In the case of Vélez Loor,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court," the "Court," or the "Tribunal"), pursuant to Articles 62.3 and 63.1 of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and to Articles 30, 32, 38.6, 56.2, 58, 59, and 61 of the Court Rules of Procedure [FN1] (hereinafter, the "Rules of Procedure"), delivers this Judgment, with the following structure:

[FN1] As stipulated in Article 79(1) of the Court's Rules of Procedure that entered into force on June 1, 2010, "[c]ontentious cases submitted to the consideration of the Court before January 1, 2010, will continue to be processed in accordance with the preceding Rules of Procedure until the delivery of a judgment." Consequently, the Court's Rules of Procedure mentioned in this judgment correspond to the instrument approved by the Court at its forty-ninth regular session, held from November 16 to 25, 2000, partially amended at its eighty-second regular session held from January 19 to 31, 2009, and that was in force until March 24, 2009 until January 1, 2010.

I. INTRODUCTION TO THE CASE AND PURPOSE OF THE CONTROVERSY

1. On October 8, 2009, the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted, pursuant to Articles 51 and 61 of the Convention, an application against the Republic of Panama (hereinafter, the "State" or "Panama") in relation to case 12.581, Jesús Tranquilino Vélez Loor, originating from the petition received by the Commission on February 10, 2004, and registered under N° P-92/04. On March 17, 2005, Mr. José Villagrán appeared as plaintiff. On October 21, 2006, the Commission declared the petition to be admissible by adopting the Report on Admissibility N° 95/06. On May 25, 2007, Mr. Vélez Loor transferred his legal representation to the Center for Justice and International Law (hereinafter "CEJIL"). On March 27, 2009, the Commission adopted the Report on the Merits, [FN2] under the terms of Article 50 of the Convention. On April 8, 2009, the State was notified of said report, and it was granted a term of two months to report on the measures adopted to comply with the recommendations made by the Commission. [FN3] After considering that Panama had not adopted its recommendations, the Commission decided to submit the present case to the Court's jurisdiction. The Commission appointed Mr. Paolo Carozza, then member of the Commission and its Executive Secretary, Santiago A. Cantón, as delegates, and Deputy Executive Secretary Elizabeth Abi-Mershed, Mrs. Silvia Serrano Guzmán, Mrs. Isabel Madariaga, and Mr. Mark Fleming as legal advisors.

[FN2] In that report, the Commission concluded that the Panamanian State is responsible for the violation of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 25 (right to judicial protection), in conjunction with the violations of articles 2 and 1(1) of the American Convention and that the State violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture for failure to appropriately investigate the alleged torture committed against Mr. Vélez Loor. The Commission, however, concluded that the petitioners have not provided sufficient evidence to declare the violation of Article 21 of the American Convention. Finally, the Commission sustained that "it does not address the petitioners' new claim of violations of Article 9 of the American Convention because it was not presented at the admissibility stage and petitioners d[id] not provide a sufficient foundation to find a violation". (case file of the evidence, tome I, appendix I of the application, folios 30 and 31)

[FN3] In said report, the Commission recommended that the Panamanian State: Fully compensate the victim, Jesús Vélez Loor, in both moral and material terms for human rights violations as determined in the report on the merits report; implement measures to prevent inhumane treatment to occur at La Joya-Joyita and La Palma penitentiaries and to bring them into compliance with the Inter-American standards; report to the Commission on the application of Decree Law No. 3 of February 22, 2008, eliminating incarceration as a form of penalty for repeated illegal entry into Panama, and Article 66 of Decree No. 3; implement laws to ensure that immigration proceedings are conducted before a competent, independent and impartial juridical authority; and, implement the required measures to ensure that the accusations of torture of Mr. Jesús Tranquilino Vélez Loor within the State's jurisdiction are properly investigated as required by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
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2. The application relates to the alleged arrest in the Republic of Panama of Mr. Jesus Tranquilino Vélez Loor – an Ecuadorian national – and subsequent prosecution for crimes relating to his immigration status, in the absence of due guarantees and without affording him the possibility of being heard or of exercising his right of defense; the alleged failure to investigate the report on torture Mr. Vélez Loor filed before Panamanian authorities, as well as the alleged inhumane detention conditions he had suffered at various Panamanian prisons in which he was held between his arrest on November 11, 2002, and his deportation to the Republic of Ecuador on September 10, 2003.

3. The Commission requested the Court to declare the State responsible for the violation of Articles 5 (right to humane treatment [personal integrity]), 7 (right to personal liberty), 8 (right to a fair trial [judicial guarantees]), and 25 (right to judicial protection), in connection with the obligations established in Articles 1(1) and 2 of the American Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, "Convention against Torture"), to the detriment of Jesús Tranquilino Vélez Loor. Lastly, the Commission requested the Tribunal to order the State to adopt various measures of reparation, as well as the payment of costs and expenses.

4. On January 9, 2010, Mrs. Viviana Krsticevic, Alejandra Nuño, Gisela De León, and Marcela Martino of CEJIL, the organization that represents the alleged victim (hereinafter, the "representatives"), submitted before the Court a written brief containing pleadings, motions, and evidence, under the terms of Article 24 of the Rules of Procedure. The representatives sustained that the State was responsible for the violation of the same rights alleged by the Commission, though in connection with Articles 24, 1(1), and 2 of the Convention. In addition, they alleged the violation of Article 2 of the Convention against Torture. Finally, they requested the Court to order the State to adopt certain measures of reparation.

5. On April 23, 2010, [FN4] the State submitted a brief containing the answer to the application along with its observations on the written brief of pleadings, motions, and evidence. In said brief, the State raised two preliminary objections related to the application filed by the Commission, namely, i) non-exhaustion of domestic remedies and ii) lack of jurisdiction ratione materiae in relation to the Inter-American Convention to Prevent and Punish Torture (infra Chapter III). Likewise, in its presentation of observations in relation to the representatives' brief,

the State put forward the following issues, which it called "preliminary matters": i) the inadmissibility ratione materiae of new claims put forward by the representatives and ii) CEJIL's legal standing in the representation of the alleged victim regarding the alleged violations of the obligations contained in the Convention against Torture (infra Chapter IV). In said brief, the State also expressed its objection to and denial of certain requests filed by the Commission and the representatives and made a partial acknowledgment of international responsibility (infra Chapter VI). The State requested the Court to declare that Panama did not have the obligation to repair in regard to the costs and expenses, except for the violations it expressly acknowledged. On December 11, 2009, the State appointed Mrs. Iana Quadri de Ballard as Agent and Mr. Vladimir Franco Sousa as its Deputy Agent.

[FN4] By means of note of May 31, 2010, the Secretariat put on record that on April 22, 2010, this Tribunal had problems with the receipt of communications sent electronically; therefore, it considered that the brief forwarded by the State on April 23, 2010, without attachments, was presented within the period of time granted for its submission.

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6. On June 30, 2010, the representatives and the Commission forwarded their written responses to the preliminary objections and the partial acknowledgment of responsibility made by the State, in accordance with Article 38(4) of the Rules of Procedure.

II. PROCEEDINGS BEFORE THE COURT

7. Notice of the application was served on the State on November 11, 2000, andon the representatives on November 9, 2009.

8. By means of an Order of July 30, 2001 [FN5] the President of the Court ordered that the testimony of seven witnesses and one expert witness be received by declarations made before a notary public (affidavit), and he convened the parties to a public hearing to listen to the statements of the alleged victim, a witness and three expert witnesses proposed by the Commission, the representatives and the State, as well as the oral arguments of the parties regarding the preliminary objections and possible merits, reparations, and costs. Also, by means of the Order of August 10, 2010, [FN6] the President, in exercise of the authority vested in Article 50(3) of the Rules of Procedure, decided that the expert witness Arturo Hoyos Phillips should render his expert assessment before a public notary (affidavit).

[FN5] See http://corteidh.or.cr/docs/asuntos/velez.pdf
[FN6] See http://corteidh.or.cr/docs/asuntos/velez1.pdf

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9. On August 13 and 15, 2010, the representatives and the State forwarded the statements rendered before a public notary. On August 24, 2010, the parties presented their observations to the forwarded statements.

10. The public hearing was held on August 25 and 26, 2010, at the seat of the Court. [FN7]

[FN7] At this hearing, the following appeared: a) on behalf of the Inter-American Commission: Mrs. María Silvia Guillén, Commissioner, Delegate; Silvia Serrano and Karla Quintana, Advisors; b) on behalf of the representatives: Mrs. Alejandra Nuño, Gisela De León, Marcela Martino and Adeline Neau, of CEJIL c) and, on behalf of the Republic of Panama: Iana Quadri de Ballard, Agent; Vladimir Franco, Deputy Agent; José Javier Mulino, Ambassador of Panama to Costa Rica; Mariela Vega de Donoso, Human Rights Director; Sophia Lee, Legal Assistant; Yarissa Montenegro, Attorney of the Bureau of Legal Affairs and Treaties; Francisco Rodríguez Robles, Legal Assistant; María de Lourdes Cabeza, Immigration Legal Advisor and Luz Divina Arredondo, Representative of the Embassy of Panama in Costa Rica. Furthermore, the alleged victim, Mr. Jesus Tranquilino Vélez Loor rendered a statement; Mrs. Maria Cristina Gonzalez rendered a testimony and Mrs. Gabriela Rodriguez Pizarro and Mr. Marcelo Flores Torrico rendered their expert assessments.

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11. On September 30, 2010, the Commission, the representatives and the State presented their final written arguments. On November 3, 2010, the State and the representatives presented their observations to the annexes to the written final briefs presented by the other party, and the Commission stated that "it had no observations to make" by means of a written document received on November 4, 2010.

12. The Tribunal received a brief presented by the Public Interest Clinic of the Universidad Sergio Arboleda (Colombia) as an amicus curiae, [FN8] regarding issues of discrimination, torture, liberty, and prison conditions.

[FN8] Said brief was submitted and signed by Luis Andrés Fajardo Arturo on July 29, 2010, Director of the Public interest Clinic at the Universidad Sergio Arboleda, and José María del Castillo Abella, Dean of the School of Law of the Universidad Sergio Arboleda.

III. PRELIMINARY OBJECTIONS

13. Pursuant to the provisions of Article 38(6), together with the provisions of Articles 56(2) and 58, all of the Rules of Procedure, the Court shall analyze the preliminary objections raised by the State, in the understanding that they cannot limit, contradict, or annul the content of the partial acknowledgment of responsibility made by the State (infra Chapter VI). In this manner, the Court proceeds to analyze the arguments presented by the parties.

1. Non-Exhaustion of Domestic Remedies

a) Arguments of the Parties

i. Arguments of the State

14. The State requested this Tribunal to reject the application submitted by the Commission in limine litis, under the following arguments: the petitioner never made use of the mechanisms available to him under the domestic law to claim his rights to personal liberty, judicial guarantees, and judicial protection; the petitioner did not exhaust the existing domestic remedies to exercise his right to have an investigation conducted regarding the alleged acts of torture committed against him; the Commission incorrectly applied the exception contained in Article 46(2)(b) of the Convention; the State sustains that the non-compliance with the requirement of exhaustion of domestic remedies existed since its first communications to the Commission and that the Commission infringed the procedural balance and the right to defense of the State given that it did not clearly state the purpose of the hearing held on March 13, 2006; some of the facts considered in the report on admissibility were provided by the petitioner without having forwarded them to the State, in violation of the State's opportunity to object to them, and paragraph 46 of the report on admissibility clearly shows the "lack of agreement between the facts described as basis of the report and the ones [..] that led the Commission to determine the merits of whether to apply the exception."

15. In particular, the State alleged that the non-exhaustion of domestic remedies refers to those related to: (a) Resolution 7306 of December 6, 2002, issued by the National Office of Immigration and Naturalization of the Ministry of the Interior and Justice of Panama (hereinafter, "National Office of Immigration"), by which the punishment of imprisonment was imposed on the alleged victim; and (b) the complaint and investigation of the alleged acts of torture committed against him. Regarding Resolution 7306 of December 6, 2002, the State mentioned that the remedies that existed under Panamanian law, at the time of the events, for the review of said administrative act, were the Request for Reconsideration and Appeal, the Appeal for Administrative Review, the Appeal for Protection of Human Rights, the Writ of Amparo, and the Writ of Habeas Corpus. According to the State, all the remedies above mentioned were in full force and effect, were effective to exercise the right to judicial protection, and were accessible to the petitioner. Regarding the alleged acts of torture, the State sustained that Mr. Vélez Loor did not file a complaint or claim in that respect, despite having had access to the relevant mechanisms and opportunities to do so.

16. As for the appropriate procedural moment, the State indicated that the notices of non-compliance with the requirement of exhaustion of domestic remedies were given at the first stages of the proceeding before the Commission and given that "the State never stopped alleging the non-exhaustion of domestic remedies, […] it cannot be sustained there is a tacit waiver of the State's right to raise [...] this objection."

ii. Arguments of the Commission

17. The Commission alleged that the arguments put forward by the State are time-barred. In that respect, it sustained that even though in the first response of Panama of March 6, 2006, reference was made to Article 46(1)(a) of the Convention, "the State did not put forward any argument addressed to sustain the non-exhaustion of the domestic remedies in the specific case or to explain the remedies that were at the victim's disposal and might have been considered suitable and effective in view of the facts alleged in the petition." Furthermore, it noted that at

the hearing held on March 13, 2006, the State "mentioned separately some remedies or 'mechanisms' to which the [alleged] victim could have resorted"; nevertheless, "before the Inter-American Court [it submitted] a broader list of specific remedies that cannot be considered equivalent to the ones presented before the [Commission]."

iii. Arguments of the Representatives

18. For their part, the representatives pointed out that "with the exception of the writ of habeas corpus, the State did not allege the existence of [the] remedies [mentioned in the answer to the application] at the admissibility stage in the proceeding before the Inter-American Commission." Moreover, they sustained that "regarding the mistreatment and acts of torture of which Mr. Vélez was [allegedly] a victim, [that] the State d[id] not expressly refer to which remedies would have been suitable and adequate."

b) Decision of the Court

19. The Court shall assess, according to its jurisprudence, whether, in the present case, the formal and material conditions have been met in order to admit the preliminary objection of non-exhaustion of domestic remedies. As for the formal requirements, considering that this objection is a defense available to the State, the Court shall first analyze the purely procedural issues, such as the procedural moment of the objection (whether it was raised in a timely fashion); the facts on which the objection is based and whether the interested party has shown that the decision on admissibility was based on erroneous information or on other considerations which implicate a compromise in the State's right to defense. Regarding the material requirements, the Court shall verify whether the domestic remedies have been filed and exhausted according to the generally recognized principles of international law; in particular, whether the State raising this objection has specified the domestic remedies that remain to be exhausted, and also the State must demonstrate that such remedies were at the victim's disposal and were adequate, suitable, and effective. All this, considering that this is a question of the admissibility of a petition before the Inter-American system, the conditions of this rule need to be verified insofar as it is alleged, even though the analysis of the formal requisites takes precedence over the material conditions, and in certain occasions, the latter are related to the merits of the case. [FN9]

[FN9] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Garibaldi, supra note 9, para. 46, and Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 42.

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20. It is reiterated jurisprudence of this Court, [FN10] that an objection to the exercise of the Court's jurisdiction based on the alleged lack of exhaustion of domestic remedies must be submitted in a timely manner from the procedural standpoint, which is at the stage of admissibility of the proceeding before the Commission; otherwise, the State shall have missed the possibility to submit such defense before this Tribunal.

[FN10] Cf. Case of Velásquez Rodríguez, supra note 9, para. 88; Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207, para. 19, and Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 24, 2009. Series C No. 204, para. 18.

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21. It appears within the case file before this Court that, during the processing of the admissibility before the Commission, the State was neither clear nor explicit in asserting its objection of non-exhaustion of domestic remedies, for the State did not make reference to the detailed list of remedies that it mentioned for the first time in its answer to the application (supra para. 15). Regarding this aspect, the State itself admitted that in its first communication before the Commission on March 6, 2006, it only invoked the rule of Article 46(1) of the Convention "without providing a complete list of the available remedies which had not been exhausted in this particular case." Likewise, the State acknowledged that "[e]ven though the information provided [in said brief and in the hearing of March 13, 2006, before the Commission] was not a complete list of the remedies available at the time of the events, [it was] in fact sufficient for the Commission to learn about the existence of judicial remedies neither utilized, nor exhausted by the petitioner."

22. As for the arguments about the alleged violation of the right to defense of the State, the Court has held that the Inter-American Commission has autonomy and independence in the exercise of its mandate as established by the American Convention [FN11] and, particularly, in the exercise of its inherent powers in the proceedings relating to the processing of individual petitions, according to the terms of Articles 44 to 51 of the Convention. [FN12] However, one of the Court's powers is to monitor the legality of the Commission's actions in regard to the processing of matters that are being heard by the Court. [FN13] This does not necessarily mean reviewing the proceedings carried out before the Commission, unless there exists a grave error that violates the right to defense of the parties. [FN14] Lastly, the party that asserts that the Commission's actions during the proceedings before it have been carried out in an irregular manner, which affected the party's right to defense, must effectively demonstrate such detriment. [FN15] Consequently, in this respect, a complaint or a difference of opinion in relation to the actions of the Inter-American Commission is not sufficient. [FN16]

[FN11] Cf. Control of Legality in the Practice of Authorities of the Inter-American Commission of Human Rights (Arts. 41 & 44 to 51 of the American Convention on Human Rights) Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, Operative Paragraph 1; Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. Series C No. 213, para. 31, and Case of Garibaldi, supra note 9, para. 35.

[FN12] Cf. Control of Legality in the Practice of Authorities of the Inter-American Commission of Human Rights (Arts. 41 & 44 to 51 of the American Convention on Human Rights), supra note 11, Operative Paragraph 2; Case of Manuel Cepeda Vargas, supra note 11, para. 31, and Case of Garibaldi, supra note 9, para. 35.

[FN13] Cf. Control of Legality in the Practice of Authorities of the Inter-American Commission of Human Rights (Arts. 41 & 44 to 51 of the American Convention on Human Rights), supra note 11, Operative Paragraph 3; Case of Manuel Cepeda Vargas, supra note 11, para. 31, and Case of Garibaldi, supra note 9, para. 35.
[FN14] Cf. Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158, para. 66; Case of Manuel Cepeda Vargas, supra note 11, para. 31, and Case of Garibaldi, supra note 9, para. 35.
[FN15] Cf. Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.), supra note 14, para. 66; Case of Manuel Cepeda Vargas, supra note 11, para. 31, and Case of Garibaldi, supra note 9, para. 36.
[FN16] Cf. Case of Castañeda Gutman v. United Mexican States. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 42; Case of Manuel Cepeda Vargas, supra note 11, para. 31, and Case of Garibaldi, supra note 9, para. 36.
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23. In relation to this aspect, the Commission argued that “despite the fact that the State indicate[d] not having known the matter at issue that would be discussed at the hearing, during the hearing the State presented arguments related to the admissibility of the petition"; thus, said hearing constitutes an additional procedural opportunity to those already granted by the Commission to the State for the State to present all its arguments concerning admissibility. For their part, the representatives did not present specific arguments to this respect.

24. It is worth recalling that it is neither the Court’s nor the Commission’s task to identify ex officio the domestic remedies to be exhausted; rather, it is incumbent on the State to point out, in a timely manner, the domestic remedies which must be exhausted and to show their effectiveness. It is also not up to the international bodies to resolve the lack of precision in the allegations of the State, [FN17] which despite having several procedural opportunities, did not timely raise the objection of non-exhaustion of domestic remedies.

[FN17] Cf. Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 23, and Case of Usón Ramírez, supra note 10, para. 22.
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25. Furthermore, taking into account the characteristics of the instant case and the arguments put forward by the parties in this regard, this Tribunal considers that a preliminary analysis of the availability and/or effectiveness of the writ of habeas corpus, of the investigations into the alleged acts of torture, or of consular assistance in the particular circumstances of this case, would implicate an evaluation of the proceedings conducted by the State in relation to its obligation to respect and guarantee the rights enshrined in the international treaties, the violation of which is alleged, issue that must not be analyzed as a preliminary matter but when assessing the merits of the controversy.

26. Therefore, the Tribunal understands that the State's right to defense has not been affected and thus finds no reason to depart from the prior decision made in the proceeding before the Commission. Consequently, the State's lack of specificity in a timely procedural manner before the Commission regarding the domestic remedies that allegedly had not been exhausted, as well as the lack of reasoning put forth concerning their availability, suitability, and effectiveness, make the argument presented before this Court time-barred.

27. Lastly, it is worth emphasizing that the State made a partial acknowledgment of international responsibility (infra Chapter VI), in which it specified and admitted that Mr. Vélez Loor was not notified of the content of Order 7306 of December 6, 2002, and that the process by which he was sentenced to two years' imprisonment was conducted without any guarantee of the right to defense. In this respect, the Tribunal deems that the filing of the preliminary objection of non-exhaustion of domestic remedies in the present case is incompatible with said acknowledgment, [FN18] with the understanding that the notice of said decision constituted a requisite for the filing of some of the remedies mentioned by the State in its response [FN19] and that the lack of guarantee of due process of law to pursue the remedies constitutes an enabling factor of the jurisdiction of the international system of protection.

[FN18] Cf. Case of the "Mapiripan Massacre" v. Colombia. Preliminary Objections. Judgment of March 7, 2005 Series C No. 122, para. 30, and Case of the Ituango Massacre v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2006 Series C No. 148, para. 104.

[FN19] In fact, the State pointed out that even though "[t]he resolution by which it was ordered the deportation of Mr. Vélez Loor was subject to the request for reconsideration and appeal before the Ministry of Interior and Justice, the National Office of Immigration and Naturalization failed to formally notified the content of the Resolution, therefore it is possible to infer that the petitioner was not, at the moment of the implementation of the resolution, reported of the remedies or in a position to file said remedies".

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28. Therefore, in virtue of these reasons, the Court dismisses the first preliminary objection raised by the State.

2. Lack of jurisdiction ratione materiae of the Court over an alleged breach of the Inter-American Convention to Prevent and Punish Torture

a) Arguments of the Parties

i. Arguments of the State

29. The State requested that the inadmissibility of the application submitted by the Commission be declared, in view of the "lack of the Court's competence […] to hear the alleged non-compliance with the obligation to investigate established in the [Convention against Torture], based on the content of Articles 33 and 62 of the American Convention on Human Rights, which expressly limit the Court's jurisdiction to the interpretation or application of the

[latter].” In this respect, the State alleged that “it cannot be assumed that the acceptance of the jurisdiction of the American Convention by the Panamanian State […] could be applied to [confer] jurisdiction upon the Court regarding the application and interpretation of the Convention [against Torture], without considering that such assumption constitutes an act contrary to the principle of consent.” In the same manner, it pointed out that this Tribunal is not competent to hear violations of the obligations contained in the Convention against Torture in the present case given that the State, apart from giving its consent to be bound to such treaty, must expressly state and accept the competence of the Inter-American Court to apply and interpret its content. Finally, the State argued that the Court has limited jurisdiction over international treaties which “do not expressly confer on it the power to determine the compatibility of the acts and the norms of the States, such as the [Convention against Torture].”

30. Should the objection be dismissed, the State requested that the Court elaborate, in a broader manner, on its jurisprudence of the last decade regarding this issue, given that its criterion “is based on facts that are insufficient to determine, with complete certainty, the scope of jurisdiction over the application and interpretation of the [Convention against Torture].”

ii. Arguments of the Commission and representatives

31. The Commission recalled that both said organ and the Court have determined the existence of violations of Articles 1, 6, and 8 of the Convention against Torture, in the understanding that subsection three of Article 8 of the said Convention contains a general clause of acceptance of jurisdiction by the States upon the ratification or adherence of said treaty. Therefore, according to the Commission there are no reasons for the Court to depart from its reiterated opinion, which is in accordance with international law. For their part, the representatives requested that the Court, "in conformity with [its] combined jurisprudence on the issue, reject[ed] the preliminary objection raised by the State of Panama.”

b) Decision of the Court

32. Firstly, it is relevant to recall that, regarding the argument put forward by some States that each Inter-American treaty requires a specific declaration granting jurisdiction to the Court, this Tribunal has determined the possibility of exercising its contentious jurisdiction with regard to Inter-American instruments other than the American Convention, when such instruments establish a system of petitions subject to international supervision in the regional sphere. [FN20] In this regard, the special declaration accepting the contentious jurisdiction of the Court, based on Article 62 of the American Convention, allows the Court to examine violations of the Convention as well as other Inter-American instruments that grant it jurisdiction. [FN21]

[FN20] Cf. Case of Las Palmeras v. Colombia. Preliminary Objections. Judgment of February 4, 2000. Series C No. 67, para. 34, and Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 37.

[FN21] Cf. Case of González et al. (“Cotton Field”), supra note 20, para. 37.

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33. Although Article 8 of the Convention against Torture [FN22] does not explicitly mention the Inter-American Court, the Tribunal has referred to its own jurisdiction to interpret and apply the Convention against Torture, using a means of complementary interpretation, such as the working papers, to overcome the possible ambiguity of the provision. [FN23] In this manner, in its judgment in the case of Villagrán Morales et al v. Guatemala, the Tribunal referred to the historic reason of said Article, which is that at the moment of drafting the Convention against Torture some member countries of the Organization of American States were still not parties to the American Convention and indicated that "the possibility of ratifying or adhering to the Convention against Torture was opened to the greatest number of States by means of a general clause [of jurisdiction, which did not make express and exclusive reference to the Inter-American Court]. What was considered important was to attribute the competence for applying the [Convention against Torture] to an international organ, whether this was a commission, a committee, an existing tribunal or one that would be created in the future." [FN24]

[FN22] This precept states, regarding the jurisdiction to apply it, that "[a]fter all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State" to which the violation is deemed.
[FN23] Cf. Case of González et al. ("Cotton FieldsCotton Field"), supra note 20, para. 51.
[FN24] Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 247 and 248, and Case of Cantoral Huamaní and García Santa Cruz v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, footnote 6.

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34. In relation to this issue, it is necessary to emphasize that the system of international protection must be understood as an integral whole, a principle contemplated in Article 29 of the American Convention, which provides a framework of the protection that always gives the priority to the interpretation or the norm that better protects the rights of the human being, which is the main objective of the Inter-American System. To this end, the adoption of a restrictive interpretation as to the scope of the Tribunal's jurisdiction would not only be contrary to the purpose and end of the Convention, but it would also affect the effective application of the treaty and of the guarantee of protection that it provides, with negative consequences for the alleged victim in the exercise of his right to access to justice. [FN25]

[FN25] Cf. Case of Radilla Pacheco v. México. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 24.

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35. Based on previous considerations, the Court recalls its constant jurisprudence [FN26] which states that it is competent to interpret and apply the Convention against Torture and declare the responsibility of a State that has given its consent to be bound to this Convention and has accepted, in addition, the jurisdiction of the Inter-American Court of Human Rights. In this

understanding, the Tribunal has already had the opportunity to apply the Convention against Torture and to declare the responsibility of various States in view of the violation. [FN27] Given that Panama is a party to the Convention against Torture and has acknowledged the contentious jurisdiction of this Tribunal (infra Chapter V), the Court has jurisdiction ratione materiae to rule, in this case, on the alleged responsibility of the State for the violation of said treaty, which was in force at the time of the events.

[FN26] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 24, paras. 247 and 248; Case of González et al. ("Cotton Field"), supra note 20, para. 51; Case of Las Palmeras, supra note 20, para. 34, and Case of Cantoral Huamaní and García Santa Cruz, supra note 24, footnote 6.

[FN27] The Court has applied the Convention against Torture in the following cases: Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 136; Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 248 to 252; Case of Cantoral Benavides v. Perú. Merits. Judgment of August 18, 2000. Series C No. 69, paras. 185 and 186; Case of Las Palmeras v. Colombia. Preliminary Objections. Judgment of February 4, 2000. Series C No. 67, para. 34; Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, paras. 218 and 219; Case of Maritza Urrutia v. Guatemala. Merits, Reparations, and Costs. Judgment of November 27, 2003. Series C No. 103, para. 98; Case of the Gómez-Paquiyauri Brothers v. Perú. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, paras. 117 and 156; Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, para. 159; Case of Gutiérrez Soler v. Colombia. Merits, Reparations, and Costs. Judgment of September 12, 2005. Series C No. 132, para. 54; Case of Blanco Romero et al. v. Venezuela. Merits, Reparations, and Costs. Judgment of November 28, 2005. Series C No. 138, para. 61; Case of Baldeón García v. Perú. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 162; Case of Vargas Areco v. Paraguay. Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 155, para. 86; Case of the Miguel Castro-Castro Prison v. Perú. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 266; Case of Cantoral Huamaní and García Santa Cruz v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, footnote 6; Case of Heliodoro Portugal v. Panamá. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 53; Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C No. 187, para. 89; Case of The Dos Erres Massacre v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2009. Series C No. 211, para. 54; Case of González et al. ("Cotton Field") v. México. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 51; Case of Fernández Ortega et al. v. México. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 131, and Case of Rosendo Cantú et al. v. México. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216; para. 131.

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36. Based on the foregoing arguments, the Tribunal dismisses the second preliminary objection raised by the State.

IV. PRELIMINARY MATTERS

37. Next, the Court shall refer to the two issues presented by the State, being preliminary matters precedent, in relation to the representatives' brief of the pleadings and motions.

1. Inadmissibility ratione materiae of new claims argued by the representatives

a) Arguments of the Parties

i) Arguments of the State

38. The State argued that the brief submitted by the representatives "seeks to introduce into this process new claims that are not included in the application filed by the Commission [and that these] new claims vary and modify the scope of the present case" and therefore should not be admitted by the Court in the present litigation.

39. The claims that the State considers as introduced by the representatives into this case refer, to the Court´s opinion, both to facts and to rights, namely: the alleged acts of torture, the alleged violation of Articles 2 of the Convention against Torture and 24 of the American Convention, and the alleged responsibility of the State for failing to adequately classify torture, all of which the State requested the Tribunal not to admit.

40. The State's argument refers to the representatives' assertions that, while in Panamanian's custody, Mr. Vélez Loor suffered ill treatment, sexual abuse, and torture. In particular, the representatives sustained that Mr. Vélez Loor "was victim of multiple instances of humiliation and mistreatment, while in Panamanian custody, which must be considered as torture." In this respect, they indicated that on June 1, 2003, after he initiated a hunger strike and stitched his mouth, Mr. Vélez was transferred to maximum security Cellblock 12 at La Joyita Prison, where "they beat him," poured tear gas in his face and eyes, "sprayed tear gas onto his genitals," and where "he was raped by a police guard who inserted a pen with tear gas powder into his anus."

ii) Response to the Arguments of the State

41. The representatives alleged that in their brief they elaborated on the facts, legal claims, and proposed reparations, following the factual framework established in the application of the Commission, without putting forth different facts and limiting themselves to explaining or contextualizing the alleged violations; as such, they requested that this preliminary matter be dismissed. Likewise, they indicated that "the description of the acts of torture suffered by Mr. Jesús Vélez Loor, while in Panamanian custody, does nothing more than develop the facts put forward by the Commission in the brief containing the application[, and] forms an integral part of it." Hence, they considered that it is up to the Court, in view of the evidence provided, to assess and rule on the State's responsibility for the alleged acts of torture. Likewise, the representatives sustained that even though the Commission made no reference to "the violation

of the right to humane treatment based on act of torture", "[t]he Court has expressly acknowledged that [the representatives may introduce new claims]."

42. The Commission did not present specific considerations in relation to this issue.

b) Decision of the Court

43. It is the jurisprudence of the Court that the alleged victims, their family members, or representatives in the contentious proceedings before this Court, may invoke the violation of rights different than those included in the Commission's application, so long as they refer to facts already included in the application, [FN28] which constitutes the factual framework of the proceeding. [FN29] In turn, the alleged victims or their representatives may refer to facts that explain, contextualize, clarify, or reject those mentioned in the application or even respond to the claims of the State, [FN30] depending on their arguments and the evidence they provide. The purpose of this possibility is to make effective the procedural power of locus standi in judicio that is recognized in the Rules of Procedure of the Tribunal, without this invalidating the conventional limitations to their participation and the exercise of the Court's jurisdiction, nor being an infringement or violation of the State's right to a defense, [FN31] since the latter has the procedural opportunities to respond to the arguments of the Commission and the representatives during each stage of the process. Furthermore, supervening facts may be submitted to the Court at any stage of the proceeding before the judgment is issued. [FN32] Finally, it is the responsibility of the Court to decide in each case the admissibility of arguments of that nature in protection of the procedural balance of the parties. [FN33]

[FN28] Cf. Case of the "Five Pensioners" v. Perú. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98, para. 155; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs. Judgment of September 1, 2010. Series C No. 217, para. 228, and Case of The Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 237.

[FN29] Cf. Case of the "Mapiripan Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, para. 59; Case of The Xákmok Kásek Indigenous Community, supra note 28, para. 237, and Case of Manuel Cepeda Vargas, supra note 11, para. 49.

[FN30] Cf. Case of the "Five Pensioners", supra note 28, para. 153; Case of The Xákmok Kásek Indigenous Community, supra note 28, para. 237, and Case of Manuel Cepeda Vargas, supra note 11, para. 49.

[FN31] Cf. Case of Perozo et al., supra note 9, para. 32, and Case of Reverón Trujillo, supra note 17, para. 135.

[FN32] Cf. Case of the "Five Pensioners", supra note 28, para. 154; Case of The Xákmok Kásek Indigenous Community, supra note 28, para. 237, and Case of Manuel Cepeda Vargas, supra note 11, para. 49.

[FN33] Cf. Case of the "Mapiripan Massacre", supra note 29, para. 58; Case of The Dos Erres Massacre, supra note 27, para. 165, and Case of Reverón Trujillo, supra note 17, para. 135.

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44. In light of the criteria put forward, it is up to the Tribunal to determine whether the facts alleged within the factual framework established by the Commission in its application must be classified as acts of torture.

45. The Tribunal notes that in the Report on Admissibility N° 95/06, the Inter-American Commission considered that in the case of Mr. Vélez Loor the alleged torture facts described in the petition and the lack of information about criminal investigations and penalties relating to these facts constitute a possible violation of Articles 5, 8, and 25 of the American Convention and Articles 1, 6, and 8 of the Convention against Torture. [FN34] Then, when assessing the facts brought before it as possible acts of torture, the Commission deemed, in the Report on the Merits N° 37/09 adopted in this case, that it did not have "sufficient evidence that Mr. Vélez Loor was tortured during the time he was under Panamanian custody," [FN35] however, it found the State responsible "for not carrying out a contemporaneous investigation of the torture allegations against Mr. Vélez Loor." [FN36]

[FN34] Cf. Report N° 95/06 (Admissibility), Petition 92/04, Jesús Tranquilino Vélez – Panama, Loor, issued by the Inter-American Commission on October 21, 2006 (case file of the evidence, tome I, appendix 2 to the application, folio 50).

[FN35] In this respect, it concluded that "given the nature of the contradictory allegations regarding the alleged acts of torture and the lack of specific information of the parties, the Commission does not have sufficient information to find that acts of torture had been committed by the State. […] Therefore, taking into account it does not have sufficient evidence of acts of torture, the Commission concludes that the State has not violated article 2 of the Inter-American Convention to Prevent and Punish Torture in relation to the allegations of torture of Mr. Vélez Loor". Report N° 37/09 (Merits), Case 12.581, Jesús Tranquilino Vélez Loor - Panama, March 27, 2009 (case file of the evidence, tome I, appendix 1 to the application, folio 31).

[FN36] Report No. 37/09, supra note 35.

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46. In its application before this Court, the Commission referred only abstractly to the allegations of torture made within the scope of the present case, but without relating them to the facts or acts that would constitute torture, nor did it make any allusion to the circumstances of the manner, time, and place in which they occurred. Likewise, it refers to a medical and psychological examination conducted on Mr. Vélez Loor in Bolivia in June of 2008, and it observes that the same examination conforms in some aspects to the complaints of torture presented by Mr. Vélez Loor in the framework of another petition against Ecuador that also was processed before the Commission.

47. It was the representatives in their brief of pleadings and arguments, and the alleged victim in his declaration before this Court, who referred in a detailed manner to the events that constituted the alleged acts of torture. In this understanding, the Tribunal considers that the information provided by the representatives and the alleged victim himself with respect to the alleged acts of torture and the manner, time, and place in which they had occurred is complementary to the factual framework of the complaint in regard to clarifying to the events over which falls the duty to investigate, but these events cannot be considered autonomously as

constitutive of a violation in light of the complaint present by the Commission (supra para. 43). Under this understanding, the Court shall make an allusion to the events that constitute torture according to the representatives of the alleged victim only as an object from which to proceed to analyze the alleged obligation to investigate these acts included by the Commission in its application.

48. It then follows, in conformity with the factual framework of the present case, it is not viable to analyze the events presented by the representatives as a separate violation within Articles 5(2) of the American Convention and 2 of the Convention against Torture. However, these events shall be taken into account, inasmuch as they give content to the duty of the State to initiate immediately an investigation in respect to the supposed acts of torture.

49. Notwithstanding the abovementioned, upon analyzing the events of the complaint relative to the conditions under which the deprivation of liberty of Mr. Vélez Loor developed, the Tribunal shall be able to make judgments on other legal aspects in reference to humane treatment established in Article 5 of the Convention.

50. Regarding the arguments of the representatives related to the alleged violation of Article 24 of the American Convention, the Tribunal considers that, in the current state of evolution of the system of protection of human rights, it is within the power of the representative of the alleged victim to include legal claims different than those filed by the Commission, as long as they are founded within the factual basis of the application. Moreover, the State has had every procedural opportunity to submit its defense arguments concerning said pleadings before this Tribunal. [FN37] Therefore, such arguments shall be analyzed by the Court in the merits of this Judgment (infra Chapter VII-3).

[FN37] Cf. Case of Garibaldi, supra note 9, para. 39.

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51. Therefore, the Tribunal partially accepts the first preliminary matter to the proceeding filed by the State.

2. The legal standing of CEJIL to act on behalf of the alleged victim regarding the alleged violations of the obligations embodied in the Convention against Torture.

52. The State alleged that CEJIL does not have legal standing "to act at [this] stage [...] on behalf of the alleged victim [...] regarding the alleged violations of the obligations embodied in the [Convention against Torture]," based on that the power-of-attorney granted by Mr. Vélez Loor authorizes CEJIL to "represent him […] only in relation to the violation of 'some rights enshrined in the Inter-American Convention on Human Rights (sic)' and not to represent him as to the alleged violations [...] contained in other international conventions."

53. The representatives argued that the granted powers-of-attorney complies with all the formalities that the Court has previously determined to be essential and "unequivocally demonstrates [the will of the alleged victim] for CEJIL to take all the actions and measures

related to the proceeding […] conducted against the State […] 'ensuring the correct processing of said case'"; therefore, the power-of-attorney is valid and effective in relation to all the pertinent actions within the framework of this proceeding. For its part, the Commission did not present specific considerations in this regard.

54. Previously, the Court has stated that it is not essential that the power of attorney granted by the alleged victims to be represented in the proceeding before the Court conform to the same formalities established by the domestic laws of the respondent State. [FN38] The Court has further stated that the usual practice of this Court in regard to the rules of representation has been flexible. However, it has certain limits dictated by the use that the representation itself will have. First, the instruments must clearly identify the party bestowing the power of attorney and reflect a lucid and unambiguous manifestation of free will. They must also name the person to whom the power of attorney is granted and, finally, they must specifically state the purpose of the representation. The instruments that meet these requirements are valid and have full effect once submitted before the Tribunal. [FN39]

[FN38] Cf. Case of Loayza Tamayo v. Perú. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, paras. 97 and 98; Case of Acevedo Jaramillo et al. v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 7, 2006. Series C No. 144, para. 145, and Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127, para. 94.
[FN39] Cf. Case of Loayza Tamayo, supra note 38, paras. 98 and 99; Case of Acevedo Jaramillo et al., supra note 38, para. 145, and Case of Yatama, supra note 38, para. 94.

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55. The Court verifies that the power of attorney granted to CEJIL [FN40] does not contain any express limitation on the Articles that may be alleged by the representatives in the proceeding before this Court, given that the American Convention was mentioned in a general way; moreover, an intention to limit the authority or capacity of the representatives in the proceedings before this Tribunal cannot be inferred from the draft of the said instrument. On the contrary, in the said power of attorney it is expressed that the attorneys must "ensure the correct processing of the [instant] case," [FN41] and based on this, the Court understands that they have standing to put forward the legal claims they consider relevant or appropriate in the specific case.

[FN40] Cf. Special power-of–attorney granted by Jesús Tranquilino Vélez Loor in favor of the Center for Justice and International Law (CEJIL) through Mrs. Viviana Krsticevic and Marcela Martino by means of deed N° 367/2009 of April 29, 2009 (case file of the evidence, volume III, annex 33 to the application, folios 1544 to 1545).
[FN41] Special power-of –attorney granted by Jesús Tranquilino Vélez, supra note 40.

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56. Based on the foregoing, the Court considers that it has accurately determined the purpose of the power-of-attorney, in compliance with the requirements previously established by this Tribunal, and that the power-of-attorney granted to the representatives does not contain any

limitation that would prevent them from alleging the violation of certain rights of the Convention against Torture before this Tribunal; therefore, the Court rejects the second preliminary matter.

V. JURISDICTION

57. The Inter-American Court has jurisdiction to hear the present case, pursuant to the terms of Article 62(3) of the Convention. The State of Panama ratified the American Convention on June 22, 1978, which entered into force for the State on July 18, 1978, and on May 9, 1990, it accepted "the binding jurisdiction of the Inter-American Court on Human Rights over all the cases related to the interpretation and application of the American Convention […]." Furthermore, on August 28, 1991, Panama deposited the instrument of ratification of the Inter-American Convention to Prevent and Punish Torture, which entered into force for the State on September 28, 1991.

VI. PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

58. In the instant case, the State made a partial acknowledgment of the facts and of its international responsibility for several alleged violations of the rights enshrined in the Convention. Hence, in its response to the application, the State assumed partial responsibility:

For the violation of the right to personal liberty, enshrined in Articles 7(1), 7(3), 7(4) and 7(5) of the Convention, in relation with Article 1(1) therein, regarding Mr. Jesus Tranquilino Vélez Loor, under the following terms:

i) The violation of Article 7(1) of the Convention on the grounds of not having partially observed the compliance with the guarantees contained in Articles 7(3), 7(4), 7(5), and 7(6) of the Convention regarding the arrest by Order 7306 of December 6, 2002;

ii) The violation of Article 7(3) of the Convention on the grounds of not having notified Mr. Vélez Loor of the content of Order 7306 of December 6, 2002, issued by the National Office of Immigration and Naturalization;

iii) The violation of Article 7(4) of the Convention on the grounds of not having formally informed him of the charges that would be considered by the National Office of Immigration and Naturalization for the imposition of the sentence of two years' imprisonment; and,

iv) The violation of Article 7(5) of the Convention on the grounds of not having brought Mr. Vélez Loor before the officer of the National Office of Immigration and Naturalization in order to determine his responsibility for the alleged violation of the terms of his deportation ordered in January 2002.

For the violation of the right to humane treatment [personal integrity] embodied in Article 5(1) and 5(2) of the Convention, in conjunction with Article 1(1) therein, regarding Mr. Jesus Tranquilino Vélez Loor, as to the arrest conditions limited to the time of the events, specifically excluding the alleged mistreatment and acts of torture, as well as the lack of medical care while imprisoned in Panama.

Partially, for the violation of the right to a fair trial [judicial guarantees], enshrined in Articles 8(1) and 8(2) subsections (b), (c), (d), and (f), and 25 of the Convention, in conjunction with Article 1(1) therein, regarding the application of the punishment of two years' imprisonment

ordered by means of Order 7306 of December 6, 2002, issued by the National Office of Immigration and Naturalization.

59. At the public hearing, the State repeated its partial acknowledgment of responsibility, specified the aspects acknowledged as to the arrest conditions, and indicated that such acknowledgment does not apply to: i) Article 2 of the American Convention insofar as the Panamanian legal system establishes the mechanisms of protection necessary to ensure personal liberty, ii) the alleged acts of torture referred to by the representatives; and, iii) the alleged violation of the right to appeal the judgment contemplated in subsection h) Article 8(2) of the Convention.

60. In its final written arguments, the State repeated that "it maintains the partial acknowledgment of responsibility regarding the facts,"

As to the right of personal liberty, "it acknowledge[d] responsibility for the application of the punishment established by Article 67 of Decree Law 16 of 1960 […] without having guaranteed, in the instant case, Mr. Vélez the possibility for preparing his defense before the application of such punishment. This measure constituted the violation of the right to personal liberty, embodied in Articles 7(1), 7(3), 7(4), 7(5), and 7(6) of the [American Convention] in conjunction with the general obligation contained in Article 1(1) [therein]."
Regarding Article 7(1) of the American Convention, "it expressed its acknowledgment of responsibility for the partial non-compliance with the obligation contained in Article 1(1) of the Convention, insofar as the arrest ordered by the Order of December 6 only partially took into account the guarantees contained in Articles 7(3), 7(4), and 7(5), which in turn constitutes non-compliance with the general obligation to respect the norms of the Convention."
As to Article 7(3) of the American Convention, "[t]he State acknowledged, regarding Order 7306, the responsibility for the violation of the right enshrined in Article 7(3) in conjunction with Article 1(1) of the Convention in view of the non-compliance with the obligation to promptly notify Mr. Vélez Loor of the reasons for his arrest as of the issuance of said Order 7306 of December 6, 2002."
In relation to Article 7(4) of the American Convention, the State expressed that "[d]espite it being true that the State orally informed Mr. Vélez of the reasons for the imposition of such punishment, as of his arrest and, despite Mr. Vélez having been deported in the month of January of 2002 under penalty of the punishment contained in Article 67 of [Decree Law] 16, the State admits that, in light of its domestic legal system and its international obligations, such actions were not sufficient to adequately comply with the obligation to serve a formal notification of the specific charges that would be considered by the [National Direction of Immigration] and with which Jesus Vélez could be punished according to Decree Law 16 [...]. There is no record of the formal written notification of the charges brought against Vélez Loor."
Regarding the right to humane treatment [personal integrity], "[t]he State assum[ed] responsibility for not having guaranteed the appropriate arrest conditions to Mr. Vélez, insofar as the general conditions of the penitentiary centers of the Penitentiary National System of Panama, in which he was detained, (La Palma and La Joyita) did not comply with the standards to guarantee and safeguard the right to humane treatment, which constituted the violation of Articles 5(1) and 5(2) of the [American Convention]."

In addition, the State acknowledged "responsibility for the violation of the right to a fair trial [judicial guarantees] and judicial protection embodied in Articles 8(1), 8(2), and 25 of the American Convention in conjunction with Article 1(1) therein, regarding the imposition of the punishment of two years imprisonment ordered against Jesús Vélez by means of Resolution N° 7306[,] of December 6, 2002." The State mentioned that "the issuance of Resolution N° 7306[,] despite being a formal administrative act, had to take into account and provide the procedural guarantees inherent in criminal procedures, insofar as its application affected the fundamental right to liberty. There is no record in the instant case that such obligation has been adequately complied with at the stage of substantiation of the administrative proceeding in which it was determined the imposition of such punishment. […T]he sentence of imprisonment was decided without affording the victim the possibility of being heard […]. Such failure constitutes a violation of the guarantees contemplated in Article 8(2)." Therefore, the State "acknowledge[d] responsibility for the violation of Article 8(1) and 8(2) subsection (b), (c), (d), and (f) in conjunction with Article 1(1) of the American Convention, given that no written and detailed formal notice was served on the accused of the charges brought against him; Mr. Vélez was not provided time or the adequate means for the preparation of his defense; Mr. Vélez was not assisted by counsel nor was he allowed to exercise his right to defense during the substantiation of the administrative proceeding that resulted in the deprivation of his liberty."

61. The Commission valued the acknowledgment made by the State, but it noted that "some aspects of the language used [...] are ambiguous and thereby hinder an unequivocal determination of the scope of the acknowledgment of responsibility"; therefore, it requested the Tribunal to provide a "detailed description of the facts and [of] the [alleged] human rights violations committed, in view of the effect of reparation of [this judgment] in favor of the [alleged] victim, as well as of its contribution to the non-repetition of similar facts."

62. The representatives sustained that "the acknowledgment of responsibility made by the Panamanian State is highly confusing and ambiguous," given that it only indicates the Articles the State considers to be violated, without clearly establishing which were the facts that gave rise to such violations or making reference to reasons different than the ones alleged by the Commission and the representatives. Furthermore, they emphasized certain contradictions that emerged from the State's arguments. As a result, they indicated that the lack of clarity of the State's declarations impedes the establishment of the true scope of the acknowledgment of responsibility made, for which they requested the Court to "examine all the facts, claims, and requests in dispute."

63. According to Articles 56(2) and 58 of the Rules of Procedure, [FN42] and in exercise of the power to provide international judicial protection of the human rights, a matter of international public order that goes beyond the intent of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the Inter-American system. Consequently, the Court does not limit itself to merely confirming, recording, or taking note of the acknowledgement made by the State, or verifying the formal conditions of such actions, but it must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties, [FN43] in order to determine, insofar as possible and in the exercise of its competence, the truth of what occurred in the case.

[FN42] In its pertinent part, articles 56.2 and 58 of the Court's Rules of Procedure establish that:
Article 56. Discontinuance of a case.
[…]
2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the alleged victims or their representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.
Article 58. Continuance of a case.
The Court may, notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.
[FN43] Cf. Case of Kimel v. Argentina. Merits, Reparations, and Costs. Judgment of May 2, 2008. Series C No. 177, para. 24; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 34, and Case of Rosendo Cantú et al., supra note 27, para. 22.

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64. The Court notes that the State did not clearly and specifically detail the facts of the application that serve as the legal basis for its partial acknowledgment of responsibility. However, it is verified that the State explicitly objected to certain facts mentioned in the application. [FN44] Therefore, given that the State acquiesced to the alleged violations of Articles 7(1), 7(3), 7(4), 7(5), 5(1), 5(2), 8(1), and 8(2) (b), (c), (d), and (f) of the American Convention, in relation to the obligation established in Article 1(1) therein, this Tribunal finds that Panama has acknowledged the facts that, according to the application -factual framework of this proceeding-, constitute these violations, with the exception of the Articles above mentioned.

[FN44] The State objected to "the statement made in the application of the Inter-American Commission according to which Mr. Vélez Loor did not have access to a counsel provided by the State and that he was not afforded the possibility of contacting the Ecuadorian [C]onsulate," and "to the fact regarding the lack of specialized medical care that Mr. Vélez required in light of the alleged cranial fracture he had". It sustained that "it is not true that a request for deportation has been presented to the [National Office of Immigration] by the Ombudsman's Office in favor of Mr. Vélez Loor"; it is "not exact the statement made according to which the Ecuadorian consulate heard, only in the month February, about the request for the payment of tickets to obtain the commutation of the sentence imposed on Vélez Loor" and that "it denies the fact alleged regarding the lack of investigation into the acts of torture denounced by the petitioner."

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65. In view of the foregoing, the Tribunal decides to accept the acknowledgment made by the State and to classify it as a partial acknowledgment of facts and a partial acquiescence to the legal claims contained in the application of the Inter-American Commission.

66. Regarding Article 25 of the Convention, the Court finds that it cannot be inferred from the acquiescence made by the State the precise scope of its acknowledgment, [FN45] given that the State itself declared that there is still dispute over the right to recourse to a competent judge or court in order for the court to decide without delay on the lawfulness of his arrest or detention (Article 7(6)); the right to appeal the judgment to a higher court (Article 8(2)(h)), and the right to judicial protection (Article 25), all of the American Convention.

[FN45] In this respect, in its response to the application, the State indicated: "[e]ven though the State has acknowledged partial responsibility for the non-compliance with its duty to provide judicial guarantees regarding the punishment imposed on Mr. Vélez Loor, it has not accepted responsibility for the violation of the obligation to provide effective recourse before the courts (judicial control) to protect him before acts that, in breach of the domestic legal system, violated the petitioner's right."

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67. In sum, the Court notes that there is still controversy between the parties as to the alleged violation of:

- Article 7(2) and 7(5) of the American Convention with respect to the initial detention for not having put Mr. Vélez Loor before a judge or a competent authority to exercise judiciary functions and for not having notified, in writing, of the requirements to exit the country;
- Article 7(3) of the American Convention in relation to the order of detention N° 1430 of November 12, 2002;
- Article 7(3) of the American Convention in relation to the punishment imposed by means of Order 7306 of December 6, 2002;
- Article 7(4) of the American Convention in relation to the notification provided to Mr. Vélez Loor concerning the right to consular assistance;
- Articles 7(6) and 25 of the American Convention in relation to the right to recourse to a court to decide on the lawfulness of the arrest of Mr. Vélez Loor;
- Article 8(2)(h) and 25 of the American Convention in relation to the right to appeal the judgment;
- Article 8(2)(e) of the American Convention in relation to the right to legal counsel and in relation to the information and access to consular assistance of Ecuador;
- Article 25 of the American Convention in relation to the right to judicial protection;
- Article 5(1) and 5(2) of the American Convention in relation to the condition of deprivation of liberty related to the alleged lack of medical care during Mr. Vélez Loor's imprisonment in Panama and the supply of potable water in La Joyita Penitentiary Center;
- the obligation to guarantee Article 5 of the American Convention, as well as Articles 1, 6, and 8 of the Convention against Torture, for failing to conduct a serious and diligent investigation into the allegations of torture presented by Mr. Vélez Loor;
- Article 2 of the American Convention for failing to adapt its domestic law to Articles 7, 8 and 25 of the American Convention in view of the application of Decree Law 16 of June 30, 1960;
- Articles 24, 1(1), and 2 of the American Convention in relation to the violation of the principle of equal protection and non-discrimination; and,

• Articles 2 of the American Convention and 1, 6, and 8 of the Convention against Torture for the alleged lack of adequate classification of the crime of torture.

68. As for the claims of reparations, the State acknowledged the determination of the alleged victim, accepted its duty to repair the violations acknowledged for the infringement of the rights to humane treatment [personal integrity], personal liberty, a fair trial [judicial guarantees], and judicial protection established in Articles 5, 7, 8, and 25 of the Convention and indicated some measures it has adopted or offers to adopt, which shall be analyzed in the corresponding chapter. However, it objected to the State's obligation to conduct a serious and diligent investigation into the allegations of torture allegedly committed under its jurisdiction to the detriment of Vélez Loor; the obligation to bring in line the domestic legislation on immigration and its application to the minimum guarantees established in Articles 7 and 8 of the American Convention; the obligation to adopt the measures necessary to ensure that the Panamanian detention centers comply with the minimum standards compatible with affording a humane treatment and that permit those persons deprived of liberty to have a dignified life; to initiate investigations ex officio upon the filing of a complaint or a well grounded reason to believe that an act of torture was committed under its jurisdiction and to pay all the costs and expenses incurred in the processing of the instant case before the Inter-American Commission and the Court. Moreover, the Commission and the representatives questioned the extent of the results that the State argues, for which there is still controversy in relation to other forms of reparation requested by the Commission and the representatives. Consequently, the Tribunal shall decide what is appropriate.

69. In the instant case, the Tribunal deems that the State's partial acknowledgement of the facts and acquiescence with regard to some of the legal claims and claims for reparation make a positive contribution to the development of these proceedings and to the exercise of the principles that inspire the American Convention, [FN46] and in part to satisfying the reparation required by the victims of human rights violations.

[FN46] Cf. Case of the Caracazo v. Venezuela. Merits. Judgment of November 11, 1999. Series C No. 58, para. 43; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 37, and Case of Rosendo Cantú et al., supra note 27, para. 25.

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70. Notwithstanding that, the Court finds it necessary to determine the facts and all the subsisting aspects of the merits and possible reparations, as well as the corresponding consequences, in order to satisfy the purposes of the Inter-American jurisdiction on human rights. [FN47]

[FN47] Cf. Case of the "Mapiripan Massacre," supra note 29, para. 69; Case of Manuel Cepeda Vargas, supra note 11, para. 18, and Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 22.

VII. EVIDENCE

71. Based on the provisions of Articles 46, 47, and 49 of the Rules of Procedure, as well as on the Court's jurisprudence regarding the evidence and assessment thereof, [FN48] the Court shall now examine the evidence forwarded by the parties at the different procedural stages, the affidavits presented and those rendered during the public hearing, as well as the evidence to facilitate adjudication of the case requested by the Tribunal. In doing so, the Tribunal shall assess them on the basis of sound judgment, within the applicable legal framework. [FN49]

[FN48] Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs. Judgment of August 31, 2001. Series C No. 79, para. 86; Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50, and Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 15. See also, Case of the Miguel Castro-Castro Prison, supra note 27, paras. 183 and 184; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, paras. 67, 68, and 69, and Case of Servellón García et al. v. Honduras. Merits, Reparations, and Costs. Judgment of September 21, 2006. Series C No. 152, para. 34.
[FN49] Cf. Case of the "White Van"(Paniagua Morales et al.), supra note 27, para. 76; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 39, and Case of Rosendo Cantú et al., supra note 27, para. 27.

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1. Documentary, Testimonial, and Expert Evidence

72. The Court admitted the affidavits rendered by the following witnesses and expert witnesses: [FN50]

1) Leoncio Raúl Ochoa Tapia, witness proposed by the representatives, who rendered a statement about the facts he has knowledge of regarding the alleged arrest of Mr. Jesús Vélez Loor; the treatment that the alleged victim allegedly received by the Panamanian authorities during the alleged imprisonment at La Palma detention center, and the imprisonment conditions to which Mr. Vélez Loor was subjected at La Palma detention center.
2) Sharon Irasema Díaz Rodríguez, witness proposed by the representatives, who made declarations about the prison conditions in the Republic of Panama and, in particular, at La Palma detention center and at La Joya-La Joyita prison, at the time of the events and at the present time; causes identified by the Ombudsman of Panama in relation to the alleged human rights violations in Panamanian prisons and proposed by the Ombudsman of Panama to address these aspects.
3) Ricardo Julio Vargas Davis, witness proposed by the State, who rendered a statement about the legal authority of the Ombudsman of Panama, its role, the constitutional nature and the scope of such role, and the procedures and measures adopted by the Ombudsman of Panama in relation to the facts of the instant case.

4) Luis Adolfo Corró Fernández, witness proposed by the State, who rendered a statement about the process leading to the modification of Decree Law 16 of 1960 and the consultation and debate process of Act 3 of 2008.
5) Alfredo Castillero Hoyos, witness proposed by the State, who made declarations about the public policies adopted by the State of Panama on the defense of human rights and the plans implemented by the State for the migratory regularization in Panama.
6) Carlos Benigno González Gómez, witness proposed by the State, who made declarations about the proceedings of deportation and consular notification in Panama and the alleged procedure of notification followed in the case of Mr. Vélez Loor before the Ecuadorian Consulate in Panama.
7) Roxana Méndez de Obarrio, witness proposed by the State, who rendered a statement about the administrative restructuring of the former Ministry of Interior and Justice in view of the enactment of Law 19 of May 3, 2010 and its relation to the imprisonment conditions of the people confined at La Palma Detention Center and La Joya-La Joyita prison.
8) Andrés Gautier Hirsch, psychologist, psycho-therapist, expert witness proposed by the representatives, who rendered an expert assessment regarding the psychological results obtained from the assessment carried out on the alleged victim, the after-effects that Mr. Vélez Loor presented at the moment as a consequence of the facts of the instant case, and the necessary measures to repair the alleged violations.
9) Arturo Hoyos Phillips, former President of the Supreme Court of Justice of the Republic of Panama (1994-2000), expert witness proposed by the State, who rendered an expert assessment regarding the jurisprudence and the precedents of the Panamanian justice in the field of human rights protection and the mechanisms of defense in force at the time of events in Panama in relation to the facts of the case.

[FN50] By means of the Order of August 10, 2010, the President ordered the expert witness Arturo Hoyos Phillips to render his expert report before a public notary (affidavit) (supra para. 8, Operative Paragraph 2).
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73. In addition, the Court listened to, at the public hearing, the statements rendered by the following people:

1) Jesús Tranquilino Vélez Loor, alleged victim proposed by the Commission and the representatives, who rendered a statement about the facts related to his alleged imprisonment in the State of Panama; the imprisonment conditions to which he was subjected at La Palma Detention Center and La Joya-Joyita Prison; the alleged violations of his personal integrity and other rights while imprisoned in Panama; the proceedings he conducted in order to seek repatriation and to expedite the investigation into the alleged acts, among them, the alleged mistreatment and acts of torture and the way in which the State should repair the violations so alleged.
2) Maria Cristina González Batista, witness proposed by the State, who rendered a statement about the application of the immigration law in Panama in force at the time of the events; the immigration law in force at the moment in Panama; the modifications currently contemplated in the norm in relation to human rights protection.

3) Gabriela Elena Rodríguez Pizarro, former United Nations Special Rapporteur for the Rights of Migrants and present Chief of Mission of Organization for International Migrations, expert witness proposed by the Commission, who rendered an expert assessment regarding the minimum guarantees that, according to international human rights standards, must be present in a criminal proceeding or any other proceeding dealing with the determination of the immigration status of a person or that may result in a punishment as a consequence of said status.
4) Marcelo Flores Torrico, medical doctor, expert witness proposed by the representatives, who rendered an expert assessment regarding the medical results obtained from the assessment carried out on the alleged victim, the after-effects that Mr. Vélez Loor would present at the moment as a consequence of the facts of the instant case, and the necessary measures to repair the alleged violations.

2. Admission of the Documentary Evidence

74. In the case at hand, as in many other cases, the Tribunal admits the evidentiary value of such documents presented in a timely manner by the parties that were not contested or objected to, or whose authenticity was not questioned. [FN51]

[FN51] Cf. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 42, and Case of Rosendo Cantú et al., supra note 27, para. 31.
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75. The State objected to the use as evidence “of the independent investigations, reports of the Ombudsman’s Office[, except for those reports containing statistics corresponding to the years 2002-2003,] and reports of organizations that have monitored the situation in prisons[, specifically, annexes 24, [FN52] 27 [FN53] and 32 [FN54] of the application,] given that they were all prepared five years after the detention of Mr. Vélez Loor in the Panamanian penitentiary centers;” therefore, in the State’s opinion, such reports and investigations do not have evidentiary value and may only be considered based on its investigative value in the general context. In particular, the State mentioned that the Report of the Harvard University International Human Rights Clinic, “Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons,” was published in March 2008, the "Alternative Report on the Situation of Human Rights in Panama,” of the Human Rights Network/Panama was presented to the Office of the United Nations High Commissioner for Human Rights in March 2008, the Psychological and Medical Expert Report on Jesús Tranquilino Vélez Loor in the month of July 2008, and the communications of the Inter-American Commission related to the request for precautionary measures are dated January 2008. Moreover, Panama did not consider pertinent the reference made to the proceedings conducted by the petitioner in the State of Ecuador and before authorities of that country to bring accusations against Panama. In this respect, the Court takes note of the observations of the State and decides to admit said documents and assess them as appropriate, taking into account the body of evidence, the observations of the State, and the rules of sound judgment.

[FN52] Identified as “Psychological Medical Expert of possible Torture and/or cruel treatment issued on July, 2008 by doctors Marcelo Flores Torrico (Medical Expert) and Andrés Gautier (Psychological Expert).”
[FN53] Identified as “Clinic of International Human Rights Law of Harvard University, ‘Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons,’ in March 2008”.
[FN54] Identified as “Letter of January 11, 2008, of the IACHR to the State of Panama in the framework of the request for precautionary measures related to the conditions of detention in La Joya-Joyita.”
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76. Regarding the newspaper articles submitted by the Commission and the representatives, this Tribunal has considered that they can be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case. [FN55] The Court verified that, in some of the documents, the date of the publication cannot be read. However, none of the parties objected to such documents for this fact nor questioned their authenticity. Therefore, the Tribunal decides to admit the documents that are complete or that, at least, allow verifying their source and date of publication, and shall assess them according to the body of evidence, the observations of the parties, and the rules of sound judgment.

[FN55] Cf. Case of Velásquez Rodríguez, supra note 51, para. 146; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 43, and Case of Rosendo Cantú et al., supra note 27, para. 35.
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77. Moreover, the Tribunal admits other documents into the body of evidence, in application of Article 47(1) of the Rules of Procedure, upon considering them useful for the determination of the case at hand. [FN56]

[FN56] IACHR, Second Progress Report of the Rapporteur on Migrant Workers and Members of their Family in the Hemisphere, OEA/Ser./L/V/II.111doc. 20 rev; April 16, 2001 (http://www.cidh.oas.org/Migrantes/migrantes.00sp.htm#DETENCI%C3%93N); Criminal Code, in force as of June, 2009, Adopted by Law 14 of 2007, with the modifications and additions introduced by the Law 26, 2008, promulgated on June 9, 2008 (http://www.asamblea.gob.pa/busca/legislacion.html); High Commissioner of the United Nations for Refugees, Background Document, “Refugee Protection and International Migration in the Americas: Trends, Protection Challenges and Responses," 2009 (http://www.unhcr.org/refworld/docid/4c59329b2.html), and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Second General Report, 1992 (http://www.cpt.coe.intlen/annual/rep-02.htm).
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78. Moreover, together with the observations to the preliminary objections, the Commission attached a compact disc containing the recording of the hearing held before said body on March 13, 2006. In addition, the State forwarded, in the final lists of deponents, a copy of Law 19 of May 3, 2010, related to the Organization System of the Ministry of Interior. Finally, during the

public hearing, expert witness Flores Torrico, who presented his expert opinion, delivered copies of such expert opinion, which were distributed among the parties. Upon considering them useful for the determination of the instant case, pursuant to Articles 46(2), 46(3) and 47 of the Rules of Procedure, the Tribunal decides to admit such evidence into the body of evidence of the instant case.

79. Finally, the representatives and the State forwarded different documents as evidence, which were requested by the Tribunal based on the provisions of Article 47(2) of the Court's Rules of Procedure, [FN57] for which purpose the Court admits them and they shall be assessed as appropriate according to the body of evidence, the observations of the parties, and the rules of sound judgment.

[FN57] In particular, they were requested to refer to and, if applicable, forward evidentiary support documentation:
a) the alleged "generalized context of discrimination and criminalization of immigration in order to reduce the migration flows of Panama, specially of those illegal migrants".
b) the premises where the State confined, in the year 2002, in all the country, the migrants arrested pursuant to Decree Law 16 of 1960 and the premises where the State confines the people arrested for immigration reasons.
c) the real effectiveness of the domestic remedies existing at the time of the events in relation to the specific arrest conditions of Mr. Vélez Loor.
d) the possibilities of real availability of a telephone or other means of communication, free of charge and of the information about the consulates existing in the Republic of Panama at the time of the events, both at La Palma detention center and at La Joya-Joyita prison.
e) the judgment issued by the Supreme Court of Justice of Panama on December 26, 2002 in which it was ordered the lawfulness of placing the foreigners punished by the application of article 67 of Decree Law 16, 1960 in the centers of the national penitentiary system different from the Coiba prison island.

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80. In relation to the documents presented by the representatives referring to costs and expenses, the Tribunal will only consider those documents submitted in the final written arguments that refer to the new costs and expenses incurred in the proceeding before this Court, that is to say, those incurred after the brief containing pleadings and motions.

3. Assessment of the statements of the alleged victim, of the testimonial and expert evidence

81. The Court shall assess the testimonies and expert opinions rendered by the witnesses and expert witnesses at the public hearing and in sworn statements, when they are in keeping with the purpose defined by the President in the Order requiring them and the object of the present case, bearing in mind the observations of the parties.

82. The statement of the alleged victim is useful insofar as it can provide additional information on the violations and their consequences. [FN58] However, because it has a direct

interest in this case, such statement will be assessed together with all the evidence in the proceedings. [FN59]

[FN58] Cf. Case of the "White Van" (Paniagua Morales et al.), supra note 48, para. 70; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 47, and Case of Rosendo Cantú et al., supra note 27, para. 52.
[FN59] Cf. Case of Loayza Tamayo v. Perú. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 47, and Case of Rosendo Cantú et al., supra note 27, para. 52.

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83. The Court notes that the representatives and the State presented their observations to the affidavits on August 24, 2010. Moreover, on that same date, the Commission stated that it did not have observations to submit regarding the sworn statements forwarded.

84. As to the testimony of Mrs. Sharon Irasema Diaz, the State pointed out that "apart from referring to the facts that she has personal knowledge of and the facts she has knowledge of because of her functions, the statement so rendered contains a series of opinions and considerations that, rather than a testimony, would constitute an expert opinion given that it refers to opinions derived from the special knowledge or expertise of the deponent."

85. For their part, the representatives pointed out that "when assessing the statements of witnesses Carlos Benigno González Gómez, Alfredo Castillero Hoyos, and Roxana Méndez, [the Court] must take into account that they are public officials." In addition, they indicated that the statement of witness Luis Adolfo Corró Fernández "is not related to the facts established in the application and [...] does not provide relevant elements for the determination or scope of the measures of reparation that the Court shall [...] eventually order, on the grounds that it refers to different initiatives to reform the immigration law, which, in most cases, have not been approved and therefore are not part of the Panamanian legal system." As to the statement of witness Alfredo Castillero Hoyos, they noted that, "most of the matters narrated by the witness are not related to any of the facts of the case, both as to the violations committed and to the aspects that could be brought before the Tribunal regarding the scope of the reparations that should be ordered." Moreover, they indicated that witness Carlos Benigno González Gómez made statements that exceeded the purpose defined, "when he referred not only to the deportation process of Mr. Vélez Loor in the January, 2002, but also to proceedings conducted by the Ecuadorian Consulate in Panama, when he had to only declare about the alleged notification proceedings conducted." Finally, in relation to the declaration of witness Roxana Méndez de Obarrio, they pointed out that such declaration "is not related to the detention conditions of the centers at which Mr. Vélez Loor was confined."

86. In this respect, the Court takes note of the objections and observations presented by the State and the representatives; however, this Tribunal considers that such arguments relate to a matter of evidentiary weight and not of admissibility of the evidence. [FN60] As a consequence, the Court admits the statements mentioned, without prejudice to the fact that its evidentiary value may only be considered regarding the matters that fit with the purpose timely defined by the

President of the Court (supra para. 8), taking into account the body of evidence, the observations of the parties and the rules of sound judgment.

[FN60] Cf. Case of Reverón Trujillo, supra note 17, para. 43; Case of Manuel Cepeda Vargas, supra note 11, para. 57, and Case of Anzualdo Castro v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 28.

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87. In relation to the expert opinion rendered by expert witness Gautier Hirsch, the State pointed out that the expert evidence furnished is inadmissible given that "the application filed against the State did not include an accusation by the Commission for the acts of torture against Mr. Vélez Loor." Likewise, it indicated that said expert report "constitut[ed] an expansion of the evidence originally furnished by the Inter-American Commission, evidence that, at its moment, was objected to by the State insofar as there is no correlation that would allow for the unequivocal determination that the pathology and physical after-effects presented by Jesús Vélez[,] corresponded, in fact, to situations that took place in Panama or that they [could] be the responsibility of Panamanian State agents." Finally, the State mentioned that "the expert witness, in his report, makes reference to facts he has no knowledge of and that are not part of his field of expertise, like the case of the description of the living conditions of Mr. Vélez, or that the national justice did not produce positive results, among other things. [F]acts that, in any case, could only be referred to by means of a testimony insofar as they correspond to facts he has personal knowledge of and that are not the result of a special knowledge or expertise."

88. Regarding the expert opinion of the expert witness proposed by the State, Hoyos Phillips, the representatives indicated that the content of his expert assessment exceeded the purpose defined by the President of the Court, in the understanding that the expert witness made declarations "on several occasions, about the facts of the case and even specifically referred to orders wherein the [alleged] victim was punished and conclud[ed] his expert opinion with specific conclusions about the remedies that, in his opinion, the [alleged] victim had access to." Likewise, they pointed out that the expert opinion "reveal[ed] that the expert witness did not know the facts of the case, despite having insist[ed] in making reference to them without explaining what or how he k[new] about what he was affirming." Finally, they noted that the expert opinion "is very brief and does not provide [the] Court with relevant information for it [...] to assess the suitability and effectiveness of the remedies to which he refers."

89. The Tribunal considers relevant to point out that, unlike witnesses, who shall avoid offering personal opinions, expert witnesses may offer technical or personal opinions as long as they refer to their special knowledge or experience. Additionally, the experts may refer both to specific matters of the action or any other relevant subject of the litigation, as long as they are limited to the object for which they were convened [FN61] and their conclusions are well founded. The Court notes that the State contested the opinion of the expert witness proposed by the representatives, Gautier Hirsch, on the grounds that he presented facts in his opinion that were not defined in the factual basis of the application. Likewise, it indicated that said report constituted an expansion of the evidence furnished by the Commission and that the expert witness made references to facts he had no knowledge of and were not the product of his special

knowledge. On the other hand, the representatives indicated that the content of the expert opinion of Mr. Hoyos Phillips exceeded the purpose defined by the President of the Court. This Tribunal shall assess, in the corresponding chapter of the Judgment, the content of the opinions provided by the experts witnesses as long as they fit with the purpose timely defined by the President of the Tribunal (supra para. 8), according to the object of the case, taking into account the body of evidence, the observations of the parties, and the rules of sound judgment.

[FN61] Cf. Case of Reverón Trujillo, supra note 17, para. 42; Case of Rosendo Cantú et al., supra note 27, para. 68, and Case of Fernández Ortega et al., supra note 27, para. 61.

VIII. MERITS

90. Having already resolved the preliminary objections (supra Chapter III) and the two questions arose by the State as preliminary matters (supra Chapter IV), as well as having analyzed the terms of the partial acknowledgment of international responsibility made by the State, the Tribunal shall now proceed to consider and decide the merits of the case.

VIII-1. RIGHT TO PERSONAL LIBERTY, RIGHT TO A FAIR TRIAL [JUDICIAL GUARANTEES], FREEDOM FROM EX POST FACTO LAWS, AND RIGHT TO JUDICIAL PROTECTION, IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT RIGHTS AND DOMESTIC LEGAL EFFECTS

91. Once the scope of the partial acknowledgment of responsibility made by the State has been established (supra Chapter VI), the Tribunal shall evaluate the aspects regarding which there is still controversy in relation to Articles 7, [FN62] 8, [FN63] and 25 [FN64] of the American Convention, in relation to Articles 1(1) [FN65] and 2 [FN66] of the American Convention, according to the facts of the instant case, the evidence furnished and the parties' arguments.

[FN62] Article 7 of the American Convention provides that:
Every person has the right to personal liberty and security.
No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
No one shall be subject to arbitrary arrest or imprisonment.
Anyone who is detained shall be reported of the reasons for his detention and shall be promptly notified of the charge or charges against him.
Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his

release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

[FN63] Article 8 of the Convention, in its relevant part, provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[…]

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

[…]

h) the right to appeal the judgment to a higher court.

[FN64] Article 25(1) establishes that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

[FN65] Article 1(1) establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[FN66] Article 2 of the Convention provides that:

[W]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

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92. It is a non-disputed fact that Mr. Jesus Tranquilino Vélez Loor, an Ecuadorian national, was detained by the Police of Tupiza, in the Province of Darién, Republic of Panama, on November 11, 2002, because “he did not have the necessary documentation which justified his

presence on [said] country." [FN67] The area in which Mr. Vélez Loor was apprehended is surrounded by jungle and close to the border. The National Police is in charge of the migration controls due to the lack of an immigration authority in the area. [FN68] That day, the person in charge of the post of Nueva Esperanza prepared a report addressed to the Director of the Darien Police Zone [FN69] concerning "the apprehension of two (2) foreigners" at 2:13 of that day, including Mr. Vélez Loor.

[FN67] Official Letter N° ZPD/SDIIP 192-02 issued by the Subdirectorate of Information and Police Investigation, Darién Police Zone of the Ministry of Government and Justice of Panama on November 12, 2002 (case file of the evidence, volume VI, annex 2 of the response to the application, folio 2482).

[FN68] The State sustained that "Tupiza, a town of the Province of Darién where Mr. Vélez was apprehended, does not have a migration post; therefore, the National Police is in charge of the immigration controls." See also, Wing, Fernando. "Refugees and the Legislation of the Right to Asylum in the Republic of Panama" (Los Refugiados and la Legislacion sobre el Derecho al Asilo en la Republica de Panama), published in Asylum and Refugee in the Borders of Colombia, PCS, Bogotá, 2003 (case file of the evidence, volume IV annex 17 of the autonomous brief containing pleadings, motions and evidence, folios 1621 to 1622).

[FN69] Cf. Report of novelties issued by the National Police located at the Darien Police Zone, Panama on November 11, 2002 (case file of the evidence, volume III, annex 8 of the application, folio 1211). Note N° AL-0874-04 from the Legal Advisory Services Office of the National Police of the Ministry of Interior and Justice of Panama of March 30, 2004 (case file of the evidence, volume III, annex 6, folio 1206); Note N° 208-DGSP.DAL issued by the General Office of the Penitentiary System of the Ministry of the Interior and Justice addressed to the General Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs on February 22, 2006 (case file of the evidence, volume VIII, annex 25 of the answer to the application, folios 3192 to 3194); Report of the General Director of the National Police of Panama addressed to the General Office of Legal Affairs and Treaties, on February 24, 2006 (case file of the evidence, volume IV, annex 5 of the autonomous brief of pleadings, motions and evidence, folio 1572); Note N° 268-DGSP.DAL issued by the National Prison System Office of Panama addressed to the General Director of the Office of Legal Affairs and Treaties on April 12, 2007 (case file of the evidence, volume IV, annex 13 of the autonomous brief of pleadings, motions and evidence, folio 1605).

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93. Mr. Vélez Loor was, according to the official letter N° ZPD/SDIIP 192-02, "placed at the disposal of" the Office of Migration and Naturalization of Darién on November 12, 2002. [FN70] In the town of Meteti, a form of immigration called "filiación" was completed with Mr. Vélez Loor's information, [FN71] and afterwards the National Office of Immigration and Naturalization of the Ministry of Interior and Justice (hereinafter, the "National Office of Immigration") issued Arrest Warrant N° 1430, [FN72] and Mr. Vélez Loor was transferred to La Palma Public Prison, according to the records, because "the National Office of Immigration d[id] not have special cellblocks to locate the undocumented persons." [FN73]

[FN70] Cf. Official Letter N° ZPD/SDIIP 192-02, supra note 67; Note N° DNMYN-AL-32-04 from the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of Panama of February 17, 2004 (case file of the evidence, volume III, annex 5 of the application, folio 1203); Report of the General Director of the National Police of Panama, supra note 69; and, Arrest Warrant N° 1430- DNMYN-SI issued by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of November 12, 2002 (case file of the evidence, volume IV; annex 2 of the response to the application, folio 2480 to 2481).
[FN71] Cf. Particulars of Mr. Vélez Loor in the Immigration Registry of the Office of Immigration and Naturalization of the Ministry of Interior and Justice of November 12, 2002 (case file of the evidence, volume VI, annex 2 of the response to the application, folio 2456).
[FN72] Arrest Warrant N° 1430-DNMYN-SI, supra note 70.
[FN73] Note N° 208-DGSP.DAL, supra note 69, and Note N° 268-DGSP.DAL, supra note 69. See also, Wing, Fernando. “Refugees and the Legislation of the Right to Asylum in the Republic of Panama" (Los Refugiados and la Legislacion sobre el Derecho al Asilo en la República de Panamá), supra note 68, folio 1619).

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94. On December 6, 2002, by means of Resolution 7306, the Director of the National Migration Office, after having ratified that Mr. Vélez Loor had been previously deported from the Republic of Panama by means of Resolution 6425 of September 18, 1996, for having entered national territory “unlawfully,” [FN74] decided to sentence him “to serve a two (2) year prison term in one of the Penitentiary facilities of the country” for “failing to comply with the warnings […] regarding the prohibition to enter that existed against him” and, in consequence, for violating the terms of Decree Law 16 of 1960 on Migration, of June 30, 1960 (hereinafter, “Decree Law 16 of 1960” or “Decree Law 16”). [FN75] Said order was not served to Mr Vélez Loor (supra para. 60 and infra para. 175). Subsequently, Mr. Vélez Loor was moved to the La Joyita Penitentiary Center. [FN76]

[FN74] Even though Mr. Vélez Loor had been deported from Panama in January 2002, it does not spring from the resolution that this circumstance was considered when imposing the penalty. Cf. Order N° 6425 issued by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of Panama on September 18, 1006 (case file of the evidence, volume III, annex 3 of the application, folio 1197) and Resolution N° 0185 issued by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of Panama of January 9, 2002 (case file of the evidence, volume IV, annex 1 of the answer to the application, folio 2396).
[FN75] Cf. Resolution N° 7306 issued by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of Panama on December 6, 2002 (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2394 to 2395); Report of the General Director of the National Police of Panama, supra note 69, folio 1573, and Note N° 268-DGSP.DAL, supra note 69.
[FN76] Cf. Communication No. DNMYN-SI-1265-02 issued by the National Office of Migration and Naturalization of the Ministry of the Interior and Justice addressed to the Director of the Police Zone of Darién of the National Police on December 12, 2002 (case file of the evidence, tome VI, annex 2 of the answer to the application, folio 2483); Communication No.

DNMYN-SI-1264-02 issued by the National Office of Migration and Naturalization of the Ministry of the Interior and Justice directed to the Supervisor of Migration in Metetí, Province of Darién on December 12, 2002 (case file of the evidence, tome VI, annex 2 to the answer to the application, folio 2484); Communication No. DNMYN-SI-1266-02 issued by the National Office of Migration and Naturalization of the Ministry of the Interior and Justice addressed to the Director of the La Joya Penitentiary on December 12, 2002 (case file of the evidence, tome VI, annex 2 to the answer to the application, folio 2485), and Communication No. 2778 T issued by the General Director of the Penitentiary System addressed to the National Direction of the Office of Migration and Naturalization on December 11, 2002 (case file of the evidence, tome VI, annex 2 to the response to the application, folio 2486).

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95. On September 8, 2003, the National Office of Immigration, by Order N° 8230, commuted Mr. Vélez Loor's sentence, given that he presented a ticket to abandon the country, [FN77] and the next day, he was transferred from La Joyita Penitentiary to the premises of the National Office of Migration in the Panama City. [FN78] On September 10, 2003, Mr. Vélez Loor was deported to the Republic of Ecuador. [FN79]

[FN77] Cf. Resolution N° 8230 issued by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of September 8, 2003 (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2398 to 2399) and Note N° 268-DGSP.DAL, supra note 69.

[FN78] Cf. Discharge record of La Joyita Penitentiary of Jesus Vélez of September 9, 2003 (case file of the evidence, volume VI, annex 3 of the answer to the application, folio 2536); and Report of the General Director of the National Police of Panama, supra note 69, folio 1574).

[FN79] Cf. Note A.J. N° 551 issued by the Ministry of Foreign Affairs of Panama to the Ambassador of Panama in Ecuador of March 10, 2004 (case file of the evidence, volume IV, annex 3 of the autonomous brief of pleadings, motions and evidence, folio 1567 to 1568); Safe conduct N° 59/03 issued by the Consulate General of Ecuador in Panama on September 10, 2003 (case file of the evidence, volume III, annex 21 of the application, folio 1254); Note N° DNMYN-AL-32-04, supra note 70; Note N° 4-2-105/2009 issued by the Ecuadorian Embassy in Panama addressed to the Ministry of Foreign Affairs of Panama on September 15, 2009 (case file of the evidence, volume VI, annex 1 of the response to the application, folio 2437).

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96. The deprivation of liberty of Mr. Vélez Loor was ordered based on the terms of Decree Law 16 of July 30, 1960 on Migration, [FN80] which was annulled by means of Article 141 of Decree Law N° 3 of February 22, 2008. [FN81] That is, after the facts that gave rise to the instant case, reforms were introduced in the Panamanian legal framework regarding immigration. However, it falls upon this Tribunal to decide on the immigration laws in force in Panama at the time of the events of the instant case and applied to Mr. Vélez Loor vis-á-vis its obligations under the American Convention.

[FN80] Cf. Decree Law N° 16 of June 30, 1960 published in the Official Gazette on July 5, 1960 (case file of the evidence, volume VIII, annex 54 of the answer to the application, folios 3619 to 3635), and Decree Law No. 16 of June 30, 1960 on Migration, integrated text, with its respective modifications, subrogations, derogations, and additions (case file of the evidence, tome III, annex 1 of the application, folios 1145 to 1155).
[FN81] Cf. Decree Law N° 3 of February 22, 2008 that creates the National Immigration Service, the Immigration Career and Stipulates Other Provisions published in the Digital Official Gazette of February 26, 2008 (case file of the evidence, volume VII, annex 10 of the response of the application, folio 2895).
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97. This Tribunal has already stated that, in exercise of its power to adopt migratory policies, [FN82] States may establish mechanisms to control the entry into and departure from their territory of individuals who are not nationals, as long as they are compatible with the norms of human rights protection established in the American Convention. [FN83] Also, even though States enjoy a margin of discretion when adopting their migratory policies, the goals of such policies should take into account respect for the human rights of migrants. [FN84]

[FN82] The migratory policy of a State includes any institutional act, measure or omission (laws, decrees, resolutions, directives, administrative acts, etc.) that refers to the entry, departure or residence of national or foreign persons in its territory. Cfr. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003, Series A N.18, para. 163.
[FN83] Cf. Case of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding the Dominican Republic. Provisional Measures. Order of the Inter-American Court of August 18, 2000, Considering clause four.
[FN84] Cf. Juridical Condition and Rights of the Undocumented Migrants. supra note 82, para. 168. Likewise, the Special Rapporteur on the human rights of migrants of the United Nations Human Rights Council has sustained that “[a]lthough it is the sovereign right of all States to safeguard their borders and regulate their migration policies, States should ensure respect for the human rights of migrants while enacting and implementing national immigration laws.” United Nations, Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, entitled "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development" of February 25, 2008 A/HRC/7/12, para. 14 (case file of the evidence, volume V, annex 24 of the autonomous brief of pleadings, motions and evidence, folio 2017).
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98. In this respect, the Court has established that from the general obligations to respect and guarantee rights, derive special duties, which can be ascertained based on the particular needs of protection of the legal person, considering the personal condition or the specific situation of the person. [FN85] In this respect, migrants who are undocumented or in an irregular situation have been identified as a group in a vulnerable situation [FN86] given that “they are the most vulnerable to potential or actual violations of their human rights” [FN87] and they suffer from, as consequence of their situation, a lack of protection of their rights at a high level and “differences

in their access […] to the public resources administered by the State [in relation to nationals or residents].” [FN88] Evidently, this situation of vulnerability has “an ideological dimension and occurs in a historical context that is distinct for each State and is maintained by de jure (inequalities between nationals and aliens in the laws) and de facto (structural inequalities) situations.” [FN89] Moreover, cultural prejudices about migrants lead to reproduction of the situation of vulnerability, which make it difficult for migrants to integrate into society. [FN90] Finally, it is worth mentioning that the human rights violations committed against migrants many times go unpunished due to, inter alia, the set of cultural elements which justify it, the lack of access to power structures in a given society and the legal and factual impediments which make the effective access to justice illusory. [FN91]

[FN85] Cf. Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 111; Case of González et al. (“Cotton Field”), supra note 20, para. 243, and Case of Anzualdo Castro, supra note 60, para. 37.

[FN86] Likewise, the United Nations General Assembly highlighted “the situation of vulnerability in which migrants frequently find themselves, owing, inter alia, to their absence from their State of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for the return to their States of origin of migrants who are non-documented or in an irregular situation.” United Nations, General Assembly, Resolution A/RES/54/166 on “Protection of migrants” of February 24, 2000, Preamble, para. Fifth, cited in Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 114.

[FN87] United Nations, Economic and Social Council, “Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants,” Report of the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, submitted pursuant Order 1999/44 of the Commission on Human Rights, E/CN.4/2000/82, of January 6, 2000, para. 28.

[FN88] Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para 112.

[FN89] Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para 112.

[FN90] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para 113.

[FN91] Cf. United Nations, Economic and Social Council, “Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants,” Report of the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, submitted pursuant Order 1999/44 of the Commission on Human Rights, E/CN.4/2000/82, of January 6, 2000, para. 73, and Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para 112.

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99. Pursuant to the principle of effectiveness and the need of protection in those cases of people or groups in situation of vulnerability, [FN92] this Tribunal shall interpret and give essence to the rights enshrined in the Convention, according to the evolution of the international corpus juris existing in relation to the human rights of migrants, taking into account that the international community has recognized the need to adopt special measures to ensure the protection of the human rights of this group. [FN93]

[FN92] Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, para. 189; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 90, and Case of the Xákmok Kásek Indigenous Community, supra note 28, para. 250.
[FN93] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 117, quoting United Nations, World Summit for Social Development, held in Copenhagen, March 6 to 12, 1995, A/CONF.166/9, of April 19, 1995, Programme of Action, paras. 63, 77, and 78, available at: http://www.inclusion-ia.org/espa%F1ol/Norm/copspanish.pdf; United Nations, Report of the United Nations International Conference on Population and Development held in Cairo from 5 to 13 September, 1994, A/CONF.171/13, October 18, 1994, Programme of Action, Chapter X.A. 10.2 to 10.20, available at: http://www.un.org/popin/icpd/conference/offspa/sconf13.html, and United Nations General Assembly, World Conference on Human Rights held in Vienna, Austria, on 14 to 25 June, 1993, A/CONF.157/23, July 12, 1993, Declaration and Programme of Action, I.24 and II.33-35, available at: http://www.cinu.org.mx/temas/dh/decvienapaccion.pdf.
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100. This does not mean that they cannot take any action against migrants who do not comply with the State legal system. However, it is important that, when taking the corresponding measures, States should respect human rights and ensure their exercise and enjoyment to all persons who are in their territory, without any discrimination owing to their regular or irregular residence, or their nationality, race, gender, or any other reason. [FN94] Likewise, the evolution of this aspect of international law has placed certain limits on the application of migratory policies that must always be applied with strict regard for the guarantees of due process and respect for human dignity, [FN95] whatever the legal situation of the migrant may be.

[FN94] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 118.
[FN95] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 119. Likewise, the African Commission of Human Rights and Peoples has pointed out that " [...] [The Commission] does not wish to call into question nor is it calling into question the right of any State to take legal action against illegal immigrants such as deport them to their countries of origin, if the competent courts so decide. It is however of the view that it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the [African] Charter [of Human Rights and Peoples] and international law." African Commission of Human and Peoples´ Rights, Communication No: 159/96- Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme au Angola, decision of November, 11, 1997, para. 20.
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101. Based on the foregoing, the Court considers pertinent to make a differentiated analysis in relation to the different acts and moments at which the personal liberty of Mr. Vélez Loor was restricted, according to the arguments presented by the parties and regarding which the State has

not accepted its international responsibility. To that end, the Court shall refer to the following issues: a) the initial arrest by the Tupiza Police on November 11, 2002; b) Arrest Warrant 1430 of November 12, 2002; c) effective remedies to challenge the lawfulness of the detention; d) the proceeding before the National Office of Immigration and Naturalization from November 12 to December 6, 2002; e) the right to information and effective access to consular assistance; f) deprivation of liberty under the terms of Article 67 of Decree Law 16 of 1960; g) notification of Order 7306 of December 6, 2002 and remedies regarding the punitive ruling; h) and, the illegality of placing sanctioned foreigners in centers of the national prison system pursuant to Decree Law 16 of 1960.

a) Initial arrest by the Tupiza Police on November 11, 2002

102. The representatives alleged that, given that Mr. Vélez Loor was never placed at the disposal of the National Director of Migration and never received a written notification of the conditions necessary to leave the country, the arrest was not legal and therefore, it was contrary to Article 7(2) of the Convention. Likewise, the representatives sustained that Mr. Vélez Loor was never taken before a judge to exercise judicial control over the terms and conditions of his arrest. Therefore, they requested the Court to declare that Mr. Vélez Loor was not taken before a competent judge after his arrest and that the judge did not exercise an effective judicial control over the arrest made in violation of Article 7(5) of the Convention.

103. Following this line of thought, the Commission sustained that "[e]ven though Vélez Loor would have been taken before the National Office of Immigration and Naturalization, the violation of Article 7(5) of the Convention remained intact due to the fact that said authority is not a judicial authority nor exercises judicial functions." In addition, in the ten months during which Mr. Vélez Loor was held in custody of the Panamanian State, he was never brought before a judge or other officer authorized by law to exercise judicial power; therefore, the administrative detention ordered on November 12, 2002, did not comply with any judicial control.

104. The State contested these arguments by alleging that, on the day following his arrest, Mr. Vélez Loor was physically brought before the competent immigration authority for the verification of his immigration status and for the application of the corresponding legal measures; and, at that moment, he was informed of the reasons for his arrest, he was heard by the officer in charge of the National Office of Immigration in Metetí, who verified the non-compliance with the legal requirements for the entry of Mr. Vélez into Panama.

105. The Tribunal has previously highlighted that, in relation with Article 7(5) of the Convention, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence, [FN96] as a guarantee that tends to avoid arbitrariness or illegality of the detentions, [FN97] as well as guaranteeing the right to life and humane treatment. [FN98]

[FN96] Cf. Case of Tibi, supra note 27, para. 114; Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, paras. 119 a 121, and Case of Bayarri, supra note 27, para. 63.
[FN97] Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 7, 2003. Series C No. 99, para. 83; Case of Bayarri, supra note 27, para. 63, and Case of Yvon Neptune v. Haití. Merits, Reparations, and Costs. Judgment of May 6, 2008. Series C No. 180, para. 107.
[FN98] Cf. Case of Tibi, supra note 27, para. 118; Case of López Álvarez v. Honduras. Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141, para. 87, and Case of Palamara Iribarne, supra note 100, para. 221.
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106. In previous cases, the Tribunal has referred to, among other things, deprivation of liberty ordered within the framework of criminal proceedings before ordinary [FN99] or military forums, [FN100] as a precautionary and punitive measure, [FN101] to collective and programmed arrests, [FN102] and to those carried out outside the law, which constituted the first act to perpetrate an extra-legal execution [FN103] or an enforced disappearance. [FN104] In the instant case, it is worth mentioning that the holder of the rights is a foreign person, who was arrested due to the fact that he was not authorized to enter into and stay in Panama according to the laws of the State. That is to say, the measures restricting the personal liberty applied to Mr. Vélez Loor were not related to the commission of a criminal crime, but responded to an irregular immigration status for having entered Panama through an unauthorized area, without the necessary documents and in violation of a prior deportation order. Likewise, the Court deems appropriate to indicate that it does not appear from the evidence and arguments of the parties that Mr. Vélez Loor had requested international protection, [FN105] nor that he demonstrated another status regarding which other fields of international law could then apply as lex specialis.

[FN99] Cf. Case of García Asto and Ramírez Rojas v. Perú. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2005. Series C No. 137, paras. 115 and 134; Case of Yvon Neptune, supra note 97, para. 100, and Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, paras. 66, 73, 86, and 87.
[FN100] Cf. Case of Loayza Tamayo, supra note 59, para. 61; Case of Usón Ramírez, supra note 10, para. 148, and Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 195 and 228.
[FN101] Cf. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, paras. 70, 74, and 75; Case of Barreto Leiva, supra note 96, paras. 121 to 123, and Case of Bayarri, supra note 27, paras. 75 to 77.
[FN102] Cf. Case of Bulacio v. Argentina. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, para. 38, and Case of Servellón García, supra note 48, para. 96.
[FN103] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 24, paras. 132 and 143; Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 86, and Case of La Cantuta v. Perú. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C No. 162, para. 109.

[FN104] Cf. Case of Velásquez Rodríguez, supra note 51, para. 186; Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 121, and Case of Anzualdo Castro, supra note 60, para. 79.
[FN105] Included in this statement the Statute on Refugees pursuant to the pertinent instruments of the United Nations and the corresponding domestic laws, and territorial asylum pursuant to the various Inter-American conventions on the matter.
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107. Unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, [FN106] the American Convention does not set a limitation to the exercise of the guarantee established in Article 7(5) of the Convention based on the reasons or circumstances under which the person has been arrested or detained. Therefore, by virtue of the principle pro persona, this guarantee must be satisfied as long as the detention or arrest of a person is based on his o her immigration status, in accordance with the principles of judicial control and procedural immediacy. [FN107] To constitute a real control mechanism in the face of unlawful and arbitrary detention, the judicial review must be carried out promptly and in such a way as to guarantee compliance with the law and the detainee's effective enjoyment of his rights, taking into account his special vulnerability. [FN108] Likewise, the United Nations Working Group on Arbitrary Detention established that "[a]ny […] immigrant placed in custody must be brought promptly before a judicial or other authority." [FN109]

[FN106] In the European Convention, the right to the promptly brought before a judge or other officer, pursuant to Article 5, paragraph 3, is exclusively related to the category of detainees mentioned in the first paragraph, subparagraph c; that is, the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent from committing an offence or fleeing after having done so.
[FN107] Case of Tibi, supra note 27, para. 118; Case of López Álvarez, supra note 98, para. 87, and Case of Palamara Iribarne, supra note 100, para. 221.
[FN108] Cf. Case of Bayarri, supra note 27, para. 67. In the same sense, Eur. Court HR, Iwanczuk v. Poland (Application no. 25196/94) Judgment of 15 November 2001, para. 53.
[FN109] United Nations, Working Group on Arbitrary Detention, Group Report, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 3.
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108. This Tribunal considers that, in order to satisfy the guarantee established in Article 7(5) of the Convention in relation to migrants, the domestic legislation must ensure that the officer authorized by law to carry out judicial functions fulfills the requirements of impartiality and independence that must be present in any body authorized to determine the rights and obligations of persons. In this respect, the Tribunal has already established that said requirements must not only be met strictly by judicial bodies, but that the provisions of Article 8(1) of the Convention apply also to the decisions of administrative bodies. [FN110] Since, in relation to this guarantee, the officer has the task of preventing and ending unlawful and arbitrary detentions, [FN111] it is

essential that the officer has the authority to order the release of the person if his or her detention is illegal or arbitrary.

[FN110] Cf. Case of the Constitutional Court v. Perú. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, para. 71; Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200. para. 208, and Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, para. 119.
[FN111] Cf. Case of Bayarri, supra note 27, para 67.

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109. The Tribunal notes that Decree Law 16 of 1960 established that foreigners would be placed at the disposal of the Director of the Immigration Department of the Ministry of Interior and Justice. [FN112] According to the facts and the evidence of the case, after the arrest, the National Police of Darien Zone placed Mr. Vélez Loor at the disposal of the Office of Immigration and Naturalization by means of Official letter N° ZPD/SDIIP 192-02. [FN113] The Court understands that placing someone at the disposal of an authority does not necessarily mean bringing someone before the Director of the Immigration Office. Certainly, as has been established, in order to satisfy the requirement of Article 7(5) of "being brought" without delay before a judge or other officer authorized by law to carry out the judicial functions, the competent authority must hear the detained person personally and evaluate all the explanations that the latter provides, in order to decide whether to proceed to release him or to maintain the deprivation of liberty. [FN114]

[FN112] In this regard, Articles 58 and 60 stated:
Article 58. "Notwithstanding the provisions of Article 22 of this Decree Law, any foreigner who is found by any authority without valid documents proving their income, residence, or establishment in the country will be placed at the disposal of the Director of the Immigration Department of the Ministry of the Interior and Justice. Said official shall give notice to the alien in writing, of the alien's obligation to legalize their stay or leave the country on their own within a reasonable time which shall not be less than three (3) days nor more than thirty (30), without detriment to any other penalties established by this Decree Law."
Article 60. "Immigration officials have power to arrest any alien who, in the official's presence or view, attempts to enter the territory of the Republic in violation of the provisions of this Decree Law or who is found in the country without documents proving their legal entry, residence, or permanence in the country, in accordance with legal requirements. The alien will be placed at the disposal of the Director of the Immigration Department of the Ministry of the Interior and Justice within (24) hours."Cf. Decree Law No. 16 of June 30, 1960, supra note 80, folio 1152.
[FN113] Cf. Order No. ZPD/SDIIP 192-02, supra note 67; Note No. DNMYN-AL-32-04, supra note 70; Report of the General Director of the National Police of Panama, supra note 69; Arrest Warrant No. 1430-DNMYN-SI, supra note 70.
[FN114] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 85, and Case of Bayarri, supra note 27, para. 65.

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110. Moreover, the Court notes that, once Mr. Vélez Loor was transferred to Metetí, a form was filled out, titled "filiación," with his personal information [particulars] and the reasons why he was in Panama. [FN115] It does not appear from this act that Mr. Vélez Loor had received a written notification of the alternatives that said Decree Law established, pursuant to Article 58 therein, in relation to the obligation he had to legalize his stay in the country or abandon it by his own means, within a minimum reasonable term of three (3) days and a maximum term of thirty (30) days, without detriment to the other established penalties. In addition, there is no record of the position of the officer who filled out the document and, as consequence, whether he or she had evaluated all the explanations that Mr. Vélez Loor was able to provide in order to decide whether to proceed to release him or to maintain the deprivation of liberty, or if he or she had the power to decide about the continuity of the detention or the release of Mr, Vélez Loor.

[FN115] Cf. Particulars of Mr. Vélez Loor, supra note 71.

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111. Based on the foregoing, the Tribunal considers that the State has not provided sufficient elements that demonstrate that it has complied with the terms established in Article 7(5) of the Convention.

b) Arrest warrant 1430 of November 12, 2002

112. The Commission argued that the arrest of Mr. Vélez Loor was arbitrary, from the moment of the issuance of the arrest warrant on November 12, 2002, to the moment of his deportation on September 10, 2003. In the Commission's opinion, the arrest is only acceptable on the basis of an individualized evaluation and to comply with a legitimate State interest, "like ensuring the appearance of a person to the proceeding in order to determine the immigration status and possible deportation." Furthermore, it sustained that the "threat to public security" could only be based on "exceptional circumstances in which there are serious indicia of the risk a person represents." In this respect, the Commission pointed out that there is no reference in the decision of November 12, 2002 to "the specific situation of the [alleged] victim, the reasons why the detention was acceptable instead of another less detrimental measure, or the reasons why Mr. Vélez Loor represented a risk to the security or public order; [therefore] it was arbitrary." The only justification for the decision was that Mr. Vélez Loor's presence was "unlawful" for reasons of "security and public order."

113. The State pointed out that the arrest warrant was of a preventive nature and was issued while the immigration authority was examining the case. It alleged that the enjoyment of the right to personal liberty of Mr. Vélez was suspended according to the forms prescribed by law, based on a reason previously stipulated by law and ordered by a competent authority; it was not arbitrary, he was informed of the reasons of his arrest, and was brought before the authorized officer.

114. The Tribunal notes that in the Detention Order 1430 (supra para. 93), it was mentioned that Mr. Vélez Loor had been placed at the disposal of the National Office of Immigration "for having been arrested due to the fact that he did not have any legal documents which justified or authorized his physical presence on national territory and was unable to enter Panama again." [FN116] Based on the foregoing, it was decided to order his arrest "for having entered the country illegally and for reasons of security and public order in order to apply to him any of the measures established in Decree Law N° 16 of 1960." [FN117]

[FN116] Arrest Warrant N° 1430-DNMYN-SI, supra note 70.
[FN117] Arrest Warrant N° 1430-DNMYN-SI, supra note 70.

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115. The Court verifies that the immigration authority, who issued said arrest warrant and who was authorized to do so, established as legal grounds for the validity of said measure several articles of Decree Law N° 16. [FN118] In this respect, the Court notes that the norms mentioned as grounds for the arrest warrant provided, inter alia, the following: 1) the Ministry of Interior and Justice may deny the entrance or passage in the country to any alien who is living in it, as long as it is necessary or convenient for reasons of security, public health, or public order (Article 36); 2) the immigration into the country of those aliens who had been deported from the Republic of Panama is prohibited (Article 37(f); 3) immigration officers shall have the power to arrest any alien who, in their presence or sight, seek to enter the national territory in violation of the provisions of the Decree Law or who is apprehended in the national territory without any document to accredit his legal entrance, residence or permanence in the country, according to the legal requirements; such person shall be placed at the disposal of the Director of the Immigration Office of the Ministry of Interior and Justice within the next twenty-four (24) hours (Article 60); 4) non-resident aliens or immigrants who provide false information in order to reap the benefits of this Decree Law, will be forced to leave the country immediately upon confirmation of the crime (Article 61); 5) if the alien were incapable of presenting the documents he or she should have according to the Decree Law based on a just cause, immediate notice shall be served on the Director of the Immigration Office of the Ministry of Interior and Justice, and such foreigner shall be placed at its disposal for all appropriate purposes (Article 62); 6) an alien who had entered the country without complying with the legal requirements for the entrance or who remain in the country after the expiration of their visas, shall be placed at the disposal of the Ministry of Interior and Justice in order to be deported or in order to adopt the corresponding measures (Article 65, first paragraph); 7) aliens condemned to deportation who evade this order by staying in the country in a clandestine manner or flouts the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal colony of Coiba and will be obliged to leave the country at the end of that period (Article 67), and 8) the Director of the Immigration Office shall dispatch and decide, at first instance, the matters related to immigration in general (Article 85).

[FN118] Cf. Decree Law N° 16 of June, 30, 1960, supra note 80.

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116. Even when the arrest is made for reasons of "security and public order" (supra para. 114), it must comply with all the guarantees of Article 7 of the Convention. In this respect, the resolution adopted by the Director of the National Immigration Office does not clearly show what was the reasoned and objective legal substantiation regarding the measure's applicability need. The mere listing of all the norms that could be applicable does not satisfy the requirement of a sufficient justification that will allow an assessment of whether it is compatible with the American Convention. [FN119] In this respect, the Court has established in its jurisprudence that those rulings of domestic bodies that may impair human rights, such as the right to personal liberty, and which are not duly substantiated, are arbitrary. [FN120]

[FN119] Cf. Case of García Asto and Ramírez Rojas, supra note 99, para. 128 and 143; Case of Barreto Leiva, supra note 96, para. 116, and Case of Yvon Neptune, supra note 97, para. 98.
[FN120] Cf. Case of Yatama, supra note 38, para. 152; Case of Escher et al., supra note 110, para. 208, and Case of Tristán Donoso v. Panamá. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 27, 2009. Series C No. 193, para. 153.

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117. Likewise, it does not spring forth from the rules invoked or the resolution adopted that such measure had a term of duration. On this aspect, the Working Group on Arbitrary Detention had established that in the case of the detention of a person due to his or her irregular immigration status, "a maximum period should be set by law and the custody may in no case be unlimited or of excessive length." [FN121] In sum, there were no clear limits to the powers of the administrative authority, which favors the undue duration of the detention of immigrants, thus becoming a punitive measure.

[FN121] United Nations, Working Group on Arbitrary Detention, Group Report, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 7.

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118. Consequently, the Tribunal considers that the arrest warrant issued in the instant case was arbitrary, given that it did not contain the grounds and reasons for the need to issue it, according to the facts of the case and the particular circumstances of Mr. Vélez Loor. On the contrary, it would seem that the arrest warrant of irregular immigrants was automatically issued after the initial arrest, without consideration of the particular circumstances. [FN122] Therefore, the Tribunal considers that the State violated Article 7(3) of the Convention in relation to Article 1(1), to the detriment of Mr. Vélez Loor, by depriving him of his liberty during 25 days based on an arbitrary order.

[FN122] According to the statement of the Chief of Investigations of the National Office of Immigration at the time of the events, whenever there was an irregular immigration "his or her identity was established […] and then, an Arrest Warrant was issued, which was signed by the Director and personally notified to the party involved." Statement rendered by Carlos Benigno

González Gómez before a public notary (affidavit) on August 13, 2010 (case file of the evidence, volume IX, affidavits, folio 3779).

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c) Effective remedies to challenge the lawfulness of the detention

119. The Commission sustained that although remedies for challenging the lawfulness of the detention did formally exist, "they were not effectively made available to the [alleged] victim," considering that due to the absence of information, lack of judicial control and absence of procedural guarantees, Mr. Vélez Loor was prevented from filing a writ of habeas corpus on his own initiative.

120. The representatives alleged that even though the Panamanian legislation provides for the possibility of filing a writ of habeas corpus to challenge the lawfulness of the detention, in the instant case, Mr. Vélez Loor "never had the real possibility of doing so," due to the fact that he was an irregular migrant; therefore, he was in a special vulnerable situation. Therefore, the representatives alleged that, due to the violation of several procedural guarantees, he was prevented from having access to the corresponding judicial remedy, namely: i) he was never notified of the proceeding instituted against him; ii) he was not provided with legal aid; iii) he was not informed of his rights; and iv) during the whole time the alleged victim was in Panamanian territory, he was held in custody by the State authorities and was never taken before a judicial authority. According to the representatives, all these omissions prevented the alleged victim from having the opportunity to have access to an effective legal remedy to challenge his detention. As a consequence, they considered that the State is responsible for the violation of Articles 7(6) and 25 of the Convention.

121. The State held that the domestic legal system, that establishes the legality of administrative actions, also provides a broad range of remedies in force, those of which were available to Mr. Vélez, with the legal assistance provided by the State through the Ombudsman's Office or by means of assistance of the Consulate of Ecuador, who was aware of the situation of his fellow citizen. However, Mr. Vélez Loor did not request assistance to challenge the lawfulness of the proceeding conducted by the National Office of Immigration, nor did he take any action oriented to expedite some of the mechanisms of judicial control at his disposal. Furthermore, it referred to the lack of formality and effectiveness of the writ of habeas corpus in the arrests ordered by the National Office of Immigration of the Ministry of Interior and Justice.

122. As may be observed, the State has objected to any statement regarding a violation of Articles 7(6), 8(2)(h), and 25 of the Convention (supra paras. 59 y 66), based on that, at the time of the events, there were no adequate and effective domestic remedies to review the lawfulness of the arrest of Mr. Vélez Loor. In this respect, the Court notes that the State based its position on the review of the lawfulness of the penalty of deprivation of liberty ordered by Order N° 7306 of December 6, 2002, but it did not mention the arrest ordered by means of Order N° 1430, of November 12, 2002.

123. Accordingly, the Court recalls that Articles 7(6), 8(2)(h), and 25 of the Convention relates to different aspects of protection. In this chapter, the Court will analyze whether the State

offered Mr. Vélez Loor the possibility of having recourse to a competent judge or court, in order that the Court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful pursuant to Article 7(6) of the Convention. Moreover, the Court notes that even though the Commission independently alleged the violation of Article 7(6) of the Convention, the representatives requested the Court to declare the violation of such norm in conjunction with Article 25 of the Convention for the same facts. By virtue of the fact that Article 7(6) of the Convention has its own legal content and the principle of effectiveness (effet utile) is interrelated to the duly protection for all the rights enshrined in the treaty, the Tribunal considers it is unnecessary to analyze such provision in connection with Article 25 of the Convention. [FN123] The possibility of appealing the penalty imposed by means of Order 7306 shall be analyzed in section g) infra (para. 173 to 181).

[FN123] Cf. Case of Anzualdo Castro, supra note 60, para. 77.

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124. In fact, as it has been mentioned, Article 7(6) of the Convention has its own legal content, which consists of the protection of personal or physical freedom, by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the release of the detainee be ordered. [FN124]

[FN124] Cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33.

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125. Firstly, the Court observes that, according to Article 88 of Decree Law 16 of 1960, all the resolutions of the Migration Office of the Ministry of Interior and Justice were subjected to the following administrative remedies: 1) request for reconsideration, before the Director of the Migration Office and 2) the appeal, before the Ministry of Interior and Justice. [FN125]

[FN125] Cf. Decree Law N° 16 of June 30, supra note 80, folios 1155.

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126. Article 7(6) of the Convention is clear when it provides that the authority that must decide on the lawfulness of the “arrest or detention” must be “a judge or court." The Convention is therefore safeguarding that the control of deprivation of liberty is judicial. Given that, in the instant case, the detention was ordered by an administrative authority, on November 12, 2002, the Tribunal deems that the review by a judge or court is a fundamental requirement to guarantee an adequate control and scrutiny of the administrative acts that affect fundamental rights.

127. In this respect, the Court considers that the Director of the National Migration Office as well as the Ministry of Interior and Justice, though they may be competent by law, they are not a

judicial authority in a strict sense; therefore, none of the remedies available through governing channels satisfied the requirements of Article 7(6) of the Convention. Moreover, any other remedy through the governing channels or that would require the prior exhaustion of the remedies available through governing channels [FN126] did not guarantee the direct judicial control of the administrative acts that depended on the exhaustion of such channels.

[FN126] Cf. Affidavit rendered before a public notary (affidavit) by expert witness Arturo Hoyos Phillips on August 10, 2010 (case file of the evidence, volume IX, affidavits, folios 3733 to 3735).

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128. In addition, the Court notes that there existed in Panama, at the time of the events, a judicial remedy that specifically allowed the review of the lawfulness of a deprivation of liberty, which was the writ of habeas corpus, stipulated in Article 23 of the National Constitution. [FN127] Furthermore, the Tribunal notes that there existed a remedy to protect human rights through contentious-administrative channels before Chamber III of the Supreme Court of Justice of Panama, which could have been useful to control the proceedings conducted by the public administration and to protect human rights; also, such remedy did not require the exhaustion of governing channels. [FN128]

[FN127] Cf. Political Constitution of the Republic of Panama of 1972 (case file of the evidence, tome VIII, annex 5 to the answer to the application, folios 2659 and 2660); Report rendered before a public notary (affidavit) by expert witness Arturo Hoyos Phillips, supra note 126, folios 3726 to 3727, and Statement rendered by Carlos Benigno González Gómez, supra note 122, folios 3782 to 3783.

[FN128] Cf. Affidavit rendered before a public notary (affidavit) by expert witness Arturo Hoyos Phillips, supra note 126, folios 3734 to 3735.

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129. In this respect, the jurisprudence of this Tribunal has also established that these remedies must not only formally exist in the legislation but they must be effective, that is to say, must comply with the purpose of obtaining, without delay, a decision on the lawfulness of the arrest or detention. [FN129]

[FN129] It is enlightening what the Special Rapporteur on Migrants sustained as to that "[s]ome national laws do not provide for judicial review of administrative detention of migrants. In other instances, the judicial review of administrative detention is initiated only upon request of the migrant. In these cases, lack of awareness of the right to appeal, lack of awareness of the grounds for detention, difficult access to relevant files, lack of access to free legal counsel, lack of interpreters and translation services, and a general absence of information in a language detainees can understand on the right to instruct and retain counsel and the situation of the facilities where they are being held can prevent migrants from exercising their rights in practice. In the absence of lawyers and/or interpreters, migrants can often feel intimidated and obliged to

sign papers without understanding their content." United Nations, Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, supra note 84, folio 2029, para. 46.

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130. In this respect, the Commission noted that between the moment of the detention and the date on which the penalty of imprisonment was imposed, Mr. Vélez Loor did not "have the possibility of being assisted by an attorney of his own choosing nor by a defense attorney provided by the State, had he not exercised his right." Likewise, the representatives stated that, during the time of his confinement, Mr. Vélez Loor "was not able to communicate with any other person" and that "he did not have legal counsel to defend himself or to appeal the sentence imposed on him at any moment."

131. The State sustained that Mr. Vélez Loor "had access to legal counsel provided, free of charge, by the Ombudsman of the Republic of Panama [and,] also that he could have activated the mechanisms of cooperation between the Ombudsman's Office of Ecuador and the Ombudsman's Office of Panama, given that they exist and are valid." Moreover, the State referred to "[the] legal access that people deprived of liberty had to free legal counsel provided by court appointed counsels in Panama." Finally, it referred to the access to consular assistance that Mr. Vélez Loor had.

132. In this context, it is worth emphasizing the importance of legal aid in cases like the instant one, in which there is an alien who may not know the legal system of the country and who is in a particularly vulnerable situation given the deprivation of liberty, for which the recipient State must take into account the particular characteristics of the persons situation, in order for said person to have effective access to justice in equal terms. [FN130] Hence, the Tribunal deems that the legal aid must be provided by a legal professional in order to satisfy the requirements of a procedural representation, by means of which the accused is advised, inter alia, about the possibility of filing remedies against acts that affect individual rights. If the right to defense arises as from the moment the investigation begins or the authority in charge orders or executes actions entailing an infringement of rights, [FN131] the person subjected to a sanctioning administrative proceeding must have access to procedural representation from that moment onwards. To prevent the accused from being advised by a counsel means to strictly limit the right to defense, which leads to procedural imbalance and leaves the individual unprotected before the sanctioning authority. [FN132]

[FN130] See mutatis mutandis Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 51 and 63; Case of Rosendo Cantú et al., supra note 27, para. 184, and Case of Fernández Ortega et al., supra note 27, para. 200.

[FN131] See mutatis mutandis Case of Suárez Rosero, supra note 101, para. 70; Case of Barreto Leiva, supra note 96, para. 29, and Case of Bayarri, supra note 27, para. 105.

[FN132] Case of Barreto Leiva, supra note 96, para. 61 to 62.

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133. Without prejudice to the powers inherent to the Ombudsman of the Republic of Panama, [FN133] the Court considers that the proceeding said institution may conduct, by virtue of a claim or complaint filed against an authority in charge of the public administration, is clearly different to the State obligation to provide adequate legal aid to whom cannot defend himself or herself or appoint a private counsel. Therefore, the realm or scope of its acts does not satisfy the guarantee of a counsel provided by the State who, in principle and for conventional purposes, must exercise legal assistance and representation from the first stages of the proceeding, given that, otherwise, the legal aid is not competent due to its lack of timeliness. Specially, the Court emphasizes that the legal aid provided by the State cannot be confused with the activity that, within the framework of its work, the Ombudsman carries out. [FN134] In fact, they both may complement each other, but for conventional purposes they are clearly different.

[FN133] The Ombudsman is an independent institution created by Law N° 7 of February 5, 1997, who acts with functional, administrative and financial full autonomy, without receiving instructions of any other authority, state body or person. Cf. Article 1 of Law N° 7 of February 5, 1997, by means of which the Ombudsman of the Republic of Panama was created (case file of the evidence, volume VII, annex 8 of the answer to the application, folio 2768).

[FN134] In what is permanent, Article 5 of Law No. 7 of February 5, 1997, states:

The individual protected by the Ombudsman's Office is legitimized procedurally to exercise popular actions and remedies under constitutional guarantees, as well as for contentious cases - full administrative jurisdiction and protection of human rights.

The Defender or Ombudsman shall exercise these powers in cases that it considers appropriate in view of the objectives of the Ombudsman.

Law No. 7 of February 5, 1997, supra note 133, folio 2772.

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134. In addition, it should be emphasized that while he was imprisoned at La Palma Detention Center, Mr. Vélez Loor did not have access to the Ombudsman, given that, at the time of the events, said institution did not have offices in that border region. [FN135] According to the records, the Ombudsman only became aware of the case of Mr. Vélez Loor between May and June of 2003 in one of its visits to La Joyita Penitentiary. [FN136]

[FN135] Cf. Affidavit rendered before a public notary (affidavit) by Mrs. Sharon Irasema Diaz Rodriguez on August 12, 2010 (case file of the evidence, volumen IX, affidavits, folio 3672) and Note DDP-RP-DRI No. 24-2010 of the Ombudsman of September 23, 2010 (case file of the evidence, tome X, annex 5 to the final arguments of the representatives, folios 3794 and 3795).

[FN136] Cf. Note DDP-RP-DRI N° 64-08 issued by the Ombudsman addressed to the Head of the Human Rights Department of the Ministry of Foreign Affairs on October 2, 2008 (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2427), and Order No. 1046a-03 issued by the Ombudsman of the Republic of Panama on June 30, 2003 (case file of the evidence, tome VII, annex 4 to the response to the application, folios 2649 to 2650).

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135. Regarding the mechanisms of cooperation between the Ombudsman's Office of Ecuador and the Ombudsman's Office of Panama, the Court notes that the State has not accompanied evidence that would support the Court's decision in this respect, in addition to not being the appropriate forum to guarantee the rights enshrined in the Convention (supra para. 133).

136. As to the alleged direct access that people deprived of liberty may have to free legal representation provided by a court appointed counsel of Panama, it does not appear from the body of evidence of the instant case that Mr. Vélez Loor had been informed of or that he had proven access to free legal representation provided by court appointed counsel or by any other free legal counsel provided by the State. Moreover, it appears from the evidence furnished in the instant case that, at the time of the arrest of Mr. Vélez Loor, the Office of Immigration did not have court appointed counsels for those people who did not have financial means to be able to be represented. [FN137]

[FN137] Cf. Statement rendered by María Cristina González at the public hearing held before the Inter-American Court on August 25, 2010.

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137. In his statement, Carlos Benigno González Gómez indicated that, at the time of the events, "[t]he person was held in custody at the premises of the [Office of Immigration] in Panama City, where there was a permanent presence of non-governmental organizations that provided legal representation to arrested migrants […] These organizations had full access to all the detainees at the premises of [said place]." [FN138] In this respect, the Court notes that Mr. Vélez Loor was not held in custody at the premises of the Office of Immigration in the Panama City, given that during the time he was deprived of liberty, he was held in the State's custody at penitentiary centers. Furthermore, the Court notes that the assistance that non-governmental organizations might exercise does not substitute for the State's obligation to offer free legal counsel (infra paras. 146).

[FN138] Statement rendered by Carlos Benigno González Gómez, supra note 122.

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138. The issue related to the consular assistance will be considered by the Court in section e) infra (paras. 149 to 160).

139. In sum, the existence alone of recourses is not sufficient without proof of their effectiveness. In this case, the State has not proven how, in the specific circumstances in which Mr. Vélez Loor was imprisoned at La Palma Public Prison in Darién, these remedies were effective, taking into account the fact that he was an arrested alien who did not have legal counsel and without knowledge on the persons or organizations that could provide legal assistance. Therefore, the Tribunal considers that the State violated Article 7(6) of the Convention in relation to Article 1(1) of the same treaty, given that it did not guarantee that Mr. Vélez Loor could exercise the available remedies to question the lawfulness of his arrest.

d) Proceeding before the National Office of Immigration and Naturalization between November 12 and December 6, 2002

140. The Commission and the representatives sustained that the measure taken against Mr. Vélez Loor is of a criminal nature; therefore, the guarantees of due process established in Article 8 of the American Convention should have been respected in the proceeding before the National Office of Immigration. Similarly, the State explained that, by the time of the events, the Supreme Court of Justice of Panama had established that any administrative act that would infringe fundamental rights should address and provide the victim with the mere guarantees of the judicial proceedings. As a consequence, "[t]he issuance of Order N° 7306 of December 6, 2002, despite being a formal administrative act, was destined to address and provide, in fact, the procedural guarantees inherent to criminal proceedings, insofar as its application affected fundamental rights of liberty," "which did not occur in the instant case."

141. Even when the exercise of legal functions is incumbent on the Judiciary, in some States other public bodies or authorities may also exercise, in some cases, judicial functions and take decisions, like the one of the instant case, that affect fundamental rights, like the personal liberty of Mr. Vélez Loor. However, the intervention of the administration in such cases has boundaries that may not be surpassed, which occupies an eminent position for the respect of human rights, hence it is necessary that the conduct of the administration be regulated. [FN139]

[FN139] Case of Baena Ricardo et al v. Panamá. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 126.

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142. That is why it is necessary that any administrative, legislative, or judicial authority, whose decisions may affect the rights of persons, adopt them in strict compliance with the guarantees of due process of law. [FN140] Hence, Article 8 of the Convention contemplates the guidelines of due process of law, which is composed of all the requirements that must be observed by procedural instances, to ensure that the individual may defend himself or herself adequately with regard to any act of the State that may affect his rights. [FN141] In addition, the Court has interpreted that the set of minimum guarantees established in Article 8(2) of the Convention also applies when determining the rights and obligations of "a civil, labor, fiscal or any other nature." [FN142] For this reason, the administration may not dictate punitive administrative actions without granting the sanctioned individuals said minimum guarantees, which apply mutatis mutandis as appropriate. [FN143]

[FN140] Cf. Case of the Constitutional Court, supra note 110, para. 71; Case of Baena Ricardo et al., supra note 139, para. 127; Case of the Sawhoyamaxa Indigenous Community, supra note 92, para. 82, and Case of of the Yakye Axa Indigenous Community, supra note 130, para. 62.

[FN141] Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27; Case of Claude Reyes et al., supra note 110, para. 116, and Case of Yatama, supra note 38, para. 147.

[FN142] Case of the Constitutional Court, supra note 110, para. 70; Case of Ivcher Bronstein v. Perú. Merits, Reparations, and Costs. Judgment of February 6, 2001. Series C No. 74, para. 103, and Case of Baena Ricardo et al., supra note 139, para. 125.
[FN143] Cf. Case of Baena Ricardo et al., supra note 139, para. 128. See also, Second Progress Report of the Rapporteur on Migrant Workers and Members of Their Families in the Hemisphere, OEA/Ser./L/V/II.111 doc. 20 rev. of April 16, 2001, paras. 98 a 100.
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143. In this respect, the Court recalls that the right to due process of law must be recognized as one of the minimum guarantees that should be offered to any migrant, irrespective of his migratory status. [FN144] This implies that the State must ensure every foreign person, even when said person is a migrant in an irregular situation, may exercise his or her rights and defend his or her interests effectively and in full procedural equality with other triable individuals. [FN145]

[FN144] Cf. Right of Undocumented Migrants, supra note, para. 121 and 122.
[FN145] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 117 and 119; and Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 121, and Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs. Judgment of June 21, 2002. Series C No. 94, para. 146.
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144. It is an acknowledged fact that, since there was no specific regulation of Decree Law 16 of 1960, its substantiation was subject to the procedure established in Law 38 of 2000, related to administrative procedures in general. [FN146] That is to say, it was necessary to resort to supplemental norms. In this respect, the procedure that resulted in the punitive administrative act by which Mr. Vélez Loor was deprived of liberty, was not only decided inaudita parte (supra para. 60) but also it did not offer the possibility of exercising the right to defense, to a hearing or to adversarial proceedings' safeguards, as part of the guarantees of due process of law, leaving the arrested migrant to the absolute discretion of the punishing power of the National Office of Immigration. In fact, the State "accept[ed] responsibility [given that] the accused received no written and detailed formal communication regarding the charges brought against him; Mr. Vélez was not given time or adequate means to prepare his defense; Mr. Vélez was not assisted by a counsel; he was also not permitted to exercise his right to defense during the substantiation of the administrative procedure that resulted in the deprivation of his liberty."

[FN146] In this respect, the State pointed out that "[a]s administrative act, Resolution [7306] was subject, in first instance, to the General Administrative Procedure contained in Law 38 of July 31, 2000, a rule that governs the administrative activity of the State and establishes with the utmost clarity the remedies for the annulment and reversal of unlawful administrative acts." See also, Statement rendered by María Cristina González at the public hearing held before the Inter-American Court on August 25, 2010 and Law N° 38 of July 31, 2000 that approves the Organic Statutes of the Administration's Office, regulates the General Administrative Procedure and

stipulates the Special Provisions published in the Official Gazette on August 2, 2000 (case file of the evidence, volume VII, annex 9 of the response to the application, folio 2792 to 2855).

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145. Furthermore, the Court has sustained that the right to defense binds the State to treat the person, at all times, as a true party to the proceeding, in the broadest sense of this concept and not simply as an object thereof. [FN147] Article 8(2)(d) and (e) establish the right of the accused to defend himself or herself personally or to be assisted by legal counsel of his or her own choosing, and, if the accused does not so chose, the accused has the inalienable right to be assisted by a counsel provided by the State, paid or not as the domestic law provides. In this respect and for cases concerning non-criminal procedures, the Tribunal has previously established that "the circumstances of a particular case or proceeding—its significance, its legal character, and its context in a particular legal system—are among the factors that bear on the determination of whether legal representation is or is not necessary for due process." [FN148]

[FN147] Case of Barreto Leiva v. Venezuela, supra note 96, para. 29.
[FN148] Exceptions to the Exhaustion of Domestic Remedies (Articles 46.1, 46.2.a) and 46.2.b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A N.11 para. 28.

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146. The Court has considered that, in the administrative or judicial instances, where decisions may be taken by which an accused may be deported, expelled, or deprived of freedom, the provision of free public legal aid service is necessary to avoid the violation of the right to due process. [FN149] In fact, in cases like the instant case, in which the consequence of the immigration procedures could be the deprivation of liberty of a punitive nature, free legal representation is an imperative for the interests of justice. [FN150]

[FN149] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 126.
[FN150] Cf. ECHR, Case of Benham v. The United Kingdom (Application no 19380/92) Judgment, 10 June 1996, para. 61 ("The Court agrees with the Commission that where deprivation of liberty is at stake, the interests of justice in principle call for legal representation") and para. 64 ("In view of the severity of the penalty risked by Mr Benham and the complexity of the applicable law, the Court considers that the interests of justice demanded that, in order to receive a fair hearing, Mr Benham ought to have benefited from free legal representation during the proceedings before the magistrates").

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147. In consequence, the Tribunal considers that the fact of not having provided the accused with the right to defense before the administrative instance, in which it was decided the application of the penalty of deprivation of liberty, has effects on the entire proceeding and goes beyond the decision of December 6, 2002. Certainly, the punitive administrative procedure is a

single proceeding in various stages, [FN151] including the processing of the remedies filed against the decision adopted.

[FN151] Cf. mutatis mutandi Case of Castillo Petruzzi et al. v. Perú. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 161; Case of Radilla Pacheco, supra note 25, para. 208, and Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 43.

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148. Therefore, the Court considers that the State of Panama violated, to the detriment of Mr. Vélez Loor, the right to a hearing contained in Article 8(1) of the Convention and the right to be assisted by a counsel contained in Articles 8(2)(d) and 8(2)(e) of the Convention, in relation to Article 1(1) therein to the detriment of Mr. Vélez Loor.

e) Right to information and effective access to consular assistance

149. The Commission referred to the omissions made by the State of Panama that "prevented the access to adequate and timely consular assistance." In this respect, it argued that "the right to seek consular assistance implies that the person who was arrested or subjected to a proceeding be informed of his right to communicate with consular officials and be provided the means to do so," which "did not occur in the instant case, given that the Panamanian State unilaterally decided to inform the Ecuadorian State of the situation, without providing the means so that the [alleged] victim could communicate with the consular officials and seek the assistance required." Furthermore, the Commission noted that "there is no evidence that the State of Ecuador has officially been informed of the proceeding conducted against the [alleged] victim or of the criminal penalty that such proceeding could entail." The representatives agreed with the Commission that "[t]he State neither informed [Mr. Vélez Loor] of his right to seek consular assistance." They alleged that "said right is not satisfied with the sole notification by the authorities of the recipient State," given that "it is the individual who is entitled to the right to information and consular notification; therefore, Panama should have informed Mr. Vélez, without delay, of his right to contact the consulate of his country and also guarantee the conditions to be able to do so, had he chosen."

150. The State pointed out that the "Consulate of the Republic of Ecuador was notified, over the telephone, by the National Office of Immigration [...] of the detention of Mr. Vélez Loor, on November 12, 2002," and that Mr. Vélez Loor had proven assistance of consular officials of his country "since the beginning of December, [2002]." Likewise, the State sustained that "at the time of the events, […] Panama, like most countries, applied its criterion regarding consular notification[, according to which] it understood that the right to consular notification was a right of the sending State, and not a right of the individual." Therefore, the State considers that "[a]t the moment of the detention of Mr. Vélez , the notification served on the consul [of Ecuador] regarding the detention of the individual was, according to the international standards, adequate and sufficient [and] the obligation contemplated in Article 36 of the Vienna Convention had been fully fulfilled."

151. The Court has already ruled on the right to seek consular assistance in cases related to deprivation of liberty of a person who is not a national of the country where he is detained. In the year 1999, in the advisory opinion on The right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, the Court declared that the right of a detained foreign national to consular assistance, enshrined in Article 36 of the Vienna Convention on Consular Relations (hereinafter "Vienna Convention") is an individual right and a minimum guarantee protected within the Inter-American system. [FN152] This principle was upheld by the International Court of Justice in the case of LaGrand in the year 2001. [FN153] In addition, there existed non-binding international treaties that establish this right. [FN154] As a result, what was reported by the State—that in the year 2002, at the time of the events, the notification to the consulate was sufficient—is not true.

[FN152] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law, supra note 145, paras. 84 and 124.
[FN153] Cf. ICJ, LaGrand Case (Germany v. United States of America), I.C.J. Reports 2001, Judgment of 27 June 2001, folio 494, para. 77.
[FN154] Cf. Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its orders 663C (XXIV) of July 31, 1957 and 2076 (LXII), of May 13, 1977, Rule 38.1 and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in its resolution 43/173 of December 9 1988, principle 16.2.

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152. The Court notes that foreigners under detention, in a social and juridical milieu different from their own, and often in a language unknown to them, often experience a condition of particular vulnerability, which the right to information on consular assistance, inserted into the conceptual universe of human rights, seeks to remedy in such a way that the detained foreigner may enjoy a true opportunity for justice, and the benefit of the due process of law equal to those who do not have those disadvantages, carried out with respect for the dignity of the person. To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the correlative prohibition of discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. [FN155]

[FN155] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law, supra note 145, para. 119; and Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 121, and Case of Baldeón García, supra note 27, para. 202.

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153. From the point of view of the rights of a detained person, there are three essential components of the right due to a person by the State Party: [FN156] 1) the right to be informed

of his rights under the Vienna Convention [FN157]; 2) the right to have effective access to communication with the consular official; and 3) the right to the assistance itself.

[FN156] It must take into account that the following standards are not applicable to those detainees who have requested international protection (supra para. 106). If they are arrested, such persons enjoy the rights enshrined in the Vienna Convention. However, there are other considerations to protect the interests of refugees, which the Court shall not examine in this Judgment.

[FN157] Hence, the detained foreigner shall be entitled to be reported of his right: 1) that the authorities of the receiving State inform, without delay, to the competent consular post of his situation and 2) to have any communication addressed to the consular post by the person detained be forwarded by said authorities without delay. Cf. Article 36.1.b) of the Vienna Convention on Consular Affairs. Document (A/CONF.25/12) (1963) of April 24, 1963, in force as of March 19, 1967, and in effect since that date for Ecuador (which ratified the Convention on 11 March 1965), and to Panama from the thirtieth day following the deposit of its instrument of ratification, held on August 28, 1967. This notification must be served before the arrested person "renders his first statement." The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process, supra note 145, para. 106; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 164, and Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs. Judgment of May 11, de 2007. Series C No. 164, para. 116. As well as other rights the person deprived of liberty is entitled to, this right "constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individuals right to defense." See mutatis mutandis Case of Juan Humberto Sánchez, supra note 97, para. 82; Case of Usón Ramírez, supra note 10, para. 147, and Case of Yvon Neptune, supra note 97, para. 105.

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154. To prevent arbitrary detentions, the Court reiterates the importance of notifying the arrested person of their right to establish contact with a third party, such as a consular official, to inform them that he or she is in the State's custody, which must be carried out in conjunction with the obligations under Article 7(4) of the Convention. When the arrested person is not a national of the State in which he or she is held in custody, the notification of his or her right to consular assistance is based on a fundamental guarantee of the access to justice and allows the effective exercise of the right to defense given that the consul may assist the detainee in various acts of defense, such as granting or hiring legal counsel, obtaining evidence in the country of origin, corroborating the conditions under which legal assistance is provided, and observing the situation of the accused while he or she is in prison. [FN158]

[FN158] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process, supra note 145, para. 86; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 164, and Case of Bueno Alves, supra note 157, para. 116.

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155. The Tribunal shall now determine whether the State informed Mr. Vélez Loor of the right to which he was entitled. From the case file before the Court, no evidence appears proving that the State had notified Mr. Vélez Loor, a foreign detainee, of his right to communicate with a consular official of his country, in order to seek the assistance contemplated in Article 36(1)(b) of the Vienna Convention on Consular Assistance. The Court considers that the State had the obligation to prove that, in the instant case, it complied with its obligation to notify Mr. Vélez Loor of the right to seek consular assistance to which every foreign detainee is entitled and not only the Embassy of Ecuador. In this respect, it is worth emphasizing that, according to the Vienna Convention, it falls upon the detainee to decide. [FN159]

[FN159] In what is relevant, article 36.1.c) of the Vienna Convention on Consular Relations states that "[…] consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

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156. Now, all the parties agree that, at some moment the consular authorities were informed of the fact that Mr. Vélez Loor was in the custody of the Panamanian State (supra paras. 149 and 150); however, there is still a controversy regarding the date the consulate was notified. The evidence furnished is not consistent as to the date and manner in which the Consulate of Ecuador in Panama was informed of the fact that Mr. Vélez Loor was held in custody by the State. [FN160] The truth is that by December 5, 2010, the Ecuadorian consular mission had already instituted proceedings for the deportation of Mr. Vélez Loor. [FN161] In this respect, Mr. Vélez Loor stated that, while he was imprisoned at La Palma Public Jail, he had an interview with immigration officials; however, he indicated that “he never learned" about the proceedings that the Ecuadorian Consulate was conducting on his behalf in December 2002. Furthermore, he mentioned that “he never knew how the deportation occurred” and that “he does not know the proceedings that were conducted to that end.” [FN162]

[FN160] On the one hand, Mr. González stated that the Consulate of the Republic of Ecuador was notified, over the telephone, by the National Office of Immigration and Naturalization of the Ministry of Interior and Justice of the detention of Mr. Vélez Loor. Cf. Statement rendered by Carlos Benigno González Gómez, supra note 122, folio 3787. On the other hand, Mr. Vélez Loor sustained that “at one moment, I had the opportunity to call the Consulate of Ecuador by means of a clandestine telephone.” Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Inter-American Court on August 25, 2010. Finally, Mr. Ochoa stated “[a] few days before Christmas, [w]hen I was taken to the Ecuadorian Embassy to take my fingerprints and establish my nationality, I could talk to the ambassador; [I] told her about the case of Mr. Vélez and she told me I had to talk to the Director of the Migration Office.” Statement redered before a public notary (affidavit) by Mr. Leoncio Raúl Ochoa Tapia on August 6, 2010 (case file of the evidence, volume IX, affidavits, folio 3656).

[FN161] Cf. Note N° 3-6-3/2002 issued by the Consulate of Ecuador in Panama addressed to the Chief of Staff of the Navy of Panama on December 5, 2002 (case file of the evidence, volume VIII, annex 51 of the answer to the application, folio 3531).

[FN162] Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Inter-American Court on August 25, 2010.

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157. It is pertinent to recall that the right of a foreign detainee to request consular assistance from his country of nationality has been considered within the framework of the "minimum guarantees to offer foreigners the opportunity to adequately prepare their defense." [FN163] In this respect, the Court has emphasized several cases where the consul may assist the detainee in different acts of defense (supra para. 154), and its importance in guaranteeing the compliance with the right "to be assisted by a counsel" under Article 8(2)(d) of the Convention. In this way, "[n]on-observance or impairment of the detainee's right to information is prejudicial to the judicial guarantees," [FN164] and may result in a violation thereof.

[FN163] The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process, supra note 145, para. 122; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 164, and Case of Bueno Alves, supra note 157, para. 116.
[FN164] The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process, supra note 145, para. 129; Case of Acosta Calderón v. Ecuador. Merits, Reparations, and Costs. Judgment of June 24, 2005. Series C No. 129, paras. 125 and 126, and Case of Tibi, supra note 27, paras. 195 and 196.

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158. As to the effective access to consular communication, the Vienna Convention provides that the detainee has the right to: 1) freely communicate with consular officials; and 2) be visited by consular officials. [FN165] According to this treaty, "consular officers shall have the right to visit a national of the sending State [and] to arrange for his legal representation." [FN166] That is to say, the recipient State must not hinder the acts of the consular official that provides legal services to the detainee. Furthermore, the detainee has the right to seek consular assistance, which binds the State, of which the detainee is a national, to protect the rights of its nationals in a foreign country by providing consular protection. The visits of consular officials should be made with a view to facilitating "the protection of interests" of the national detainee, especially those associated with "his or her defense before the courts." [FN167] In this respect, the right to the consular visit represents a condition to guarantee and enforce the rights to personal liberty, humane treatment [personal integrity], and defense.

[FN165] Cf. Vienna Convention on Consular Relations, Articles 36.1.a and 36.1.b).
[FN166] Vienna Convention on Consular Relations, Article 36.1.c).
[FN167] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process, supra note 145, para. 87; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 164 and Case of Bueno Alves, supra note 157, para. 116.

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159. The Court notes that even though Mr. Vélez Loor had proven communication with consular officials of Ecuador in the State of Panama, [FN168] the administrative proceeding

conducted between November 12 and December 6, 2002, which resulted in the resolution by which he was sentenced to imprisonment, did not give him the opportunity to avail himself of the right to defense, to a hearing, or to the safeguards of adversarial proceedings, let alone guaranteed that said right could be really exercised (supra para. 144). That is to say, even if Mr. Vélez Loor was visited at the penitentiary center by the consular officials at La Joyita Penitentiary Center after the punishment was imposed, [FN169] who providie the detainee with personal hygiene products, money in cash, and medicine, as well as requested the intervention of physicians to examine him, Mr. Vélez Loor could not exercise his right to defense with consular assistance, due to the fact that the sanctioning administrative procedure did not allow to implement the consular assistance as part of due process of law.

[FN168] Cf. Note N° 4-2-105/2009, supra note 79, folio 2435 and 2436, and Note N° 3-8/09/2003 issued by the Embassy of Ecuador in Panama addressed to the Director of La Palma Penitentiary Center of February 26, 2003 (case file of the evidence, volume VIII, annex 53 of the response to the application, folio 3611).

[FN169] Cf. Note N° 4-2-105/2009, supra note 79, folio 2435 and 2436.

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160. Based on the foregoing, the Court concludes that, in the instant case, the absence of information of Mr. Vélez Loor regarding his right to communicate with the consulate of his country and the lack of effective access to consular assistance as a component of the right to defense and due process, violated Articles 7(4), 8(1), and 8(2)(d) of the American Convention, in relation to Article 1(1) therein, to the detriment of Mr. Vélez Loor.

f) Deprivation of liberty by application of Article 67 of Decree Law 16 of 1960

161. The Commission as well as the representatives alleged the violation of Article 7(3) of the Convention by virtue of the penalty of two years imposed on Mr. Vélez Loor by Order 7306, which was of a criminal nature. On the one hand, the Commission sustained that "[e]ven though, this second order indicated the legal basis for the penalty and that Mr. Vélez Loor was a recidivist, the penalty per se was the result of a proceeding that openly disregarded all the guarantees of due process." On the other hand, the representatives alleged that it is not sufficient that every reason for deprivation or restriction of the right to liberty is established by law, but that it is necessary for such law and its application to respect the requirements according to which the measure must have a compatible purpose, be suitable, necessary, and proportional, so that the detention is not considered arbitrary. According to the representatives, the penalty imposed on Mr. Vélez Loor "was not only unnecessary, but it seriously and disproportionately affected his right to personal liberty," and Order 7306, by means of which he was sentenced to imprisonment, does not contain any grounds that allow evaluating whether the restriction complies with the conditions aforementioned.

162. Moreover, the representatives emphasized what they called "the phenomenon of the criminalization of migrant persons," of which the law in force in Panama at the time of the events is a clear illustration of this, given that it stipulated the imposition of the penalty of imprisonment on recidivists who illegally entered the country. Furthermore, they highlighted that

this tendency towards criminalization of migrants is reinforced by "practices or discourse that encourage the perception that migrants [were] dangerous, that they caus[ed] an increase of insecurity, that they p[ut] pressure on the public services and that they, therefore, bec[ome] a burden to society." Finally, the representatives alleged that this norm was "discriminatory and a stigma, [given] that it compared the regular migrant with a criminal; however, it did not contemplate any guarantee of due process."

163. In this chapter, the Court shall rule on the power of States to impose a punitive penalty for the non-compliance with immigration laws, like the sanction of two years contemplated in Article 67 of Decree Law 16 of 1960 [FN170] that was applied in the instant case. To that end, it is necessary to analyze whether such domestic legislation applied to the instant case was compatible with the requirements of the American Convention.

[FN170] Article 67 stated that "[a]ny alien who evades the order for deportation issued against him, by staying in the country in a clandestine manner or flouts the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and will be obliged to leave the country at the end of that period; such an alien may be released if he presents, at the discretion of the Ministry of Interior and Justice, a ticket to abandon the country." Decree Law No. 16 of June 30, 1960, supra note 80, folio 1153.

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164. Article 7(2) of the Convention establishes that the deprivation of liberty shall only proceed for the reasons and under the conditions established beforehand by the Political Constitutions of the State Parties or by a law established pursuant thereto. Under the principle of legal codification of the offense, States are obliged to establish, as specifically as possible and "beforehand," the "reasons" and "conditions" for the deprivation of physical liberty. [FN171]

[FN171] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 57; Case of Usón Ramírez, supra note 10, para. 145, and Case of Yvon Neptune, supra note 97, para. 96.

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165. Moreover, Article 7(3) of the Convention provides that "no one shall be subject to arbitrary arrest or imprisonment." The Court has held in previous cases that:

No one may be subjected to arrest or imprisonment for reasons and using methods that –although classified as legal– can be considered incompatible with regard for the fundamental rights of the individual, because they are, among other matters, unreasonable, unpredictable, or disproportionate. [FN172]

[FN172] Case of Gangaram Panday v. Surinam. Merits, Reparations, and Costs. Judgment of January 21, 1994. Series C No. 16, para. 47; Case of Usón Ramírez, supra note 10, para. 146, and Case of Yvon Neptune, supra note 97, para. 97.

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166. In consequence, without prejudice to the lawfulness of the detention, it is necessary to assess, in each case, the compatibility of the legislation with the Convention, understanding that such law and its application must respect the requirements listed below, in order to ensure that this measure is not arbitrary: [FN173] i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention; ii) that the measures adopted are appropriate to achieve the sought-after purpose; iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. Hence, the Court has indicated that the right to personal liberty supposes that any limitation of this right must be exceptional; [FN174] and, iv) that the measures are strictly proportionate, [FN175] so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought. Any restriction of liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will thus violate Article 7(3) of the Convention. [FN176]

[FN173] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 93, and Case of Yvon Neptune, supra note 97, para. 98.
[FN174] Cf. Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment of August 31, 2004. Series C No. 111, para. 129; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 93, and Case of Yvon Neptune, supra note 97, para. 98.
[FN175] Cf. Case of Ricardo Canese, supra note 174, para. 129; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 93, and Case of Yvon Neptune, supra note 97, para. 98.
[FN176] Cf. Case of García Asto and Ramírez Rojas, supra note 99, para. 128; Case of Barreto Leiva, supra note 96, para. 116, and Case of Yvon Neptune, supra note 97, para. 98.
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167. That is why, in the instant case, said assessment is related to the compatibility of punitive custodial measures with the American Convention for the control of migratory flows, particularly those concerning irregular migrants, and in this way determine the scope of the State's obligations, within the framework of the State's responsibility for the violations of the rights enshrined in said treaty. Therefore, the Court shall proceed to evaluate whether the custodial measure applied to Mr. Vélez Loor complied with the requirements mentioned according to which it must be lawful, seek a legal purpose and be suitable, necessary and proportional. The Tribunal notes that the penalty of imprisonment imposed on Mr. Vélez Loor by means of Order 7306 (supra para. 94) was based on Article 67 of Decree Law 16 of 1960, which was issued on June 30, 1960 by the President of the Republic, upon having heard the favorable opinion of the Cabinet and prior approval of the Permanent Legislative Commission of the General Assembly. [FN177] None of the parties questioned if this provision satisfied with the principle of legal exception, in accordance with this Tribunal's jurisprudence. [FN178] Hence the Court does not count with sufficient elements to make a declaration on this issue.

[FN177] Cf. Decree Law N° 16 of June 30, 1960, supra note 80.

[FN178] The principle of legal exception provides that the right to personal liberty can only be affected by a law, which is understood, according to Article 30 of the Convention, as a general legal norm closely related to the general welfare, enacted by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth in the Constitutions of the States Parties for that purpose. Advisory Opinion, The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº 6. See also, Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 56; Case of Usón Ramírez, supra note 10, para. 145, and Case of Yvon Neptune, supra note 97, para. 96.

Lawful purpose and suitability of the measure

168. As to the possibility of setting limitations or restrictions to the right to personal liberty it is necessary to note that, unlike the European Convention for the Protection of Human Rights and Fundamental Liberties, [FN179] the American Convention does not establish, neither explicitly or implicitly, the reasons, cases, or circumstances that shall be considered lawful in a democratic society to authorize a custodial measure within the domestic legislation.

[FN179] Cf. Article 5 on the right to liberty and security of the European Covenant for the Protection of Human Rights and Fundamental Freedoms.

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169. As has been already established, States have the authority to control and regulate the entrance and stay of foreign persons in their territory (supra para. 97); therefore, this may be a lawful purpose according to the Convention. In this respect, the application of preventive custody may be suitable to regulate and control the irregular immigration in order to ensure that the individual appears before the immigration proceeding or, in addition, to guarantee the application of an order for deportation. However, and in the view of the Working Group on Arbitrary Detention, "criminalizing an irregular entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention." [FN180] Moreover, the United Nations Rapporteur on the human rights of migrants has sustained that "[d]etention of migrants on the ground of their irregular status should under no circumstance be of a punitive nature." [FN181] In the present case, the Court considers that the objective of imposing a punitive measure upon a migrant that reenters in an irregular manner to a country after a previous deportation order cannot be considered a lawful purpose in conformity with the Convention.

[FN180] United Nations, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," Working Group on Arbitrary Detention, Group Report, A/HRC/7/4, January 10, 2008, para. 53.

[FN181] United Nations, "Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants," Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant Order 2002/62 of the Human Rights Commission, E/CN.4/2003/85, December 30,

2002, para. 73 (case file of the evidence, volume V, annex 22 of the autonomous brief of pleadings, motions and evidence, folio 1993).

Need for the measure

170. In the instant case, the Court notes that the measure established in Article 67 of Decree Law 16 of 1960 was an administrative measure of a punitive nature. In this respect, the Court has already held that administrative sanctions, as well as criminal sanctions, constitute an expression of the State's punitive power and that, on occasions, the nature of the former is similar to that of the latter. [FN182] In a democratic society punitive power is exercised only to the extent that is strictly necessary in order to protect fundamental legal rights from serious attacks that may impair or endanger them. The opposite would result in the abusive exercise of the punitive power of the State. [FN183] Similarly, the Working Group on Arbitrary Detention sustained that right to personal liberty "requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need." [FN184]

[FN182] Cf. Case of Baena Ricardo et al., supra note 139, para. 106.
[FN183] Cf. Case of Kimel, supra note 43, para. 76; Case of Usón Ramírez, supra note 10, para. 73, and Case of Tristán Donoso, supra note 120, para. 119.
[FN184] United Nations, Working Group on Arbitrary Detention, Group Report, Civil and Political Rights, in particular those issues related to Torture and Detention, E/CN.4/2006/7, December 12, 2005, para. 63.

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171. Based on this principle, it is deduced that the detention of people for non-compliance with immigration laws should never involve punitive purposes. Hence, a custodial measure should only be applied when it is necessary and proportionate in the specific case to the purposes mentioned supra and only for the shortest period of time. Therefore, it is essential for States to seek alternatives to detention whenever possible, [FN185] which may be effective for the achievement of the purposes described. As a consequence, those migratory policies whose central focus is the mandatory detention of irregular migrants, without ordering the competent authorities to verify in each particular case and by means of an individualized evaluation, the possibility of using less restrictive measures of achieving the same ends, are arbitrary. [FN186]

[FN185] Cf. United Nations, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," Working Group on Arbitrary Detention, Group Report, A/HRC/10/21, February 16, 2009, para. 67.
[FN186] Cf. United Nations, Human Rights Committee, C. v. Australia, Communication No 900/1999: Australia. 13/11/2002, CCPR/C/76/D/900/1999, of November 13, 2002, para. 8.2

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172. Based on the foregoing reasons, the Tribunal deems that Article 67 of Decree Law 16 of 1960 did not follow a lawful purpose and was disproportionate, given that it established a punitive penalty for aliens who evade a previous order for deportation and, therefore, resulted in arbitrary detentions. In brief, the deprivation of liberty imposed on Mr. Vélez Loor, based on such norm, constituted a violation of Article 7(3) of the Convention in relation to Article 1(1) of the same treaty.

g) Notification of Order 7306 of December 6, 2002 and remedies regarding the punitive ruling

173. The Commission argued, in the first place, that, according to the immigration law in force at the time of the events, "the right to appeal before a court, which would ensure the guarantees of independence and impartiality, did not exist;" in the second place, that the "criminal penalty was imposed by means of an administrative act," which in Panama "was legal on a presumptive basis and could only be judicially challenged once a series of administrative remedies had been exhausted and based on sufficient grounds capable of disproving said presumption;" in the third place, that the remedies mentioned by the State "cannot be considered adequate in order to obtain the entire review of the criminal penalty like the one imposed on the [alleged] victim and, finally, that due to the lack of notice and legal counsel, the remedies were not at the disposal of Mr. Vélez Loor."

174. The representatives indicated that "the Panamanian legislation in force at the time of the events did not provide that the decision made by the General Director of Migration could be reviewed, in second instance, by a court or tribunal." Furthermore, they pointed out that the alleged victim had no effective access to the remedies established in Law N° 16 of 1960, given that "there is no record showing the resolution, by which Mr. Jesús Vélez Loor was sentenced to imprisonment, had been formally notified;" apart from the fact that "such resolution was not well-grounded, which prevented challenging its validity."

175. The State acknowledged "the non-compliance with the obligation to notify Mr. Vélez Loor [of the] content of Order 7306 of December 6, 2002," insofar as there is "no record of the steps taken to serve notice as required by Article 22 of the National Constitution." However, it noted that the resolution "was subjected to a series of measures of judicial and non-judicial control that could be taken by the alleged victim at any moment as from [its] issuance [...], disregarding the lack of notice," which "were not carried out" and that, due to "its administrative nature, it was not adequate to unofficially bring the detainee before a judicial authority." Moreover, it pointed out that "[e]ven though Mr. Vélez, having noticed the lack of notification of this act, could not appeal, by means of governing channels, the penalty imposed by the National Office of Immigration, he had the opportunity to request its annulment." Furthermore, it explained that the lack of notification of the administrative act "gives rise to judicial remedies contemplated within the domestic remedies, amparo, habeas corpus and remedies for the protection of Human Rights." In this respect, the State emphasized that Mr. Vélez Loor had the possibility of resorting to different kinds of actions and remedies, of a governmental or administrative nature, judicial or non-judicial, established in the Panamanian legal system that existed before his arrest and sanction.

176. Moreover, the State alleged that "after the issuance of Order 7306, [Mr. Vélez Loor] had proven access to the Ombudsman's Office and to the consular officials of his country," considering that "during his imprisonment at La Joya Penitentiary Center [sic] he had access, by means of such institution, to the judicial mechanisms for the control of administrative proceedings that the domestic legislation in force offered him for the protection of his rights."

177. According to the arguments of the Commission and the representatives, there is still controversy over whether the State respected and guaranteed the right to appeal the sanction imposed by means of Order 7306 to a higher court, according to Articles 8(2)(h) and 25 of the American Convention.

178. In this respect, the Court considers that the facts of this case are restricted to the field of application of Article 8(2)(h) of the Convention that enshrines a specific type of remedy that must be offered to every individual against whom a custodial measure is taken, as guarantee of the individual's right to defense, and it deems that it is not a ground for application of Article 25(1) of said treaty. The defenselessness of Mr. Vélez Loor was due to the impossibility of appealing the punitive ruling, a situation covered by Article 8(2)(h) in question.

179. The jurisprudence of this Court has emphasized that the aim of the right to appeal a judgment is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final. [FN187] The right to review by a higher court, expressed by means of the complete review of the condemnatory or punitive ruling, ratifies the grounds and provides more credibility to the judicial acts of the State and, at the same time, offers more security and protection to the rights of the accused. [FN188] In this respect, the right to appeal a judgment, recognized in the Convention, is not satisfied merely because there is a higher court than the one that tried and convicted the accused and to which the latter has or may have recourse. For a true review of the judgment, in the sense required by the Convention, the higher court must have the jurisdictional authority to take up the particular case in question. [FN189] In this respect, while States have a margin of discretion in regulating the exercise of that remedy, they may not establish restrictions or requirements that infringe upon the very essence of the right to appeal a judgment. The possibility of "appealing the judgment" must be accessible, without allowing for the kind of complex formalities that would render this right illusory. [FN190]

[FN187] Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of July 2, 2004. Series C Nº 107, para. 158; Case of Barreto Leiva, supra note 96, para. 88.

[FN188] Cf. Case of Barreto Leiva, supra note 96, para. 89.

[FN189] Cf. Case of Castillo Petruzzi et al., supra note 151, para. 161; Case of Lori Berenson Mejía v. Perú. Merits, Reparations, and Costs. Judgment of November 25, 2004. Series C No. 119, para. 192, and Case of Herrera Ulloa, supra note 187, para. 159.

[FN190] Cf. Case of Herrera Ulloa, supra note 187, paras. 161 and 164.

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180. In the instant case, the Tribunal deems it is inadmissible that Order 7306 of December 6, 2002, issued by the National Office of Immigration, by means of which Mr. Vélez Loor was deprived of liberty for almost ten months, had not been notified, as the State itself acknowledged (supra para. 60). The Court finds that the lack of notification constitutes, per se, a violation of Article 8 of the Convention, given that it placed Mr. Vélez Loor in a situation of uncertainty regarding his legal situation and made the exercise of the right to appeal a judgment unfeasible. As a consequence, the Court considers that this case is framed within a situation of factual impediment to ensure a real access to the right to appeal, and within a situation of lack of guarantees and judicial insecurity as well; therefore, it is not appropriate to analyze the remedies mentioned by the State. It is neither necessary to analyze the argument of the State regarding the Ombudsman's Office as a non-judicial remedy, given that such Office does not satisfy the requirement of a reviewing judicial higher body, as well as the requirement of a liberal remedy that would permit a thorough analysis or examination of all the issues debated and analyzed before the authority that issued the act subject to appeal. Therefore, it is not a remedy that the people must necessarily seek.

181. Based on the foregoing, the Tribunal declares that Panama violated the right of Mr. Vélez Loor recognized in Article 8(2)(h) of the Convention, in relation to Articles 1(1) therein.

h) Lack of legality of the place of incarceration of aliens punished by application of Decree Law 16 of 1960

182. The State sustained that "[t]he legality of placing aliens punished by application of Article 67 of Decree Law 16 of 1960 in centers of the national penitentiary system was based, not only on the content of the norm itself, but also on the interpretation that the Supreme Court of Justice has made regarding the legality of such measure."

183. Under the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields of competence, particularly when the exercise of its punitive power is at issue. [FN191] The Tribunal has already ruled on the application of Article 9 of the Convention to the administrative punitive action. In this respect, it has held that "for the sake of legal security, it is indispensable for the punitive rule, whether of a criminal or an administrative nature, to exist and to be known or to offer the possibility to be known, before the action or omission that violate it and for which punishment is intended occurs. The definition of an act as an unlawful act, and the determination of its legal effects must precede the conduct of the subject being regarded as a violator. Otherwise, individuals would not be able to orient their behavior according to a valid and true legal order within which social reproach and its consequences were expressed. These are the foundations of the principles of legality and unfavorable non-retroactivity of a punitive rule." [FN192]

[FN191] Cf. Case of Baena Ricardo et al., supra note 139, para. 107; Case of Yvon Neptune, supra note 97, para. 125, and Case García Asto and Ramírez Rojas, supra note 99, para. 187.
[FN192] Case of Baena Ricardo et al., supra note 139, para. 106, citing cf., inter alia, Eur. Court HR, Ezelin v. France (Application no. 25196/94) Judgment of 15 November 2001, para. 45, and

Eur. Court HR, Müller et al. v. Switzerland (Application no. 10737/84) Judgment of 24 May 1988, para. 29.

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184. Despite the fact that neither the Commission or the representatives expressly alleged the violation of Article 9 [FN193] of the Convention that enshrines the principle of freedom from Ex Post Facto Laws, but that does not preclude the Court from applying it. The precept contained therein constitutes one of the fundamental principles in a Rule of Law to impose limits to the punitive power of the State and would be applicable, in any case, by virtue of a general principle of law, iura novit curia, on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them. [FN194] In this respect, the Tribunal deems that the facts of this case, acknowledged by the State and regarding which the parties have had ample possibility of making reference to, constitute a violation of this principle under the terms mentioned below.

[FN193] Article 9 of the Convention states:
No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.
[FN194] Cf. Case of Velásquez Rodríguez, supra note 51, para. 163; Case of Usón Ramírez, supra note 10, para. 53, and Case of Garibaldi, supra note 9, para. 33.

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185. As has been held, Article 67 of Decree Law 16 of 1960, established that "any alien who evades the order of deportation by staying in the country in a clandestine way or who flouts the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and will be obliged to leave the country at the end of that period." Instead, Mr. Vélez Loor was given a "two-year prison term in one of the Penitentiary Centers of the country" when he reentered Panama after a deportation order (supra para. 94). Even if the Court already declared the incompatibility of this type of measures with the Convention (supra paras. 161 to 172), the penalty imposed on Mr. Vélez is not consistent with what was established in the domestic legislation.

186. The State defended the lawfulness of such proceeding by means of a ruling of the Supreme Court of Justice of Panama of December 26, 2002 and other precedents. There, it was established that "the literal application of said precept is unworkable, particularly in this moment at which, in the eyes of everyone, the competent public entities have made efforts to turn the colony of Coiba, a penitentiary center, into a tourist and ecological place. Therefore, it is illogical, before such circumstances, to require the immigration authorities to literally apply the abovementioned Article 67, when it is widely known that it is inapplicable […]. As a consequence, the full Court deems that, an interpretation of Article 67, more in keeping with reality and to make its application effective, leads to the establishment that the penalty of

imprisonment for said norm allows the immigration authority to impose on deported aliens, who had failed to comply with the order implied in said decision, to be fulfilled in penitentiary centers of the country different than the Penal Colony of Coiba, according to the norm examined." [FN195] However, the State specified that said situation changed as of the repeal of said norm; therefore, currently, the penalty of imprisonment for those aliens who repeat the same offense of violating the orders for deportation is revoked.

[FN195] Judgment of the Supreme Court of Panama of December 26, 2002, wherein it decided upon the legality of the holding of aliens punished via the application of Article 67 of Decree Law 16 of 1960 in the national prison system centers other than the Coiba penal colony. (Includes judgments mentioned in it with background; see items 16 to 21) (case file of the evidence, tome X, annex 15 to the State's final arguments, folios 4046 to 4054).

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187. The State furnished some rulings of the Supreme Court of Justice of Panama in which it ruled on the legality of ordering a measure as the one applied to Mr. Vélez Loor. [FN196] Nevertheless, the Court deems that the application of an administrative penalty or sanction, materially different to the one provided in the law, is in breach of the principle of freedom from ex post facto laws, given that it is based on extensive interpretations of criminal law. In the instant case, the Court notes that the National Office of Immigration did not provide any reasoning in its Order 7306 regarding the grounds for the application of a penalty in a facility that was not the one stipulated in said norm. Regarding the compatibility of placing migrants together with individuals who had been accused and convicted for criminal crimes with international obligations, see infra (paras. 206 to 210).

[FN196] Cf. Judgment of the Full Court of the Supreme Court of Justice. Writ of Habeas Corpus in favor of Jorge Perlaza Royo and against attorney Eric Singares and attorney Rosabel Vergara, Director and Deputy Director of the National Office of Immigration and Naturalization. Magistrate: Arturo Hoyos. Panamá, Twelve (12) of January of two thousand and one (2001) (case file of the evidence, tome X, annex 16 to the final arguments of the State, folios 4055 to 4060); Judgment of the full court of the Supreme Court of Justice. Writ of Habeas Corpus filed by attorney Magaly Castillo, in favor of Vicente Limones, against the National Director of Immigration and Naturalization. Magistrate: Mirtza Angélica Franceschi de Aguilera. Panamá, twenty-fifth (25) of July two thousand and one (2001) (case file of the evidence, tome X, annex 17 to the final arguments of the State, folios 4061 to 4066); Judgment of the Full Court of the Supreme Court of Justice. Writ of Habeas Corpus filed by Attorney Anda j. jurado Zamora, in favor of Guillermo Goicochea against the National Director of Immigration Office. Magistrate: jasé A. Troyano. Panamá, Thirtieth (30) of April two thousand and one (2001) (case file of the evidence, tome X, annex 19 to the final arguments of the State, folios 4073 to 4077), Judgment of the Full Court of the Supreme Court of Justice. Writ of Habeas Corpus filed by attorney Víctor Orobio in favor of jairo González and against the National Direction of the Office of Migration and Naturalization of the Ministry of the Interior and Justice. Magistrate: Rogelio Fábrega Z. Panamá, Fourteenth (14) of February two thousand and one (2001) (case file of the evidence, tome X, annex 20 to the final arguments of the State, folios 4078 to 4083).

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188. Based on the foregoing reasons, the Court considers that the application of a heavier sanction than the one stipulated in Article 67 of Decree Law 16 of 1960 infringes the principle of legality and, hence, is in breach of Article 9 of the Convention, in conjunction with Articles 1(1) therein, to the detriment of Mr. Vélez Loor.

i) Conclusion

189. The parties have put forward arguments regarding Article 7 of the American Convention, regarding its different subparagraphs. The Commission and the State agreed on, based on the jurisprudence of the Court, that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof, because failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.

190. In this respect, the Court has already noted that said norm establishes a general regulation and a specific regulation that is composed of a series of guarantees. In fact, Article 7(1) of the American Convention provides, in general terms, that "[e]very person has the right to personal liberty and security." Even though this right may be exercised in many ways, the American Convention regulates "the limits or restrictions that the State may impose," by means of different guarantees established in the different subparagraphs of said norm, which must be provided when depriving a person of their liberty. [FN197] These subparagraphs protect the right: i) to not to be deprived of liberty unlawfully (Art. 7)(2)) or in an arbitrary manner (Art. 7(3)); ii) to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)); iii) the judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7(5)); iv) to contest the lawfulness of the arrest (Art. 7(6)); v) and, not to be detained for debt (Art. 7(7)).

[FN197] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 53.

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191. Based on the foregoing considerations and taking into account the acknowledgment of responsibility made by the State, the Tribunal declares that the State violated the right enshrined in Articles 7(3), and the guarantees enshrined in Articles 7(4), 7(5), and 7(6) of the Convention to the detriment of Mr. Vélez Loor, in relation to the obligations contemplated in Article 1(1) therein. Consequently, the State violated the right to personal liberty of the victim enshrined in Article 7(1) of the Convention, in conjunction with the duty to respect established in Article 1(1) therein. Likewise, the State violated Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 8(2)(f), and 8(2)(h) of the American Convention, in relation to the obligations contemplated in Article 1(1) therein. Finally, the State violated Article 9 of the American Convention, in relation to the lack of compliance with its obligation to respect contained in Article 1(1) therein.

j) Clarifications regarding Article 2 of the American Convention

192. The Commission positively valued the issuance of Decree Law N° 3 of February 22, 2008, which eliminates the penalty of imprisonment for repeated unlawful entry into Panamá. However, it stated that such change in domestic law "does not resolve the violation of Article 2" due to the application of Decree Law No. 16 of June 30, 1960, in Mr. Vélez Loor's case, and the consequent lack of due process afforded to him as a migrant. Therefore, it concluded that the State "did violate Article 2 by failing to bring its domestic law into line with the rights enshrined in Articles 7, 8, and 25." The representatives pointed out that the State violated Article 2 of the American Convention in conjunction with the non-compliance with the obligations contained in Articles 5, 7, 8, 25, and 24 therein.

193. The State denied the violation of Article 2 of the American Convention. In this respect, it pointed out that the application of Article 67 of Decree Law 16 of 1960 provided for "sufficient provisions to ensure all persons under its jurisdiction, nationals or foreigners, without discrimination, the enjoyment of the rights established in the Convention [...] especially those addressed to the protection of the rights of personal liberty, a fair trial [judicial guarantees] and judicial protection." Finally, the State expressed that "Article 141 of Decree Law 3 of 2008 repealed Decree [Law] 16 of 1960 and any other norm contrary to it, as from the entry into force;" for which the question becomes moot.

194. Article 2 of the Convention establishes the general obligation of each State Party to adapt its domestic laws to the Convention's provisions, so as to guarantee the rights therein protected, which means that the provisions of domestic law must be effective (principle of effet utile). [FN198] Even though Article 2 of the Convention fails to define which measures are appropriate to adjust the domestic law to the Convention, the Court has held that the general duty set forth in Article 2 implies the adoption of measures on two fronts: i) the elimination of any norms and practices of any kind entailing violations of the guarantees provided for in the Convention or disregarding the rights enshrined therein or impeding the exercise of such rights and, ii) the issuance of rules and the development of practices leading to the effective observance of said guarantees. [FN199] The Court has taken the view that the first set of duties is breached while the rule or practice running counter to the Convention remains in the legal system [FN200] and is therefore satisfied by modifying, [FN201] derogating, or otherwise annulling [FN202] or amending [FN203] such rules or practices, as appropriate. [FN204]

[FN198] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, paras. 68 and 69; Case of Rosendo Cantú et al., supra note 27, para. 163, and Case of Fernández Ortega et al., supra note 27, para. 179.

[FN199] Cf. Case of Castillo Petruzzi et al., supra note 151, para. 207; Case of Chitay Nech et al., supra note 104, para. 213, and Case of The Dos Erres Massacre, supra note 27, para. 122.

[FN200] Cf. Case of "The last Temptation of Christ" (Olmedo-Bustos et al) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C N° 73, para. 88; Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 57, and Case of La Cantuta, supra note 103, para. 172.

[FN201] Cf. Case of Hilaire, Constantine and Benjamin et al., supra note 145, para. 113; Case of Zambrano Vélez et al., supra note 200, para. 57, and Case of La Cantuta, supra note 103, para. 172.

[FN202] Cf. Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of March 11, 2005. Series C N°. 123, para 94; Case of Salvador Chiriboga v. Ecuador. Preliminary Objections and Merits. Judgment of May 6, 2008. Series C No. 179, para. 122, and Case of Zambrano Vélez et al., supra note 200, para. 57.
[FN203] Cf. Case of Raxcacó Reyes v. Guatemala. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 133, para. 87; Case of Salvador Chiriboga, supra note 202, para. 122, and Case of Zambrano Vélez et al., supra note 200, para. 57.
[FN204] Cf. Case of "The last Temptation of Christ" (Olmedo-Bustos et al), supra note 200, para. 87; Case of Salvador Chiriboga, supra note 202, para. 122, and Case of Zambrano Vélez et al., supra note 200, para. 57.
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195. The reforms introduced in the Panamanian legal framework in relation to immigration issues do not annul the violations committed to the detriment of Mr. Vélez Loor by the application of Decree Law N° 16 of 1960 and the State's non-compliance with the duty to adapt such legislation to its international obligations as from the date of the ratification of the American Convention (supra Chapter V). Therefore, the Tribunal deems that the State violated Article 2 of the American Convention in conjunction with Articles 7 and 8 therein. The reforms so mentioned shall be considered for all pertinent purposes in the chapter corresponding to the reparations (infra Chapter IX).

VIII-2. RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS AND THE OBLIGATIONS ENSHRINED IN THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

196. The arguments of the Commission and the representatives, under Article 5 of the American Convention and the Convention against Torture, coincide as to: i) the prison conditions, and ii) the obligation to investigate into the acts of torture. In addition, the representatives presented arguments regarding the alleged acts of torture and the obligation to codify torture as a crime; these arguments will be considered as they complement the obligation to investigate the alleged acts of torture (supra para. 47). The State, moreover, acknowledged international responsibility for the violation of the right to humane treatment [personal integrity] contained in Articles 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) therein, only as to certain prison conditions to which Mr. Vélez Loor was subjected while he was imprisoned, with the exception of the obligation to provide adequate medical care and the water supply. (supra para. 67).

197. In fact, the State "acknowledg[ed] that the serious deficiencies in the national prison system negatively affect the right to integrity [humane treatment] of the individuals deprived of liberty." In this respect, it made special emphasis "on the physical, structural and functional serious deficiencies," which contradict domestic laws as well as the international standards regarding the matter established by the country. In relation to the La Palma Public Jail and La Joya-La Joyita Complex, "it acknowledg[ed] the existence, as documented by the different Panamanian authorities, of the following problems, among others: structural deficiencies in the detention centers; problems in the provision of water supply; prison overcrowding; deficiency of the systems to classify prisoners; deficiencies in the re-socialization and education programs."

The State also explained that, in order to remedy the situation of overcrowding of penitentiary centers of the country, "it has adopted measures in the short and medium term," which the State explained in detail. In this respect, it acknowledged its responsibility [FN205] and subjected itself to the decision the Court may take.

[FN205] In relation to the prison conditions acknowledged by the State, the Tribunal notes that at the end of the on-site visit to Panama and, specifically, La Joyita Penitentiary in June 2001, the Inter-American Commission issued a press release in which it referred to detention conditions that are incompatible with human dignity. It made reference, among other things, to the overpopulation; the large number of prisoners who have to sleep on the floor or in hammocks, which are sometimes placed four meters above the floor; the inadequate and in poor condition sanitation facilities, which pose health risks to the current population. Furthermore, the Commission noted serious deficiencies in the health services available to detainees, and a dearth of employment opportunities, rehabilitation programs, and recreational activities. Cf. Press Release N° 10/01 of the Inter-American Commission on Human Rights of June 8, 2001 (case file of the evidence, volume III, annex 29 of the application, folio 1529 and 1530).

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198. This Court has held that, in the terms of Articles 5(1) and 5(2) of the Convention, [FN206] every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoner. [FN207] This implies the State's duty to guarantee the health and welfare of inmates by providing them, among other things, with the required medical care, and it must also ensure that the manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention. [FN208] Lack of compliance therewith may constitute a violation of the absolute prohibition against torture and cruel, inhumane, or degrading punishment or treatment. [FN209] In this sense, the States cannot invoke economic hardships to justify imprisonment conditions that do not comply with the minimum international standards and respect the inherent dignity of the human being. [FN210]

[FN206] Article 5 of the American Convention, states where pertinent, that:

2. Every person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[FN207] Cf. Case of Neira Alegría et al. v. Perú. Merits. Judgment of January 19, 1995. Series C No. 20, para. 60; Case of Yvon Neptune, supra note 97, para. 130, and Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, Reparations, and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 85 and 87.

[FN208] Cf. Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and legal Costs. Judgment of September 2, 2004. Series C N° 112, para. 159; Case of Yvon Neptune, supra note 97, para. 130, and Case of Boyce et al v. Barbados.

Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C N° 169, para. 88.
[FN209] Case of Cantoral Benavides, supra note 27, para. 95; Case of Boyce et al., supra note 208, para. 88, and Case of Bueno Alves, supra note 157, paras. 75 and 76. In this respect, the Committee against Torture has expressed that "[o]vercrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, the inability of the authorities to guarantee the protection of detainees in situations involving violence within prisons […] in addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies aggravate the deprivation of liberty of prisoners serving sentences and those awaiting trial, making such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence." United Nations, Report of the Committee against Torture, 25th period of sessions (November 13 to 14, 2000) / 26th period of sessions (April 30 to May 18, 2001), A/56/44, May 10, 2001, para. 95f.
[FN210] Cf. Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, and Case of Boyce et al., supra note 208, para. 88.
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199. From the evidence presented in this case, it appears that, at the time of the detention of Mr. Vélez Loor, there was a shelter for migrants in the country, specifically in the Panama City, to accommodate irregular migrants while the State defined their situation and decided whether to deport them or not. [FN211] Currently, Panama has two shelters for migrants, which are located in the capital city, [FN212] therefore individuals arrested in border areas, either irregular migrants or persons seeking international protection, are sent to penitentiary centers of the provinces or police stations until their transfer to the shelters of the National Immigration Services in the Panama City. [FN213]

[FN211] Cf. Statement rendered by María Cristina González at the public hearing held before the Inter-American Court on August 25, 2010.
[FN212] Cf. Statement rendered by María Cristina González at the public hearing held before the Inter-American Court on August 25, 2010.
[FN213] Cf. Affidavit rendered by Mrs. Sharon Irasema Diaz Rodriguez, supra note 135, folio 3667, and Note DDP-RP-DRI No. 24-2010, supra note 135.
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200. Hence, when Mr. Vélez Loor was arrested in the province of Darién, he was transferred together with four other foreigners [FN214] to La Palma Public Prison [FN215] (supra para. 93), which is the main confinement center of the area. [FN216] According to the testimony rendered by Mr. Vélez Loor regarding his imprisonment at La Palma, there were also "Peruvian detainees and their wives, and Colombian detainees [...] with their children, pregnant women, [and] a pregnant Peruvian adolescent." [FN217] There were three cellblocks for men in the premises: the big cellblock, the preventive cellblock and the cuadra cellblock, which were old warehouses of goods, without natural and artificial ventilation. [FN218] Furthermore, there was a room for confined women, without security and a physical divide. [FN219] There, Mr. Vélez Loor was imprisoned in a cellblock where the individuals who are on good behavior and elder individuals

were confined, [FN220] near a fuel tank. [FN221] On these premises, he was held together with people arrested for crimes. [FN222]

[FN214] Cf. Note N° 061 Judicial Section issued by the Chief of the First Battalion of Support and Service of La Palma Public Prison addressed to the Deputy Prosecutor of the Republic on September 2, 2009 (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2400), and Note No. 163-02 Regional Metetí issued by the Regional Supervisor of Migration of Metetí addressed to the Chief of the Police Zone of Darién on November 12, 2002 (case file of the evidence, tome VI, annex 1 to the response to the application, folio 2401).
[FN215] Cf. Particulars Form, La Palma Public Prison, Darien, Penitentiary Prison, Ministry of Interior and Justice, November 12, 2002 (case file of the evidence, volume III, annex 11 of the application, folio 1219) and case file of Mr. Jesus Tranquilino Vélez Loor in the National Prison System (case file of the evidence, volume VI, annex 3 of the response to the application, folios 2624 and 2625).
[FN216] Cf. Information on the Public Jail of La Palma available at the webfolio of the General Office of Penitentiary Systems (case file of the evidence, volume IV, annex 8 of the autonomous brief of pleadings, motions and evidence, folio 1581).
[FN217] Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Inter-American Court on August 25, 2010.
[FN218] Cf. Statement of Mrs. Sharon Irasema Díaz Rodríguez, supra note 135, folios 3664 to 3665, and Special Report of the Ombudsman of the Republic of Panama on the Situation of the Jails in the Interior of the Country on April 12, 2005 (case file of the evidence, tome VIII, annex 42 to the response to the application, folio 3438).
[FN219] Statement rendered by Sharon Irasema Díaz Rodríguez, supra note 135, folios 3664 to 3665, and Special Report of the Ombudsman of the Republic of Panama, supra note 218.
[FN220] Cf. Note No. 208-DGSP.DAL, supra note 69.
[FN221] Cf. Note No. 208-DGSP.DAL, supra note 69, and Statement rendered by Leoncio Raúl Ochoa Tapia, supra note 160, folio 3657.
[FN222] Statement rendered by Jesus Tranquilino Vélez Loor at the public hearing held before the Inter-American Court on August 25, 2010, and Statement rendered by Mr. Leoncio Raul Ochoa Tapia, supra note 160, folio 3657. Witness Gonzalez indicated that people arrested under the order of the Migration Office were not held in the same area at La Palma than the individuals arrested for criminal or police reasons. Cf. Statement rendered by Carlos Benigno González Gómez, supra note 122, folio 3789.

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201. Then, on December 18, 2002, Mr. Vélez Loor was transferred to La Joya-La Joyita prison, [FN223] where he was admitted on the following day [FN224] and was held in Cellblock 6 of La Joyita Penitentiary Center, a section destined to aliens deprived of liberty, [FN225] where he was also imprisoned together with detainees being held for crimes. [FN226] This center is located in the Correctional Facility of Pacora, Panama City, and today, it has become the biggest penitentiary center of the country. [FN227]

[FN223] Cf. Communication No. DNMYN-SI-1265-02, supra note 76; Communication No. DNMYN-SI-1264-02, supra note 76; Communication No. DNMYN-SI-1266-02, supra note 76, and Order No. 2778 T, supra note 76.
[FN224] Cf. Case file of Mr. Jesus Tranquilino Vélez Loor, supra note 215, folio 2643; Note No. 208-DGSP.DAL, supra note 69, and Report of the General Director of the National Police of Panama, supra note 69, folio 1574.
[FN225] Cf. Report of the General Director of the National Police of Panama, supra note 69, folio 1574; Information on the Penitentiary Center of La Joyita, available at the webfolio of the General Direction of the Office of the Penitentiary System (http://sistemapenitenciario.gob.pa/detailcentros.php?centID=2) (case file of the evidence, tome IV, annex 10 to the autonomous brief of pleadings, motions, and evidence, folio 1582), and Note No. 1420-DGSP.DAL issued by the General Director of the Penitenciary System addressed to Assistant Attorney General of the Republic on October 13, 2009 (case file of the evidence, tome VI, annex 3 to the response to the application, folio 2553).
[FN226] Cf. Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Inter-American Court on August 25, 2010.
[FN227] Cf. Information on the Penitentiary Center La Joyita, supra note 225.
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202. The La Palma Public Prison, in the year 2003, had the physical capacity to house 108 persons, men and women. [FN228] According to official information of the Panamanian Prison System, [FN229] in the year 2002, its total population was of 146 inmates, and in 2003 there were 149 inmates. Moreover, La Joyita Penitentiary Center in the year 2003 had a physical capacity to house 1770 inmates. [FN230] According to official information of the Panamanian Prison System, [FN231] in the year 2002, its total population was of 2430 inmates and in 2003, of 2917.

[FN228] Cf. Statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, supra note 135, folio 3664.
[FN229] Cf. Report of the Department of Statistics of the Administrative Bureau of the Ministry of Interior and Justice, entitled “Prison population in the Republic per year according to Penitentiary Center 2000-2007” (Población Penitenciaria en la Republica por año según Centro penitenciario 2000-2007) (case file of the evidence, volume IV, annex 12 of the autonomous brief of pleadings, motions and evidence, folio 1601). Similarly, statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, supra note 135, folio 3664.
[FN230] Cf. Statement rendered by Mrs. Sharon Irasema Diaz Rodriguez, supra note 135, folio 3664, and Alianza Ciudadana Pro Justicia, Audito Ciudadano of Criminal Justice in Panama City, Panama 2004 (case file of the evidence, volume IV, annex 18 of the autonomous brief of pleadings, motions and evidence, folio 1732).
[FN231] Cf. Report of the Department of Statistics, supra note 229, folio 1602. Similarly, statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, supra note 135, folio 3664.
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203. Due to the fact that the limit of its capacity was exceeded, both prison units had, at the time of the events, high rates of overcrowding. Furthermore, given that the population density

was higher than 120% over its officially established housing capacity, the Tribunal considers that the overpopulation reached dangerous levels. In consequence, during the time Mr. Vélez Loor was imprisoned at La Palma and La Joyita, there were high levels of overcrowding with a population density of 135% and 164%, respectively.

204. As this Tribunal has already held, [FN232] overcrowded conditions at a detention center may cause detrimental effects on the centers, like overburdened health care services, a reduction of out-of-cell activities, hygienic problems, problems related to food, security, visitation schedule, education, employment, recreational activities and intimate visits; which, in turn, also cause generalized deterioration in the physical facilities; create problems of coexistence and favor violence between prisoners and prison staff. All these, to the detriment of prisoners and prison staff, due to the hard and dangerous conditions in which they carry out their daily tasks.

[FN232] Cf. Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, para. 90, and Case of Boyce et al., supra note 208, para. 93.

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205. Given that these arguments and the acknowledgment refer to facts that occurred while Mr. Vélez Loor was held in custody by the Panamanian State due to his irregular immigration status, confined in national penitentiary centers, the Tribunal shall refer next to the need for the people deprived of liberty given their immigration status to be held in places different from those destined for those people accused or convicted of serious crimes, in order to analyze, then, the issues that remain of the controversy.

a) Requirement that undocumented migrants be held in places different than those intended for convicted persons or persons in custody pending trial

206. The Commission as well as the representatives alleged the State's obligation to separate prisoners who have committed criminal crimes from those who are detained for immigration issues. The State did not put forward a specific argument regarding this issue, but it accepted "the existence of a serious deficiency in the systems of classification of those deprived of liberty." As to Cellblock 6 of La Joyita Penitentiary Center, where Mr. Vélez Loor was imprisoned, it indicated that "it is a cellblock of medium to low security which accommodated people who were deprived of liberty for the same reasons for which Mr. Vélez was detained, as well as others detained for reasons that excluded dangerous inmates." Likewise, it alleged that the opening of shelters for migrants of the National Office of Immigration, which house only migrants, guarantees said separation.

207. Even though the Court has already referred to the particular vulnerable situation of migrants (supra para. 98), it is important to emphasize how this vulnerability is even more critical when, due to the irregular immigration status, migrants are held in penitentiary centers together with individuals undergoing a criminal trial and/or serving time for the commission of a crime, [FN233] like what happened in this case. Said situation makes migrants prone to suffer abusive treatment, given that it entails an individual de facto situation of lack of protection in relation to the rest of the detainees. Hence, within the framework of its obligations to guarantee

the rights acknowledged in the Convention, the State must abstain from acting in such a way that favors, promotes, fosters, or deepens that vulnerability [FN234] and it must adopt, when appropriate, the measures necessary and reasonable to prevent or protect the rights of whoever is in that situation.

[FN233] Similarly, United Nations, Report presented by the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, according to Resolution 2002/62 of the Commission on Human Rights E/CN.4/2003/85, December 30, 2002, para. 16, and United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, supra note 84, folio 2027, para. 41.

[FN234] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, paras. 112 and 172; Case of Manuel Cepeda Vargas, supra note 11, para. 172, and Case of Perozo, supra note 9, para. 118.

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208. Therefore, in the case their detention is necessary and proportionate, migrants must be held in facilities specifically destined for that purpose, according to their legal situation and not in common prisons, the purpose of which is incompatible with the nature of the possible detention of a person for her or his immigration status, or other places where placed together with those accused or convicted for crimes. This principle of separation certainly attends to the distinct purposes of deprivations of liberty. Certainly, when dealing with convicted persons, the imprisonment conditions must tend to the "essential aim" of the custodial measures that is the "reform and social re-adaptation of the prisoners." [FN235] In cases of migrants, detention and imprisonment of persons solely for their irregular status should only be used as necessary and proportionately in the concrete case, only admissible for the shortest possible period of time and according to the legal purposes mentioned (supra paras. 169 and 171). In effect, by the time Mr. Vélez Loor was imprisoned, several international organizations had ruled on the necessary separation of those persons who are imprisoned for a violation of immigration laws from those persons who are accused or convicted of criminal crimes. [FN236] Therefore, the Tribunal considers that States must provide public establishments specifically designed for that purpose, [FN237] and if the State does not have such establishments, it must provide premises other than those intended for persons imprisoned under criminal law. [FN238]

[FN235] Article 5(6) of the American Convention establishes that: [pu]nishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

[FN236] The European Court on Human Rights, in a decision of the year 2000, indicated that "it is undesirable for prisoners awaiting deportation to be held in the same location as convicted prisoners." Eur. Court HR, Ha You ZHU v. United Kingdom (Application no. 36790/97) Admissibility of 12 September 2000, folio 6. Likewise, the Rapporteurship on Migrant Workers and Their Families in the Hemisphere, in the year 2001, considered that undocumented migrants deprived of liberty for the sole fact of being undocumented should be held "in detention centers and not in regular prisons." Organization of American States, Annual Report of the Inter-American Commission on Human Rights, 2000. Second Progress Report of the Rapporteurship on Migrant Workers and Their Families, Chapter VI Special Studies, April 16, 2001,

OEA/Ser./L/V/II.111, doc. 20 rev. para. 110, Likewise, the Working Group on Arbitrary Detention, in the year 2003, made the following recommendation "the current practice of detaining foreigners for reasons related to immigration together with individuals charged with ordinary offences should be halted." United Nations, Working Group on Arbitrary Detention, Group Report, Civil and political rights, in particular the issues related to torture and detention, E/CN.4/2004/3/Add.3, December 23, 2003, Recommendation 75.

[FN237] The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, of December 18, 1990, in its article 17(3) provides that: "[a]ny migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial." International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990. Likewise, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in the year 2002, took the view that "in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centers specifically designed for that purpose, that offer material conditions and an appropriate system for their legal status, and whose staff is appropriately qualified. European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), CPT Standards, Sections of General Reports CPT Merits issues, CPT/Inf/E (2002) 1 - Rev. 2004, Chapter IV. Foreign nationals detained under immigration legislation, extract of the 7th General Report [CPT/Inf (97) 10], para. 29.

[FN238] Cf. In 2002, the United Nations Rapporteurship on Migrant Workers and their Families recommended States to take measures "[e]nsuring that migrants under administrative detention are placed in a public establishment specifically intended for that purpose or, when this is not possible, in premises other than those intended for persons imprisoned under criminal law." United Nations, "Specific Groups and Individuals: Migrant Workers," Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant Order 2002/62 of the Commission on Human Rights, E/CN.4/2003/85, December 30, 2002, para. 75. i).

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209. Even though deprivation of liberty often entails, as an inevitable consequence, the breach of other human rights apart from the right to personal liberty, in case of deprivation of liberty of persons for immigration purposes, they should be accommodated in centers specifically designed for that purpose, "offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel," [FN239] avoiding, as far as possible, the disintegration of the family group. In consequence, the State must adopt certain positive, specific, and oriented measures in order not only to guarantee the enjoyment and exercise of those rights the restriction of which is not a collateral effect of the situation of imprisonment, but also to ensure that such deprivation of liberty does not entail a higher risk to the infringement of the rights, the integrity, and personal and family welfare of migrants.

[FN239] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, Sections of General Reports CPT Merits issues, CPT/Inf/E (2002) 1 - Rev. 2004, Chapter IV. Foreign nationals detained under

immigration legislation, extract of the 7th General Report [CPT/Inf (97) 10], para. 29. In the same line, the Organization of American States, Annual Report of the Inter-American Commission on Human Rights, 2000. Second Progress Report of the Rapporteurship on Migrant Workers and Members of Their Families, Chapter VI Special Studies, April 16, 2001, OEA/Ser./L/V/II.111, doc. 20 rev., para. 110.

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210. The Court considers that, given that Mr. Vélez Loor was deprived of his liberty at La Palma Public Prison and later at the La Joyita Penitentiary Center, prison centers that depend on the national prison system in which he was held together with people awaiting criminal trial and/or are serving time for the commission of a crime, the State violated Articles 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) therein, to the detriment of Mr. Vélez Loor.

b) Prison conditions at La Palma Public Prison and La Joyita Penitentiary Center ("La Joyita")

211. Considering the partial acknowledgment of responsibility by the State, (supra Chapter VI), there is still controversy over the issues related to the provision of water at La Joyita and with the medical care provided to Mr. Vélez Loor in said place, which will be analyzed below.

1) Provision of water at La Joyita

212. Regarding La Joyita Penitentiary Center, the Commission emphasized, among other things, "the shortcomings in access to basic services, such as a shortage of showers, drinking water, and an adequate system for disposing of the prisoners' waste." The representatives indicated that Mr. Vélez Loor was imprisoned "without sufficient water for human consumption, and the little water he had was of poor quality," and the facility was without water for two weeks.

213. The State expressed that "[i]t is not true that prisoners had been without water for more than two weeks [at La Joyita]," given that during such period of time, urgent measures were adopted to guarantee the supply through "the use of tank trucks" and therefore, the immediate causes of the problems were identified and the necessary repairs were made to normalize the supply. In this respect, the State contested "the existence of malicious acts against those deprived of liberty," and emphasized that "[i]t is tendentious to claim that the shortage of water is used as a form of punishment for the population of those deprived of liberty."

214. From the evidence, it appears that, during an inspection conducted by personnel of the Supervision Program of Inmates' Rights of the Ombudsman's Office of June 23, 2003, a group of inmates of La Joyita Penitentiary Center complained about the lack of drinking water for more than fifteen days at the premises of said center, which had caused dehydration, diarrhea, and conjunctivitis in the inmates of some cellblocks, as well as the overflowing of waste water. On July 1, 2003, the Ombudsman admitted the complaint, and personnel of the Ombudsman's Office conducted a new inspection, verifying that "there was still no water at the place due to an electrical problem that affected the supply of water." [FN240] The Ombudsman's Office had

also studied and issued a decision on the deficiencies and lack of the supply of drinking water and its bad quality at La Joyita Penitentiary Center in the year 2004. [FN241]

[FN240] Press release issued by the Ombudsman's Office by means of its website http://defensoriadelpueblo.gob.pa/mainprensa.php?folio=1&catid=&start=1900 on July 1, 2003 (case file of the evidence, volume III, annex 30 of the application, folio 1536). See also, Newspaper article of "La Prensa," entitled "Sanitation crisis at La Joya and La Joyita" of July 2, 2003 (case file of the evidence, volume V, annex 29 of the autonomous brief of pleadings, motions and evidence, folio 2197).

[FN241] In the Special Report of the Public Defender of the Republic of Panama on the quality, analysis of drinking water for human consumption at the La Joya-Joyita Penitentiary Center and in the Investigation of the Public Defender at the La Joya Penitentiary Complex in relation to the situation of residual water, deficiencies and absence in the water supply for human consumption and its bad quality were documented. Cf. Special Report of the Ombudsman of the Republic of Panama on the quality, analysis of water for human consumption in the Penitentiary of La Joya–Joyita Panamá, September 17, 2004, pages 8 to 9 and 23 to 25 (case file of the evidence, compact disc, annex 31 to the autonomous brief of pleadings, motions, and evidence). Furthermore, in the Special Report of the Public Defender of the Republic regarding the Right to Health in the Penitentiary Centers of the year 2008, this state organ noticed that, in agreement with report No. 05-1773-2007 issued by the Experimental Center of Chemical Laboratory Engineering and Applied Physics, the La Joyita Penitentiary Center "included a water treatment plant which ran to a storage tank, which currently functioned by gravity, since the pumps were damaged;" furthermore, "the supply of water was received from the IDAAN [Instituto de Acueductos y Alcantarillados Nacionales (Institute of National Aqueducts and Sewer Systems)] with an alternate supply;" also, "the pipes which conducted the black water from the different cell blocks, generally have collapsed, almost all of them are shut off, since they are blocked," and "[t]he residual waters run in open air." Special Report of the Ombudsman's Office of the Republic of Panama in regard to Health in the Penitentiary Centers in 2008 and its annex II (case file of the evidence, tome VIII, annex 43 to the answer to the application, folios 3452 to 3453 and 3467 to 3469). In turn, the Harvard University International Human Rights Clinic, in the visits made in March and October, 2007 to said center, also documented, inter alia, the problems with the access to drinking water and the lack of water, due to the shortage of water and the frequent suspensions of the supply over long terms, coupled with the bad quality of the water and the overflowing of waste water. Cf. Report prepared by the Harvard University International Human Rights Clinic, entitled "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," in March 2008 (case file of the evidence, volume III, annex 27 of the application, folio 1326, 1342, 1349, 1362 and 1363).

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215. The Court considers proven that, in June 2003, while Mr. Vélez Loor was held at La Joyita Penitentiary Center, there was a problem in the supply of water that affected the prison population. The evidence furnished demonstrates that the deficiencies in the supply of drinking water at La Joyita penitentiary center had been frequent (supra para. 197), and in the year of 2008, the State had adopted some measures in that respect. [FN242] The Tribunal notes that the lack of drinking water is a particularly important aspect of the prison conditions. In relation to

the right to drinking water the United Nations Committee on Economic, Social, and Cultural Rights mentioned that States Parties must adopt measures to ensure that "[p]risoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners." [FN243] Furthermore, the Minimum Rules establish that "[p]risoners shall be required to keep their persons clean, and to this end they shall be provided with water and with toilets as are necessary for health and cleanliness," as well as "[d]rinking water shall be available to every prisoner whenever needed." [FN244]In consequence, States must take steps to ensure that prisoners have sufficient safe water for daily personal needs, among them, the consumption of drinking water whenever they require it, as well as for personal hygiene. [FN245]

[FN242] In this regard, in the proceedings before the Inter-American Commission, the Director General of the Penitentiary System of the Republic of Panama reported that "[t]he water problems were evident with the increase in the population of La Joya Complex," and that after many efforts "in late 2008, adequacy of the water treatment plant with suction equipment, processing, storage and new distribution, was achieved, which gives total coverage of potable water, 24 hours a day, to all of the La Joya Complex." Note No. 0045-DGSP-AFP issued by the Director General of the Prison System Addressed to the Deputy Minister of Public Security on May 27, 2009 (case file of the evidence, tome VIII, annex 29 of the answer to the application, folios 3242 and 3243).

[FN243] United Nations, Committee on Economic, Social and Cultural Rights, General Observation No. 15 (2002) on the Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights), approved by the Committee in its 29th period of sessions (2002), HRI/GEN/1/Rev.7, 2002, para. 16.g) (case file of the evidence, tome V, annex 23 to the autonomous brief of pleadings, motions, and evidence, folio 2002). See also, Organization of American States, General Assembly, AG/RES. 2349 (XXXVII-O/07), Order on "water, health, and human rights," Approved in the fourth plenary session, celebrated on June 5, 2007, Operative Paragraphs 1 to 3.

[FN244] Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, 1955, approved by the Economic and Social Council by its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Rules 15 and 20(2).

[FN245] Recently, the United Nations General Assembly declared "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights." United Nations, General Assembly, Order 64/292 in its 108th plenary session on July 28, 2010, on "Resolution on the Human Right to Water and Sanitation." A/Res/64/292, August 3, 2010, para. 1.

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216. The Tribunal considers that the absence of minimum conditions that ensure the supply of drinking water within a penitentiary center constitutes a serious failure of the State's duty to guarantee the rights of those held in the State's custody, given that due to the particular circumstances of any deprivation of liberty, detainees cannot satisfy their personal basic needs by

themselves, though said needs are essential for the basic development of a dignified life, [FN246] such as access to sufficient safe water.

[FN246] Cf. Case of the "Juvenile Reeducation Institute", supra note 208, para. 152; Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, para. 87, and Case of García Asto and Ramírez Rojas, supra note 99, para. 221.

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217. With respect to the rest, regarding that expressed by the State (supra para. 213), the Tribunal does not have sufficient elements to determine if this practice was used as a means of punishment towards the prison population.

2) Medical care

218. As to the lack of adequate medical care, the Commission sustained that "[t]he information available indicates that during his detention at La Joya-Joyita, Mr. Vélez Loor received basic medical attention; however, he did not receive the specialized treatment necessitated by the fractured skull he apparently suffered." Moreover, the representatives stated that there is no record that Mr. Vélez Loor had undergone a medical examination at the moment he was admitted to La Palma Prison or when he was transferred to La Joya-La Joyita Center, and that the State, "at no time, provided adequate and thorough medical care to the [alleged] victim." In particular, they referred to the failure to carry out the only medical examination prescribed, that of a CAT exam for his skull.

219. The State, in addition, pointed out that "Mr. Vélez received timely and adequate medical treatment, with the restrictions that the penitentiary center equally imposed on the rest of the inmates confined, at that time, at La Joya Penitentiary." It objected to the statement made by the Commission and the representatives regarding the lack of specialized medical treatment, and it referred, in detail, to the activity and medical care registered in the "medical record of Mr. Vélez " at the Clinic of La Joya Penitentiary. Furthermore, it emphasized that, on some occasions, Mr. Vélez Loor himself refused to accept said care.

220. This Tribunal has held that the State has the duty to provide detainees with regular medical checks and care and adequate treatment whenever necessary. [FN247] The Principle 24° for the Protection of All Persons Under Any Form of Detention or Imprisonment provides that: "[A] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his [or her] admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge." [FN248] Assistance by a physician not related to the prison or detention center authorities is an important safeguard against torture and physical or mental ill treatment of inmates. [FN249] Moreover, lack of adequate medical assistance could be considered per se a violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the person, the type of ailment, the time spent without medical attention and its cumulative effects. [FN250]

[FN247] Cf. Case of Tibi, supra note 27, para. 156; Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, para. 102, and Case of García Asto and Ramírez Rojas, supra note 99, para. 227.
[FN248] United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by the General Assembly in Order 43/173, December 9, 1988, Principle 24.
[FN249] Cf. Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, para. 102
[FN250] Cf. Case of García Asto and Ramírez Rojas, supra note 99, para. 226; Case of the Miguel Castro-Castro Prison, supra note 27, para. 302, and Case of Montero Aranguren et al. (Detention Center of Catia), supra note 207, paras. 102 and 103.

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221. In this respect, the Court notes that from the medical record of Mr. Vélez Loor it is noted that, inter alia, on March 20, 2003, Mr. Vélez Loor was evaluated for migraines and dizziness, the product of a former cranial fracture, which according to the physician had been there for almost a year; therefore a CAT scan of the brain was prescribed [FN251]; on April 10, 2003, Mr. Vélez Loor was summoned for a medical evaluation but he refused to go; however, the physician, upon reviewing his medical record, determined that the inmate had a fractured skull and that a CAT scan had not been carried out, for which he opted to discard a brain injury with the ordered CAT scan, [FN252] and on April 22, 2003, Mr. Vélez Loor was examined for headaches and dizziness, as the result of a former cranial fracture and a CAT scan was prescribed; however, the CAT scan was not performed due to its cost. [FN253]

[FN251] Cf. Note of Dr. Guillermo A. Garay M. of March 20, 2003 in the medical file of Mr. Vélez Loor in the Complex of La Joya-Joyita (case file of the evidence, tome VIII, annex 53 to the response to the application, folio 3609).
[FN252] Cf. Communication of the Clinic of La Joyita to the Director of La Joyita Penitentiary Center of April 10, 2003 (case file of the evidence, volume III, annex 53 of the answer to the application, folio 3612); Medical note of Physician Mastellari of April 10, 2003 in medical file of Mr. Vélez Loor of Complex La Joya-Joyita (case file of the evidence, volume III, annex 53 of the application, folio 3609), and Note N° 208-DGSP.DAL, supra note 69.
[FN253] Cf. Note N° 208-DGSP.DAL, supra note 69, and Official Letter N° 450-SP issued by the Head of the Prison Healthcare of the Ministry of Interior and Justice addressed to Jesus Vélez Loor on April 22, 2003 (case file of the evidence, volume VIII, annex 53 of the answer to the application, folio 3613).

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222. The Court notes that, despite its recurring problems of migraines and dizziness, and the need determined by the physicians who treated him for which a CAT scan was necessary, said scan was never performed and Mr. Vélez Loor did not receive adequate and timely medical care in relation to this ailment, which could have had unfavorable consequences for his current health condition, and it is contrary to the dignified treatment due. According to expert witness Flores Torrico, “the headaches, migraines, blurred vision, tearing, vertigo and dizziness experienced by

Mr. Vélez Loor can perfectly relate to the blow he received to his head by a blunt object, by which he sustained an injury and a scar […] in the right front-parietal region." [FN254]

[FN254] Expert opinion rendered by Marcelo Flores Torrico at the public hearing held before the Inter-American Court on August 25, 2010.

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223. Consequently, the Court finds proven that the medical care services to which Mr. Vélez Loor had access to, were not provided in a timely, adequate, and complete manner, given that he did not receive specialized medical treatment and medicine for the apparent cranial fracture he suffered, and it was neither duly treated.

224. In sum, the representatives sustained that the conditions of imprisonment to which Mr. Vélez Loor was subjected to, "constituted cruel, inhumane, and degrading treatment," "[d]uring the ten months he was in custody of the Panamanian authorities [...] where he lived in inhumane conditions, far from the merited respect to his dignity."

225. The Court values the political will of the State to improve the conditions of imprisonment of its prisoners and to reform the entire penal system. [FN255] The fact is that Mr. Vélez Loor, who was imprisoned for almost ten months, was subjected to prison conditions that did not respect his integrity and dignity.

[FN255] Cf. Statement rendered by Mrs. Roxana Méndez before a public notary (affidavit) on August 12, 2010 (case file of the evidence, tome IX, affidávits, folios 3738 to 3746); Master Plan for the Construction of the Panama Prison Infrastructure undated (case file of the evidence, tome VIII, annex 52 to the response to the application, folios 3533 to 3558); Opening for Bids for the Contract to Design, Construct, and Equipt the New Joya Complex, under the Key Modality at the hands of the Department of Institutional Procurement and Supplier of the Ministry of the Interior and Justice on March 17, 2010 (case file of the evidence, tome VIII, annex 52 to the response to the application, folios 3559 to 3579), Report of the Evaluation Commission Prequalification No. 1 for the Bid to Design, Construct, and Equipt the New Joya Prison Complex under the Key Modality of March 27, 2010 (case file of the evidence, tome VIII, annex 52 to the answer to the application, folios 3580 to 3604), and Resolution No. 125-2010 issued by the Ministry of the Interior and Justice on April 7, 2010 (case file of the evidence, tome VIII, annex 52 of the answer to the application, folios 3605 to 3606).

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226. In relation to the alleged "context of violence and accusations of police abuse in the Panamanian penitentiary centers, to the detriment of a foreign person whose guarantees have been denied," the Court observes that the representatives did not offer sufficient and assorted evidence referring to the time of the facts that permits the Court to deliberate over the issue.

227. According to the acknowledgment made by the State and the evidence furnished, the Court finds that the conditions of imprisonment at La Palma Public Prison, as well as those of La

Joyita Penitentiary Center, as a whole, constituted a cruel, inhumane, and degrading treatment contrary to the human being and therefore, configures a violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) therein, to the detriment of Mr. Vélez Loor.

c) Duty to initiate ex officio a prompt investigation into the alleged acts of torture

228. The Commission as well as the representatives stated that, after he was deported to his country, on January 24, 2004, Mr. Vélez Loor filed a complaint before the Embassy of Panama in Quito, Ecuador, through his lawyer at the time, alleging acts of torture supposedly committed while he was deprived of liberty in Panama. However, it was not until the notification of the report on the merits issued by the Commission that the State initiated a criminal investigation into said complaints. Therefore, they considered the non-compliance of the State of Panama with the obligation to seriously investigate the complaint regarding possible acts of torture occurring under its jurisdiction to be evident.

229. The State emphasized that Mr. Vélez Loor "while he was in the territory of Panama, never filed a complaint against the State on acts of torture committed against him." Likewise, the State noted that "on March 30, 2003, Mr. Vélez filed a request at the Ombudsman Office to obtain the intervention of said institution only regarding his deportation to Ecuador [and that in t]his request there is no reference to any complaint of mistreatment, torture, denial of medical assistance or others, that according to him, occurred since the first day of his detention. As such, "the first news that the authorities of the Panamanian State had about the alleged acts of torture and mistreatment committed against Mr. Vélez was reported before the Embassy of Panama in Ecuador, on January 24, 2004." The State sustained that "it immediately initiated an administrative investigation" but "the results of the verification revealed the lack of consistency between the facts and the circumstances described in [said] communication […] and the information forwarded by the different Panamanian authorities." Hence, "[t]he case file of such complaint remained open but no formal complaint was filed regarding the facts given that there were no elements as adequate basis of such complaint." Finally, the State referred to the existence and progress of the criminal investigation conducted by the Public Prosecutor's Office in the month of April 2009. In this respect, it sustained that the Panamanian State has made several requests to obtain the initial statement of Mr. Vélez Loor but that such statement is not possible without his direct cooperation.

230. The Court has pointed out that, according to Article 1(1) of the American Convention, the obligation to guarantee the rights enshrined in Articles 5(1) and 5(2) of the American Convention embodies the duty of the State to investigate possible acts of torture and other cruel, inhumane or degrading treatment. [FN256] The duty to investigate is reinforced through the provisions of Articles 1, 6, and 8 of the Convention against Torture, [FN257] which set forth that the State is bound to "take […] effective measures to prevent and punish torture within its jurisdiction," and to "prevent and punish […] other cruel, inhumane, or degrading treatment or punishment." In addition, according to the provision of Article 8 of that Convention, State Parties shall guarantee

[…] that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case [and]

[i]f there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, […] that their respective authorities will proceed ex officio and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process [FN258].

[FN256] Cf. Case of Ximenes Lopes v. Brazil. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, para. 147; Case of González et al. ("Cotton Field"), supra note 20, para. 246, and Case of Bayarri, supra note 27, para. 88.

[FN257] Article 1 of the Inter-American Convention to Prevent and Punish Torture states that:

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Likewise, Article 6 states that:

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8 states that:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

[FN258] As of September 28, 1991, date in which said Inter-American Convention against Torture entered into force in Panama, according to its Article 22, the State has the duty to comply with all the obligations contained in said treaty (supra para. 57).

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231. This obligation to investigate is based on information that the Court has seen in the pleadings and arguments of the representatives and declarations received in public hearings before the Tribunal, as well as through information that, at the opportune time, was filed with the Commission and assessed by it. [FN259]

[FN259] Original petition received by the Inter-American Commission on February 10, 2004 (case file of the evidence, tome I, Appendix 3 to the application, folios 225 to 228), and letters received at the Inter-American Commission on August 3, 2004 (case file of the evidence, tome I, Appendix 3 to the application, folios 214 to 218). In the same vein, Comments on the Merits filed by the petitioner to the Inter-American Commission on Human Rights on January 31, 2007

(case file of the evidence, tome VIII, annex 38 to the answer to the application, folios 3326 to 3329) .
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232. The representatives declared that "since the first moment of his detention," Mr. Vélez Loor "was mistreated by State agents," and during the ten months that he was in prison, "he was tortured as reprisal for demanding his rights." In this manner, they refer in detail to the alleged acts that constitute "torture and mistreatment[,] including sexual torture," in the following terms:

a) upon his detention on [November 11, 2002], agents of the National Police of Panama that detained him fired several shots that compelled Mr. Vélez Loor to throw himself facedown on the floor. Later on, one of the agents put his foot on the head of Mr. Vélez Loor [and] the other stood on his hands and strongly pressed his bayonet on the [alleged] victim's back, threatening to kill him. Afterward, they handcuffed him, put shackles on his feet, and made him walk barefoot to a small barracks, where he remained handcuffed to a pole for approximately 8 hours.
b) in the Public Prison of La Palma, Mr. Jesús Vélez Loor and other migrants in an irregular situation initiated a hunger strike in order to demand their immediate deportation. In reprisal, the [alleged] victim received, in his words, "a blow to the spine, a fracture on his head with a wooden stick by which [I] was able to recognize the aggressor was from the police."
c) [in the Complex of La Joya-Joyita], he suffered a wound to the hip, a product of a fall from a hammock caused when members of the Police entered into cellblock No. 6 launching teargas bombs. In spite of having on repeated occasions applied for medical attention for the wounds that had been caused […] he was not provided [with such]. In the face of lack of response to his requests, on June 1, 2003, Mr. Vélez Loor sewed closed his mouth and initiated a new hunger strike in cellblock 6 of La Joyita in order to demand to be helped. [As] punishment, he was transferred to cellblock 12, considered as high security, in which, according to the words of the alleged victim, "they took off my clothes and threw me to the floor totally nude, they started beating me with the billy club on the back, on the legs, and the soles of the feet; they stomped on my head, and scraped my scalp with their boots while I was face down; afterwards, they lifted my head, pouring teargas on my face and eyes; I couldn't breath and I had to break the strings on my mouth so that I could breath […] after this long torture [a] Lieutenant […] locked me up in a small cell called la Discoteca, […] then they threw teargas powder on my body and around the cell [which produces a] terrible suffocation […] a few hours later a homosexual guard arrived that proposed that if I had sexual relations with him, he would send me to another place […] and for having refused, he began to beat me, giving me a tremendous beating, and he took out a container of powder, which I do not know what it was, and he poured it on my back and private parts, then he put a little on some paper and with a pencil that he had in his pocket, he covered it in powder and put that strange material in my anus almost two centimeters to the inside part of my rectum with the eraser-end of the pencil, that powder burned me like fire."

233. During the public hearing, Mr. Vélez Loor declared in a detailed manner that:

[…] from the moment that I was detained […] the police opened fire with rifles […], and they forced me to fall down on the floor; they closed in, stood on my arms, made me spread my arms in the form of a cross on the floor, stood on the palms of my open hands, and stripped me of my belongings. Later on, they took off my shoes and socks, put shackles on my arms and my feet,

and forced me to walk barefoot […] up to a small barracks of the village of Nueva Esperanza of the Province of Darien. […] What they did afterward [was] hang me from a pole […] from my right arm, where I remained for nearly eight hours […].
[In the Public Prison of La Palma,] all of the prisoners that were in a migratory situation [made the] decision [… to] stage a peaceful strike, holding hands, facing outside at the time that they took us out, [and] at that point a ton of police arrived and began to drag us by the feet, and as we were caught, they began to beat us with clubs and sticks, […] and in that beating that they gave us, they broke my skull […].
[Concerning the hunger strike at the La Joyita Penitentiary Center] on June 1[, 2003], I sewed closed my mouth [… in response, the police] took me to the maximum security cellblock 12, walking, far from the other blocks […], then a police officer […] said: 'bring that guy over here; why have you sewn closed your mouth?' Well, I did not say anything because I had my mouth stitched closed; at that moment they began to spray gas in my face; I felt that I had to force open my lips; I ripped open my lips so that I could breath, and I bled everywhere, and from there they took off my clothes, […] left me naked and put cuffs, […] on my feet; [they laid me [sic] on the floor and] began to walk around in a circle, first hitting them with thick clubs over the soles of the feet, and then walking on the backs of the naked detainees while opening up bottles of teargas and pouring it on their naked bodies and spraying them with water […], it was maddening; it was like fire on the skin. From there, they went around again, made [us] [sic] turn faceup, and came walking on the bellies […] From there […], they took me to a small room that they call 'la discoteca' [… and] they continued spraying me with that powder […] from there, they locked me up in a small cellblock […] there they continued spraying me with gas [and] a police officer comes with taunts, laughing, and he tells me: 'ah, you want to have sex with me?' And laughing, […], he kicks me with his boots, then, there he inserts a powder in my anus with the eraser-end of a pencil, and he kicks me […]. [FN260]

[FN260] Statement rendered by Jesús Tranquilino Vélez Loor in the public hearing held at the Inter-American Court on August 25, 2010.

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234. The Court notes that, after he was deported to Ecuador (supra para. 95), Mr. Vélez Loor filed a complaint before his State alleging that he was subjected to acts of torture and mistreatment at both La Palma Public Prison and La Joyita Penitentiary Center. [FN261] Specifically, he addressed a communication to the Commission on Human Rights of the National Congress of Ecuador on September 15, 2003, [FN262] and the Ombudsman's Office of Ecuador on November 10, 2003. [FN263]

[FN261] He referred to having been detained in the Province of Darien by the Panamanian State authorities, that they tied his hands and feet and drove him to the village of Metetí, that in the Public Prison of La Palma he staged a hunger strike as a protest and he was tortured in reprisal, that in the cellblock 6 of the La Joyita Penitentiary Center he staged a hunger strike during which he sewed closed his mouth, that they sent him to the maximum security cellblock number 12, and he was the object of physical and psychological torture.

[FN262] Cf. Brief of Mr. Vélez Loor to the Commission on Human Rights of the National Congress of Ecuador with acknowledgment of receipt of said body of September 15, 2003 (case file of the evidence, volume III, annex 22 of the application, folio 1256).
[FN263] Cf. Brief of Mr. Vélez Loor to the Ombudsman's Office of Ecuador with acknowledgment of receipt of said body of November 10, 2003 (case file of the evidence, volume III, annex 19 of the application, folio 1242).
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235. Then, on January 24, 2004, as affirmed by the Stated, a brief was filed at the Embassy of Panama in Ecuador by a person who was said to be the attorney of Mr. Vélez Loor, [FN264] and a copy of the complaint presented before the Ombudsman's Office of Ecuador was attached to said brief (supra para. 234). The parties agree that this was the first time that the authorities of Panama heard about the allegations of torture and mistreatment. Likewise, on September 15, 2004, Mr. Vélez Loor brought the facts to the attention of the Panamanian Ministry of Foreign Affairs. [FN265] The Court notes that, in both briefs, the Panamanian State was notified of the allegations of torture and mistreatment committed in Panama, while he was arrested in Darién as well as while he was imprisoned at La Palma Public Prison and La Joyita Penitentiary Center. Afterwards, on October 7 and October 24 of 2004, Mr. Vélez Loor sent two electronic mails to the Office of Foreign Affairs –Legal Matters and Treaties of Panama. [FN266]

[FN264] Cf. Note E.P.Ec. N° 035-04 issued by the Embassy of Panama in Ecuador addressed to the Ministry of Foreign Affairs of Panama on January 27, 2004 (case file of the evidence, volume VIII, annex 22 of the response to the application, folio 3170 to 3182).
[FN265] Cf. Complaint signed by Jesus Tranquilino Vélez filed before the Panamanian Foreign Office on September 15, 2004 (case file of the evidence, volume VIII, annex 48 of the response to the application, folio 3508).
[FN266] In both of them he expressed in a consistent manner that "[he was] a victim of a cruel imprisonment by part of the Director of Migration," during which they sent him to cellblock 12 of the La Joyita Penitentiary Center in which "[he was] savagely mistreated physically[,] morally, and sexually." Furthermore, he stated that during said imprisonment "they broke [his] head with a stick, opening a wound of almost 4 [c]entimeters of which up to today [he is] still suffering." In the second message, he added that "a homosexual police officer from La Joyita demanded [him] to let [him] do oral sex on his penis in exchange for removing [him] from the torture room that is known as la discoteca of cellblock 12 […]." Note A.J. No. 2865 issued by the General Director of Legal Affairs and Treaties of the Ministry of Foreign Relations of Panama addressed to the Chief of Consular Affairs of the Embassy of Panama in Ecuador on November 17, 2004 (evidence file, volume VIII, annex 23 of the answer to the petition, folios 3184 to 3186).
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236. As a result, the Court notes that said briefs were presented by Mr. Vélez Loor against the State of Panama once he was no longer under custody of Panama. In this respect, it is important to note that the victim may refrain, because he is afraid, from denouncing the acts of torture or mistreatment, especially if the victim is confined in the same place where these facts occurred. [FN267] Considering the situation of vulnerability and defenselessness brought about by institutions such as prisons, the interior of which is completely not subject to public examination,

it is important to emphasize the need to perform periodic inspections at detention centers, [FN268] in order to guarantee the independence of the medical and health care personnel responsible for examining and providing assistance to those who are detained, [FN269] and for these to have available, adequate, and effective means to assert their claims and file complaints while in deprived of liberty. [FN270]

[FN267] Cf. Case of Bayarri, supra note 27, para. 92.
[FN268] Cf. United Nations, Committee against Torture, General Observation No. 2: Application of Article 2 by States Parties, CAT/C/GC/2, January 24, 2008, para. 13.
[FN269] Cf. Case of Bayarri, supra note 27, para. 92. See also, United Nations, Office of the High Commissioner on Human Rights, Istanbul Protocol (Manual for the effective investigation and documentation of torture and other cruel, inhumane, and degrading treatment) Nueva York and Geneva, 2001, paras. 56, 60, 65, and 66, and United Nations, Committee against Torture, General Observation No. 2, supra note 268.
[FN270] Cf. United Nations, Committee against Torture, General Observation No. 2, supra note 268.

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237. From the evidence furnished, it springs that, after the receipt of the complaint at the Embassy of Panama (supra para. 235), on January 27, 2004, said brief was forwarded to the Ministry of Foreign Affairs of Panama, [FN271] and on February 10, 2004, the Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs informed the Embassy that it had requested information from the National Police and the Office of Immigration of Panama, [FN272] in order to find out "whether Mr. Vélez Loor was arrested [in Panama] and subsequently deported." [FN273] In response to this, on February 17 and March 30, 2004, the National Office of Immigration and the National Police informed, respectively, on the migratory status of Mr. Vélez Loor in Panama without mentioning the acts of torture and mistreatment denounced. [FN274]

[FN271] Note E.P.Ec N° 035-04, supra note 264.
[FN272] Cf. Note A.J. N° 323 issued by the Ministry of Foreign Affairs of Panama to the Ambassador of Panama to Ecuador on February 10, 2004 (case file of the evidence, volume III, annex 25 of the application, folio 1305).
[FN273] Note A.J. N° 324 issued by the Ministry of Foreign Affairs of Panama to the National Director of Immigration and Naturalization on February 10, 2004 (case file of the evidence, volume VI, annex 2 of the answer to the application, folios 2509 to 2510) and Note A.J. N° 322 issued by the Ministry of Foreign Affairs of Panama to the Director of the National Police on February 10, 2004 (case file of the evidence, volume VIII, annex 33 of the answer to the application, folios 3265 to 3266).
[FN274] Cf. Note N° DNMYN-AL-32-04, supra note 70, folios 1202 to 1204, and Note No. AL-0874-04, supra note 69, folios 1206 to 1207.

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238. In response to the communication of September 15, 2004, on September 27, 2004, the Office of Foreign Policy referred to other facts also mentioned by Mr. Vélez, without presenting information related to the alleged acts of torture. [FN275] Furthermore, on October 7 and 24, 2004, Mr. Vélez Loor sent to the General Office of Foreign Policy of Panama electronic mails in reference to the communication of September 15 (supra para. 235). In response to this, on November 17, 2004, the Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs requested information to the person in charge of Consular Affairs of the Embassy of Panama in Ecuador, also without referring to the alleged acts of torture. [FN276]

[FN275] Cf. Note N° DGPE-DC-2666-04 issued by the Ministry of Foreign Affairs on September 27, 2004 (case file of the evidence, volume III, annex 7 of the application, folio 1209)
[FN276] Cf. Note A.J. N° 2865, supra note 266.

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239. In this regard to these verifications, the State denied having omitted to initiate a serious and diligent investigation into the allegations of torture presented by Mr. Vélez Loor since, in the State's opinion, the obligation to investigate contained in the Convention against Torture "is subject to the existence of a well-grounded reason to believe such acts had been committed. Understanding the opposite would imply that any unfounded accusation as to the occurrence of such acts binds the State to conduct frivolous proceedings that, far from being useful in the prevention and punishment of acts of torture, result in the useless debilitation of the judicial remedies."

240. In this respect, the Court clarifies that the Convention against Torture provides two situations to activate the State's duty to investigate: on the one hand, whenever an accusation is filed and, on the other hand, whenever there is a well-grounded reason to believe that an act of torture has been committed within State jurisdiction. In these situations, the decision to initiate and conduct an investigation is not up to the State to make, that is to say, it is not a discretional power; instead, this duty to investigate constitutes an imperative obligation of the State that derives from international law and cannot be disregarded or conditioned by domestic acts or legal provisions of any nature. [FN277] In the present case, given that Mr. Vélez Loor had filed, through a third person, a complaint with the Embassy of Panama (supra para. 235) in order to inform the State about the facts, this was a sufficient reason to activate the State's duty to conduct a prompt and impartial investigation. In addition, as the Tribunal has held, even when the application of torture or cruel, inhumane, or degrading treatment has not been denounced before the competent authorities by the victim, whenever there are indications that it has occurred, the State must initiate, ex officio and immediately, an impartial, independent, and detailed investigation that allows for the determination of the nature and origin of the injuries, the identification of those responsible, and prosecution of said persons to commence. [FN278]

[FN277] Cf. Case of the Miguel Castro-Castro Prison, supra note 27, para. 347; Case of Escué Zapata, supra note 103, para. 75, and Case of Bueno Alves, supra note 157, para. 90.
[FN278] Cf. Case of Gutiérrez Soler, supra note 27, para. 54; Case of Bayarri, supra note 27, para. 92, and Case of Bueno Alves, supra note 157, para. 88.

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241. In this case, the Court notes that the State authorities did not proceed according to what was duly expected, given that the proceedings conducted by the State only verified the detention and presence of Mr. Vélez Loor in Panama during the period of time mentioned (supra para. 237). It was not until October 14, 2008, that the Ministry of Foreign Affairs, through its Human Rights Department, forwarded to the Ombudsman's Office the brief that was filed, as well as the complaint signed by Mr. Vélez Loor (supra para. 235), which was received on day 16th of that month and year. [FN279] In relation to the briefs of September 15, October 7 and 24, 2004 presented by Mr. Vélez Loor, there is no record that the State had conducted any proceeding regarding the alleged acts of torture and mistreatment denounced. Hence, the authorities that learned of such accusations did not present before the corresponding authorities of Panama the respective accusations in order to initiate ex officio and immediately an impartial, independent, and detailed investigation so as to guarantee the gathering and preservation of evidence that would establish what happened to Jesus Tranquilino Vélez Loor. Much to the contrary, they challenged the truthfulness of the allegations of torture without conducting a thorough investigation (supra para. 239). Likewise, within the framework of this proceeding, the State has denied the commission of such alleged acts of torture that, as the Commission mentioned, threatens the seriousness of the development of a domestic criminal proceeding.

[FN279] Cf. Order A.J.D.H. No. 106 submitted by the Head of the Human Rights Department of the Ministry of Foreign Affairs of the Republic of Panama to the Ombudsman of October 14, 2008 (case file of the evidence, tome VI, annex 1 to the answer to the application, folio 2422).

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242. Finally, it is worth noting that it was not until the notification of the report on the merits 37/09 issued by the Inter-American Commission that the Deputy Prosecutor of the Public Prosecutor's Office of Panama learned about the facts denounced by Mr. Vélez Loor, and on July 10, 2006, the investigation was initiated. The Prosecutor's Office, upon considering that "[w]hat was mentioned constitut[ed] a noticia criminis," ordered the immediate summary investigation for the crime against liberty to the detriment of Mr. Vélez Loor "in order to shed light on all those circumstances leading to the determination of the illicit act, its nature and the consequences of criminal relevance, as well as the alleged responsible." [FN280] To that effect, on August 11, 2009, it requested information related to the arrest in Panama of Mr. Vélez Loor to all the authorities involved, according to his version. [FN281] Said request was repeated on October 19, 2009. [FN282] By December 2009, some public agencies had forwarded the information requested, while other responses were pending. [FN283] Finally, on April 5, 2010, a visual inspection was conducted at La Joyita Penitentiary Center; however, it could not be completed given that the documents to inspect "were books containing old dates and were filed." [FN284]

[FN280] Order to initiate the investigations issued by the Deputy Prosecutor of the Republic of the Public Prosecutor's Office of Panama on July 10, 2009 (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2373).

[FN281] Cf. Order issued by the Deputy Prosecutor of the Republic of the Public Prosecutor's Office of Panama on August 11, 2009 (case file of the evidence, volume VI, annex 1 of the response of the application, folio 2374 to 2378).
[FN282] Cf. Case file N° 1219 of the Deputy Prosecutor of the Republic regarding the investigation for the crime against liberty to the detriment of Jesus Tranquilino Vélez Loor (case file of the evidence, volume VI, annex 1 of the answer to the application, folio 2428 to 2440).
[FN283] Cf. Case file N° 1219, supra note 282.
[FN284] Case file N° 1219, supra note 282, folios 2254, 2255, 2272 to 2279 and 2289.
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243. As to the arguments of the State regarding the impossibility of gathering certain evidence (supra para. 229), the Tribunal considers that the State cannot attribute its failure to comply with its conventional obligations and/or its delay in complying to the measures of coordination that must be taken at the international level in order to effectively process evidence, given that it is a duty of the State to adopt such pertinent measures as are required to comply with this obligation and, particularly, to adopt all necessary measures to take the witnesses' testimony, as well as to take any other steps that may contribute to the advancement of the investigations. Therefore, the State must adopt all administrative, judicial, diplomatic or other measures in order to further advance in the investigation, as well as adopt all measures and procedures required to that effect. [FN285] In this respect, it is worth mentioning the importance of the victim's cooperation to be able to comply with some of the measures ordered by the organ in charge of the investigation.

[FN285] Cf. Case of Cantoral Benavides v. Perú. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights on November 20, 2009, Considering clause 19.
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244. With respect to the representative's allegation that the State is responsible for failing to adequately codify the crime of torture, the Court recalls that it has ruled on the noncompliance of obligations established in the Convention against Torture in this regard in the case of Heliodoro Portugal v. Panama, which thereby has general effects that permeate this specific case. [FN286]

[FN286] Cf. Case of Barrios Altos v. Perú. Interpretation of the Judgment on the Merits. Judgment of September 3, 2001. Series C No. 83, para. 18; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 194, and Case of Anzualdo Castro, supra note 60, para. 191.
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245. As a consequence, the Inter-American Court concludes that serious alleged violations to the right to the personal integrity of Mr. Vélez Loor that could constitute torture exist in the present case, those of which the local tribunals must investigate. Hence, the Court finds that the State did not duly initiate, until July 10, 2009, a prompt investigation into the allegations of torture and mistreatment to which Mr. Vélez Loor had been subjected; therefore, it failed to comply with the duty to guarantee the right to humane treatment [personal integrity] enshrined in Articles 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) therein, and

the obligations contained in Articles 1, 6, and 8 of the Convention against Torture, to the detriment of Mr. Vélez Loor.

VIII-3. NON-DISCRIMINATION AND RIGHT TO EQUAL PROTECTION

246. The representatives sustained that the violations committed against Jesús Vélez Loor "are framed within a generalized context of discrimination and criminalization of immigration," in attempts to reduce the migration flows into Panama, particularly of those irregular migrants.

247. The State categorically denied the existence of said context and sustained that the different bodies of the Panamanian State, each of them within the scope of its jurisdiction, had taken and, in fact, continue taking measures to promote integration and equality among the population, whether nationals or aliens, without consideration as to the national or migratory status of the aliens under its jurisdiction. In this way, the State referred to the regularization programs of migrants and amnesty, laws on employment and social security, access to public education and health, among other topics.

248. This Tribunal has already considered that the principle of equality before the law, equal protection before the law, and non-discrimination belongs, at the current stage of the evolution of international law, to jus cogens. [FN287] Consequently, States may not discriminate or tolerate discriminatory situations that prejudice migrants.However, the State may grant distinct treatment to documented migrants with respect to undocumented migrants, or between migrants and nationals, provided that this differential treatment is reasonable, objective, and proportionate and does not infringe upon human rights. [FN288] Consequently, States are obliged not to introduce discriminatory regulations into their laws, to eliminate regulations of a discriminatory nature, to combat practices of this nature, and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual. [FN289]

[FN287] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 101; Case of The Xákmok Kásek Indigenous Community, supra note 28, para. 269, and Case of Servellón García et al., supra note 48, para. 94.

[FN288] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 82, para. 119

[FN289] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54; Case of the Yean and Bosico girls v. República Dominicana. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005. Series C No. 130, para. 141, and Case of Yatama, supra note 38, para. 185.

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249. In such respect, this Court has established that it cannot ignore the particular seriousness of the finding that a State Party to the Convention has carried out or has tolerated a generalized practice of human rights violations in its territory. This requires the Court "to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner."

[FN290] The Court has established that "the confirmation of a single case of violation of human rights by the authorities of a State is not in itself sufficient ground to presume or infer the existence in that State of widespread, large-scale practices, to the detriment of the rights of other citizens." [FN291]

[FN290] Case of Velásquez Rodríguez, supra note 51, para. 129; Case of Perozo, supra note 9, para. 148, and Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 136.
[FN291] Case of Gangaram Panday, supra note 172, para. 64.

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250. The alleged context of generalized discrimination constitutes, then, an issue of fact. Therefore, the alleging party must offer evidence to sustain the argument. In this respect, the Court notes that the representatives do not make reference to specific evidence or evidence specifically furnished in the case-file of this case to base such affirmation. After the request of evidence to facilitate adjudication of the case in this respect (supra para. 79), the representatives made reference to reports of United Nations Rapporteurs or other reports of non governmental organizations or private individuals.

251. Considering the documents furnished by the representatives, the Court does not find grounds to consider said context proven, due to the fact that some of said references are not related to the particular situation in Panama; some of the documents were prepared after the time of the events of this case, and those documents that make reference to alleged discriminatory practices refer specifically to refugees and migrants coming from Colombia. In sum, there are not sufficient facts in the case file for this Tribunal to decide that this case was framed within the alleged situation. Moreover, the phenomenon of criminalization of irregular immigration has already been analyzed in light of the obligations contained in Articles 7 and 2 of the American Convention (supra paras. 161 to 172).

252. The representatives, moreover, considered that the human rights violations committed against Mr. Vélez Loor must be necessarily assessed in light of the obligations established in Articles 24 and 1(1), both of the Convention, by virtue of the fact that the State failed to adopt the measures tending to repair the vulnerable situation of Mr. Vélez Loor in light of his status as an irregular migrant. In addition, "it issued and applied clearly arbitrary norms[,] based on discriminatory concepts and prejudices[,] and blatantly violated those guarantees embodied in the legal code to prevent and remedy the breach of fundamental rights." The Commission did not analyze the alleged violations in light of said obligations. The State sustained that the Panamanian domestic legal code provided for sufficient provisions to ensure all persons under its jurisdiction, nationals or aliens, an equal and non-discriminatory treatment.

253. Regarding what was alleged by the representatives, the Court recalls that the general obligation contained in Article 1(1) [FN292] refers to the State's duty to respect and guarantee "non-discrimination" in the enjoyment of the rights enshrined in the American Convention, while Article 24 [FN293] protects the right to "equal treatment before the law." [FN294] In other words, if the State discriminates upon the respect or guarantee of a conventional right, the fact

must be analyzed pursuant to Article 1(1) and the substantial right in question. If, on the contrary, the alleged discrimination refers to unequal protection by domestic law, the fact must be analyzed in light of Article 24 therein. [FN295] Therefore, the alleged discrimination regarding the rights contained in the Convention that were alleged by the representatives must be analyzed pursuant to the general duty to respect and guarantee the conventional rights without discrimination, enshrined in Article 1(1) of the American Convention.

[FN292] Article 1(1) of the Convention states that:
The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
[FN293] Article 24 of the Convention states that:
All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.
[FN294] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. supra note 289, paras. 53 and 54; Case of Rosendo Cantú, supra note 27, para. 183, and Case of Fernández Ortega et al., supra note 27, para. 199.
[FN295] Cf. Case of Fernández Ortega et al., supra note 27, para. 199, and Case of Rosendo Cantú et al., supra note 27, para. 183.
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254. The Tribunal emphasized the necessary measures that States must adopt to guarantee effective and equal access to justice to all persons who are in a serious vulnerable situation, such as an irregular migrant subjected to a measure of deprivation of liberty. Hence, it focused on the notification of the right to consular assistance (supra para. 152), and the requirement to have legal counsel, in the circumstances of Mr. Vélez Loor (supra paras. 132 and 146). In the present case, it has been proven that Mr. Vélez Loor did not have said assistance, which made ineffective his ability to access and pursue remedies to challenge the measures that deprived him of liberty, involving an unjustifiable impairment of his right of access to justice. Based on the foregoing, the Court considers that the State failed to comply with its obligation to guarantee, without discrimination, the right to access to justice under the terms of Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) therein, to the detriment of Mr. Vélez Loor.

IX. REPARATIONS (Application of Article 63(1) of the American Convention)

255. Pursuant to the terms of Article 63(1) of the American Convention, [FN296] the Court has indicated that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation [FN297] and that “this provision reflects a common-law norm that is one of the fundamental principles of contemporary international law regarding the responsibility of the State.” [FN298]

[FN296] Article 63(1) of the Convention provides that "[I]f the Court finds that there has been a violation of a right or freedom protected by [this] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".
[FN297] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 231, and Case of Rosendo Cantú et al., supra note 27, para. 203.
[FN298] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 62; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 231, and Case of Rosendo Cantú et al., supra note 27, para. 203.
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256. Furthermore, the Tribunal has established that the reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the respective damages. Therefore, the Court must observe such concurrence in order to duly declare according to law. [FN299]

[FN299] Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 110; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 262, and Case of Rosendo Cantú et al., supra note 27, para. 204.
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257. In consideration of the violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture so declared in the preceding chapters, the Tribunal shall address the requests for reparations made by the Commission and the representatives, as well as the State's observations thereof, in light of the criteria embodied in the Court's jurisprudence in connection with the nature and scope of the obligation to make reparations, [FN300] in order to adopt the measures required to redress the damage caused to the victim.

[FN300] Cf. Case of Velásquez Rodríguez, supra note 297, paras. 25 a 27; Case of Garrido and Baigorria, supra note 198, para. 43, and Case of the "White Van" (Paniagua Morales et al.), supra note 48, paras. 76 a 79.
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258. When ordering the measures of reparation in the instant case, the Court shall take into account that Mr. Vélez Loor is not a national of nor resident of the State of Panama and that, in light of his situation as arrested migrant, at the time of the events, he was in a special situation of vulnerability (supra paras. 28, 132, and 207).

A. Injured Party

259. This Tribunal considers as injured party, pursuant to Article 63(1) of the Convention, the person who has been declared to be the victim of the violation of some of the rights enshrined in

the Convention. In the instant case, the victim is Mr. Jesus Tranquilino Vélez Loor, who shall be considered to be the beneficiary of the reparations ordered by this Tribunal.

B. Measures of rehabilitation, satisfaction, duty to investigate, and guarantees of non-repetition

260. The Commission considered it was relevant for the Tribunal to order the Panamanian State to implement measures of satisfaction and rehabilitation. It mentioned that the measures "must take into particular consideration the expectations of the victim in his capacity as alien regarding Panama, and it is also necessary to provide the necessary means so that his migratory status does not constitute an obstacle to the compliance with such reparations." Likewise, it indicated that the State is obliged to prevent further human rights violations. The representatives indicated that these reparations are very important, not only for the instant case, but also to prevent the recurrence of said violations. The State mentioned, in addition, that it has adopted some measures that coincide with the ones described in the claims of the petitioners, which are being fully implemented.

261. The Tribunal shall determine the measures that seek to repair the non-pecuniary damages and that are not of a pecuniary nature and shall order the measures of public import or impact. [FN301]

[FN301] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 298, para. 84; Case of Manuel Cepeda Vargas, supra note 11, para. 219, and Case of Chitay Nech et al., supra note 104, para. 242.

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1. Measures of rehabilitation

a) To provide the victim with adequate medical and psychological treatment

262. The Commission requested the Court to order the State to provide medical and psychological treatment to mitigate the physical and mental effects of the inhumane conditions of imprisonment to which Mr. Vélez Loor was subjected. The representatives, moreover, requested the Court to order the State to provide, free of charge, medical and psychological treatment to Mr. Vélez Loor, including the medicines he requires. They specified that "[b]ased on the fact that the victim does not reside in Panama, the State must adopt the measures so that he is treated in Santa Cruz, Bolivia - where he currently resides- by personnel and institutions specialized in the treatment of victims of violent facts like the ones committed in the instant case." The corresponding treatment "must be administered once the victim has undergone a complete diagnosis" and according to a plan for its implementation. The State expressed that there is merit and does not object to the Court ordering measures of rehabilitation in favor of Mr. Vélez Loor, "in relation to pecuniary and non-pecuniary damage for the damage caused to him for the violation of his right to humane treatment [personal integrity], personal liberty, a fair trial [judicial guarantees], and judicial protection."

263. The Court deems, as it has held in other cases [FN302] that it is necessary to provide for a measure of reparation that seeks to provide a treatment adequate to the bodily and psychological suffering inflicted on the victim. Therefore, having verified the violations and damage caused to Mr. Vélez Loor while in custody of the State of Panama (supra para. 227), the Tribunal considers it necessary to order measures of rehabilitation in the present case, which must take into account the victim's expectations and his migrant situation (supra para. 258). That is why this Tribunal does not consider it is appropriate for Mr. Vélez Loor to receive medical and psychological treatment in Panama; instead, Mr. Vélez Loor must be able to exercise his right to rehabilitation in the place where he lives in order to comply with the purpose and end of such rehabilitation. Following this line of thought and having regard to the considerations (supra para. 258), the Court deems it necessary for Panama to provide Mr. Vélez Loor with an amount to cover the expenses of the specialized medical and psychological treatment, as well as other related expenses, at the place where he resides.

[FN302] Cf. Case of Barrios Altos v. Perú. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; Case of Rosendo Cantú et al., supra note 27, para. 252, and Case of Fernández Ortega et al., supra note 27, para. 251.

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264. Consequently, the State must allocate to Mr. Vélez Loor only once, within a term of six months as of notification of this Judgment, the amount of US$ 7,500,00 (seven thousand five hundred dollars of the United States of America) for the specialized medical and psychological treatment and care, as well as medicines and other future related expenses.

2. Measures of satisfaction

a) Publication of the Judgment

265. The Commission did not refer to this measure of satisfaction. On its behalf, the representatives requested the Court "to order the Panamanian State the entire publication of the Judgment, in the Official Gazette of Panama and in two newspapers with national circulation in the country, elected in common agreement by the victim and his representatives." In the final arguments, they indicated that, for the sake of redeeming the honor and dignity of Mr. Vélez Loor in relation to his family in Ecuador, the pertinent parts of the Judgment must also be published in a newspaper with national circulation in Ecuador. The State mentioned that the publication of the Judgment the Court may order is already guaranteed in light of the content of Article 31 of its Rules of Procedure.

266. The Court deems that the instant measure of satisfaction is relevant and significant to restore the dignity of the victim, who suffered physically and emotionally as a result of the arbitrary deprivation of his liberty, the cruel, inhumane, and degrading conditions to which he was subjected during his imprisonment and the disappointment and harm due to an immigration proceeding without the due guarantees. Based on the foregoing, as this Tribunal has held in other cases, [FN303] the State shall publish, at least once, in the Official Gazette of Panama, this Judgment, with the corresponding headings and subheadings, but without the corresponding

footnotes, as well as the operative paragraphs of the Judgment. Furthermore, the State must publish in a newspaper with national circulation in Panama and in another newspaper of Ecuador, the official summary of the Judgment prepared by the Court. In addition, as the Court has ordered on previous occasions, [FN304] this Judgment must be entirely published in an official website and be available for a period of one year. The Court establishes the term of one year, as of notification of this Judgment, to publish the Judgment in the Official Gazette, the newspapers, and the Internet.

[FN303] Cf. Case of Barrios Altos, supra note 302, Operative Paragraph 5.d); Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 244, and Case of Rosendo Cantú et al., supra note 27, para. 229.

[FN304] Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C N°. 120, para. 195; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 244, and Case of The Xákmok Kásek Indigenous Community, supra note 28, para. 298.

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3. Obligation to investigate the alleged acts of torture and other injuries committed to the detriment of Mr. Vélez Loor and to identify, prosecute and, if applicable, punish those responsible

267. The Commission requested the Court to order the State to conduct a serious and diligent investigation into the allegations of torture allegedly committed under the jurisdiction of the Panamanian State to the detriment of Mr. Vélez Loor.

268. The representatives sustained that the Panamanian State must seriously and thoroughly investigate the acts of torture committed to the detriment of Mr. Vélez Loor, in relation to all the participants that must be punished according to the seriousness of the violations committed. Furthermore, they pointed out that it is necessary to investigate the identity of the officials responsible for other violations committed against the victim and punish them accordingly. They indicated that “once the investigation is initiated, the victim shall have full access and capacity to act in all the procedural stages according to the domestic law and the American Convention and that the State should guarantee him and all the people involved in the investigations, effective protection.” In addition, they requested that the results of the investigations be publicly and broadly disseminated, so that the Panamanian society learns about them. Finally, they emphasized the need for Mr. Vélez Loor to obtain justice so as to "condemn what happened in Panama” in order to “restore his honor and dignity.”

269. Moreover, the State informed that the Public Prosecutor’s Office had initiated a criminal investigation in order to determine the responsibilities for the facts mentioned in this case. Regarding the other violations, the State pointed out that the obligation to adopt measures like these is not possible and objected to such request, given “that these measures could be ordered only when it has been effectively determined that the facts protected by the Convention had been violated.”

270. Taking into account that as of July 10, 2009 a summary investigation into the crime against liberty to the detriment of Mr. Vélez Loor is being conducted (supra paras. 242 and 245), as well as the jurisprudence of this Tribunal [FN305], the Court orders the State to effectively continue and conduct with the most diligence and within the most reasonable term the criminal investigation initiated for the facts mentioned by Mr. Vélez Loor. To that end, the State must seriously adopt all measures necessary to identify, prosecute and, if applicable, punish all the perpetrators and participants of the facts giving rise to the violations committed against Mr. Vélez Loor, for the criminal and other effects that may arise from the investigation into the facts. For the investigation into the allegations of torture, the competent authorities must take into consideration the international standards for documentation and for the construction of forensic evidence proving the commission of torture acts and, in particular, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment ("Istanbul Protocol"). [FN306]

[FN305] Cf. Case of the Miguel Castro-Castro Prison, supra note 27, para. 441; Case of Rosendo Cantú et al., supra note 27, para. 211, and Case of Fernández Ortega et al., supra note 27, para. 228.

[FN306] Cf. United Nations Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual for Effective Research and Documentation of Torture and other cruel, inhumane, or degrading treatment), New York and Geneva, 2001.

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4. Guarantees of Non-Repetition

a) To adopt measures to guarantee the separation of inmates imprisoned due to immigration reasons from those imprisoned for criminal offenses.

271. The Commission did not make reference to this measure. The representatives pointed out that, nowadays, the Panamanian legislation provides that undocumented migrants who are detained shall be placed in "short-stay preventive shelters." However, such shelters only exist in Panama City and therefore, irregular migrants who are arrested in other regions shall be sent to penitentiary centers together with accused and convicted inmates by criminal offenses. Consequently, they requested the Court to order the Panamanian State to adopt effective measures to guarantee people detained for suspected immigration violations to be placed in centers intended for them, in which their needs are adequately satisfied. The State made reference to the inauguration of the shelters of the National Office of Immigration and their characteristics and considered it was important to highlight that, in these shelters, only migrants are housed.

272. In the instant case, the Tribunal determined that Mr. Vélez Loor was imprisoned at La Palma Public Prison and, later on, at La Joyita Penitentiary Center, which are prison centers that depend on the national prison system where he was confined together with people accused and/or convicted of the commission of criminal offenses, due to his irregular migratory status (supra para. 210). In order not to place persons detained for suspected immigration violations in penitentiary centers or other places where they may be held in custody together with people who

have been accused or convicted of crimes, the Court orders the State to adopt, within a reasonable time, the measures necessary to provide facilities with sufficient capacity to accommodate persons whose detention is necessary and proportionate, in the specific case, for immigration purposes, which must offer material conditions and a proper regime for migrants. The personnel working at such facilities must be duly qualified and trained civilians. These facilities must have visible information written in several languages regarding the legal situation of the detainees, forms with names and telephones of consulates, legal advisors, and organizations to which the people may resort for support, if they deem pertinent.

b) To adapt the prison conditions of La Palma Public Prison and La Joya-La Joyita Penitentiary Center to international standards

273. The Commission requested the Court to order the State to ensure that the State's detention centers meet minimum standards that are compatible with humane treatment and ensure those deprived of liberty with a decent existence.

274. The representatives, in addition, repeated that most of the "inhumane conditions" in which Mr. Vélez Loor lived are still existent in the present. Therefore, they requested the Court to order the Panamanian State "to create a plan in the short, medium, and long-term to ensure that the Prison System have the necessary resources to operate adequately within a reasonable term," as well as "to create an inter-institutional mechanism in order to improve the prison conditions in the country and therefore, the quality of life of inmates." In particular, they requested the Court to order the State to guarantee that the people in charge of the custody of the people deprived of liberty shall be civilians with the adequate training and not members of the National Police; to adopt effective measures to improve the prison conditions of those inmates held in Panamanian prisons and to guarantee that the Panamanian Prison System have sufficient physicians, which must be independent in order to properly carry out their roles and to draw up protocols for the examination of people deprived of liberty.

275. The State informed, in detail, on the measures adopted to improve the living conditions of the people deprived of liberty, which are being actually implemented. It mentioned that, since the month of July 2009, it has adopted more measures tending to reduce the overcrowding existent in the penitentiary centers of the country. Moreover, it indicated that with "the direct coordination of the Minister of the Interior, the National Prison System Office is implementing, apart from measures of immediate impact on the improvement of the situation of people deprived of liberty, complete programs to solve, in the medium term, the deficiencies, shortages and irregularities." In addition, it informed on specific measures adopted as to health. Among such measures, it emphasized the implementation of medical visits to the centers of the interior of the country, as well as the provision of supplies to the clinics of the penitentiary centers. Furthermore, the State informed that it had worked out an arrangement with the Ministry of Health in order to increase the medical service at the clinic at La Joya prison.

276. The Court takes note of the poor conditions of imprisonment, recognized by the State (supra paras. 60 and 197), at La Palma Public Prison and La Joya-La Joyita Penitentiary Center, which are incompatible with the American Convention. Given that this case refers to migrants and that it has been established that they cannot be held in such places, the Tribunal considers

that in this case it is not pertinent to order a measure as the one requested. Nevertheless, the Court recalls the special position of the State with respect to persons deprived of liberty. On such grounds, the State is specially obliged to ensure the rights of persons deprived of liberty, [FN307] and in particular, the adequate provision of water supply in La Joya-La Joyita Penitentiary Center, and to secure that the conditions of imprisonment in said establishment as well as in La Palma Public Prison conform to international standards on the matter.

[FN307] Cf. Matter of Urso Branco Prison. Provisional measures regarding Brazil. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering clauses 6 and 8; Matter of Penitenciary Center of Aragua "Cárcel de Tocorón." Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering clause 12, and Matter of Guerrero Larez. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Clause 13.

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c) Measures of training for government officials

277. The representatives requested the Court to “order the State to implement training programs addressed to officials of the National Migration Services in relation to the guarantees of due process and the right every person has […] to have access to them in an effective manner" and to establish the content of said programs in common agreement with recognized organizations in the field of the rights of migrants. In relation to the implementation of training programs, the State did not present any argument.

278. Once analyzed the evidence furnished by the Commission and the representatives and taking into account the acknowledgment of responsibility made by the State, the Court determined that the violations of the rights of Mr. Vélez Loor were characterized by the action or omission especially of officials of the then National Office of Immigration and Naturalization and the National Prison System. In light of this and of the circumstances of the instant case, the Court considers that the State must implement, within a reasonable time, an education and training program for the personnel of the National Migration and Naturalization Services, as well as for other officials that in their capacity have to deal with migrants, regarding the international standards related to the human rights of migrants, the guarantees of due process and the right to consular assistance. In said program, the State shall make special reference to the present Judgment and the international human rights treaties to which Panama is a Party.

279. The Commission requested the Court to order the State to adopt measures so that “the Panamanian authorities learn and comply with the obligation to initiate ex officio investigations whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed under its jurisdiction.”

280. Finally, the Court considers it is appropriate to order the State to implement, within a reasonable time, training programs on the prohibition to torture and the obligation to initiate ex officio investigations if there is an accusation or a well-grounded reason to believe that an act of torture has been committed under its jurisdiction, addressed to personnel of the Public

Prosecutor's Office, the Judiciary, the police as well as medical personnel with authority in this type of cases and who because of their functions constitute the first line of primary attention to torture victims.

d) Measures to ensure that the Panamanian immigration laws and the application thereof conform to the American Convention on Human Rights

281. The Commission requested the Court to order the State to guarantee that the domestic immigration legislation and its application conform to the minimum guarantees established in Articles 7 and 8 of the American Convention, including the legislative reforms that are necessary to ensure that, in all immigration proceedings, the conventional guarantees are strictly observed. Likewise, it emphasized that even though the Decree Law N° 3 of 2008 eliminated the criminalization of migratory recidivists, several aspects of said norm are still not compatible with the American Convention. [FN308] Therefore, it requested the Court to order the State to make the necessary efforts to complete the process of adaptation of immigration laws to the American Convention.

[FN308] In particular, it referred to the application of the detention of migrants as a general rule and not as an exception; to the possibility of extending such detention for 18 months and to the lack of judicial control of the imprisonment of migrants, unless judicial remedies, which are not necessarily at the disposal of undocumented or irregular migrants, are filed.

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282. The representatives agreed with the Commission that the legislation in force still does not respect the guarantees of due process of migrants subjected to proceedings, since "it still has several deficiencies which gave rise to and fostered the violations of the rights of the victims in this case." [FN309] In light of the abovementioned, the representatives requested the Court to order the Panamanian State to modify its legislation so as to guarantee the right to due process of migrants and, in particular, to reform its legislation to guarantee the judicial control of the detention of migrants, the right to be assisted by a defense counsel appointed by the court and the right to consular information.

[FN309] They referred, inter alia, to the fact that the National Migration Services still has authority to order the detention of aliens and may extend the detention up to eighteen months, without following mechanisms to guarantee the automatic judicial control of such detention and measures to assure due process of the aliens, such as providing them with translations into their language, legal assistance, or consular assistance.

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283. The State indicated that "[i]t is not possible to request […] the modification of the current immigration law given that the [a]pplication filed by the Inter-American Commission on Human Rights does not include any argument regarding Decree Law 3 of 2008." In addition, it pointed out that "[t]here is no provision in the Convention that allows the Court to decide […] whether a law which has still not infringed the rights and liberties of certain individuals; therefore, such

claim should not be admitted on the understanding of a measure of satisfaction." Therefore, the State objected to such request.

284. The Court takes cognizance that the Republic of Panama made modifications in its legislation and, in particular, in the immigration law, during the time the case at hand was under the organs of the Inter-American System of protection of Human Rights. In effect, the State repealed Decree Law 16 of 1960 by means of Decree Law 3 of 2008, eliminating incarceration as a form of penalty for reentry into Panama following a previous deportation order.

285. In this respect, the Tribunal has previously stated that the object of the Court's contentious jurisdiction is not to review national legislations in the abstract, [FN310] but to resolve specific cases where it may be alleged that an act of a State carried out against certain individuals is contrary to the Convention. Therefore, upon hearing the merits of the case, the Court analyzed whether the State's conduct complied or not with the Convention in relation to the legislation in force at the time of the events. Considering that, in the present case, Decree Law 3 of 2008 was not applied to Mr. Vélez Loor, this Tribunal shall not issue a ruling on the compatibility of such norm with the Convention.

[FN310] Cf. Case of Genie Lacayo v. Nicaragua. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, para. 50; Case of Manuel Cepeda Vargas, supra note 11, para. 51, and Case of Usón Ramírez, supra note 10, para. 154.

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286. However, the Tribunal considers it pertinent to recall upon the State that it must prevent further human rights violations like the ones committed and to that end, it must adopt all the legal, administrative, and other measures necessary to ensure that similar facts are never repeated again, in compliance with its duty to prevent and guarantee the fundamental rights enshrined in the American Convention. Furthermore, it must adopt "the necessary legislative or any other measures to uphold" the rights recognized in the American Convention, [FN311] in the understanding that the obligation the State has to adapt its domestic legislation to the provisions in the Convention is not limited to the wording of the Constitution or laws, but must rather permeate all the legal provisions of a statutory or regulatory nature and translate into the effective enforcement, in practice, of the human rights protection standards applicable to migrants. In particular, in relation to the notification to the arrested aliens of their right to consular assistance, as well as to ensure the direct judicial control before a competent court or tribunal that may decide on the lawfulness of the arrest or detention.

[FN311] Case of the "White Van" (Paniagua Morales et al.), supra note 48, para. 203; Case of Salvador Chiriboga, supra note 202, para. 122, and Case of Zambrano Vélez et al., supra note 200, para. 153.

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287. Moreover, it is worth emphasizing that when a State has ratified an international treaty such as the American Convention, the authorities that perform judicial duties are also subject to

it; this obliges them to ensure that the effect utile of the Convention is not reduced or annulled by the application of laws contrary to its provisions, object, and purpose. In other words, the organs of any of the branches whose authorities perform judicial duties should exercise not only a control of constitutionality, but also of "conventionality" ex officio between the domestic norms and the American Convention, evidently in the context of their respective spheres of competence and the corresponding procedural regulations. [FN312]

[FN312] Cf. Case of Almonacid Arellano, supra note 48, para. 124; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 202, and Case of Rosendo Cantú et al., supra note 27, para. 219.

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288. Consequently, the Court recalls that the State is obliged to adopt all necessary measures to ensure that the process of application of its provisions related to immigration conforms to the American Convention.

e) Adequate codification of the crime of torture

289. The Commission did not present any claim in respect to this measure. The representatives, moreover, pointed out that, so far, the crime of torture has not been adequately classified. Consequently, they requested the Court to order the Panamanian State to modify its legislation, "so as to classify the crime of torture, pursuant to the terms ordered in its judgment of the case of Heliodoro Portugal v. Panama and according to the provisions of the Inter-American Convention to Prevent and Punish Torture." The State pointed out that there is a preliminary draft of a bill for the complete classification of the crime of torture, together with the precedents of its preparation.

290. The Court has already made reference to the general obligation of States to adapt their domestic law to the norms of the American Convention (supra para. 194). This is also applicable when dealing with the adherence to the Inter-American Convention to Prevent and Punish Torture, since it derives from the rule of customary law according to which a State, who has entered into an international agreement, must include, within its domestic law, the necessary modifications to ensure the compliance with the obligations undertaken.

291. In the Judgment of the case of Heliodoro Portugal v. Panama, the Tribunal had already declared the non-compliance with the State's obligations and had ordered the corresponding reparation under the following terms:

[T]he Court considers it appropriate to order the State to adapt, within a reasonable time, its domestic laws to define [the offense] of torture in the terms and in compliance with the obligations assumed in relation [with] the Convention against Torture […]. [FN313]

[FN313] Cf. Case of Heliodoro Portugal, supra note 27, para. 259.

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292. Therefore, the Court considers it is not appropriate to order, once again, the adequate classification of the crime of torture, given that such measure of reparation was already ordered in the mentioned Judgment supra and such ruling has general effects that go beyond the specific case. Furthermore, the Court is still assessing compliance with what was ordered in said Judgment at the monitoring compliance stage.

f) Other measures requested

293. The representatives requested the Court, in addition, to order the State: a) to organize an act to acknowledge its responsibility for the violations committed and to guarantee that similar facts do not reoccur; b) to conduct an effective and serious investigation into the identity of the officials who failed to initiate the investigation into the alleged acts of torture committed to the detriment of the victim; c) to draw up "protocols by which it is compulsory to conduct thorough physical examinations of the people deprived of liberty at the moment they are admitted into the different prison centers, before any indication of mistreatment or torture or regarding the different prison centers," d) to create a mechanism of "daily visits to the detention facilities, in order to prevent, detect and punish those conducts that may entail a violation of the rights to security and humane treatment and life those deprived of liberty," and e) to set in motion "a mechanism by which those deprived of liberty have the possibility of directly informing the corresponding authorities of the attacks to which they are subjected while in custody."

294. Regarding these requests, the Court considers that the issuing of the present Judgment and the reparations ordered in this Chapter are sufficient and adequate for the reparation of the consequences of the violations suffered by the victim. [FN314]

[FN314] Cf. Case of Radilla Pacheco, supra note 25, para. 359; Case of Rosendo Cantú et al., supra note 27, para. 267, and Case of Manuel Cepeda Vargas, supra note 11, para. 238.

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295. In addition, the representatives requested the Court to order the Panamanian State to comply with Law N° 55 of July 30, 2003, and to guarantee that the management of the penitentiary centers and the custody of those deprived of liberty be carried out by civil and public officials, who must be adequately trained for this. The State pointed out that the National Prison System has worked on the recruitment of human resources interested in receiving formal training to work as guards in the prison centers of the country. However, it acknowledged that the calls have not found great acceptance in the society. Therefore, it informed that it continues issuing calls to locate people with the adequate profile to perform such task. It mentioned that the call for new prison guards is issued by means of national mass media. Furthermore, it indicated that, currently, the program for the recruitment of Civilian Guards has established a quota of 200 Guards and B/30,000.00 (thirty thousand Balboas) for the initial training.

296. The Court positively values the efforts made by the State for the incorporation and training of qualified civilian personnel to work as guards in the prison centers of Panama. However, it notes that, in this case, it has not ruled in its considerations on the merits regarding the domestic law provisions related to Law 55 of 2003; therefore, it is not possible to order reparations in this regard.

297. In the closing written arguments, the representatives requested the Court to order the State to guarantee the separation of individuals under arrest pending trial from those already convicted persons.

298. The Court notes that this request was not presented at the appropriate procedural moment by the representatives, that is to say, in its brief of pleadings and motions. Based on the foregoing, this measure of reparation, which was requested in an untimely manner, shall not be considered by the Tribunal.

C. Compensatory damages

1. Pecuniary damage

299. The Tribunal has established in its jurisprudence that pecuniary damage involves "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a casual nexus with the facts of the case." [FN315]

[FN315] Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 260, and Case of Rosendo Cantú et al., supra note 27, para. 270.

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300. The Commission requested the Court to "equitably determine the amount of compensation for consequential damages and loss of earnings, by virtue of its authority over this matter." The representatives did not make specific reference to consequential damages. However, they made specific requests as to the claim of loss of earnings. The State declared that, as to the compensatory damages for pecuniary and non-pecuniary damage, it subjects to the decision of the Court regarding the violations for which it has accepted responsibility.

301. Next, the Tribunal shall determine the compensations for pecuniary damage in relation to the violations declared in Chapters VIII-1, 2, and 3 of this Judgment, taking into account the particular circumstances of the case, the evidence furnished by the parties and the arguments.

a) Loss of earnings

302. The representatives pointed out that the loss of earnings refers to the loss of economic wages as a consequence of the "interruption, while he was in custody of Panama, of [his] profitable activities […]." Therefore, they mentioned that from 1998 to 2002, Mr. Vélez Loor worked buying and selling clothes, vehicles, and livestock in Quito, Ecuador. According to the representatives, at the time of his detention, he was going to the United States of America in order to make money to promote his business. Considering that the representatives do not have exact figures to calculate the lost earnings of the victim during the ten months of his detention, they requested the Court to take into account these elements and equitably determine the

corresponding amount. Moreover, the State did not present any argument regarding the loss of earnings.

303. The determination of the compensation for loss of earnings in the instant case must be calculated based on the period the victim did not work given his deprivation of liberty. In this case, the Court has already proven that Jesus Tranquilino Vélez Loor was deprived of liberty from November 11, 2002, to September 10, 2003, and that said imprisonment constituted a violation of his rights to liberty and personal integrity (supra Chapters VIII-1 and VIII-2). On this occasion, the Tribunal considers that, despite the fact that the representatives pointed out that the victim worked buying and selling clothes, vehicles, and livestock in Quito, Ecuador, the Tribunal does not have sufficient evidence to determine which work activities the victim was engaged in at the time of the events.

304. Based on the above reasons, the Court determines, in equity, that the State must deliver the amount of US$ 2.500.00 (two thousand five hundred dollars of the United States of America) to Mr. Vélez Loor, as compensation for the earnings he lost during the ten months he was imprisoned in violation of Article 7 of the American Convention.

b) Consequential Damages

305. The Commission requested the Court to set the amount in equity for the consequential damages. The representatives stated that, at the time the victim was deported, he tried to have access to justice for the violations committed against him. Regarding this, they indicated that Mr. Vélez requested legal aid and together with his attorney, followed-up on the complaint presented before the Embassy of Panama in Quito, maintaining contact with the Embassy. In addition, they pointed out that, within the framework of the international proceeding, the victim incurred in expenses related to defense counsels, stationery, postage, a trip to Washington to participate in the hearing on admissibility before the Commission and a trip from Santa Cruz to La Paz, Bolivia, to document and prepare the case together with the representatives. They mentioned that all of this entailed expenses, and the Court should set an amount in equity. The State presented no argument in this regard.

306. Even though the representatives identified the expenses incurred by the victim as part of the legal costs and expenses, the Court considered that such costs and expenses are part of the consequential damages, insofar as they are the result of the economic efforts made by Mr. Vélez Loor in his call for justice.

307. In this respect, the Court notes that Mr. Vélez Loor was provided with legal assistance in the filing of complaints for the violations to which he was subjected. However, based on the evidence existing in the case file, the Tribunal is not able to quantify the amount the victim spent. In view of the foregoing and taking into account the time elapsed, the Tribunal determines, in equity, the amount of US$ 5.000.00 (five thousand dollars of the United States of America) which shall be paid by the State to Mr. Vélez Loor as reimbursement of expenses incurred in legal assistance and other expenses incurred at the international level.

2. Non-pecuniary damage

308. The Court has developed in its jurisprudence the concept of non-pecuniary damages and has established that the non-pecuniary damage "may include both the suffering and distress caused to the direct victims and their next-of-kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms, to the living conditions of the victims or their families." [FN316]

[FN316] Case of the "Street Children" (Villagrán Morales et al), supra note 298, para. 84; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 278, and Case of Rosendo Cantú et al., supra note 27, para. 275.

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309. The Commission requested the Court to determine the amount in equity of compensation for non-pecuniary damage. The representatives, in addition, requested the Court "to order the Panamanian State to compensate the damage caused to [Mr.] Vélez Loor as a result of the violations committed against him." Therefore, they requested the Court "to take into account also the suffering inflicted on him as a result of the violations and its consequences and to determine an equitable amount." The State declared, regarding this measure, that it subjects to the decision of the Court.

310. The Court's jurisprudence has developed the concept of non-pecuniary damage and the cases in which compensation therefore is due. Non-pecuniary damage may include both the suffering and affliction caused to the direct victims and to those close to them, as well as non-pecuniary changes in the conditions of existence of the victim or the victim's family. Since it is not possible to assign a specific monetary equivalent to non-pecuniary damage, it can only be compensated, in two ways. First, by payment of an amount of money or delivery of goods or services that can be quantified in monetary terms, which the Court will establish by rationally applying judicial discretion and in terms of fairness. Second, by carrying out acts or works that are public in their scope or repercussion, such as broadcasting a message of official disapproval of the human rights violations involved and of commitment to efforts to avoid their repetition and to ensure acknowledgment of the victim's dignity, among other aspects. [FN317]

[FN317] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 298, para. 84; Case of González et al. ("Cotton Field"), supra note 20, footnote 547, and Case of Anzualdo Castro, supra note 60, para. 218.

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311. International jurisprudence has repeatedly established that a judgment may constitute per se a form of reparation. [FN318] However, considering the circumstances of the case sub judice, the Court considers it appropriate to set, in equity, an amount as compensation for non-pecuniary damage. [FN319]

[FN318] Cf. Case of Neira Alegría et al v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 56; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 282, and Case of Rosendo Cantú et al., supra note 27, para. 278.[FN319] Cf. Case of Neira Alegría et al., supra note 318, para. 56; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 282, and Case of Rosendo Cantú et al., supra note 27, para. 278.
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312. In determining the amount of compensation for non-pecuniary damage in this case, it is necessary to consider that Jesus Tranquilino Vélez Loor was subjected to cruel, inhumane, and degrading confinement conditions, which caused him intense physical pain and emotional suffering, as well as physical and mental consequences that endure (supra paras. 222 and 227).

313. Furthermore, the proceedings conducted against him did not comply with the requirements of due process (there was arbitrary detention and lack of judicial guarantees). Naturally, a person subjected to arbitrary detention endures profound suffering, [FN320] which is aggravated if the facts related to mistreatment and alleged acts of torture to which the victim was subjected, are not investigated. For these reasons, the Tribunal deems that these kind of violations cause non-pecuniary damage to those who suffer them. [FN321]

[FN320] Cf. Case of Bulacio, supra note 102, para. 98; Case of La Cantuta, supra note 103, para. 217, and Case of Tibi, supra note 27, para. 244.
[FN321] Cf. Case of Tibi, supra note 27, para. 244.
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314. Consequently, the Court deems pertinent to determine, in equity, the amount of US$ 20.000,00 (twenty thousand dollars of the United States of America) in favor of Mr. Vélez Loor, as compensation for non-pecuniary damage.

D. Costs and Expenses

315. The Commission requested the Court, once the representatives of the victim have been heard, to order the State of Panama “the reimbursement of the costs and expenses incurred in pursuing this case at the domestic level, as well as those arising from its processing before the Inter-American System of Human Rights.” The representatives, moreover, pointed out that in his search for justice, Mr. Vélez Loor incurred in many expenses arising from the proceedings at the domestic and international level. CEJIL, in its capacity as representative of the victim, has also incurred in expenses arising from the international proceeding. For this reason, the representatives of the victim indicated that the expenses it incurred in the processing of the case at the domestic and international level are the following.

316. The representatives requested the Court to order the State to reimburse the costs and expenses incurred by the victim as legal assistance provided for his defense in the proceedings conducted at the domestic and international level. Moreover, they requested the reimbursement of the expenses incurred by CEJIL in its capacity of representative before international instances, mainly for the trips made by the lawyers of CEJIL to document and prepare the case and also the

trips made during the processing of the case before the Commission. Moreover, they included the expenses for the corresponding legal work, investigation, gathering and presentation of evidence, interviews, and drafting of briefs. Of this amount, the representatives demonstrated expenses for the approximate amount of US$ 10,700.00 (ten thousand seven hundred dollars of the United States of America) related to the different expenses in which they incurred during the proceeding. Moreover, in the brief of final arguments, they updated the amounts originally indicated by forwarding vouchers of the expenses incurred in relation to the public hearing held at the seat of the Tribunal, such as trips, lodging, and meals of the representatives, expert witnesses, and victim, for the approximate amount of US$ 13,339.00 (thirteen thousand three hundred and thirty nine dollars of the United States of America). In sum, the representatives requested expenses for the approximate total amount of US$ 24.000.00 (twenty four thousand dollars of the United States of America). Regarding future expenses, the representatives requested the Court "to grant them, during the corresponding procedural stage, the opportunity to submit figures and up-to-date receipts regarding the expenses to be incurred during the proceeding of the case at the international contentious level."

317. The State declared that "[t]here is no grounds for the claim according to which the Panamanian State must pay the totality of the costs and expenses incurred in the processing of the instant case before the Inter-American Commission and Court." It specified that some of the detailed expenses do not correspond to this process and have already been canceled-out by the Panamanian government, and it referred in particular to "the receipts detailing the purchase of ticket for verification of the compliance with the Judgment in the case of Heliodoro Portugal."

318. Regarding reimbursement of costs and expenses, it is for the Tribunal to assess their scope prudently. This reimbursement includes the costs arising before the domestic authorities, as well as those arising during the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made on an equitable basis and taking into account the expenses incurred by the parties, provided their quantum is reasonable. [FN322] This Court has held that "the claims of the victims or their representatives, as to costs and expenses and the supporting evidence, must be offered to the Court at the first occasion granted to them, that is, in the brief of pleadings and motions, without prejudice to the fact that such claim may be updated in the future, according to new costs and expenses incurred during the processing of the case before this Court." [FN323]

[FN322] Cf. Case of Garrido and Baigorria, supra note 198, para. 82; Case of Ibsen Cárdenas and Ibsen Peña, supra note 28, para. 288, and Case of Rosendo Cantú et al., supra note 27, para. 284.

[FN323] Case of Chaparro Álvarez and Lapo Íñiguez, supra note 99, para. 275; Case of Rosendo Cantú et al., supra note 27, para. 285, and Case of Fernández Ortega et al., supra note 27, para. 298.

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319. Taking into account the above mentioned considerations, the evidence furnished and the only specific objection of the State as of the receipts exhibited, in order to compensate for the

costs and expenses incurred before the domestic authorities, as well as those arising from the processing of the case before the Inter-American System, the Court determines that the State must reimburse the amount of US$ 24,000.00 (twenty-four thousand dollars of the United States of America) directly to the Center for Justice and International Law (CEJIL). In the procedure to monitor compliance with this Judgment, the Tribunal shall order the reimbursement by the State to the victims or their representatives of the reasonable expenses duly demonstrated.

320. The Court does not order the payment of costs and expenses in favor of the victim given that it was already considered in the Chapter on consequential damages (supra para. 307).

E. Method of Compliance with the Ordered Payments

321. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage as well as the reimbursement of costs and expenses within the term of one year as of the notice of this Judgment.

322. The compensatory amounts set in favor of the victim shall be paid directly to him. Should Jesús Tranquilino Vélez Loor die before the pertinent above compensatory amounts are paid thereto, such amounts shall provided to the benefit of his heirs.

323. The State must comply with its pecuniary obligations by payment in Dollars of the United States of America.

324. If, due to reasons attributable to the beneficiary of the above compensatory amounts, he were not able to collect them within the period set for that purpose, the State shall deposit said amounts in an account held in Jesús Tranquilino Vélez Loor's name or draw a certificate of deposit from a reputable Panamanian financial institution, in US dollars and under the most favorable financial terms allowed by the legislation in force and the customary banking practice. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

325. The amounts allocated in this Judgment as compensation shall be delivered to the victim in their entirety in accordance with the provisions hereof. The amounts allocated in this Judgment as reimbursement of costs and expenses shall be delivered directly to the Center for Justice and International Law (CEJIL). The amounts may not be affected, reduced, or conditioned on account of possible taxes or charges.

326. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Panama.

X. OPEARATIVE PARAGRAPHS

327. Therefore,

THE COURT

DECIDES,

unanimously, to

1. Dismiss the first and second preliminary objections filed by the State, in accordance with paragraphs 14 to 36 of this Judgment.
2. Partially accept the first issue of the preliminary matter raised by the State, in accordance with paragraphs 38 to 51 of this Judgment.
3. Dismiss the second issue of the preliminary matter raised by the State, in accordance with paragraphs 52 to 56 of this Judgment.
4. Accept the partial acknowledgment of international responsibility by the State, in terms of paragraphs 58 to 70 of this Judgment.

DECLARES,

unanimously, that:

5. The State is responsible for the violation of the right to personal liberty, enshrined in Articles 7(1), 7(3), 7(4), 7(5), and 7(6), in relation to Articles 1(1) and 2 of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, pursuant to paragraphs 102 to 139, 149 to 172, and 189 to 195 of this Judgment.
6. The State is responsible for the violation of the right to a fair trial [judicial guarantees], recognized in Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 8(2)(f), and 8(2)(h), in relation to Articles 1(1) and 2 of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in conformity with paragraphs 140 to 160, 173 to 181, and 191 to 195 of this Judgment.
7. The State is responsible for the violation of the right to freedom from ex post facto laws, recognized in Article 9, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, pursuant to paragraphs 182 to 188 of the present Judgment.
8. The State is responsible for the violation of the right to humane treatment [personal integrity] recognized in Articles 5(1) and 5(2), in relation to Article 1(1) of the American Convention on Human Rights, regarding the detention conditions, to the detriment of Mr. Jesús Tranquilino Vélez Loor, pursuant to paragraphs 196 to 227 of this Judgment.
9. The State is responsible for the failure to guarantee the right to humane treatment [personal integrity] enshrined in Articles 5(1) and 5(2), in relation to Article 1(1) of the American Convention on Human Rights, and for the noncompliance of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, regarding the obligation to investigate the alleged acts of torture, to the detriment of Mr. Jesús Tranquilino Vélez Loor, pursuant to paragraphs 228 to 245 of the present Judgment.
10. The State did not comply with the obligation to guarantee, without discrimination, the right to access to justice, established in Articles 8(1) and 25, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in the terms of paragraphs 252 to 254 of the present Judgment.

AND ORDERS,

unanimously, that:

11. This Judgment constitutes per se a form of reparation.
12. The State must pay the amount set in paragraph 264 of the present Judgment, for the specialized medical and psychological treatment and care, as well as for medicines and other related expenses, within a period of six months.
13. The State must carry out the aforementioned publications, pursuant to that established in paragraph 266 of the present Judgment.
14. The State must effectively continue and carry out with the utmost diligence and within a reasonable period of time, the criminal investigation initiated in regard to the facts alleged by Mr. Vélez Loor, in order to determine the corresponding criminal responsibility, and where necessary, the punishment and other consequences provided in the law, in conformity with paragraph 270 of the present Judgment.
15. The State must, in a reasonable period of time, adopt the necessary measures to provide establishments that offer sufficient capacity to hold those persons whose detention is necessary and proportionate for migratory reasons, specifically appropriate for such purposes, that offer material conditions and a regimen fit for migrants, and whose staff is civil and duly qualified and trained, pursuant to that established in paragraph 272 of this Judgment.
16. The State must implement, in a reasonable period of time, a formation and training program that deals with international standards related to the human rights of migrants, due process guarantees, and the right to consular assistance for the personnel of the National Migration and Naturalization Service, as well as for officials that given their jurisdiction in the matter, handle issues related to migrant persons, pursuant to that established in paragraph 278 of the present Judgment.
17. The State must implement, in a reasonable period of time, training programs on the obligation to initiate ex oficio investigations upon a complaint or reason to believe that acts of torture have taken place in the jurisdiction, for members of the Public Prosecutor's Office, the Judiciary, or the National Police, as well as the personnel of the health sector with jurisdiction in these matters and given their duties are the first in-line to attend to victims of torture, pursuant to paragraphs 280 of the present Judgment.
18. The State must pay the amounts set in paragraphs 304, 307, 314, and 319 of the present Judgment, for the compensation of pecuniary and non-pecuniary damages as well as for the reimbursement of costs and expenses, as it so corresponds, within the period of one year, as of notification of the present Judgment, in the terms set in paragraphs 321 to 326 herein.
19. The Court will monitor the full compliance with this Judgment, in the exercise of its attributions and in compliance with its obligations pursuant to the American Convention on Human Rights, and will conclude the present case once the State has entirely satisfied said dispositions. In a period of one year as of the notification of this Judgment, the State must offer the Court a brief regarding the measures adopted to satisfy compliance.

Written in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica on November 23, 2010.

Diego García-Sayán
President

Leonardo A. Franco
Manuel E. Ventura Robles
Margarette May Macaulay
Rhadys Abreu Blondet
Alberto Pérez Pérez
Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary