

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

OF JULY 29, 2020

PROVISIONAL MEASURES

CASE OF VÉLEZ LOOR V. PANAMA

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter “the Judgment”) delivered on November 23, 2010, by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”).¹ The facts of this case relate to the detention of Jesús Tranquilino Vélez Loor, an Ecuadorian national, on November 11, 2002, at the Tupiza Police Post, in the province of Darien, Republic of Panama (hereinafter the “State” or “Panama”), because he lacked “the necessary documentation to justify his presence in [the] country.” As a result of his irregular migratory status, Mr. Vélez Loor was subsequently deprived of his liberty, first at the Public Prison of La Palma in Darien province and later at La Joyita Penitentiary in Panama City, which form part of the national penitentiary system, where he was detained with individuals who had been tried and/or convicted for committing crimes. In the judgment, the Court accepted the partial acknowledgement of responsibility made by the Republic of Panama and declared the latter’s international responsibility for the violation of the rights to personal liberty, judicial guarantees, personal integrity and the principle of legality, to the detriment of Jesús Tranquilino Vélez Loor. The Court also found the State responsible for its failure to ensure his rights to personal integrity and access to justice without discrimination, as well as for the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in relation to the obligation to investigate alleged acts of torture to the detriment of Mr. Vélez Loor. Furthermore, by way of reparation and as a guarantee of non-repetition, in the fifteenth operative paragraph of the judgment, the Court ordered the State to adapt the establishments used to detain persons for migratory reasons (when such detention is necessary and proportionate) (*infra* considering paragraph 20).

2. The brief of May 7, 2020, submitted by the representatives of the victim (hereinafter “the representatives”),² in which they requested that the Court order

* Owing to the exceptional circumstances caused by the COVID-19 pandemic, this Order was deliberated and approved during the Court’s 135th Regular Session, which took place by virtual means, in accordance with its Rules of Procedure. See press release No. 39/2020, of May 25, 2020, available at: http://www.corteidh.or.cr/docs/comunicados/cp_39_2020.pdf.

¹ Cf. *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, available at: http://www.corteidh.or.cr/docs/cases/articulos/seriec_218_esp2.pdf.

² The victim is represented by the Center for Justice and International Law (CEJIL).

provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and 27(3) of the Court’s Rules of Procedure (hereinafter “the Rules”), requiring Panama to implement measures of protection “in favor of the migrants detained at [...] La Peñita migrant reception station in the Darien region in order to prevent irreparable harm to their rights to life, health and personal integrity” in the context of the current health crisis caused by the COVID-19 pandemic.

3. The note of the Secretariat of the Court of May 8, 2020, in which, pursuant to Article 27(5) of the Rules and following the instructions of the President of the Court, it required the State to submit, no later than May 14, 2020, its observations on the request for provisional measures filed by the representatives.

4. The brief of May 15, 2020, in which the State submitted its observations on the request for provisional measures.

5. The Order on the Adoption of Urgent Measures issued by the President of the Inter-American Court on May 26, 2020,³ in which the Court decided:

1. To require the State of Panama to adopt all appropriate measures to effectively protect the rights to health, personal integrity and life of the persons at the La Peñita and Lajas Blancas Migrant Reception Stations in the province of Darien [...].
2. To require the State of Panama to ensure immediate and effective access to essential health services, without discrimination, to all persons at the La Peñita and Lajas Blancas Migrant Reception Stations, including early detection and treatment of COVID-19.
3. To require the State of Panama to submit, no later than June 10, 2020, a complete and detailed report on its compliance with the provisions of the first and second operative paragraphs of [this] Order [...].
4. To require the representatives of the victim to submit their observations within one week of notification of the aforementioned report of the State, as requested in the third operative paragraph, and to request that the Inter-American Commission of Human Rights submit its observations on the report of the State within one week of receipt of the observations of the representatives.

6. The report of June 11, 2020, in which the State of Panama described the implementation of the urgent measures ordered in the first and second operative paragraphs of the order of May 26, 2020 (*supra* Having Seen 5).

7. The note of the Secretariat of June 15, 2020, in which the President of the Court summoned the parties and the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) to a virtual public hearing to receive updated information on the steps taken to implement the urgent measures ordered and on the request for provisional measures.⁴

³ *Case of Vélez Loor v. Panama. Provisional Measures. Adoption of Urgent Measures.* Order of the President of the Inter-American Court of Human Rights of May 26, 2020, available at: http://www.corteidh.or.cr/docs/measures/velez_se_01.pdf.

⁴ In relation to cases in which the hearings have been held following the President’s Order on the Adoption of Urgent Measures *Cf., inter alia, Matter of Bustíos Rojas regarding Peru. Provisional Measures.* Order of the President of the Inter-American Court of Human Rights of June 5, 1990, third operative paragraph; *Matter of Alvarado Reyes et al. regarding Mexico. Provisional Measures.* Order of the President of the Inter-American Court of Human Rights of April 1, 2011, seventh operative paragraph, and *Case of Durand and Ugarte v. Peru. Provisional Measures. Adoption of Urgent Measures.* Order of the President of the Inter-American Court of Human Rights of December 17, 2017, third operative paragraph.

8. The brief of June 18, 2020, in which the representatives submitted their observations on the State's report of June 11, 2020 (*supra* Having Seen 6) and also requested that "observations be requested from 'other source[s] of information' that have a permanent presence at the La Peñita and Lajas Blancas migrant centers or that carry out human rights monitoring and protection activities in one or both centers."

9. The notes of the Secretariat of June 25, 2020, in which the President of the Court, pursuant to Article 27(8) of the Rules of Procedure,⁵ requested that the Ombudsman of Panama and the United Nations Inter-Agency Group on Human Mobility present, within the sphere of their competencies, any information deemed relevant at the public hearing.

10. The brief of June 26, 2020, in which the Inter-American Commission presented its observations on the State's report of June 11, 2020.

11. The brief of July 8, 2020, in which the International Organization for Migration (hereinafter "IOM") submitted information from the agencies, funds and programs of the Inter-Agency Group on Human Mobility of the United Nations System in Panama regarding mixed movements of migrants in transit through Panama which, following the instructions of the President of the Court, was received as "another source of information" under the terms of Article 27(8) of the Rules of the Court.

12. The virtual public hearing held on July 9, 2020.⁶

13. The information presented during the stage of monitoring compliance with the judgment regarding the reparations ordered in the fifteenth operative paragraph of the judgment.

CONSIDERING THAT:

1. Article 63(2) of the American Convention establishes that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration."

⁵ Article 27(8) establishes that "[w]hen the Court considers it appropriate, it may require from other sources of information any relevant data on the matter that would allow it to assess the gravity and urgency of the situation and the effectiveness of the [provisional] measures."

⁶ The following persons appeared at the public hearing: a) for the State: Federico Alfaro Boyd, Deputy Foreign Minister of the Republic of Panama; Ivette Berrio, Deputy Minister of Health; Ivor Axel Pitti, Deputy Minister of Security; Juana López, Deputy Minister of the Interior; Jonathan Riggs, General Secretary of the Ministry of Security; Samira Gozaine, Director of the National Immigration Service; Oriol Ortega, Director of the National Border Service; Thais Noriega, National Director of International Affairs and Technical Cooperation at the Ministry of Health; Ana Carolina Cambra, Head of the Human Rights Department of the Ministry of Foreign Relations, and Johanna Aguirre, Head of the Department of International Legal Affairs of the Ministry of Foreign Relations; b) for the Inter-American Commission on Human Rights: Julissa Mantilla, Commissioner and Rapporteur on the Rights of Migrants; Joana Zylbersztajn, Coordinator of the Executive Secretariat's Precautionary and Provisional Measures Unit, and Carlos Elguera, legal adviser; c) the victim, Jesús Tranquilino Vélez Loo; d) his representatives: Gisela de León, Marcela Martino and Kavita Kapur, of the Center for Justice and International Law (CEJIL); and e) for the Ombudsman's Office of Panama: Maribel Coco de Garibaldi, Ombudsman, and Anahí Quintero Belda, Director of International Relations of the Ombudsman's Office. The Ombudsman's Office participated as "another source of information" (pursuant to Art. 27(8) of the Court's Rules of Procedure), separate from that provided by the State in its role as a party to this proceeding on provisional measures. The Inter-Agency Group on Human Mobility did not participate in the hearing, being unable to respond within the time frame stipulated.

2. According to Article 27(3) of the Court's Rules of Procedure, "[i]n contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case." Furthermore, pursuant to Article 27(6) of the Rules, if the Court is not sitting, the Presidency "may call upon the State concerned to adopt such urgent measures as may be necessary."

3. The request for provisional measures was submitted by the representatives of the victim in the *Case of Vélez Loo*, which is currently at the stage of monitoring compliance with the judgment, in accordance with the requirements of Article 27(3) regarding the prerogative to submit an application.

4. The urgent measures ordered by the President on May 26, 2020, are aimed at ensuring the effective protection of the rights to health, personal integrity and life of the persons at the migrant reception stations of La Peñita and Lajas Blancas in the province of Darien, in the Republic of Panama. In addition to confirming the requirements of extreme gravity, urgency and irreparability of the damage that prompted the urgent measures of protection, the President of the Court specified certain minimum requirements,⁷ in accordance with existing recommendations available, for the implementation of the necessary measures to ensure the human rights of persons who are in a situation of mobility in the context of the pandemic.

5. In order to determine the need to ratify the instant measures, the Court will analyze other conventional and statutory requirements for the adoption of provisional measures by this Court, based on the information presented by the State and the representatives on the current situation of risk, as well as their observations and those of the Inter-American Commission in this regard. In the aforementioned order of the President, the arguments and information presented up to that moment are set forth at greater length, and the following is a summary of what has been presented subsequently. The Court will also take into account the other sources of information received.

A) Request, arguments and information submitted by the victim's representatives

6. The representatives based their request for provisional measures on the specific context and facts related to the State's alleged failure to comply with the fifteenth operative paragraph of the judgment, having noted "an enormous deterioration in conditions at La Peñita, the main center used to shelter migrants in the province of Darien, which pose an extremely serious and urgent risk of irreparable harm to the rights to life, health and personal integrity of the persons detained in this facility." Regarding the "context in which the risks occurred," they stated that the Darien jungle region is a transit zone for migrants of diverse origin, most of whom are undocumented. The measures adopted to prevent the spread of COVID-19, including border closures, restrictions on the right of movement, mandatory home quarantine and *cordons sanitaires*, has meant that migrants are unable to continue their journey to the countries of the North. As for the "risk factors that [would] justify the adoption of provisional measures," they submitted information and arguments on the following four issues: i)

⁷ Cf. *Case of Vélez Loo v. Panama. Adoption of Urgent Measures*, *supra* footnote 3, considering paragraph 30.

alleged automatic and arbitrary detentions which, owing to the pandemic, could have turned into indefinite detentions; ii) alleged inadequate detention conditions for preventing the spread of COVID-19 and, in particular, a “worrisome situation of overcrowding” pre-existing at La Peñita, aggravated by “the health crisis,” “which prevents [it] from adopting the social distancing and hygiene measures recommended [by the World Health Organization] to halt the spread of COVID-19” in said establishment; iii) alleged lack of primary medical care for migrants at La Peñita; and iv) the alleged “lack of COVID-19 response and prevention measures at La Peñita.” The representatives also presented arguments regarding the requirements of extreme gravity, urgency and the irreparability of the damage,⁸ and asked the Court to order the State to implement five specific protective measures.⁹

7. During the hearing, the representatives pointed out that conditions of overcrowding and deficient infrastructure persist in La Peñita, thereby hindering the implementation of adequate social distancing measures to prevent contagion. They also expressed particular concern over the cases of child malnutrition and severe diarrhea detected in La Peñita; the alleged poor quality of the food provided at Lajas Blancas; and the conditions in which pregnant women are kept, as well as the alleged increase in premature births. In their brief of observations of June 18, 2020, the representatives indicated, based on information published by the IOM, that in Lajas Blancas “the toilets and showers do not have running water and there are no areas for hand washing.” Subsequently, during the hearing, they stated that “actions have been taken to improve the water supply with support from UNICEF, [but] in general the conditions continue to be deficient and put [people’s] health at risk.” They also referred to the deterioration of the tents during the rainy season, and to the fact that there is an 80% deficit in the number of latrines, which are only cleaned twice a week. They added that various factors – including the alleged lack of communication with migrants in their own language regarding the risks of infection, prevention practices and the scope of the State measures that affect their migratory route - have created “high levels of tension and panic” among the migrant population “mainly due to the uncertainty and their prolonged and indefinite stay” at La Peñita. There has also been an increase in cases of gender-based violence and violence between migrants of different nationalities.

8. The representatives pointed out that the seriousness of the situation and the risks involved are evidenced by the persistent increase in infections and the failure to implement immediate isolation protocols upon detecting positive [COVID-19] cases. In this regard, they referred to an IOM document indicating that, as of June 25, 2020, there were 60 people with positive or suspected cases of COVID-19 who were in La Peñita awaiting transfer to Lajas Blancas. In addition, they noted that the State did not provide any information on the existence of specific protocols to attend to the population in the migrant centers; on the diagnostic controls performed on persons entering the facility and early detection of the virus (including asymptomatic patients); on the criteria used to classify a case as “suspicious”; or on the availability of specialized equipment in the camp of Lajas Blancas to treat seriously ill patients with COVID-19. They also considered

⁸ Cf. *Case of Vélez Loor v. Panama. Adoption of Urgent Measures*, supra footnote 3, considering paragraphs 5 to 10.

⁹ Namely: 1) that detention for migratory reasons should be used only after an individualized analysis of the necessity and proportionality of the measure, and for the shortest time possible. 2) that access to health services be ensured to all migrants held in La Peñita migrant station in the Darién region, including early detection and treatment of COVID-19. 3) that the personal liberty of all persons detained at La Peñita be guaranteed, in order to protect their life, integrity and health and those of the persons who work there. 4) that such liberty observes the appropriate protocols to prevent and respond to COVID-19, including access to health care, testing, mandatory isolation when necessary and access to information. 5) that the basic needs of the migrant population facing the risk of contagion are guaranteed, including shelter, food and water, etc.

that it is not clear whether transfers of persons with special risk factors were actually carried out.

9. The representatives concluded that the failure to control the spread of the virus at La Peñita implies “high possibilities of [...] a generalized outbreak in the migrant population in the Darien [region] and that [this] could affect the officials who attend to this population, also causing [the disease] to spread to the communities where both centers are located.”

10. During the hearing, Jesús Tranquilino Vélez Lóor stated that, “despite the fact that many years have passed [since the judgment was delivered], [...] the State of Panama continues to detain migrants and does not have appropriate facilities for this purpose.” He added that, in the context of the pandemic, this situation would put migrants “at great risk of infection and even death.”

B) Observations, arguments and information submitted by the State

11. During the hearing, Panama acknowledged “the importance of the recommendations of the Commission and of the Inter-American Court, which offer guidance and a great incentive for social dialogue between those affected, representatives of civil society and State institutions, with the sole and exclusive purpose of strengthening the culture of coexistence and understanding as fundamental pillars for the promotion and protection of human rights.” It emphasized that “any effort in migratory matters must be approached from a regional point of view” given that, “as a result of the pandemic, many countries have decided to close their borders to prevent the spread of the virus and a single country cannot face that challenge alone.”

12. In its written observations of May 15 and June 11, 2020, and during the hearing, the State described the measures adopted in response to the health emergency caused by Covid-19,¹⁰ as well as the steps taken to implement the urgent measures, arguing that “provisional measures are not necessary.” In this regard, it stated the following:

- a) La Peñita is a “migrant reception station”¹¹ (hereinafter also “MRS”) located in a region of the same name where “intra and extra-continental” migrants” arrive.¹² The State explained that “migrants are not arbitrarily detained,” but normally “stay at the stations for a maximum of two days” during which time “control, security and humanitarian assistance processes” are carried out, before they continue their journey to the northern border where “Costa Rica allowed the entry of 50 to 100 migrants per day at the beginning of [2020].”¹³ It pointed out that,

¹⁰ The State cited the following legal orders: Cabinet Order No. 11 of March 13, 2020, Executive Decree No. 64 of January 28, 2020, Cabinet Order No. 6 of January 28, 2020, Executive Decree No. 241 of March 14, 2020, Executive Decree No. 244 of March 14, 2020, Decree 489 of March 16, 2020, Decree 490 of March 17, 2020, Decree 499 of March 19, 2020, Executive Decree No. 500 of March 19, 2020, Executive Decree No. 504 of March 23, 2020, Executive Decree No. 505 of March 23, 2020, Executive Decree No. 507 of March 24, 2020, and Executive Decree No. 605 of April 30, 2020. Cf. State Report of June 11, of 2020.

¹¹ Although the State referred to La Peñita as a “Migrant Reception Station” during these proceedings, in the briefs submitted during the stage of monitoring compliance with the judgment, it used the term “Temporary Humanitarian Assistance Stations.” In this Order the Court will use the term “Migrant Reception Stations.”

¹² They arrive after “a trek through the jungle that lasts between 6 and 10 days from Colombia” and after crossing waterways “in *piraguas* or canoes on a journey that takes [...] 5 hours.”

¹³ During the hearing the State mentioned that, prior to the pandemic, the border crossing was open from Monday to Friday and that the requirements of the Costa Rican authorities are more detailed with respect to family groups. It alleged that this creates “stressful situations in the shelters because usually [the migrants] keep track of the time they have spent [in Panama and ...] they know when it is their turn to pass.”

owing to the closure of regional borders on March 2, 2020, "Operation Controlled Flow" was suspended. Consequently, the state authorities are obliged to detain migrants in the migrant stations, within the perimeters of which they "enjoy [...] ambulatory freedom" which is a "measure to maintain control during their stay in the country, minimize risks and social vulnerabilities, and provide them with humanitarian assistance."¹⁴

- b) There is no situation of extreme gravity because the state authorities "are assisting the migrant population in accordance with the standards established by the WHO" and are implementing "sanitary and biosafety measures to mitigate the impact of COVID-19" at the three migrant facilities located in the province of Darien, namely, "La Peñita", "Bajo Chiquito" and "Lajas Blancas,"¹⁵ through the provision of medical care, hygiene supplies,¹⁶ drinking water¹⁷ and food.¹⁸
- c) The Lajas Blancas facility was opened on April 10, 2020, as a "quarantine or isolation area" to relocate people diagnosed with Covid-19, suspected cases, their contacts, and recovered patients in areas separated by camps, since there is no "natural population from the province there."¹⁹ As of June 30, 592 swab tests and 309 antibody tests had been performed. The State added that it has implemented "a waste collection schedule [,] continuous fumigation of all the areas used [...] and a *cordon sanitaire* around the community of La Peñita." It added that "biosafety and health procedures have been established for all front-line personnel of the National Immigration Service" as preventive measures, and that "training and orientation [is provided] for foreigners" on those topics (*infra* considering paragraph 30).
- d) As of May 2020, there were 1,694 migrants at La Peñita, mainly of Haitian origin, including 467 minors (245 boys and 222 girls). In Lajas Blancas there were 160 migrants, including 23 boys and 15 girls. As of June 1, there were 1,674 migrants at La Peñita, with no substantial variation in the numbers of adults and children, while the population of Lajas Blancas had increased to 193 people. In both centers, taken together, there were 62 pregnant women and 12 women in the post-natal period. By July 2020, there were 1,534 migrants in La Peñita with capacity for 500 people, and in Lajas Blancas, with capacity for 400 people, there

¹⁴ According to information provided by the State during the hearing, the National Border Service (hereinafter, "SENAFRONT") has 48 officials in the Darién region and the National Migration Service has six officers.

¹⁵ In addition, the State has a migrant shelter known as "Los Planes de Gualaca" in the province of Chiriquí, adjacent to Costa Rica. The tables presented by the State in its briefs of observations include a migrant reception station called "Punuloso" which concentrates 0.2 % of the irregular migrant population distributed among the migrant centers of Darién province.

¹⁶ Among these, it stressed that the three migrant reception stations in Darién receive a weekly "supply of 25,000 masks and 5,000 gloves, [...] liquid and bar soap, antibacterial gel, 70% alcohol, disposable towels [,] toilet paper, condoms, and [it] has distributed leaflets to promote their use and hygiene and social distancing habits." It added that "the National Immigration Service hired 21 mobile toilets which are located in accessible areas within the camp," that latrines are available "in the necessary quantity" and "[in] addition, fifteen mobile shower rooms" have been installed.

¹⁷ It indicated that in La Peñita drinking water is supplied by a water purification plant installed in coordination with the International Federation of the Red Cross, and that a tanker truck has been hired to deliver water three times a week. In Lajas Blancas there are three purification plants that use water from the Chucunaque River and the National Immigration Service has acquired 18,000 gallons of bottled water, with reusable containers. It also described the electricity system installed in Lajas Blancas which is comprised of "two power plants and four lighting towers."

¹⁸ In its brief of June 11, 2020, the State described the kitchen at La Peñita, which has five industrial cookers, pots and pans, adding that the National Immigration Service provides monthly food supplies for its employees and for the migrant population, consisting of "proteins, rice and grains", plus special food for children.

¹⁹ It explained that in La Peñita an initial medical assessment is carried out on any person with. Then, "[i]f a case is considered suspicious, samples are taken using swabs and the person is transferred to the Lajas Blancas station to await the result, and complete the required isolation period of fourteen days."

were 183.²⁰ The State emphasized that since the declaration of the health emergency, no foreigner has been deported or expelled from Panama, that [the authorities] have not received any requests for voluntary return, and that there are no persons recognized by the State as refugees in any of the migrant stations. It added that, in coordination with international and civil society organizations, it has “designed manuals for asylum seekers”²¹ and that the applications for asylum submitted by 21 people in the province of Darien are under legal examination, with the support of UNHCR and the Norwegian Refugee Council.

- e) There is no evidence of an alleged imminent risk at La Peñita, since the internal emergency procedures for “the prevention, containment and treatment of confirmed and suspected cases of Covid-19”²² are being followed. As of June 30, 2020, 158 people had tested positive [at La Peñita], and had received health care services, free of charge and without discrimination, as provided to all the population within the national territory.
- f) La Peñita has two basic health teams working under the Ministry of Health, “[each] consisting of a doctor, a nurse and [a] nursing technician,” which provide care from Monday to Friday, from 7 am to 3 pm., plus another similar team managed by the Red Cross. The State added that there are six Rapid Response Teams (RRTs) in the Darien region, each consisting of “a doctor, a nurse or nursing technician and a driver,” who provide guidance on the symptoms of COVID-19, treat symptomatic patients, take samples and follow up on positive cases and their contacts. It added that, when necessary, patients are transferred to health centers located in the province of Darien and other regions of Panama.²³
- g) Regarding the possibility of the harm materializing, it insisted that “it is well known by everyone that COVID-19 does not discriminate; anyone can contract the disease and become seriously ill [...therefore] health and biosafety measures have been adopted to protect the life and personal integrity of the migrants.”
- h) Finally, the State admitted that it had identified “critical points such as overcrowding, language and cultural barriers, reluctance to receive assistance and treatment, lack of awareness of the global crisis caused by the pandemic, and high levels of frustration and anxiety among migrants that have even led to verbal and physical aggression toward the health teams designated for their care, which makes it extremely difficult to ensure a fluid and systematic approach to COVID-19 in the population [of La Peñita].” The State explained that “the migrants of Haitian nationality who tested positive [...] refused to be transferred to the Lajas Blancas center [..., refused to use] masks [... and] to receive medical assistance.”

C) Observations of the Inter-American Commission

²⁰ This figure was mentioned verbally by the Deputy Minister of Security. However, the audiovisual material provided by the State delegation to be presented during the hearing shows that on that date there were 1,581 persons at La Peñita and 128 at Lajas Blancas. In addition, the document states that in the Bajo Chiquito facility there were 101 persons, even though its maximum capacity is 100, while in Los Planes there were 702 persons, although it has a maximum capacity of 750. Cf. Migrant Reception Stations (Annex 1 to the State report of July 8, 2020).

²¹ The State explained that it is currently in the process of preparing “a Protocol for the comprehensive care of migrants, children, adolescents and unaccompanied minors” to address “the care of children in the migrant stations” and “measures of protection in foster homes or at [a] protection institution of the State.”

²² During the hearing it indicated that it has implemented the following protocols: “Operational Health Plan for the prevention and control of the coronavirus; a Response Plan in the event of an outbreak or epidemic of COVID-19 in the national territory, [and] Circular No. 27 of the General Directorate of Health containing the updated definitions of contacts and cases of COVID-19.”

²³ During the hearing the State mentioned the Maternal-Child Health Center of Metetí, the Maternal-Child Health Center of Santa Fe, the Chepo Hospital, the Santo Tomás Hospital and the Children’s Hospital.

13. During the hearing, the Inter-American Commission noted that “the existing inequality in [the] region [...aggravates] the socioeconomic impact of COVID-19 [... and] makes it difficult or impossible for millions of people to take basic preventive measures against the disease.” It emphasized that these circumstances are more severe for vulnerable groups, such as those in a situation of human mobility.

14. With regard to specific facts alleged in the request for provisional measures, the Commission argued, based on information provided by the parties, that “the overcrowding in La Peñita continues” and expressed its concern about the alleged lack of running water or handwashing facilities at Lajas Blancas. It also noted that the information provided “on the actions taken with respect to each of the fifteen minimum requirements [stipulated] by the President” in the order to adopt urgent measures, “does not make it possible to demonstrate, in a specific, detailed and updated manner, how such measures have mitigated or eliminated the risk situation to date.”

15. The Commission added that “the emergency and containment measures adopted by States in response to the pandemic must focus on ensuring full respect for human rights, applying intersectional approaches and paying special attention to the needs and differentiated impact of such measures on the human rights of groups historically excluded or at special risk.” Finally, it considered that the situation of risk continues to exist and that the conventional requirements for the granting of the provisional measures requested have been met.

D) Considerations of the Court

16. The Court has indicated that the three conditions required by Article 63(2) of the Convention for provisional measures to be available must be met in every situation in which they are requested.²⁴ Under the Convention and the Rules of Procedure, the procedural burden of demonstrating *prima facie* those requirements falls on the applicant.²⁵ With respect to gravity, for the purposes of provisional measures, the Convention requires a situation of “extreme” gravity, that is to say, of the highest or most intense level. Urgency implies that the risk or threat involved is imminent, requiring an immediate response to remedy it. Finally, as regards the damage, there must be a reasonable probability that this will materialize and it must not affect legal assets or interests that may be reparable.²⁶

17. The Court will first consider the relationship between the subject matter of this case and the request for provisional measures (*infra* considering paragraphs 18 to 22), and will then examine the requirements of extreme gravity (*infra* considering paragraphs 23 to 29), urgency (*infra* considering paragraphs 30 and 31) and irreparable damage (*infra* considering paragraph 32).

²⁴ Cf. *Case of Carpio Nicolle et al. regarding Guatemala. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 6, 2009, considering paragraph 14, and *Matter of the Members of the Indigenous Community of Choréachi regarding Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of June 10, 2020, considering paragraph 2.

²⁵ Cf. *Matter of Belfort Istúriz et al. regarding Venezuela. Provisional measures*. Order of the Inter-American Court of Human Rights of April 15, 2010, considering paragraph 5, and *Case of Urrutia Laubreaux v. Chile. Request for Provisional Measures*. Order of the Inter-American Court of Human Rights of March 12, 2020, considering paragraph 3.

²⁶ Cf. *Matter of Monagas Judicial Confinement Center (“La Pica”) regarding Venezuela. Provisional measures*. Order of the Inter-American Court of Human Rights of November 24, 2009, considering paragraph 3, and *Case of Cuya Lavy et al. v. Peru. Request for provisional measures*. Order of the Inter-American Court of Human Rights of March 12, 2020, considering paragraph 5.

18. The request for provisional measures seeks to protect the rights to life, health and personal integrity of “the migrants held in [...] La Peñita center in the Darien region,” given the alleged deterioration of the physical conditions in that establishment in the context of the migratory flows transiting through Panama and the COVID-19 pandemic. The representatives maintained that “[t]he risk factors mentioned in the [...] request [...] are closely related to the fifteenth operative paragraph of the judgment in this case.” The factors that the representatives allege could affect a specific group of persons,²⁷ namely those held in the migrant center of La Peñita and those transferred to Lajas Blancas, both located in the province of Darien, are present in a region in which some of the violations to the detriment of Mr. Vélez Loor occurred (*supra* Having Seen 1).

19. After assessing the arguments and information presented, the Court considers that the requirement set forth in Article 27(3) of the Court’s Rules of Procedure - namely that the request for provisional measures must be “related to the subject matter of the case” - has been met, since it is connected with the implementation of the reparation measure ordered in the fifteenth operative paragraph of the judgment.

20. In that measure, and in order prevent others from suffering violations of their liberty and personal integrity such as those endured by Mr. Vélez Loor (*supra* Having Seen 1), the Court ordered a structural reparation that would benefit persons beyond the victim in this case. The measure aims to ensure that the detention of persons for migratory reasons is exceptional and that when a specific case meets the requirements of necessity and proportionality, said detention is carried out in establishments intended to accommodate such persons, with a regime that is appropriate for migrants instead of a regime for persons accused or convicted of criminal offenses. In this regard, the Court ordered the following in the fifteenth operative paragraph of the judgment:

15. The State must, within a reasonable time, adopt the necessary measures to ensure that there are establishments with sufficient capacity to accommodate those individuals whose detention is necessary and proportionate in the specific case owing to migratory issues, which offer the physical conditions and a regime that is adapted to migrants, staffed by duly trained and qualified civilian personnel, as established in paragraph 272 of th[e] judgment.²⁸

21. As a general rule, the Court has considered that information related to compliance with reparation measures ordered in the judgment must be assessed within the framework of monitoring compliance with the judgment. This has been its understanding

²⁷ Cf., *inter alia*, *Case of the Community of Paz de San José de Apartadó. Provisional measures*. Order of the Inter-American Court of Human Rights of June 18, 2002, considering paragraph 8, and *Case of the Sarayaku Indigenous People. Provisional measures*. Order of the Inter-American Court of Human Rights of July 6, 2004, considering paragraph 9.

²⁸ In paragraph 272 of the Judgment, the Court established the parameters for the fulfilment of this guarantee of non-repetition, in the following terms:

In order to ensure that persons detained for suspected immigration violations are not taken, under any circumstances, to prisons or other facilities where they may be held 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, specifically for immigration reasons. These establishments must offer suitable physical conditions and an appropriate regimen for migrants, and the staff working at such facilities must be properly qualified and trained civilians. These facilities must provide 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 these individuals may appeal for support, should they choose to do so.

in many cases.²⁹ However, exceptionally, it has adopted provisional measures in the face of particularly serious situations when these are related to the judgment.³⁰

22. In this case, the Inter-American Court, and its Presidency, consider that exceptional conditions have arisen that merit examination of whether the requirements for the adoption of provisional measures have been met. Indeed, the Court notes that, aside from the infrastructure and physical conditions of the migrant shelters (*supra* considering paragraph 20), in the current context of the COVID-19 pandemic, migrants in transit through Panamanian territory are also prevented from moving or continuing their journey. This has led to a mass influx of people into the migrant stations of the Darien region, surpassing their operational capacity to manage the migratory flow. Consequently, the State has been obliged to adopt additional and appropriate measures to prevent the spread of COVID-19 and provide sufficient medical care. At the same time, this situation highlights the urgent need to assist the migrant population, which is composed of mixed flows of diverse origin, including extra-continental migrants, in essential aspects such as health care for pre-existing diseases, supplies for adequate hygiene, food, accommodation in shelters until they can resume their journey, as well as special protection needs based on age and gender, etc. Given the implications of the foregoing situation - which still persists and could eventually worsen as more people continue to arrive at the migrant reception stations - the Court considers that exceptional circumstances exist that require analysis under the provisional measures mechanism.

23. Thus, the Court is of the opinion that the aforementioned situation presents a risk to the health, personal integrity and life of numerous people, the seriousness of which warrants an immediate intervention in favor of a group of vulnerable individuals, such as migrants and other foreigners in a context of human mobility, who may require international protection. This vulnerability is further increased by the pandemic and, consequently, requires specific protection by the State.³¹ The global public health crisis caused by the COVID-19 pandemic has prompted States to adopt a series of measures that have affected the exercise and enjoyment of a number of rights, with particular repercussions for migrants.³² This was noted by the Court in its Statement No. 1/20 entitled "COVID-19 and Human Rights: the problems and challenges must be addressed from a human rights perspective with respect for international obligations,"³³ as well as by other specialized international agencies.³⁴

²⁹ Cf., *inter alia*, *Case of Juan Humberto Sánchez with regard to Honduras. Request for Provisional measures*. Order of the Inter-American Court of Human Rights of February 7, 2006, considering paragraph 8; and *Case of Cesti Hurtado v. Peru. Request for Provisional measures and Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 14, 2019, considering paragraphs 24 to 26.

³⁰ Cf. *Case of Durand and Ugarte v. Peru. Provisional measures*. Order of the Inter-American Court of Human Rights of February 8, 2018, considering paragraph 29; and *Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other Guatemalan Cases v. Guatemala. Provisional measures and monitoring compliance with judgment*. Order of March 12, 2019, considering paragraph 15.

³¹ In this analysis, it is necessary to recall the vulnerability that affects migrants in an irregular situation, who are "most exposed to potential or actual violations of their rights" and, as a consequence of their situation, are highly vulnerable in terms of their rights and differences in access to public resources administered by the State in relation to nationals or residents. Cf. *Case of Vélez Loor v. Panama, supra footnote 1*, para. 98.

³² This does not preclude that, in addressing the health emergency, the migrants should also be subject to restrictions of their rights that are legitimate and in keeping with inter-American and international standards, as well as on equal terms with the rest of the population.

³³ Cf. Statement of the Inter-American Court of Human Rights No. 1/20, April 9, 2020, "COVID-19 and Human Rights: the problems and challenges must be addressed from a human rights perspective and with respect for international obligations." Available at: http://www.corteidh.or.cr/docs/comunicados/cp_27_2020.pdf.

³⁴ Cf. WHO World Health Assembly, "Resolution: Response to COVID-19" of May 19, 2020, adopted at the 73rd Session on May 19, 2020; U.N. Committee on the Protection of the Rights of All Migrant Workers and

24. Accordingly, this Court reiterates its case law regarding the obligations of states of origin and receiving states– both of transit and destination – with regard to persons in a situation of mobility over whom “they exercise their territorial jurisdiction or who are otherwise under their jurisdiction.”³⁵ On this point, it recalls that this situation must be addressed “within the framework of the rule of law, with full respect for the inter-American instruments for the protection of human rights and the standards developed in the case law of this Court,”³⁶ particularly with respect to the principle of *non-refoulement*³⁷ and the right to health.³⁸ Thus, all persons, including those in a situation of human mobility, regardless of their migratory status, must be taken into account in the responses to the current crisis and the pre-existing inequalities exacerbated by the spread of the virus, in order to protect life, health and integrity.

25. Furthermore, with regard to the requirement of extreme gravity, the Court notes that the State acknowledged the situation of overcrowding at La Peñita (*supra* considering paragraph 12). Indeed, at the hearing on July 9, it admitted that although La Peñita has a maximum capacity to accommodate 500 people, on that date there were 1,534 migrants there (*supra* considering paragraph 12), which shows that its installed capacity was greatly exceeded. According to information provided by the State, on the date of the public hearing there were 1,020 adults (312 women and 708 men), 510 minors, and 51 pregnant women of various nationalities at La Peñita.³⁹

26. The representatives also noted that the facility lacks adequate ventilation, showers, sufficient latrines and access to food of adequate quality and quantity (*supra* considering paragraph 7). This information concerning La Peñita is consistent with that provided by the representatives during the stage of monitoring compliance with the judgment,⁴⁰ as well as with data provided by the Ombudsman’s Office⁴¹ and the United

Members of their Families and the U.N. Special Rapporteur on the Human Rights of Migrants, *Joint Guidance Note on the impacts of the COVID-19 pandemic on the human rights of migrants*, May 26, 2020. Available at: https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidance_NoteCOVID-19Migrants_SP.pdf.

³⁵ Cf. *Mutatis mutandis*, “Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.” Advisory Opinion OC-21/14 of August 21, 2014. Series A No. 14, para. 63.

³⁶ As recommended by the Court in Statement No. 1/20, “COVID-19 and Human Rights: the problems and challenges must be addressed from a human rights perspective and with respect for international obligations,” *supra* footnote 33.

³⁷ Cf. *Case of the Pacheco Tineo Family v. the Plurinational State of Bolivia*. Preliminary objections, merits, reparations, and costs. Judgment of November 25, 2013. Series C No. 272, para. 153; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*.” Advisory Opinion OC-21/14, *supra* footnote 35, para. 215, and the *Institution of Asylum and its Recognition as Human Right in the inter-American System of Protection*. Advisory Opinion OC-25/18 of May 30, 2018. Series A, No. 25, paras. 186 and 187.

³⁸ Cf. “Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.” Advisory Opinion OC-21/14, *supra* footnote 35, paras. 104, 164 and 183; *Juridical Condition and Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 86; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 104; and *Case of Cuscul Pivaral et al. v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of August 23, 2018. Series C No. 359, paras. 98, 99 and 107.

³⁹ 85% of the migrants come from Haiti, 5% from the Democratic Republic of Congo, 3% from Bangladesh and the remaining 7% are of 28 different nationalities from countries in Africa, South Asia and Central and South America. Cf. *Situation Report #13 Panama-Emergency Tracking: Migrant Reception Stations -COVID 19 Pandemic* (June 19-25, 2020). Available at: <https://migration.iom.int/reports/panama-seguimiento-la-emergencia-staciones-de-recepcion/C3%B3n-migratoria-pandemia-covid-19-19-25?close=true&covid-page=1>. (Annex 1 to the brief of the United Nations Inter-Agency Group on Human Mobility of July 8, 2020).

⁴⁰ Cf. *Case of Vélez Loor v. Panama. Adoption of Urgent Measures*, *supra* footnote 3, considering paragraph 21.

⁴¹ At the hearing, the Ombudsman also mentioned having participated “as an observer” in the protest allegedly held by migrants at La Peñita to complain about “the poor conditions in that shelter [and that] they

Nations Inter-Agency Group on Human Mobility during the provisional measures procedure.⁴²

27. Against this backdrop, the Court recognizes the difficulties faced by the State of Panama as a result of the closure of regional borders, in relation to the care of migrants who wish to continue their journey toward other countries, as well as its efforts to respond to this situation within its jurisdiction, and for which it has received support from international organizations such as UNICEF, IOM and UNHCR. Thus, the Court considers it positive that, in its effort to comply with the President's order to adopt urgent measures, the State has reported - through the written procedure and at the public hearing - on various measures adopted to reduce overcrowding at La Peñita and prevent infections, in addition to opening the Lajas Blancas migrant center (*supra* considering paragraph 12). These measures include: i) the transfer "in buses, free of charge" of 168 migrants who tested "negative for the disease" to Los Planes migrant station, located in Chiriquí province, on June 6, 2020; ii) the placement of 48 tents measuring 4x5 square meters, with maximum capacity for ten persons each, plus 600 tarpaulins or emergency shelters, 14 large multipurpose tents and the provision of "mattresses, blankets and cots";⁴³ iii) the separation of the migrant population into four sectors, considering the following variables: "nationality, family groups that include adolescent boys and girls, pregnant women, single women and single men;" and iv) progress in public bidding processes to build additional shelters for migrants and to improve the existing shelters in order to increase their capacity.⁴⁴

were talking about taking the decision to leave in a caravan and go to the capital [...], they complained about the food, saying there was very little and that the children were not receiving adequate food, especially [...] milk."

⁴² The United Nations Inter-Agency Group on Human Mobility submitted a brief containing the Situation Reports published by the IOM on Panama's Migrant Reception Stations, covering the period from April 2 until June 25, 2020. In those reports - based on data from SENAFRONT, among other institutions - the IOM indicated that La Peñita has capacity for 200 people, while Lajas Blancas can hold up to 1,000 persons. It pointed out that, as of June 25, 2020, overcrowding at La Peñita stood at 737 %, given that there were 1,674 migrants at that facility, with a maximum capacity of 200 persons. At the same time, the IOM Report compared the information provided by the State on the availability of basic services in La Peñita with the minimum humanitarian standards established in the Sphere Standards and the IOM Migration Crisis Operational Framework (MCOF) for emergency response. It concluded that it did not have sufficient data regarding provision of food and clothing, and that the availability of toilets and showers was 22% and 7%, respectively, and 100% with regard to drinking water for human consumption. It also identified the following circumstances that require a humanitarian response in that station: insufficient cleaning of the portable latrines, which is carried out twice a week; the need for "sustainability in the amount of food" supplied, even though "SENAFRONT has increased the amount [...] and, consequently, the migrants report that this has improved their quality of life;" "the lack of differentiated food for pregnant women or children under five years of age;" the increase in "cases of gender-based violence, violence against children and among people of different nationalities;" "[t]here is a great need on the ground for agencies and institutions that focus on the protection of migrants" and particularly "of unaccompanied adolescents"; "more communication activities are required with migrants on migration and movement restrictions in Panama and in the Central American region in general", "on the protocols that apply to migrants who must be hospitalized and those who must be processed at the legal level", and "with the request for asylum in Panama." With regard to Lajas Blancas, the IOM indicated that water for human consumption, latrines and showers are 100% available, and that "SENAFRONT maintains distribution of three meals a day for the migrants." However, it pointed out that the water purification plants are damaged, so it is not possible to use the latrines. *Cf. Situation Report#13 Panama- Emergency Tracking: Migrant Reception Stations - COVID 19 Pandemic (19-25 June 2020), supra footnote 39 (Annex 1 to the brief of the United Nations Inter-Agency Group on Human Mobility of July 8, 2020).*

⁴³ *Cf. State Report of June 11, 2020.*

⁴⁴ During the hearing, the State explained that under national regulations "a Migration Trust Fund" was established for the purpose of assisting migrants in Panamanian territory, with monthly expenditures of approximately USD\$800,000 (eight hundred thousand United States dollars). It explained that "the fund to help migrants with COVID-19 [...] exists" but that "they must comply with [...] the legal requirements which are unfortunately [...] long procedures." It added that the Ministry of Security has invested the equivalent of "6,120,000 balboas in shelters and improvements." It indicated that a migrant station is currently under construction in Nicanor, in the province of Darién, which will have the capacity to accommodate 50 officials

28. However, the Court emphasizes the seriousness of the fact that, although the State has set up camps in Lajas Blancas to transfer (COVID-19) infected persons and those suspected of being infected,⁴⁵ and has expanded the capacity of La Peñita by installing tents and emergency shelters, this center continues to hold a large number of people - at least twice its capacity - which may increase the spread of COVID-19. Therefore, these measures must be accompanied by the expeditious provision of resources to ensure an immediate response to the current situation of overcrowding and over-population at La Peñita, which could worsen owing to the measures that restrict internal and cross-border movement, and could therefore cause irreparable harm to the life and integrity of the persons held there for migratory reasons.

29. With regard to the infrastructure and basic services available in these establishments, the Court appreciates the information provided by the State on the improvements made to supply both migrant centers with drinking water, electricity, mobile toilets, showers, cooking utensils and food (*supra* considering paragraph 12). However, it cannot fail to note that the information provided does not clarify whether these improvements are sufficient to cover the needs of the number of people housed in each migrant station and it does not explain whether the serious conditions described by the representatives were overcome at both centers. Moreover, the information provided by the State does not show *prima facie* that La Peñita meets the standards of the World Health Organization, given such a high level of overcrowding. Among other aspects, although the State listed the criteria for the separation of the population in La Peñita (*supra* considering paragraph 27), there is no information on how it ensures adequate ventilation and social distancing between the persons housed there and the personnel who perform tasks, in order to prevent the spread of COVID-19, bearing in mind that, according to the scientific information available to date, the virus is transmitted very efficiently by means of interpersonal contact and airborne droplets, which calls for efforts to intensify social distancing, ventilation and hygiene measures (*infra* considering paragraph 35). In this regard, the Court notes with concern that the limited provision and cleanliness of latrines and/or mobile toilets (only 22% of the number required), which are intensively used by the significant population of La Peñita, as well as the lack of detailed information on the provision of disposable diapers for infants and sanitary napkins for menstruating women, means that it is not possible to determine whether adequate hygiene practices are feasible to mitigate the spread of the virus. Similarly, the State did not clarify whether there are individual housing units and isolation areas to preserve the health of persons with risk factors such as pregnant women, newborns with their mothers, postoperative or transplant patients and/or those who suffer from a serious disease," and it did not mention "[the] most comfortable places among the options available" to which they can be transferred. The Court notes that, according to information provided by the representatives, as of June 25, 2020, 60 persons, including suspected and positive COVID-19 cases, were waiting to be

and 544 migrants. It also referred to the "emergency public procurement procedure" that is awaiting approval by the Cabinet Council, to move forward with the construction of a migrant station at Los Planes de Gualaca, which will have the capacity to accommodate 1,200 migrants and 50 immigration officials and is expected to be completed within six months. In addition, it mentioned the expansion of the San Vicente station in Nicanor, with its capacity increased from 200 to 300 people through the installation of tents donated by UNHCR that can accommodate eight persons each, and whose opening, scheduled for mid-July, 2020, was postponed due to the weather and "the human resources infected by coronavirus." It added that capacity will be increased with the six tents that the IOM maintains at the station. Finally, the State added that it is investing in the construction of cabins, each housing six people, at the Lajas Blancas station, which will allow it to receive up to 544 people. *Cf.* Annex 1 to the State report of June 11, 2020.

⁴⁵ The Court notes that, according to data provided by the State, there is currently no overcrowding at Lajas Blancas.

transferred to the Lajas Blancas camp (*supra* considering paragraph 8), a situation that, if it were to continue, could intensify the risk of contagion at La Peñita. In addition, the State itself mentioned that a group of infected persons refused to be transferred to Lajas Blancas, but did not specify what measures it has taken - or will take - when such situations arise that could put the other persons at La Peñita at risk of infection. The Court also notes that during the hearing the representatives acknowledged the various improvements made to the drinking water supply at Lajas Blancas, based on the IOM reports. However, those same reports also mentioned failures in the operation of the water treatment plants at Lajas Blancas. The Court considers that the State must address these failures as soon as possible, as this situation could limit the quantity and quality of the water supply for human consumption and, consequently, could increase the risk of infection and affect the quality of medical care at a camp that is intended to shelter migrants with COVID-19. Finally, from the information provided regarding the improvements made to the building infrastructure of La Peñita and Lajas Blancas, it is not clear whether there is adequate lighting, especially at night, to prevent acts of violence and ensure the safety of women and children in the different areas of the camp, such as the mobile toilets.

30. The Court also notes that the requirement of urgency has been met, since the State reported that, as of May 12, 2020, 58 positive [COVID-19] cases had been detected among migrants at La Peñita,⁴⁶ a figure that had increased to 158 by June 30, 2020, in the Darien, including infections among officials (*supra* considering paragraph 12). The Court emphasizes that the State provides free medical care to migrants staying at the migrant stations under the same conditions as nationals and appreciates its efforts to attenuate the language barriers with migrants by placing “informative signs [...] on prevention measures [...] and on the current situation of border closures” in Haitian Creole, French, Spanish and English, and by establishing a multilingual Migrants’ Committee for the same purpose (*supra* considering paragraph 12). The State also reported on the implementation of protocols to prevent and treat infections and possible complications derived from the disease, the performance of diagnostic tests, the identification of migrants with factors that expose them to greater risk of complications, and the continuity of medical care for diseases unrelated to COVID-19. However, the absence of conditions to implement rigorous social distancing and hygiene measures to prevent and mitigate the spread of COVID-19, and the lack of information regarding the supplies available to health workers assigned to La Peñita and Lajas Blancas to ensure adequate medical treatment for complications derived from the disease, make it necessary to take immediate steps to reverse these situations as soon as possible.

31. In relation to the foregoing, the Court notes with concern that the State did not explain whether the mental health teams that work in the Darien region have visited the migrant stations since the start of the pandemic to assess the psychosocial effects on the migrant population who, as the State indicated, suffer from “high levels of frustration and anxiety that have even led to verbal and physical aggression towards [the] health teams” or how the migrants can access mental health services in a timely manner, given the remoteness of both facilities from urban centers.

32. The Court considers that the requirement of irreparable harm has been met given that the extremely serious and urgent situation faced by the persons detained at the La Peñita and Lajas Blancas migrant reception stations could have irreparable consequences for their rights to health, personal integrity and life. Although the representatives initially

⁴⁶ Cf. *Case of Vélez Loor v. Panama. Adoption of Urgent Measures*, *supra* footnote 3, considering paragraph 11.

requested provisional measures to protect “the migrants held at the La Peñita center,” this Court considers that, based on the information provided, it is also appropriate to seek the protection of those held at the Lajas Blancas shelter, since persons classified as infected and/or suspected of being infected and “their contacts” are transferred to this facility from La Peñita.” According to information contained in the file, if the aforementioned conditions of overcrowding and health care are not promptly resolved, there could be an imminent generalized outbreak at the La Peñita migrant reception station and/or at Lajas Blancas. This could expose some migrants to serious health consequences and/or a risk to their lives in the event of possible complications arising from the disease if they are not adequately treated in appropriate medical centers.

33. Having examined the facts and circumstances on which the present application is based, and considering the information presented by the State of Panama on measures to address the situations described by the representatives, the Court considers that, for the reasons indicated, the requirements of extreme gravity, urgency and irreparability of the harm are met *prima facie* and that it is necessary to order provisional measures for the protection of the health, life and integrity of persons at the La Peñita migrant reception center, as well as those transferred to Lajas Blancas.

34. In particular, the Court considers that in the current situation caused by the pandemic, and in light of the Court’s case law, “it is especially important to ensure, in a timely and appropriate manner, the rights to life and health of all persons under the State’s jurisdiction without discrimination, including older persons, migrants, refugees, stateless persons and members of indigenous communities,” as emphasized by this Court in its Statement entitled: “COVID-19 and Human Rights: problems and challenges should be addressed from a human rights perspective and with respect for international obligations” (*supra* considering paragraph 23).

35. Therefore, considering that Panama has a special position as guarantor of the rights of persons under its custody in the migrant reception stations,⁴⁷ and that the aforementioned disease requires rigorous measures to mitigate the risk to the life, personal integrity and health of detained persons, the Court finds it pertinent to reiterate the minimum requirements listed in the President’s Order on the Adoption of Urgent Measures,⁴⁸ in accordance with the existing recommendations currently available,⁴⁹ for

⁴⁷ Cf. *Case of Vélez Loor v. Panama*, *supra* footnote 1, paras. 198 and 276.

⁴⁸ Cf. *Case of Vélez Loor v. Panama. Adoption of Urgent Measures*, *supra* footnote 3, considering paragraph 30.

⁴⁹ Cf. ICRC, *Recommendations for the prevention and control of COVID-19 in places of detention*, April 15, 2020; OHCHR, U.N. Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Recommendations of the Subcommittee for the Prevention of Torture to States Parties and National Preventive Mechanisms relating to Coronavirus Pandemic*, March 25, 2020. Available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>; OHCHR, *COVID-19 Guidance*, available at: <https://www.ohchr.org/SP/NewsEvents/Pages/COVID19Guidance.aspx>, in particular “COVID-19 Guidance and the human rights of migrants”, available at: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants_sp.pdf; OHCHR, *Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the UN Special Rapporteur on the Human Rights of Migrants*, May 26, 2020. Available at: https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants_SP.pdf; OHCHR, *Joint Declaration of the United Nations Committee Against Torture, United Nations Subcommittee for the Prevention of Torture, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, COVID-19 exacerbates the risk of ill-treatment and torture worldwide*, June 26, 2020. Available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25995&LangID=S>; United Nations Network on Migration, “COVID-19 & Immigration Detention: What Can Governments and Other

the implementation of measures necessary to ensure the human rights of persons held in the migrant reception stations in the context of the pandemic:

- a) Reduce overcrowding to the lowest level possible so that the recommended social distancing guidelines can be applied to prevent the spread of the virus, taking into account especially those with risk factors, including the possibility of examining alternative and community-based measures;
- b) determine, when possible, and based on the individual's best interest, family or community-based foster care options for unaccompanied migrant children and adolescents, as well as for those traveling with their families to preserve family unity, in accordance with Advisory Opinion OC-21/2014;⁵⁰
- c) guarantee to all foreign nationals respect for the principle of *non-refoulement*, when their life, safety or personal integrity is at risk, as well as effective access to asylum procedures when appropriate;
- d) adopt measures to prevent the risk of violence, particularly sexual violence, to which migrant women and children are exposed;
- e) establish protocols or action plans to prevent the spread of COVID-19 and provide care for infected migrants in accordance with recommended guidelines. Among other aspects, ensure that health checks are carried out on each person entering the establishment, verifying whether they have fever or symptoms of the disease; take biological samples from all cases classified as "suspicious" and implement the necessary medical care, quarantine and/or isolation measures;
- f) provide migrants with free access, without discrimination, to health care services, including those needed to treat COVID-19, ensuring the provision of effective and high quality medical care of the same standard as that available in the community;
- g) provide pregnant women with free access to sexual and reproductive health care services as well as maternity care, and facilitate appropriate health care services for children;

Stakeholders Do?", Available at:

https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_cov_id-19_and_immigration_detention.pdf; *Joint global statement issued by OHCHR, UNHCR, IOM and WHO on the effects of the COVID-19 crisis on refugees, migrants and stateless persons, calling for the release of refugees and migrants in detention*, available at:

<https://www.unhcr.org/news/press/2020/3/5e836f164/rights-health-refugees-migrants-stateless-must-protected-covid-19-response.html>; IOM, *COVID-19 Analytical Snapshot #9: Immigration detention*, April 2020, available at: [iom.int/sites/default/files/our_work/ICP/MPR/covid-19_analytical_snapshot_9_-_immigration_detention.pdf](https://www.iom.int/sites/default/files/our_work/ICP/MPR/covid-19_analytical_snapshot_9_-_immigration_detention.pdf); CEDAW Committee, *Guidance Note on CEDAW and COVID-19*, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9156&Lang=en; OHCHR, *COVID-19 and women's human rights: guidance*, April 15, 2020, available at https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf; OAS/CIM, *COVID-19 in women's lives. Reasons to recognize the differential impacts*, available at:

<http://www.oas.org/es/cim/docs/ArgumentarioCOVID19-ES.pdf>; WHO Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, March 15, 2020. Available at: <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>; WHO, *Home care for patients with suspected novel coronavirus (nCoV) infection presenting with mild symptoms and management of contacts*, February 4, 2020. Available at:

[https://apps.who.int/iris/bitstream/handle/10665/331397/WHO-nCov-IPC-HomeCare-2020.2-spa.pdf?_](https://apps.who.int/iris/bitstream/handle/10665/331397/WHO-nCov-IPC-HomeCare-2020.2-spa.pdf?) *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*. General Assembly Resolution 70/175; Inter-Agency Standing Committee (IASC), *Interim Guidance on COVID-19: Focus on Persons Deprived of their Liberty. OHCHR and WHO*, March 27, 2020. Available at:

https://www.ohchr.org/Documents/Events/COVID-19/COVID-19-FocusonPersonsDeprivedofTheirLiberty_SP.pdf; *The States must take measures against expressions of xenophobia related to COVID-19, says UN expert*, press release of the *Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, March 23, 2020. Available at:

<https://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=25739&LangID=S>.

⁵⁰ Cf. *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra* footnote 35, paras. 157, 158, 160, 163, 164 and 167.

- h) adopt the necessary measures to overcome legal, language and cultural barriers that hinder access to health care and to information;
- i) adopt measures to ensure natural ventilation, maximum hygiene, disinfection and waste collection to prevent the spread of the disease;
- j) continue to provide free masks, gloves, alcohol, disposable towels, toilet paper and garbage bags, among other items, both for the migrant population in the shelters and for security and health personnel;
- k) promote, through the necessary supplies and information, the personal hygiene measures recommended by the health authorities, such as regular hand and body washing with soap and water to prevent transmission of the virus and of other infectious diseases;
- l) provide sufficient food and drinking water for personal consumption, giving special consideration to pre and postnatal nutritional requirements;⁵¹
- m) facilitate access to mental health services for those who require them, taking into account the anxiety and/or other pathologies resulting from the fear caused by the COVID-19 pandemic;
- n) allow access to the migrant reception stations by the Ombudsman's Office and other independent monitoring mechanisms, as well as international and civil society organizations; and
- o) ensure that the measures adopted do not promote xenophobia, racism or any other form of discrimination.

36. In addition, the Court considers it pertinent to recall its Statement of April 9, 2020, in which it emphasized that "[t]he extraordinary problems and challenges resulting from this pandemic must be addressed through dialogue, together with regional and international cooperation implemented jointly, transparently and in a spirit of solidarity between all the States. Multilateralism is essential in order to coordinate regional efforts to contain the pandemic." In this regard, it recommended that "[t]he multilateral agencies, whatever their nature, should help and cooperate jointly with the States, under a human rights-based approach, to seek solutions to the present and future problems and challenges that the current pandemic is causing and will cause."⁵² At the public hearing, the State indicated that Panama is a transit country and that, owing to the closure of regional borders, it has had to attend to a large number of migrants seeking to continue their journey. It added that the state authorities "are determined to resume the controlled flow of migrants" and requested the Court's mediation "so that the other countries involved in this flow [will] open their borders to [...] to assist [the migrants] and help them continue their journey to their desired destination." It stressed that "it is not only a matter of Panama's will [but ...] involves the region and [...] we need the entire region to support us and understand the difficult situation faced by these people." In this regard, the Court appreciates Panama's willingness to find a regional solution to alleviate the situation of those in the migrant stations, as well as the efforts of the United Nations agencies to assist the State of Panama in the implementation of measures and actions to guarantee their rights.

37. Finally, the Court emphasizes that the difficulties of the current context require synergy and solidarity between the States, international organizations and civil society in order to provide an effective regional and global response to the challenges arising from the pandemic faced by persons in a situation of human mobility. In light of the

⁵¹ Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, reparations and costs. Judgment of August 24, 2010. Series C No. 214, para. 233.

⁵² Cf. Statement of the Inter-American Court of Human Rights No. 1/20, April 9, 2020, "COVID-19 and Human Rights: The problems and challenges must be addressed from a human rights perspective and with respect for international obligations," *supra* footnote 33.

principle of shared responsibility, and mindful of the complex and cross-border dimensions of the migratory phenomenon, aggravated by the pandemic, the Court deems it pertinent to recall the importance of promoting dialogue at the national, bilateral and regional levels to create conditions that allow for a safe, orderly and regular transit, in which the rights of persons in a situation of mobility are effectively guaranteed. Therefore, the Court urges Panama to continue promoting such dialogue and, by virtue of this, considers it pertinent to communicate this Order to the Secretary General of the Organization of American States so that, within the framework of his powers under the OAS Charter, he may also contribute to the aforementioned dialogue and promote regional solutions to the situation described by the State of Panama.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Articles 63(2) of the American Convention on Human Rights, 24(1) and 25(2) of the Court's Statute and Articles 4, 27, and 31(2) of its Rules of Procedure,

DECIDES:

By six votes in favor and one against,
Dissenting, Judge Eduardo Vio Grossi.

1. To ratify the order of the President of the Inter-American Court of May 26, 2020, on the adoption of urgent measures.
2. To require the State of Panama to continue to adopt all appropriate measures to effectively protect the rights to health, personal integrity and life of the persons held at the migrant reception stations of La Peñita and Lajas Blancas, in the province of Darien, pursuant to considering paragraphs 22 to 35 of this order.
3. To require the State of Panama to ensure immediate and effective access to essential health services, without discrimination, for all persons at the migrant reception stations of La Peñita and Lajas Blancas, including early detection and treatment of COVID-19.
4. To require the State to submit, no later than September 1, 2020, a complete and detailed report on its compliance with the provisions of the second and third operative paragraphs of this order, pursuant to considering paragraphs 22 to 35 thereof, after which it should continue to report to the Court every four weeks, counted from the submission of its last report, given the characteristics of these measures.
5. To require the representatives of the victim to submit their observations on the aforementioned reports of the State within two weeks of receiving them, and to require the Inter-American Commission on Human Rights to present its respective observations within one week of receiving the observations of the representatives.
6. To require the Secretariat of the Court to notify this order to the Secretary General of the Organization of American States, for the purposes set forth in considering paragraph 37.

7. To require the Secretariat of the Court to notify this order to the State, to the representatives of the victim and to the Inter-American Commission.

Judge L. Patricio Pazmiño Freire advised the Court of his Concurring Opinion, and Judge Eduardo Vio Grossi advised the Court of his Dissenting Opinion, both of which accompany this order.

I/A Court HR. *Case of Vélez Looz v. Panama*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 29, 2020, adopted in a virtual session at San José, Costa Rica.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary