

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

OF JUNE 24, 2021

PROVISIONAL MEASURES

CASE OF VÉLEZ LOOR V. PANAMA

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter “the Judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on November 23, 2010.¹ The facts of this case relate to the arrest 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”), on the grounds that he did not have “the necessary documentation to justify his presence in [that] country.” As a result of his irregular migratory status, Mr. Vélez Loor was subsequently deprived of his liberty, first at La Palma Public Prison in Darien province and later at La Joyita Penitentiary in Panama City, both of 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 the violation of the rights to personal integrity, access to justice without discrimination, and 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. In addition, 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 3).

2. The Order on the Adoption of Urgent Measures issued by the President of the Inter-American Court on May 26, 2020.²

* Owing to the exceptional circumstances caused by the COVID-19 pandemic, this Order was deliberated and adopted during the Court’s 142nd Regular Session, which took place by virtual means, in accordance with the Court’s Rules of Procedure.

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/casos/articulos/seriec_218_esp2.pdf.

² Cf. *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/medidas/velez_se_01.pdf.

3. The Order on the Adoption of Provisional Measures issued by the Inter-American Court on July 29, 2020,³ in which it decided:

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. The reports submitted by Panama on September 1 and October 6, 2020, and on January 28 and March 31, 2021, regarding the implementation of the provisional measures adopted (*supra* Having Seen 3).

5. The briefs of October 1 and November 2, 2020, and January 25 and February 23, 2021, in which the victim's representatives⁴ submitted their observations on the State's reports and requested that "observations be required from 'other source[s]' of information' with a permanent presence at the La Peñita and Lajas Blancas migrant stations or which carry out human rights monitoring and protection activities in one or both centers."

6. The note of the Secretariat of February 1, 2021, in which it notified the State that the President of the Court had approved its requests to submit regular reports on the implementation of the provisional measures every eight weeks, instead of the four-week period stipulated in the fourth operative paragraph of the Order of July 29, 2020, (*supra* Having Seen 3).

7. The virtual public hearing on monitoring compliance with the provisional measures, held on May 6, 2021, during the Court's 141st Regular Session.⁵

8. The notes of the Secretariat of May 13, 2021, sent as follow-up to the hearing of May 6 (*supra* Having Seen 7), in which, on the instructions of the President of the Court, the Inter-American Commission and the Ombudsman's Office of Panama were asked to submit, no later than May 21, 2021, any additional information deemed relevant for the Court to take into account when issuing this order.

³ Cf. *Case of Vélez Loor v. Panama. Provisional measures. Adoption of Provisional Measures*. Order of the Inter-American Court of Human Rights of July 29, 2020, available at: http://www.corteidh.or.cr/docs/measures/velez_se_02.pdf.

⁴ The victim was represented by the Center for Justice and International Law (CEJIL).

⁵ The following appeared at the public hearing: a) for the State: Farah Diva Urrutia, Agent and Head of Delegation, expert of the Inter-American System of Human Rights of the Ministry of Foreign Relations; Ariadna Pérez, Agent and Deputy Director of the Office of Legal Affairs of the Ministry of Foreign Relations, and Pável Andrei Osorio Wald, Agent and attorney of the Office for International Legal Affairs and Treaties of the Ministry of Foreign Relations; b) for the Inter-American Commission on Human Rights: Joel Hernández, Commissioner; Fernanda Alves dos Anjos, Lucía Azofeifa and Carlos Elguera, advisers of the Executive Secretariat; c) the victim, Jesús Tranquilino Vélez Loor; d) his representatives: Gisela de León, Marcela Martino and Gabriela Oviedo Perhavec, of the Center for Justice and International Law (CEJIL); and e) for the Ombudsman's Office of Panama: Eduardo Leblanc González, Ombudsman of Panama; Christian Miranda, Director of Legal Counseling; Maribel Peña, Head of the Darien Regional Office, and Jonathan Santana, Director of International Relations. The Ombudsman's Office participated as "another source of information" (Art. 27(8) of the Court's Rules of Procedure), separately from the State as a party to this Provisional Measures procedure.

9. The brief of May 21, 2021, in which the Ombudsman's Office of Panama presented a "Report on the actions carried out by the Ombudsman's Office of Panama as follow-up to compliance with the provisional measures issued by the Inter-American Court of Human Rights in the case of Vélez Loor v. Panama." The Court will consider said brief as "another source of information," pursuant to Article 27(8) of its Rules of Procedure (*infra* considering paragraph 6).

10. The briefs of May 21, 2021, presented by the State and by the victim's representatives, in which the latter forwarded additional information and the State requested the lifting of the provisional measures.

11. The briefs submitted on May 28, 2021, by the Commission and on June 3, 2021, by the State and the representatives of the victim, respectively, in which they presented their observations on the briefs containing supplementary information (*supra* Having Seen 10). In their observations, the representatives also asked the Court to "consider the possibility of extending [the provisional measures] to other migrant detention centers in the province of Darien."

12. The brief of June 14, 2021, in which the State presented its observations on the requests for the extension of the provisional measures (*supra* Having Seen 11).

CONSIDERING THAT:

1. Article 63(2) of the American Convention on Human Rights 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." These three requirements are coexistent and must remain in place in order for the Court to maintain the protection ordered,⁶ and to extend the provisional measures.⁷

2. The Court recalls that these provisional measures were adopted in July 2020 in order to protect the life, integrity and health of those detained in the Migrant Reception Stations (hereinafter "MRSs") of La Peñita and Lajas Blancas in the province of Darien, Republic of Panama, taking into account the restrictions on the right of movement and the need to assist and protect the rights of migrants and other persons in a situation of mobility, in the context of the COVID-19 pandemic. The Court specified some minimum requirements⁸ (*supra* Having Seen 3), consistent with the recommendations made at that time, so that the State would take these into account when implementing measures to protect such rights, in its special position as guarantor.

3. The purpose of this order is to monitor implementation of the provisional measures, and to rule on the State's request to lift said measures (*infra* considering paragraph 58) as well as the representatives' request to extend these measures to other

⁶ Cf. *Case of Carpio Nicolle regarding Guatemala. Provisional measures*. Order of the Inter-American Court of Human Rights of July 6, 2009, considering paragraph 14, and *Case of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional measures*. Order of the Inter-American Court of Human Rights of June 24, 2021, considering paragraph 19.

⁷ Cf. *Case of Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other cases against Guatemala. Request for provisional measures and monitoring compliance with the judgment*. Order of the Inter-American Court of Human Rights of October 14, 2019, considering paragraph 26, and *Case of Fernández Ortega et al. Provisional measures regarding Mexico*. Order of the Inter-American Court of Human Rights of April 22, 2021, considering paragraph 22.

⁸ Cf. *Case of Vélez Loor v. Panama. Provisional measures, supra footnote 3*, considering paragraph 35.

migrant reception centers in the Darien region, in addition to La Peñita and Lajas Blancas (*infra* considering paragraph 59).

4. The Court deems it necessary to clarify that, in its considerations on the implementation of the provisional measures adopted in the Order of July 2020, it will also refer to the San Vicente migrant station as well as to the Bajo Chiquito reception community, which were not covered by said order. This is because the State, in its report on the implementation of the provisional measures, included information on the situation in both those places. The Court will also rule on the representatives' request to extend protection to the aforementioned migrant centers (*infra* considering paragraph 59). From the information provided to date, it is clear that with the closure of the La Peñita station (*infra* considering paragraph 9), the migrant population that enters Panama through the Darien Gap is currently distributed, essentially, between the Lajas Blancas and San Vicente migrant centers, and that the Bajo Chiquito reception community receives a significant number of people who enter the country through the Colombian-Panamanian border. In Bajo Chiquito these migrants are received by the authorities of the National Border Service (hereinafter "SENAFRONT"), who carry out registration and identification procedures prior to their transfer to other migrant reception centers.

5. The Court will likewise assess the information received during the public hearing on May 6, 2021 (*supra* Having Seen 7), as well as the information submitted in writing prior to and after the hearing, both by the parties and the Inter-American Commission and also by the Office of the Ombudsman of Panama.

6. The information from the Ombudsman's Office (*supra* considering paragraph 5 and Having Seen 7 and 9) will be assessed by the Court as "another source of information" in order to determine the gravity and urgency of the situation and the efficacy of the measures," pursuant to Article 27(8) of its Rules of Procedure,⁹ in the understanding that this information is different from that provided by the State as a party to the proceeding. In this regard, the Court recalls that in the order on the adoption of provisional measures of July 2020, it stressed the importance that the State 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." Therefore, the specific work carried out by the Ombudsman's Office through its field inspections during visits to the migrant reception stations in the Darien is of particular relevance.

7. The Court will structure its considerations in the following order:

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⁹ "When the Court considers it appropriate, it may require from other sources of information any relevant data on the matter that would permit it to assess the gravity and urgency of the situation and the effectiveness of the measures. To that end, it may also require expert opinions and any other report that it considers appropriate."

D. *Measures to protect the rights of migrant children and women, prevent violence against them and guarantee the principle of non-refoulement*..... 22

II. **REGARDING THE REQUEST TO LIFT PROVISIONAL MEASURES AND THE REQUEST TO EXPAND THE PROVISIONAL MEASURES** 24

I. **REGARDING THE IMPLEMENTATION OF PROVISIONAL MEASURES**

A. ***Measures to reduce overcrowding and improve ventilation and social distancing to prevent the spread of COVID-19***

A.1. *Minimum requirements established by the Court*

8. In considering paragraph 35 of the Order of July 29, 2020, the Court established the following minimum requirements to ensure the rights of persons in the migrant reception stations in the context of the COVID-19 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.
- h) Adopt the necessary measures to overcome the 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.

A.2. *Information and observations of the parties*

9. The *State* reported on various strategies implemented to reduce overcrowding in the migrant reception stations, including:

- a) the opening of the San Vicente migrant station in the city of Metetí, in Darien province, in September 2020, with capacity to accommodate 400 persons;¹⁰
- b) the closure of La Peñita migrant station on January 28, 2021;¹¹
- c) the reactivation of Operation Controlled Flow, following the reopening of the border with Costa Rica on April 5, 2021, which allows for the daily transfer of 100 migrants to that country, and the implementation of the new "Protocol

¹⁰ The State indicated that the San Vicente migrant reception station, built with support from international cooperation agencies, was designed in accordance with the "minimum humanitarian standards" established in the SPHERE Project.

¹¹ It added that, since then, the National Border Service (SENAFRONT) has implemented the "Plan for the reorganization and recovery of public spaces in the community of La Peñita" to reduce overcrowding. At the time when the provisional measures were issued, the State had indicated that the facility had capacity to accommodate 500 people, but that there were 1,534 persons there. In September 2020, it stated that there were 1,500 people (mainly from Haiti and Cuba), including 239 children. Subsequently, in its report of January 28, 2021, it provided a document from the National Immigration Service (SNM) indicating that in La Peñita there were 188 persons, of whom 38 were children. *Cf.* State Reports of September 1, 2020, and January 28 and May 21, 2021.

for the Reception of Irregular Migrants” whereby the occupancy of the migrant centers varies every ten days, “thus avoiding a “buildup” of migrants;”¹²
d) granting migrants in an irregular situation “the possibility of voluntary return at the expense of the immigration authorities”¹³ and,
e) the signing of the “Memorandum of Understanding of Cooperation on Irregular Migratory Flows” between Panama and Colombia on April 30, 2021, whereby the Colombian authorities undertake to “share information with the Panamanian counterpart, within a period not exceeding 24 hours, regarding migrants from Colombia who are heading towards the [binational] border.” Despite the foregoing, the State explained that on May 19, 2021, it decided to “temporarily suspend entry into [its] territory through land crossings, river and maritime routes, for all persons coming from the border [with Colombia]” as a “sanitary measure [...] to prevent the spread [...] of COVID-19, not only in Panama but also in the rest of the Americas,” in response to Colombia’s decision to reopen the borders where “around 15,000 irregular migrants were waiting to cross the [...] Darien Gap.”¹⁴

10. Following the public hearing held on May 6, 2021 (*supra* Having Seen 7), the State argued that, upon analyzing the conventional requirements for the adoption of provisional measures, “[the] circumstance of gravity [overcrowding] is not applicable to the MRSs currently operating and to the community that receives the migrants” in the Darien region, namely, Lajas Blancas, San Vicente and the community of Bajo Chiquito.¹⁵ It emphasized that “the concentration of migrants [...] remains at optimal levels” in those centers. It indicated that as of May 30, 2021, a total of 15,797 migrants had entered Panamanian territory, of whom 1,050 were in transit in the migrant centers or in the reception communities, and 110 were minors. On that date, there were 234 migrants in Bajo Chiquito,¹⁶ 287 in San Vicente (which has capacity for 400 persons), and 208 in Lajas Blancas, “considering that its [...] maximum capacity is calculated at 500

¹² It explained that migrants arriving from the Darien jungle enter the community of Bajo Chiquito where they remain for ten days. From here they are transferred to Lajas Blancas, where they have “access to basic services” and “receive assistance from international organizations” and “basic medical care, including COVID-19 tests and quarantine for 15 days.” Subsequently, if they test negative for COVID-19, they are transferred to the San Vicente migrant station, where they await transfer to Los Planes de Gualaca center, located in Chiriquí province, on the border with Costa Rica.

¹³ Cf. State Report of September 1, 2020.

¹⁴ Cf. State Reports of May 21 and June 3, 2021.

¹⁵ The State explained that in the community of Bajo Chiquito “a record of entry, origin and investigation is initiated for each migrant arriving in [the ...] country.” The community of Bajo Chiquito “is accessible by river, both in the rainy season and during the summer, and it is possible to sail from the port of Lajas Blancas [...] or from the port of Peñita [...] both located on the banks of the Chucunaque River [...] in a trip that takes an average of seven hours and may be affected by environmental factors. During the dry season the land routes are open, which shorten the travel time and facilitate access”. Cf. Situation of Bajo Chiquito and Integrated Questions for the Inter-American Court of Human Rights by the National Immigration Service” (Annex 7 to the State Report of May 21, 2021).

¹⁶ At the hearing of July 9, 2020, the State indicated that the community of Bajo Chiquito had capacity to receive 100 people. In June 2021, the State provided a document prepared by the National Immigration Service indicating that its capacity is 150 persons. Cf. Technical reports on the MRSs as of May 30, 2021, of the National Immigration Service (Annex 3 to the State Report of June 3, 2021). However, according to the IOM, an average of 1,114 people were sheltered in Bajo Chiquito during the month of April 2021. In the first week of that period, 1,664 migrants were registered there, while for the last week of the month a total of 583 migrants were registered at the site.” Cf. IOM, “Site Assessment of Migrant Reception Stations, Round 1, April 2021”. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/%28EXT%29PANAMA_ERM_SITEASSESSMENT_ROUND_A2.pdf. [Last visited on June 24, 2021]. The State indicated that one of the projects in the area involves the “construction of wooden facilities for the Bajo Chiquito migrant reception station, with capacity for 1,000 people” (*infra* footnote 19), but did not refer to the matter again. Cf. Note No.053/SGMSP/2021 of April 30, 2021, addressed to the Minister of Foreign Relations of Panama (Annex 2 to the State Report of May 21, 2021).

persons.”¹⁷ It also pointed out that the migratory flow is expected to slow down during the rainy season (May to December) owing to the increased dangers of “walking along the jungle trails of the Darien due to the swollen rivers and severe weather conditions,” for which reason the expectation of overcrowding in the migrant stations “is even lower.”¹⁸

11. The State also pointed out that, in order to allow for adequate social distancing and thus prevent infections in the migrant stations, “migrants are kept outdoors, in their respective family bubbles,” in an effort to preserve the family unit principle. It explained that, in the case of Lajas Blancas, specific areas have been designated for people who have recovered from COVID-19, for those who are considered “contacts (negative or undetected tests)” and an isolation area for people who test positive and who are separated from the tents where non-infected persons are housed. The State argued that, with the same preventive purpose in mind, it has made investments in infrastructure and basic services in Lajas Blancas and San Vicente to guarantee “shelter, food and health care for the migrant population,”¹⁹ as well as measures to improve “ventilation, cleaning, disinfection, fumigation and waste collection.” The State explained that the aforementioned biosafety and hygiene measures are carried out “through governmental means, in conjunction with the ‘organized migrants’ committee,”²⁰ which was mentioned prior to the issuance of the provisional measures. It reiterated that this committee is composed of migrants “who are fluent the main languages that are spoken in the MRSs, [namely,] Creole, French, English and Spanish.” This “facilitates a proper channel of communication between the institutions and the migrants” and “has helped to reduce the language barrier,” with support from international organizations in this task. The State also recalled that the migrant centers display informative signs on health and prevention measures” in those languages. In addition, the State indicated that, as of

¹⁷ The State explained that “[t]he capacity of the migrant reception stations corresponds to the percentage divided between the number of persons housed against the occupancy capacity of each shelter.” *Cf.* State Report of June 3, 2021. During the public hearing held on May 6, 2021, the State mentioned that a total of 1,045 migrants were housed in the migrant stations located in the Darien region, with 332 in Bajo Chiquito, 182 in San Vicente and 531 in Lajas Blancas. However, the Ombudsman pointed out that, according to the count made in the morning of that day, there were 186 migrants in Bajo Chiquito, 224 in San Vicente and 394 in Lajas Blancas. Previously, in its report of March 2021, the State had indicated that there were 1,001 migrants (289 in Bajo Chiquito, 367 in Lajas Blancas, and 345 in San Vicente). *Cf.* State Report of March 31, 2021.

¹⁸ *Cf.* State Report of June 3, 2021.

¹⁹ In general, it held that “despite the difficult economic situation, in 2020 it invested more than 10 million Balboas in humanitarian assistance and protection to benefit the migrant population in transit through Panama.” With regard to the construction of the San Vicente station, it explained that “an emergency public procurement process” was implemented, with the sum of two million, one hundred thousand dollars (USD\$ 2,100,000) allocated to build “9 toilets, 12 showers, laundry facilities and an area for drying clothes, a cabin for charging electronic devices, a games area for children and a dining area,” as well as offices and an infirmary. It also listed various construction projects for temporary migrant camps at the station of Los Planes de Gualaca, the expansion of capacity at the reception stations of San Vicente and the construction of wooden buildings for the establishment of an MRS in Bajo Chiquito, as well as the purchase of water treatment supplies to benefit Lajas Blancas and Bajo Chiquito. *Cf.* State Reports of September 1 and October 6, 2020, and May 21, 2021.

²⁰ On these aspects, the State explained that the migrant reception stations “have adequate ventilation, as well as tents that comply with the minimum standards required.” It added that “garbage bags are provided to the organized migrants’ committee, which designates work groups for the daily collection of garbage.” Waste is collected “every other day or according to the requirements of the person in charge” of each migrant station. In addition, it emphasized that the facilities are fumigated daily to combat COVID-19, mosquitoes and snakes, among others, and that migrants are provided with “hygiene kits, alcohol gel, bleach [...and] water” for cleaning. This provision “is reinforced by donations from international organizations and diplomatic missions.” It added that “weekly maintenance is carried out in the facilities of the [stations], [...in] the latrines, washrooms and showers.” It also reiterated that it continues to make monthly deliveries of 5,000 cloth masks for migrants and personnel “in the Darien region” free of charge, as well as “diapers and sanitary napkins” with the support of international organizations. *Cf.* State Report of September 1, 2020 and Note No. 053/SGMSP/2021 signed by the Minister of Public Security of Panama on April 30, 2021 (Annex 2 to the State Report of May 21, 2021).

August 2020, it had organized 18 training courses for migrants on prevention of COVID-19 through personal hygiene measures with the support of the United Nations Children's Fund (hereinafter "UNICEF"), the International Organization for Migration (hereinafter "IOM"), the Red Cross, the Migrant Support Organization, and with the collaboration of leaders of the migrant community in translation tasks.

12. The *representatives* acknowledged "[the] significant progress made in complying with these provisional measures" which entailed the closure of La Peñita, "mainly due to [its] inadequate conditions [...] and high levels of overcrowding" and welcomed the "progressive reduction in the level of overcrowding at [...] Lajas Blancas." However, they requested that the provisional measures remain in effect and, furthermore, requested their extension to other migrant centers located in the Darien region (*supra* considering paragraph 3, and *infra* considering paragraph 59). Since these measures were issued, the *representatives* have maintained that the figures and information given by the State have been "insufficient to determine the level of overcrowding in the centers of La Peñita and Lajas Blancas" because they do "not provide certainty about how many people are detained there [...] or] about [their] current capacity," nor do they provide "a basis for verification and analysis." In this regard, based on the information provided by the State, the *representatives* have alleged that there are contradictions between the occupancy rates in the migrant centers and the increasing numbers of migrants who continue to arrive in the Darien region, at least since October 2020. They emphasized the absence of "clear and complete" information regarding the "specific measures" adopted by the State to contain the increased flows of migrants who continually arrive at the migrant stations. They stressed that this "has left [migrants] in a clear situation of vulnerability to human smuggling and trafficking" and could cause "the overcrowded conditions that existed in the (now closed) facility of La Peñita to be repeated at other migrant stations in the province." In addition, they pointed out that the closure of the border with Colombia "could have a negative impact in terms of overcrowding" given that, when it is reopened, "the accumulated flows could collapse the reception capacity of the [migrant] shelters."²¹

13. At the same time, the *representatives* objected to the lack of detailed information on the condition of the buildings at the migrant holding centers, particularly at the San Vicente station, which could hinder efforts to "ensure that the [preexisting ...] overcrowded conditions in La Peñita and Lajas Blancas are not repeated."²² On this point, they affirmed that the State should report, at least, "on the number of people that can be accommodated and the space allocated for each person - in square meters - for living and sleeping, as well as on conditions such as ventilation, natural light and sanitation services" and also on "the condition of the latrines and showers" and alternative arrangements for people with risk factors. Furthermore, based on a report published by the IOM, they highlighted various structural issues at Lajas Blancas that would hinder

²¹ Cf. Briefs containing observations of the representatives of February 23, and May 21, 2021.

²² They pointed out that, while La Peñita was open, the State had failed to report on the measures adopted to improve ventilation at the facility, considering that "even before the health crisis" this was very limited, since the "walls made of zinc sheeting [together with] the overcrowding of the population, produc[ed] high temperatures." In addition, they pointed out that the State did not mention whether the migrants in charge of cleaning had adequate protective equipment to carry out their activities, or whether soap was provided or whether the free provision of hygiene kits, including masks, was sufficient. In relation to the free provision of hygiene kits, they pointed out that, according to the coverage in the national press, at La Peñita almost nobody used a mask. They also indicated that the disturbances that occurred in August 2020 at La Peñita and Lajas Blancas, resulted in "the destruction of certain habitable tents" and of others used for medical care, and that there is no information as to whether those structures were replaced in a timely manner. Cf. Briefs containing observations of the representatives of October 1 and November 2, 2020 and February 23, 2021.

efforts to “prevent the spread of COVID-19 and [ensure] the effective exercise of rights.”²³ At the hearing, Mr. Vélez Loor pointed out that “the State of Panama continues to detain migrants and does not have appropriate facilities for this purpose.” He warned that, in the context of the pandemic, this would put migrants “at great risk of infection and even death.”

14. Finally, the representatives questioned the efficacy of the training provided by the State on personal hygiene and COVID-19 prevention measures, given that many migrants had difficulties understanding the information in the absence of suitable translation mechanisms.²⁴

A.3. Considerations of the Court

15. The Court recalls that in the Order of July 29, 2020, it considered that the overcrowded conditions affecting 1,534 migrants at the migrant reception station of La Peñita, a facility with capacity for 500 people, exposed them to a situation of extreme gravity.²⁵ The Court also emphasized that such a level of overcrowding had an impact on the real possibilities of complying with adequate standards of ventilation, social distancing and hygiene.²⁶

16. The Court considers very positive the fact that, as a consequence of the execution of these provisional measures, the State proceeded to close La Peñita in January 2021, given that this establishment did not comply with the minimum standards required to adequately house migrants.²⁷ The Court also highlights the State’s significant achievement in ensuring that, in order to implement these provisional measures, the closure was preceded by the expeditious procurement and construction of a new migrant reception station in the community of San Vicente, in the province of Darien. This facility began to operate in September 2020, providing shelter for 400 migrants, including those from La Peñita. Undoubtedly, these measures, together with the other actions reported by the State (*supra* considering paragraphs 9 and 11), reveal the significant efforts made by Panama to swiftly implement concrete actions aimed at reversing the conditions that gave rise to the request for provisional measures and, in particular, to improve sanitary conditions and eradicate overcrowding so as to prevent the spread of COVID-19.²⁸

17. Regarding the current situation in the migrant centers and reception communities of the Darien region, the State has been reporting since March 31, 2021, that none of those facilities are overcrowded (*supra* considering paragraph 10). The Court appreciates that, as of May 30, 2021, neither Lajas Blancas nor San Vicente were overcrowded. However, upon examining the information provided by the State itself regarding the capacity of the migrant centers in Darien and the migrant population sheltering in the reception community of Bajo Chiquito (*supra* considering paragraph 10 and footnote 16), the Court notes that the number of migrants received by said community has remained permanently above its capacity.

²³ Based on the IOM report, they pointed out that a percentage of the population in the Lajas Blancas station lives “outdoors” or “in improvised shelters due to the lack of tents”, and that “less than 25% [of the people] have access to mosquito nets”. Cf. Brief of observations of the representatives of May 21, 2021.

²⁴ Cf. Brief of observations of the representatives of October 1, 2020.

²⁵ Cf. *Vélez Loor v. Panama. Provisional measures, supra footnote 3*, considering paragraph 25.

²⁶ Cf. *Vélez Loor v. Panama. Provisional measures, supra footnote 3*, considering paragraph 29.

²⁷ Based on information provided by the State and the Ombudsman’s Office at the public hearing held in May, 2021.

²⁸ Cf. *Vélez Loor v. Panama. Provisional measures, supra footnote 3*, considering paragraph 12(d).

18. As for the migratory flows that such reception stations and shelters might have to contend with, the Court points out that the State itself acknowledged the upsurge in such flows, which have increased since the opening of the borders (*supra* considering paragraph 9(e)). The Court highlights the importance of coordination between Panama and Costa Rica to reactivate "Operation Controlled Flow," as well as the coordination between senior government authorities of Panama and Colombia which have concluded with the signing of a binational agreement (*supra* considering paragraph 9(e)). This agreement will facilitate alerts, operational information and the preparation of a humanitarian response in the event of sudden increases of migrants. In this scenario, and anticipating the imminent variability in the number of people arriving at the migrant stations of the Darien region, it is essential that the State disclose the additional contingency measures that are planned to scale up the capacities of the reception centers and safe transit spaces for migrants. This is especially important considering the changing situation, aggravated by the current pandemic, in which restrictions on movement - such as quarantine upon entry into the country, the closure of borders and the consequent buildup of migrants at the border - will likely continue. Indeed, the State itself acknowledged that, faced with the possibility of the sudden arrival of approximately 15,000 migrants through the Darien Gap, it decided to temporarily suspend entry to the country by land and sea on May 19, 2021 (*supra* considering paragraph 9(e)), a measure that remains in force on the date of the issuance of this order.

19. In its Order of July 29, 2020, the Court indicated that it did not have information "on how adequate ventilation and social distancing is ensured among those housed [in the migrant centers] and the personnel who work there, in order to prevent the spread of COVID-19."²⁹ While the Court appreciates the State's efforts to encourage migrants to spend part of the day "outdoors and in their respective family bubbles" (*supra* considering paragraph 11), it is necessary that the State explain in its next report how adequate ventilation is ensured in the communal areas, as well as in the living quarters. The Court notes that the information published by the IOM states that only some of the families or groups of migrants have access to mosquito nets,³⁰ which could make it difficult to ventilate the tents, especially at night during rest periods when they are more crowded.

20. The Court also notes that, in April 2021, the IOM reported that in each migrant station there are people living outdoors and that all of them lack various supplies, including soap.³¹ In the case of Bajo Chiquito, this situation - which was also confirmed on the ground by the Ombudsman's Office of Panama -³² is of particular concern given that, as indicated by the State, many of those arriving in the Darien after trekking through the jungle suffer from severe health problems (*infra* considering paragraphs 31

²⁹ Cf. *Vélez Loor v. Panama. Provisional measures*, *supra* footnote 3, considering paragraph 29.

³⁰ 25 % in Bajo Chiquito, 33 % in San Vicente and 50 % in Lajas Blancas. Cf. IOM, "Site Assessment of Migrant Reception Stations, Round 1, April 2021", *supra* footnote 16.

³¹ 37 % in Bajo Chiquito and 12% in Lajas Blancas. Cf. IOM, "Site Assessment of Migrant Reception Stations, Round 1, April 2021", *supra* footnote 16.

³² "It does not have infrastructure to shelter migrants, who are placed in tents or in houses that are rented by the inhabitants of this community; other migrants live in open fields in camping tents." Cf. Brief of the Ombudsman's Office of Panama of May 21, 2021. The IOM, for its part, emphasized that in Bajo Chiquito "migrants do not have access to feminine hygiene products, disposable diapers or toilet paper." They also need cooking implements, "mosquito nets, blankets, beds or mattresses, cots and soap" and "the installation of handwashing areas." Cf. IOM, "Site Assessment of Migrant Reception Stations, Round 1, April 2021", *supra* footnote 16. In addition, to illustrate this point, a report prepared by the Ministry of Health of Panama mentions that in Bajo Chiquito an average of 1,500 people are in a space in which basic services have been calculated for the 485 native inhabitants. Cf. Situation report on the intervention of the health team in the community of Bajo Chiquito and its health status, May 14, 2021, Ministry of Health of Panama (Annex 7 to the State Report of May 21, 2021).

and 43 to 45). For this Court it is obvious that the lack of basic infrastructure to enable people to protect themselves from inclement weather, and also to have some degree of privacy, can cause situations of tension and conflict, a matter highlighted by the State in relation to La Peñita (*infra* considering paragraph 33); it also exposes women and children to situations of violence (*infra* considering paragraph 56). Similarly, the information provided does not show how the State ensures the appropriate conditions and supplies to enable migrants to adopt, during the ten days - at least - that they must remain at Bajo Chiquito (*supra* considering paragraph 9.c), adequate hygiene measures in the context of the pandemic, which would also help them prevent other diseases typical of that region, or recover from their perilous journey. These needs become even more evident given the existing obstacles to accessing adequate and timely medical care (*infra* considering paragraphs 43 to 45). This is reinforced by the fact that the State itself, in its report of June 14, 2021, stated that Lajas Blancas "is the first community on the migrants' route through Panama that has sufficient public services." (*supra* footnote 12).³³

21. Nevertheless, the Court considers it positive that the State has reported the application of "international humanitarian standards" as a reference for the construction of the new San Vicente station (*supra* considering paragraph 9(a)). However, from the information provided on the infrastructure at the remaining migrant stations, it is not possible to know whether isolation areas are provided for those who develop symptoms of COVID-19 in Bajo Chiquito, San Vicente or in Los Planes de Gualaca, before or after being transferred to Lajas Blancas, as well as spaces to protect people with major risk factors for severe symptoms of the disease, recognized as such by the scientific community.

22. The Court also appreciates the continued involvement of the Migrants' Committee (*supra* considering paragraph 11) and stresses the importance of its participation in efforts to organize and promote, in various languages, cleanliness and hygiene measures for the prevention of COVID-19 and other diseases.

23. Finally, with respect to measures to "overcome legal, language and cultural barriers that hinder access to health care and information" (*supra* considering paragraph 8(h)), the Court recalls that the State itself identified such barriers as one of the main problems in ensuring adequate care for the population in the migrant stations.³⁴ However, although the State reiterated the information provided prior to the adoption of these measures regarding the actions taken by the Migrants' Committee to facilitate communication between the authorities and the migrants in the shelters, it did not indicate whether it has adopted additional measures to ensure that all migrants have adequate access to information and, additionally, that effective access to health care is ensured by safeguarding confidentiality and informed consent in medical procedures, an aspect that was raised by the representatives (*supra* considering paragraph 14). This Court also stresses the importance of establishing communication mechanisms to ensure that information on measures to prevent infection, maintain hygiene and any other type of information concerning the restriction of migrants' rights is understandable.

B. Measures to provide food, water and sanitary products to prevent COVID-19 infection

³³ Cf. State Report of June 14, 2021.

³⁴ Cf. *Vélez Lóor v. Panama. Provisional measures*, *supra* footnote 3, considering paragraph 12(h).

B.1 Minimum requirements indicated by the Court

24. In considering paragraph 35 of the Order of July 29, 2020, the Court established the following requirements to guarantee the rights of persons in the migrant reception stations in the context of the pandemic:

- 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 provision of 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.
- o) Ensure that the measures adopted do not promote xenophobia, racism or any other form of discrimination.

B.2. Information and observations of the parties

25. With regard to the provision of food, the *State* explained that the food offered to migrants, including pregnant women, is the same as that consumed by the personnel of the National Border Service “at breakfast, lunch and dinner.”³⁵ It added that each station in the Darien region has a system for the “distribution of drinking water.” The *State* listed the quantities of drinking water allocated to each migrant center and, with respect to Lajas Blancas, explained that “the water treatment plant has suffered failures” and therefore the supply of water is supplemented with a tanker truck and bottled water, so as to “maintain a capacity of 47,733.94 liters of water per week; [and that] with an occupancy of no more than 300 people, [...this] means a total of 33 liters of water per person per day, more than double the amount established in the SPHERE standards, which is 15 liters per day.”³⁶

26. Regarding access to food, the *representatives* reported that UNICEF had detected cases of child malnutrition at La Peñita and noted the lack of detailed information from

³⁵ It added that in Lajas Blancas and in San Vicente hired personnel are in charge of “the preparation, supply and distribution of food for migrants.” It also indicated that during the month of September 2020 “fortified milk was delivered [...] to nursing mothers,” thanks to donations from a pharmaceutical company. That same month, the *State* announced the opening of a public bidding process for USD\$7,600,000 (US dollars) to equip the kitchens of the migrant stations located in the Darien region with industrial appliances, food refrigeration rooms, “gas tanks, a power plant [...and] a water tank.” *Cf.* State Reports of September 1, 2020 and May 21, 2021.

³⁶ The *State* explained that when La Peñita was in operation, 50,000 liters of water were purified there daily, “that is, 28 liters per migrant per day,” reinforced with 30,000 liters weekly distributed by tanker trucks. In addition, there were 19 portable toilets and six water faucets. In Lajas Blancas, water is provided by “a tanker truck that delivers 10,000 gallons per week” together with “500 gallons of bottled drinking water” for personal consumption. There are 22 water outlets “which are in operation.” There are also 48 showers, 23 latrines and seven portable toilets in the camp. *Cf.* State Reports of September 1, 2020 and May 21, 2021. In San Vicente drinking water is obtained from “the water treatment plant located in Villa Darien”; there are six water intakes “in operation” and “an unlimited capacity of water per day is maintained.” In Bajo Chiquito there is a water treatment plant, managed by the Red Cross, which produces 100,000 liters of water daily and “is distributed to 11 hydration points, including the health station.” In addition, the National Immigration Service “is negotiating the acquisition and purchase of a 10,000-gallon water storage tank.” *Cf.* Updated Report of the National Immigration Service (Annex 1 to the State Report of June 3, 2021).

the State about the amount of food delivered to each migrant station, as well as the lack of information on the distribution of fortified milk for nursing mothers. They also emphasized the fact that the food is the same for everyone, with no provision for specific nutritional needs, for example, for pregnant women and nursing mothers. As for access to drinking water, they considered that the information provided by the State does not make it possible to know whether the distribution systems in the migrant stations meet the population's needs or comply with "the minimum humanitarian standards for drinking water," especially since "they are located in a jungle area with high temperatures and risk of infection," or whether repairs were made to the water purification system at Lajas Blancas to ensure its availability for consumption.³⁷

B.3. Considerations of the Court

27. The Court emphasizes the major improvements implemented by the State in conjunction with international cooperation to guarantee the provision of water for general use and for drinking. (*supra* considering paragraph 25).

28. Nevertheless, the Court also notes that the State has not explained how it meets the specific nutritional needs of pregnant women and children in Lajas Blancas and Bajo Chiquito,³⁸ in light of the allegations made by the representatives regarding the detection of cases of malnutrition (*supra* considering paragraph 26). Nor has it provided information on the resources available to the National Immigration Service to follow up on alleged cases of malnutrition in Lajas Blancas.

C. Measures to guarantee the right to health and prevent infection

C.1. Minimum requirements ordered by the Court

29. In considering paragraph 35 of the Order of July 29, 2020, the Court established the following requirements to guarantee the rights of persons in the migrant reception stations in the context of the pandemic:

- 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 to verify 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.

³⁷ According to information published by the IOM, the water treatment plants were not in operation in July 2020, which also prevented the use of latrines. *Cf. Vélez Loor v. Panama. Provisional measures, supra note 3, footnote 42.* In this regard, the representatives reiterated the information presented prior to the Order of 2020, based on information published by the IOM, according to which La Peñita had only 22% of the number of latrines required by the minimum standards, and 7% of the showers required. *Cf. Observations of the representatives of November 2, 2020.*

³⁸ However, this information has been submitted for the San Vicente station. *Cf. Technical reports for migrant reception stations up to May 30, 2021. Document prepared by the National Immigration Service (Annex 3 to the State Report of June 3, 2021).*

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.

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.

C.2. Information and observations of the parties

30. The *State* reported on the types of medical care provided to migrants in the migrant stations and in the community of Bajo Chiquito (*infra* considering paragraphs 31 to 35), including mental health care (*infra* considering paragraph 35), the number of people who have been infected and the number of people who have recovered (*infra* considering paragraph 32). It also reported on several incidents that occurred at the migrant stations in August 2020, which led to the resignation of medical personnel and resulted in a decrease in the number of health professionals at La Peñita - then open - and at Lajas Blancas (*infra* considering paragraph 33).

31. In its report of September 1, 2020, Panama described in general terms the free medical care it provides to the migrant population in Darien province, including prevention³⁹ and treatment for COVID-19 as well as prenatal and postnatal care⁴⁰ and for various "causes of morbidity," since "the migrants arrive at [the] shelters with severe cases of malnutrition, dehydration and skin infections after their journey through the Darien jungle."⁴¹

32. With respect to health care in the face of the spread of COVID-19, the *State* explained that the management of this disease is based on the national protocols developed in January 2020. These are updated according to "the evolution of the pandemic in the country,"⁴² and through the Traceability Operations Center established in the province of Darien. The *State* added that Rapid Response Teams, comprised of a doctor, a nurse and/or nursing technician and a driver, were assigned to La Peñita, Lajas Blancas and San Vicente.⁴³ It also explained that Lajas Blancas was designated as a treatment and monitoring center for positive COVID-19 cases and contains different

³⁹ Preventive care includes: "taking the body temperature to check whether [the person] has fever;" distribution of "masks and alcohol;" application of various vaccines of the traditional immunization schedules, and pregnancy control as part of the "Sexual and Reproductive Health Program applied throughout the national territory." Cf. State Report of September 1, 2020.

⁴⁰ Prenatal control includes: "a. Monthly medical checkup; b. Obstetric ultrasound [...] at the Manuel Nieto Yaviza Hospital [...]; c. Laboratory tests [which include] complete blood count, urine test, glycaemia, VDRL, toxoplasmosis, cytomegalovirus and HIV test, [...and] swabs." It added that the sexual and reproductive health services program includes "prophylaxis of sexually transmitted diseases with antibiotics." However, the *State* indicated that since the reactivation of the migratory flows in January 2021, "the monitoring of chronic non-communicable diseases and prenatal controls have declined, given that the stay of each migrant is shorter, [...] which limits the possibility of performing laboratory tests [...] pregnancy tests and serology (antibody) tests to continue the controls." Cf. State Report of September 1, 2020, Note No. 1230-DMS-OAL signed by the Minister of Health of Panama, April 30, 2021 (Annex 1 to the State Report of May 21, 2021).

⁴¹ Cf. State Report of September 1, 2020.

⁴² The *State* listed the following: "a. Operational Plan of the Health System for the prevention and control of the novel coronavirus; b. Action Plan to address an outbreak or epidemic of COVID-19 in the national territory; c. Circular No. 27 of the General Directorate of Health: definitions of COVID-19 cases and contacts." It explained that, for suspected cases, "a sample is taken using swabbing techniques. If a person tests positive for COVID-19, the Rapid Response Team searches for the patient's contacts," who are swabbed if they present symptoms, or undergo a serology test if they are asymptomatic.

⁴³ Cf. Note No. 1230-DMS-OAL signed by the Minister of Health of Panama, of April 30, 2021 (Annex 1 al State Report of May 21, 2021).

sectors for infected patients, their contacts, recovered persons, and also for those who, with the reactivation of the migratory flows, are referred to Lajas Blancas for “sanitary quarantine” after arriving at Bajo Chiquito (*supra* considering paragraph 11 and footnote 12).⁴⁴ Regarding the implementation of action protocols, the State indicated that “the security agencies take the temperature of external personnel entering the premises,” which are equipped with “alcohol gel dispensers.” In response to the representatives’ objections (*infra* considering paragraph 37), the *State* pointed out that in the event of a possible deterioration in their health, migrants can be transferred to “a health facility with more advanced treatment capabilities” “with the support of SENAFRONT, which has a van and an ambulance permanently available” and that “the process of transferring patients with COVID-19 [...or those] with other diseases [...] is the same as for the people who live in the national territory.”⁴⁵ It specified that, as of May 14, 2021, 407 cases of COVID-19 had been diagnosed, of which 11 remained active (7 cases in Lajas Blancas and 4 persons in hospital), while 393 persons had recovered since the beginning of the pandemic, and three had died (2 in San Vicente and 1 in Bajo Chiquito).⁴⁶ It added that, by that same date, the health authorities had carried out a total of 1,454 swabs for PCR tests, 1,612 tests using “antigen detection by immuno-chromatography, 465 using detection by immunofluorescence (SOFIA) and 1452 antibody tests.”⁴⁷

33. Regarding the number of health workers assigned to each migrant station, in September 2020 the State reported that, since April of that same year, two Rapid Response Teams⁴⁸ and a Red Cross medical team had been assigned to La Peñita⁴⁹ while five Rapid Response Teams, consisting of a doctor, a nurse and a driver, had been assigned to Lajas Blancas. However, in October 2020, the State reported that “only two Rapid Response Teams were working” in Lajas Blancas, although this was later reduced to one (which visited “two or three times a week”). The State alleged that the reason for the reduction in medical staff was, on the one hand, because “the distribution of personnel was restructured,” after which the rest of the rapid response teams were assigned to “support the non-migrant community, owing to the increase in COVID-19 cases among the general population,” and, on the other hand, due to “the resignation of health workers in the region.” In greater detail, it explained that some medical personnel had resigned as a result of the acts of violence allegedly committed by migrants at La

⁴⁴ Migrants can continue their journey after fifteen days. *Cf.* State Report of May 21, 2021.

⁴⁵ The State explained that the Lajas Blancas Health Subcenter, the Metetí Maternal-Child Health Center and the Canglón Health Subcenter are located “a few minutes” by car from Lajas Blancas and San Vicente, which “was specially adapted to receive migrants after the closure of [...] La Peñita.” The State added that “whenever a migrant’s condition requires him or her to be transferred to a more complex health facility, the health workers coordinate actions in accordance with the Single Referral System (SURCO) to ensure the continuity of care, which determines whether the patient requires the assistance of a specialist.” It indicated that the Metetí and Santa Fe Maternal-Child Health Centers, both first-level facilities, are at a distance of “15 to 20 minutes by car” from the migrant stations. In more serious cases, patients are transferred to the Chepo Hospital, a second-level facility, located “two and a half hours away.” Migrants may also receive treatment at the third-level hospital of Santo Tomás, located in the country’s capital, and specialist treatments are coordinated with this establishment and with the Chepo Hospital. *Cf.* State Report of September 1, 2021, Note No. 1230-DMS-OAL signed by the Minister of Health of Panama, on April 30, 2021 (Annex 1 to the State Report of May 21, 2021), “Situation of Bajo Chiquito and Integrated Questions for the Inter-American Court,” report prepared by the National Immigration Service (Annex 7 to the State Report of May 21, 2021), and State Report of June 14, 2021.

⁴⁶ *Cf.* Report on the total number of migrants diagnosed with COVID-19, active and recovered patients, as of May 14, 2021, of the Ministry of Health of Panama-Darien Health Region (Annex 1 to the State Report of June 14, 2021).

⁴⁷ *Cf.* Note No.DMS-OAL-1381-21 of May 19, 2021, report signed by the Minister of Health (Annex 2 to the State Report of June 3, 2021).

⁴⁸ “Provides daily service from 7:00 a.m. to 3:00 p.m., comprised of a doctor, a nurse or nursing technician.” *Cf.* State Report of September 1, 2020.

⁴⁹ Comprised of a doctor, a nursing technician and an environmental health officer. *Cf.* State Report of September 1, 2020.

Peñita and Lajas Blancas, in August 2020, prompted by uncertainty over the continuation of their journey and the reopening of the borders. The State added that this situation created “an atmosphere of frustration and aggressiveness among the migrants.” As a result of these events, “the medical tents in [...] La Peñita” were set on fire or cut down, along with all the medical supplies stored inside. “In the absence of a place to provide adequate care [,] treatment for spontaneous morbidity illnesses was being provided in a mobile unit facilitated by the Red Cross.”⁵⁰ The State presented a report signed by the Minister of Health which stated that “the medical services provided at [...La] Peñita [...] were suspended in the month of August [2020].”⁵¹ In view of this situation, [the Minister] explained that “migrants from La Peñita” who manifested signs of illness could be transferred to the Metetí Medical Center for medical evaluation.

34. In addition, based on a report prepared by personnel of the Darien Health Region, who visited the community of Bajo Chiquito on April 29, 2021, the State indicated that this location, which is “the most remote on the migrants’ route,” has a health post staffed by a “health assistant”⁵² with “the permanent support of paramedics from SENAFRONT.” It added that, “since [...] April 1, 2021,” the non-governmental organization *Médecins Sans Frontières*, together with local health workers, have been providing support with three teams six days a week for a period of three months, from 7 a.m. to 3 p.m.⁵³

35. The State also maintained that mental health care is provided to the migrant population through the region’s health network (*supra* considering paragraph 32 and footnote 45) by “general practitioners and nurses,” since there are no specialists in psychological or psychiatric care in the Darien Health Region. Similarly, in January 2021, the State reported that the “Technical Standards for Mental Health Care for the Migrant Population,” prepared by the National Mental Health Section of the General Directorate of Health was 85% complete and was “undergoing validation by international agencies that provide mental health assistance,” such as UNHCR, IOM and the International Red Cross.

⁵⁰ The State provided a copy of the complaint filed by an operational assistant of the Metetí-Darien primary health care unit before the Public Prosecutor’s Office on August 3, 2020, which listed all the medical supplies that were stored in “three types of tents belonging to the Ministry of Health” in La Peñita, which were “burned down by migrants”. Cf. File No. 20200037224 of the Public Prosecutor’s Office of Darien province (Annex 1 to the State Report of October 6, 2020). It also provided a copy of a report prepared by an official of the Panamanian Red Cross which stated that on August 1, in Lajas Blancas, when “the team of the International Red Cross and UNICEF were delivering hygiene kits to the migrant population, [...] a protest took place that [...] gradually turned more aggressive, [...as result of which] the team decided to stop the distribution and evacuate the camp.” [F. 394] The report adds that in La Peñita, on the same day, “the population rose up against the authorities [...], two UNICEF tents were completely incinerated and with them medical equipment and supplies,” together with other damage that affected the medical supplies stored there. Cf. Copy of report of the support group of the Panamanian Red Cross (Annex 2 to the State Report of October 6, 2020).

⁵¹ Cf. Note No. 1230-DMS-OAL signed by the Minister of Health of Panama, on April 30, 2021 (Annex 1 to the State Report of May 21, 2021).

⁵² The activities he performs “are minimal” with respect to patients, since “his training is empirical” and he is trained in “initial emergency management” and to identify cases that require referral to a more complex facility. The health post lacks “a supply of medicines and inputs like those we could find in a facility of greater complexity (Health Centers in the case of Darien) which are staffed by personnel with more advanced academic qualifications.” Cf. Situation of Bajo Chiquito and Questions prepared for the Inter-American Court by the National Immigration Service” (Annex 7 to the State Report of May 21, 2021).

⁵³ In addition, “according to service needs, coverage will be extended from 3:00 pm to 11:00 pm (considering that the migrants usually arrive in the afternoons [,] and even at night).” The tasks assigned are as follows: “health controls (growth and development monitoring and prenatal checkups); treatment of wounds and treatments administered parenterally; treatment of morbidities and emergencies that arise among the general population; identification and timely management of victims of sexual violence, and management of short-stay patients (up to 72 hours) minimizing the need for their transfer to other health facilities.” Cf. Program for the Strengthening of Integrated Health Services Networks/Coordination of Care for Migrants. Situation Report on the Intervention of the Health Team in the Bajo Chiquito Community and its current health situation (Annex 4 to the State Report of June 3, 2021).

36. Finally, in response to the question raised by the Court during the public hearing as to whether the COVID-19 prevention plan includes any action related to the possible vaccination of migrants, Panama explained that its vaccination program “does not distinguish [...] between nationals and foreigners, whether documented or undocumented.” Subsequently, in its written report, the State added that it was “analyzing the possibility - depending on the country’s situation - of vaccinating the migrant population at the times and in accordance with the vaccination phases established for the general population, complying with the phases and risk groups.”⁵⁴

37. The *representatives* expressed concern at the absence of medical care in La Peñita, during the time it was open, as a result of the decrease in the Rapid Response Teams, especially considering the increase in the number of migrants arriving in the Darien region during the second half of 2020, and the fact that some of them had tested positive for COVID-19.

38. The *representatives* also pointed out that, although the State indicated that migrants could be transferred to a health center, it did not specify “the guidelines used to decide when to transfer a person or whether an ambulance is available 24 hours a day for such transfers, [...while,] it appears that a transfer may only take place in urgent cases, which means that people cannot access immediate medical attention, according to their needs.”⁵⁵ They also noted that the hospitals are located at great distances, “which means that a timely response for medical treatment is impossible.” At the hearing, they indicated that, according to information prepared by international organizations, the capacity of the health services offered at Bajo Chiquito and Lajas Blancas is saturated due to the large number of migrants present there. They added that at least two migrants had died at La Peñita,⁵⁶ without providing specific information on “the type, quality and number of times these individuals received medical attention [...] with the necessary urgency.” Similarly, based on the aforementioned report of the Ombudsman’s Office, they referred to “deficiencies in the medical care provided at [...] Lajas Blancas, as well as the lack of an institutional response from the State to implement a contingency plan or protocols [...] to prevent infections” in the migrant stations.⁵⁷

39. Furthermore, prior to the hearing, the *representatives* expressed concern at “not knowing the [current] situation of pregnant women from La Peñita” or their number, when it was operating, and whether the State provides other services “related to sexual and reproductive health care for the women who were detained at [...] La Peñita and [...] Lajas Blancas.”⁵⁸

40. They also expressed their disquiet over the lack of information on mental health care. In this regard, they argued that the State identified “persons detained at the migrant stations who suffer from mental disorders,” but did not explain whether “those

⁵⁴ Cf. Note No.DMS-OAL-1381-21 of May 19, 2021, report signed by the Minister of Health (Annex 2 to the State Report of June 3, 2021).

⁵⁵ Cf. Brief of observations of the representatives of November 2, 2020.

⁵⁶ They stated that, according to “several national press reports,” on August 12, 2020, a migrant woman died “at La Peñita migrant station before being transferred to the Santo Tomás Hospital [... which] is located in Panama City, several hours away by road.” In addition, based on a UNICEF report published in June 2020, they cited the case of a two year-old migrant child who had been transferred from La Peñita to Planes de Gualaca “as a measure to reduce overcrowding” and who died on June 26, 2020 “from respiratory problems and fever.” Cf. Brief of observations of the representatives of October 1, 2020.

⁵⁷ Cf. Brief of observations of the representatives of February 23, 2021.

⁵⁸ Cf. Brief of observations of the representatives of November 2, 2020.

individuals have received personalized attention,⁵⁹ or whether access to such care is available to the entire migrant population.

41. Finally, they pointed out that the State “did not provide a precise answer as to how [...] it intends to vaccinate the migrants in the migrant stations.”⁶⁰

C.3. Considerations of the Court

42. The Court appreciates the information submitted by the State regarding the medical care provided to the migrant population. In particular, the Court notes - at least preliminarily - that the imminent outbreak of COVID-19 infections that gave rise to the request for provisional measures has been contained. According to data provided by Panama, in mid-May 2021, there were 11 active cases of COVID-19, out of a population of approximately 1,050 migrants who were in transit during that same month in migrant stations throughout the country (*supra* considering paragraph 32).

43. Without prejudice to the foregoing, according to information gathered by the Ombudsman’s Office from its field visits to the migrant centers in the Darien region,⁶¹ no medical care is permanently available in the migrant stations, including in Lajas Blancas which is specifically for infected persons. Furthermore, although SENAFRONT personnel are constantly available, the Court notes that they are not legally authorized to perform certain activities that are the exclusive competence of a doctor, such as prescribing medication to treat ailments, nor are they trained to interpret specific symptoms or their evolution with the same precision as a health professional, or to identify all conditions that may be serious. The Court notes that the Ombudsman also mentioned the lack of adequate infrastructure to deliver medical care to migrants. Thus, although the State listed the health centers that offer more advanced treatment to which migrants can be transferred (*supra* considering paragraph 32), it is not clear what emergency medical care options are available at times when a health professional trained to identify an emergency is not present or if there are sufficient SENAFRONT personnel to accompany patients during their transfer so as not to delay treatment. Similarly, it is not clear whether the State plans to assign more health professionals in the event of a possible increase in the migratory flows, or a possible outbreak of infections in the migrant stations. The situation is more serious in Bajo Chiquito, where the team of the Darien Health Region of the Ministry of Health confirmed in the field that, “[g]iven the conditions in which the migrants arrive at this migrant station [...], the need for health services in this place is greater than in [...] Lajas Blancas and San Vicente[,...] and [...] the situations they experience during their journey through the Darien jungle, plus the distance between this reception station and health facilities with greater capacity to provide treatment than the community health post, which increases the vulnerability of this population.”⁶² The Court also recalls that the State recognized that, for the most part,

⁵⁹ Cf. Brief of observations of the representatives of November 2, 2020.

⁶⁰ They requested that the State provide information on: “which vaccine will be applied to the migrant population” and, in relation to this, “how long they would have to remain in Panama to complete the doses”; also, “what measures will be adopted to guarantee the safety of the vaccines in the Darien, for example, [regarding] cold chains” and “how to ensure the free and informed consent of the migrants, taking into account the different languages” of said population. Cf. Briefs of observations of the victims’ representatives of May 21 and June 3, 2021.

⁶¹ According to that information, the migrant centers “do not have permanent medical staff, since the [doctors] who visit divide their shifts or time with the care of the population in the extensive province of Darien.” Cf. Brief of observations of the Ombudsman’s Office of Panama of May 21, 2021.

⁶² Cf. Ministry of Health of Panama, Report on Bajo Chiquito – Darien (Annex 4 to the State Report of June 3, 2021).

the health of migrants who arrive at Bajo Chiquito “is compromised as a result of their journey through the jungle, [with] fluid and electrolyte imbalances, heatstroke and tropical diseases inherent to the terrain through which they travel, as well as trauma due to falls, gunshot wounds and other injuries.”⁶³ Taking into account the foregoing, the Court appreciates the valuable efforts made by the State to increase medical care in Bajo Chiquito through its partnership with the non-governmental organization *Médecins Sans Frontières* (*supra* considering paragraph 34).

44. However, the Court is also concerned at the lack of detailed information on the provision of comprehensive care at each of the migrant centers for women, girls and adolescents who, upon arriving in Panama, report having been victims of sexual violence during their journey through the jungle.

45. Certainly, the above circumstances reveal the risks to their life and health faced by persons entering Panama through the Bajo Chiquito route, and it is not clear whether they are tested to detect the presence of COVID-19 or whether the national protocols referred to by the State are applied.

46. Similarly, based on Panama’s statement on the possible inclusion of migrants in the “vaccination programs [against COVID-19] established for the general population” (*supra* considering paragraph 36), this Court deems it necessary to clarify the implications of the principle of equality and non-discrimination with regard to the migrants’ access to those vaccinations.

47. In accordance with the principle of equality and non-discrimination,⁶⁴ States must ensure that migrants have access to vaccination programs without any distinction based on their nationality or migratory status, under the same conditions as nationals and residents. This Court understands that, in the current context, the shortage of COVID-19 vaccines makes it difficult for many countries to ensure that all persons have immediate access to vaccines, and therefore priority groups must be established. In this regard, States may only establish objective and reasonable distinctions when these are made with due respect for human rights and in accordance with the principle of applying the norm that best protects the individual.⁶⁵ In this sense, the Court agrees with the view expressed by several specialized organizations, namely that any distinctions established for the prioritization of access to COVID-19 vaccines must be made on the basis of medical needs and on scientifically established risk criteria, including all persons who meet the requirements of a priority group, regardless of their nationality or migratory status.⁶⁶

⁶³ Cf. State Report of June 3, 2021.

⁶⁴ Characterized as a *jus cogens* norm, which implies that States may not discriminate or tolerate discrimination against migrants. Cf. *Case of Vélez Loor v. Panama*, *supra* footnote 1, para. 248. See also: *Juridical condition and rights of undocumented migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 105.

⁶⁵ Cf. *Juridical condition and rights of undocumented migrants*. Advisory Opinion OC-18/03, September 17, 2003, *supra* footnote 64, para. 105.

⁶⁶ Cf. OHCHR, *Statement by UN Human Rights Experts: Universal access to vaccines is essential for prevention and containment of COVID-19 around the world*, November 9, 2020. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E> (“States have an obligation to ensure that any COVID-19 vaccines and treatments are safe, available, accessible and affordable to all who need them. This is particularly relevant to people in vulnerable situations who are often neglected by health services, goods and facilities, including [...] migrants and refugees [...]. It is imperative that access to COVID-19 vaccines and treatment is provided to all without discrimination and prioritized for those who are most exposed and vulnerable to the risk of COVID-19”); OHCHR, *Human Rights and Access to COVID-19 Vaccines*, December 17, 2020. Available at: https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf (“The determination of early vaccine recipients should not [...] exclude

48. Furthermore, in order to overcome the pandemic, this Court emphasizes the importance that the international community take action to ensure a global and equitable distribution of vaccines, so as to counteract the current situation whereby the higher-income countries have acquired the majority of the vaccines. It is imperative that low and middle-income countries also have sufficient quantities of vaccines to at least protect those who are at greatest risk of contracting the virus and/or becoming seriously ill, as well as to achieve sufficient immunity in the global population. Among the actions that have been implemented or are under discussion by the international community are: the creation of the COVAX mechanism,⁶⁷ associated with the World Health Organization and promoted by public and private actors; the expansion of vaccine production capacities

anyone explicitly or implicitly on the basis of [...] migration status or other discriminatory criteria, and should be conducted through a fair, transparent, inclusive and accountable process.” UN Committee on Migrant Workers, UN Special Rapporteur on the Human Rights of Migrants, OHCHR, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa of the African Commission on Human and Peoples’ Rights, Special Representative of the Secretary General on Migration and Refugees of the Council of Europe and Rapporteur on the Rights of Migrants of the Inter American Commission on Human Rights, *Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants*. Available at <https://www.ohchr.org/Documents/Issues/Migration/JointGuidanceNoteCOVID-19-Vaccines-for-Migrants.pdf> (“States should prioritize people for vaccination on the basis of individual medical needs and public health grounds, by establishing appropriate criteria that are in line with human rights standards and norms. The prioritization of vaccines delivery should not exclude anyone on the basis of nationality and migration status. [...] All migrants must have access to the vaccine regardless of their nationality and migration status and on an equal basis with nationals”); OHCHR, COVID-19: *Equitable access to vaccines for all, including migrants, is crucial, say UN Special Rapporteurs*, January 22, 2021. Available at: <http://www.oHCHR.org/covid-19-el-acceso-egitativo-a-la-vacuna-para-todos-incluidas-las-personas-migrantes-es-crucial-senalan-relatores-as-especiales-de-la-onu/> (“The prioritization of vaccines within the countries should include all the people who meet the requirements of a priority group, regardless of who they are. Migrants must have access to vaccines on equal terms with nationals”); International Organization for Migration, *Striving for equitable access to COVID-19 vaccines to leave no migrant behind*, March 3, 2021. Available at: <https://www.iom.int/es/news/empeno-en-aras-de-un-acceso-egitativo-las-vaccines-contra-la-covid-19-para-que-ningun-migrante> (“The United Nations Network on Migration calls on States to guarantee rapid, fair and equitable access to vaccines for all and the inclusion of migrants, regardless of their status, in their national COVID-19 vaccination programs and other public health interventions”).

⁶⁷ “Covid-19 Vaccines Global Access” [Global Access Fund for COVID-19 Vaccines]. The COVAX mechanism is a global initiative led by the Global Alliance for Vaccines and Immunization (GAVI), the Coalition for Epidemic Preparedness Innovations (CEPI) and the World Health Organization, which aims to procure vaccines from different manufacturers as they become available and ensure an equitable global supply for low- and middle-income countries. The COVAX Facility faces “a significant funding gap to reach the target set for vaccine procurement and distribution through the [COVAX] mechanism.” Cf. UNICEF, “COVAX Mechanism: COVID vaccines for all”, June 16, 2021, available at: <https://www.unicef.es/noticia/mecanismo-covax-vacunas-contra-la-covid-19-para-todos>. “The priority of the COVAX Mechanism is to immunize health and social workers to limit the effects of COVID-19 on the operation of essential services. In the next phase the participating countries may vaccinate high-risk groups, such as the elderly and those with health problems who, therefore, are at greater risk of developing serious disease or dying if they become infected with COVID-19.” Cf. Pan American Health Organization, “Frequently Asked Questions on the COVAX Mechanism and COVID-19 vaccines in the Americas,” March 26, 2021, available at: <https://www.paho.org/es/noticias/26-3-2021-preguntas-frecuentes-sobre-mecanismo-covax-vacunas-covid-19-americas>.

and the facilitation of exports of vaccines and supplies to manufacture them locally,⁶⁸ as well as the elimination or temporary suspension of patent rights.⁶⁹

49. The Court reiterates the content of its Statement No. 1/20 entitled “COVID-19 and Human Rights: the problems and challenges must be addressed from a human rights perspective and with respect for international obligations” in which it stated that “[t]he extraordinary problems and challenges caused by the current pandemic must be addressed through dialogue, together with international and regional cooperation that is 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 statement, the Court also recommended that “the multilateral agencies, whatever their nature, must help and cooperate jointly with the States, with a human rights-based approach, to seek solutions to the present and future problems and challenges that this pandemic is causing and will cause.”⁷⁰

50. Thus, the Court appreciates the willingness expressed by the State to include persons in a situation of international mobility, who transit through Panamanian territory and are sheltering in the migrant reception stations of the Darien region, in the national vaccination program to prevent COVID-19 disease. Accordingly, the State should explain clearly and in detail, within the period indicated in the fifth operative paragraph, the measures that it will adopt to ensure their vaccination, as well as the group or phase in

⁶⁸ The “COVAX Joint Statement: Call to action to equip COVAX to deliver 2 billion doses in 2021” was issued on May 27, 2021. The World Health Organization participated in this call for immediate action to enable COVAX to deliver on its promise of equitable global access to vaccines, including a call to: “Free up supply chains by removing trade barriers, export control measures and other transit issues that block, restrict or slow down the supply and distribution of COVID-19 vaccines, raw materials, components and supplies.” This joint statement on COVAX is available at: <https://www.who.int/es/news/item/27-05-2021-covax-joint-statement-call-to-action-to-equip-covax-to-deliver-2-billion-doses-in-2021>. See also, Resolution of the European Parliament (2021/2692(RSP)) on “Meeting the global COVID-19 challenge: effects of the waiver of the WHO TRIPS Agreement on COVID-19 vaccines, treatment and equipment and increasing production and manufacturing in developing countries,” of June 10, 2021. The European Parliament stressed that a holistic approach is required, prioritizing the availability and affordability of COVID-19 related health products, the scaling-up of COVID-19 vaccine production and the global geographical distribution of manufacturing capacity. It emphasized that international trade policy must play a proactive role in this endeavor by facilitating trade in raw materials, health and medical products, and urged the Commission to engage with vaccine-producing countries to rapidly eliminate export barriers. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0283_ES.html. See also, statement of the Director General of the World Trade Organization in the context of the Global Covid-19 Vaccine Supply Chain and Manufacturing Summit, held on March 8-9, 2021, which discussed the need to increase vaccine production to combat the shortage of vaccines in lower-income countries, by overcoming obstacles such as: scarcity of raw materials, shortages of qualified and experienced personnel, and supply chain problems linked to export restrictions and prohibitions as well as excessive bureaucracy. She urged Member States to drop or reduce export restrictions in order to help minimize problems in the vaccine supply chain. Available at: https://www.wto.org/spanish/news_s/news21_s/dgno_09mar21_s.htm.

⁶⁹ World Trade Organization, “Report on the global intellectual property system and COVID-19,” October 15, 2020, available at: https://www.wto.org/english/tratop_e/covid19_e/trips_report_e.pdf. India and South Africa stated that “there are several reports about intellectual property rights hindering or potentially hindering timely provisioning of affordable medical products to the patients” and that “some WTO Members have carried out urgent legal amendments to their national patent laws to expedite the process of issuing compulsory government use licenses.” They added that “many countries, especially developing countries, may face institutional and legal difficulties when using flexibilities available in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).” Cf. *WTO Council for Trade-Related Aspects of Intellectual Property Rights. Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19*, Communication from India and South Africa, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=s:/IP/C/W669.pdf&Open=True>.

⁷⁰ 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 and Cf. *Vélez Loor v. Panama. Provisional measures, supra footnote 3*, considering paragraph 23.

which they will be vaccinated in order to effectively ensure their right to life and health without discrimination in the context of the current health crisis.

D. Measures to protect the rights of migrant children and women, prevent violence against them and guarantee the principle of non-refoulement

D.1. Minimum requirements ordered by the Court

51. The Court recalls that, in considering paragraph 35 of the Order of July 29, 2020, it ordered the State to implement the following actions to guarantee the life and personal integrity of migrant children, adolescents and women housed in the migrant reception stations in the context of the COVID-19 pandemic:

- 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-21/201450.
- 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.

D.2. Considerations of the Court

52. In its Statement entitled "COVID-19 and Human Rights: the problems and challenges must be addressed from a human rights perspective and with respect for international obligations" (*supra* considering paragraph 49),⁷¹ this Court emphasized that, in the current situation caused by the pandemic, "it is especially important to ensure, promptly and appropriately, the rights to life and health of everyone subject to the State's jurisdiction, without any discrimination."

53. Similarly, throughout these proceedings the Court has warned - as the Inter-American Commission did during the public hearing - about the conditions of serious vulnerability and the various disadvantages that intersect in the experiences of persons in a situation of mobility who enter Panama after risking their lives and their integrity along the routes of the Darien region.⁷² Indeed, given this scenario, the State has emphasized that "in recent years there has been an increase in women, children and adolescents among the migratory flows that enter irregularly through the Darien"; therefore, "the feminization of migration poses a challenge for the institutions and requires a gender-based approach to the development of public policies related to migration."⁷³

⁷¹ 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 70.

⁷² Cf. *Mutatis mutandis, Case of the Workers of the Fireworks Factory in Santo Antonio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407, para. 198.

⁷³ Cf. State Report of May 21, 2021.

54. Bearing in mind the foregoing, the Court positively values the different actions implemented by the State to protect the rights of migrant children and women, which have not been disputed by the representatives, including: i. the prioritization of family groups and family reunification within the migrant reception stations, and the placement of the population in specific sectors “for single men, families and single women,” thereby ensuring that “minors [...] are housed with their parents;”⁷⁴ ii. the creation of safe spaces for children’s recreation in San Vicente and Lajas Blancas (*supra* considering paragraph 11 and footnote 19); iii. the lighting of communal areas and the installation of locking devices and partial lighting inside the toilets and showers of San Vicente, with separate facilities “for women and men;”⁷⁵ and iv. patrols carried out by SENAFRONT personnel in the migrant stations “to detect any act of violence,” including sexual violence, and also land and river patrols “along improvised trails (*trochas*), set up by *coyotes*,” which has made it possible to detect cases of human trafficking among the migrant flows.⁷⁶ The Court also considers it positive that the children born to migrant mothers in the migrant stations are being registered with the Electoral Tribunal of Panama, which issues them with identity card numbers.⁷⁷

55. However, the Court observes contradictions between the information provided by the State since September 2020, which claims that the presence of unaccompanied minors in the facilities has not been established,⁷⁸ and a statement to the contrary by the Ombudsman who, as a result of his field visits and monitoring of the migrant stations, identified the presence of “unaccompanied children and adolescents.”⁷⁹ It is therefore essential that the State clarify this information and, if applicable, report on the identification procedures applied, explaining where the unaccompanied minors are housed and the comprehensive protection measures adopted. It should also explain whether the “Protocol for the comprehensive care of migrant children, adolescents and unaccompanied minors” of the National Secretariat for Children, Adolescents and the Family of the Ministry of Public Security has been finalized and implemented, and should also refer to its content.

56. The Court also stresses the importance that, in addition to the patrols carried out by SENAFRONT personnel (*supra* considering paragraph 54.iv) to detect acts of gender violence in the camps, specific measures be adopted to prevent such cases of gender-based and sexual violence in the migrant stations. In this regard, it should be mindful that the prolonged confinement measures established in the migrant holding centers due to the pandemic and the closure of the borders (*supra* considering paragraph 18), expose victims of violence to live permanently with their aggressors. Furthermore, the Court notes that the lack of basic infrastructure for rest and privacy in Bajo Chiquito (*supra* considering paragraph 20) appears to be a situation that disproportionately exacerbates

⁷⁴ Cf. State Report of June 3, 2021.

⁷⁵ Cf. State Report of May 21, 2021.

⁷⁶ Cf. State Reports of September 1, 2020, and May 21, 2021. It also indicated that, as of June 3, 2021, a total of 110 minors were housed in the migrant stations, with 60 in Bajo Chiquito, 11 in Lajas Blancas and 39 in San Vicente. Cf. State Report of June 3, 2021 and *supra* considering paragraph 10. Similarly, it listed a number of projects “that are being implemented in coordination with international organizations” directed at migrant children and adolescents in the MRS, such as: the creation of a specialized children’s dining area in the San Vicente station; medical care provided by the Red Cross in Lajas Blancas and in San Vicente; play areas and psychomotor development for children up to 5 years of age in both stations and artistic activities organized by social workers; and “programs with the [...] IDB to ensure [their] access to education.” Cf. State Report of March 31, 2021.

⁷⁷ Cf. Number of children of migrants born in Panama in 2020-2021, National Migration Service (Annex 5 to the State Report of June 3, 2021).

⁷⁸ Cf. State Report of September 1, 2020 and Note No. 053/SGMSP/2021 of April 30, 2021, signed by the Minister of Public Security of Panama (Annex 2 to the State Report of May 21, 2021).

⁷⁹ Cf. Brief of the Ombudsman’s Office of Panama of May 21, 2021.

the risk of violence faced by women and children. The Court also takes note of the findings published by the IOM, which has reported on the lack of lighting in communal spaces and in area of latrines and showers at Lajas Blancas and Bajo Chiquito, as well as the need to ensure the safety of these facilities and provide secure locking systems inside.⁸⁰ These shortcomings clearly make it difficult for women and girls to practice adequate hygiene measures for the prevention of COVID-19, in view of the serious risk involved in using the personal hygiene area.

57. Therefore, it is necessary that the State report on the specific measures adopted to protect the life and integrity of women and children transiting through the migrant stations.

II. REGARDING THE REQUEST TO LIFT THE PROVISIONAL MEASURES AND THE REQUEST TO EXTEND THE PROVISIONAL MEASURES

A. *Requests made by the parties and observations*

58. The *State* acknowledged that, by virtue of the provisional measures ordered by this Court, it has “carried out an interinstitutional introspective exercise that has provided a working guide and a great stimulus for social dialogue between the authorities, the irregular migrants under [their] jurisdiction, [...] civil society”⁸¹ and different international organizations to address the problem of persons in a situation of human mobility who travel through the Darien Gap on their way to the north of the continent. However, it argued that “it is unfair that [faced with] the serious humanitarian migratory crisis affecting the whole of America,” these provisional measures make it appear “as if the solution to this serious and complex problem lies solely in Panama.”⁸² In the briefs submitted after the public hearing held in May 2021, the *State* considered that none of the three conventional requirements persist to date in “the MRSs currently in operation and [in] the migrant reception community” of Bajo Chiquito,⁸³ given that the authorities “immediately adopt[ed] timely and necessary bio-sanitary measures to contain the pandemic in the migrant stations located in the Darien region and substantially improved [...] health care for the migrant population coming from Colombia and in transit through the Panamanian jurisdiction” (*supra* considering paragraph 18). The *State* pointed out that, following the closure of La Peñita migrant station and the reactivation of Operation Controlled Flow (*supra* considering paragraphs 9(b) and 9(c)), “the problems of overcrowding resulting from the border closure have been overcome,” thereby helping to “mitigate the circumstances of extreme urgency, gravity and irreparable damage.”⁸⁴ It affirmed that the data provided on the number of infections and recovered patients shows that such requirements “have disappeared or did not even materialize.”⁸⁵ Furthermore, it held that it has adopted various measures “not [...] only to tackle the pandemic” but also for “future planning” to “cover the basic needs of

⁸⁰ Cf. IOM, “Site Assessment of Migrant Reception Stations, Round 1, April 2021”, *supra* footnote 28.

⁸¹ Cf. State Report of May 21, 2021.

⁸² Cf. State Report of June 14, 2021.

⁸³ In the briefs of May 21 and June 3, 2021, the *State* explained that the community of Bajo Chiquito is not considered a migrant station but rather a reception community, in the territory of the Emberá indigenous community, “where local people and migrants coexist during their journey, the latter being assisted by local agencies of the Government of Panama and international organizations.” Cf. Updated Report of the National Immigration Service (Annex 1 to the State Report of June 3, 2021). However, during the procedure of monitoring compliance with judgement, and even of the provisional measures, on several occasions, including at the public hearing, the *State* referred to Bajo Chiquito as a migrant station.

⁸⁴ Cf. State Report of May 21, 2021.

⁸⁵ Cf. State Report of June 14, 2021.

the migrant populations.”⁸⁶ Consequently, the State requested that the Court “declare its compliance with the [provisional measures] and their lifting” “in view of the substantive change in the situation that prompted their adoption.”⁸⁷ With respect to the request of the representatives (*infra* considering paragraph 59), the State rejected the possibility of these measures being extended to other migrant centers, in which it has “reinforced the provision of assistance in relation to health care, food, drinking water, basic necessities, protection to unaccompanied minors, pregnant women and girls,” and added that it considers that “a periodic (biannual or annual) monitoring of the situation of the migrant stations in the province of Darien would be more in keeping with the current situation.”⁸⁸

59. The *representatives* acknowledged the progress made by the State “in compliance with the provisional measures.” However, they maintained that “the risk that gave rise to these measures has not yet ceased,” especially considering the variability of the migratory flows and the fact that “health care [...] continues to be precarious.”⁸⁹ They noted that “there are still specific requirements” ordered by the Court “that have not been met” and emphasized “the lack of clear and precise information on compliance with those measures.”⁹⁰ Consequently, they asked the Court to “maintain the provisional measures in force and [to] consider the possibility of extending these to other migrant detention centers in the province of Darien.”⁹¹

60. The *Commission* highlighted the “persistence of certain risk factors [in] the migrant centers, particularly in [...] Lajas Blancas” along with “the requirements of extreme gravity, urgency and irreparability of the damage.” It emphasized that “one of the main obstacles to being able to properly assess the situation” is the lack of “clear, accurate and sufficient information” to determine the extent to which the fifteen requirements stipulated by the Court under the provisional measures are being implemented. Therefore, it considered it pertinent that the State provide additional and detailed information “on the actions taken with respect [to] the challenges and situations described” in the Order of July 29, 2020.⁹²

B. Considerations of the Court

61. The Court recalls that, if a State requests the lifting or the modification of the provisional measures ordered, it must present sufficient evidence and arguments to allow the Court to consider that the risk or threat no longer meets the requirements of extreme gravity and urgency to avoid irreparable harm. In turn, the representatives of the beneficiaries who wish the measures to be continued, must present proof of the reasons for doing so.⁹³

⁸⁶ Cf. State Report of May 21, 2021.

⁸⁷ Cf. State Report of May 21, 2021.

⁸⁸ Cf. State Report of June 14, 2021.

⁸⁹ Cf. Brief of observations of the representatives of June 3, 2021.

⁹⁰ In this regard, the representatives also emphasized the difficulties encountered in obtaining updated information on the situation in the migrant centers of Darien “in order to be able to compare the general information provided by the State.” Cf. Brief of observations of the representatives of June 3, 2021.

⁹¹ Cf. Brief of observations of the representatives of June 3, 2021.

⁹² Cf. Brief of observations of the Inter-American Commission of May 28, 2021.

⁹³ Cf. *Case of Carpio Nicolle. Provisional measures regarding Guatemala*, *supra* footnote 6, considering paragraph 18 and *Case of Certain Venezuelan Prisons, Humberto Prado, Marianela Sánchez Ortiz and Family. Provisional measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of July 8, 2020, considering paragraph 25.

62. Having examined the information presented by the State of Panama regarding the actions implemented to guarantee the life and health of the migrants housed in the migrant stations of La Peñita and Lajas Blancas, together with the observations of the representatives and of the Inter-American Commission, as well as the information provided by the Ombudsman's Office of Panama, this Court considers that, although the State has taken important steps to implement the provisional measures ordered by this Court - which certainly reflect the improvements been made in conditions at the migrant stations to address the risks of the spread of COVID-19 - it is also true that risks to the health, integrity and life of the persons whom these measures seek to protect still persist. In this regard, the Court has noted the lack of precise information on multiple physical conditions that are not being sufficiently addressed to prevent the spread of COVID-19, as well as the lack of permanent emergency medical care and supplies to respond to the problem (*supra* considering paragraphs 18 to 21, 23, 28, 43 to 45, 50 and 55 to 57). Moreover, the continued spread of the disease means that there is still a possibility that restrictive measures may be imposed on movement, such as quarantine upon entry to the country, the closure of borders and the consequent accumulation of migrants who will later have to enter the country. These risk factors, together with the incomplete information provided by Panama, do not allow this Court to properly assess the State's capacity to deal with unexpected and exponential increases in the migrant flows, associated with measures to control the pandemic, such as the situation that forced the State of Panama to close its borders with Colombia on May 19, 2021 (*supra* considering paragraphs 9(e) and 18). This could lead to situations similar to those that gave rise to the request for and adoption of provisional measures (*supra* considering paragraph 2).

63. Therefore, this Court considers that the provisional measures ordered should remain in force. However, taking into account the regional measures that may be adopted in the context of the pandemic, as well as the information presented on the implementation of these measures in the coming months, the Court will again consider whether the conditions warrant the maintenance of these measures or whether it is appropriate to continue assessing them, within the framework of monitoring compliance with the judgment in relation to the guarantee of non-repetition ordered in the fifteenth operative paragraph thereof.

64. The measures ordered with respect to the persons who were housed in the migrant station of La Peñita have ceased to serve any purpose, given that the State decided to close that facility (*supra* considering paragraph 16).

65. With respect to the representatives' request for the extension of the provisional measures to "other migrant detention centers in the Darien" region (*supra* Having Seen 11 and considering paragraph 59), the Court finds that this request is related to the purpose of the provisional measures that have already been ordered in this case, since it seeks to extend the protection of fundamental rights in the context of the COVID-19 pandemic to persons who are in a situation of international mobility and are sheltering in other migrant centers in the Darien.

66. Although the representatives submitted a general request for the extension of these measures to "other centers," the information provided by the parties shows that, with the closure of La Peñita station, the migrant population entering Panama through the Darien region would now be distributed, essentially, between the Lajas Blancas and San Vicente migrant stations. They also explained that the Bajo Chiquito reception community is the first stop for migrants entering the country through the Colombia-Panama border and the place where they remain for a certain number of days while the

SENAFRONT authorities carry out registration and identification procedures prior to their transfer to other migrant centers. In this regard, the representatives noted that the conditions of overcrowding and the lack of adequate medical care persist in the migrant centers located in Darien province. Considering that part of the migrant population that was previously housed in La Peñita center is now transferred to or accepted by the new facility of San Vicente, together with the State's emphasis on the fact that Bajo Chiquito is the area with the most urgent physical and health needs due to the highly vulnerable conditions in which those who survive the trek through the Darien jungle arrive, as well as the changing circumstances in the migratory flows owing to the pandemic, the Court considers that it is also appropriate to order the protection of persons in the shelters of San Vicente and Bajo Chiquito. The Court considers that if measures such as those ordered to address overcrowding and health care are not adopted, circumstances similar to those that prompted the adoption of these measures could arise, exposing migrants in those two shelters to serious health consequences and/or effects on their lives.

67. Therefore, considering that Panama holds a special position as guarantor of the rights of those who are under its custody in the migrant reception stations, and that the COVID-19 disease implies taking rigorous measures to mitigate the risk to the life, personal integrity and health of such persons, the Court deems it pertinent to reiterate the minimum requirements established in the Order on the Adoption of Provisional Measures for the continuation of their implementation, so as to protect the human rights of those in a situation of international mobility in the migrant reception stations of Lajas Blancas and San Vicente, as well as in the community of Bajo Chiquito, in the context of the COVID-19 pandemic.⁹⁴ This Court will subsequently reassess the need to maintain these provisional measures.

68. Finally, the Court reiterates 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 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."⁹⁵

⁹⁴ Cf. *Vélez Loor v. Panama. Provisional measures*, *supra* footnote 3, considering paragraph 35.

⁹⁵ Cf. *Vélez Loor v. Panama. Provisional measures*, *supra* footnote 3, considering paragraph 37.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Articles 63(2) of the American Convention, 24(1) and 25(2) of its 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 maintain the provisional measures in favor of the persons in the migrant reception station of Lajas Blancas in the province of Darien, requiring the State of Panama to continue to adopt all appropriate measures to effectively protect their rights to health, personal integrity and life, pursuant to considering paragraphs 62 and 63 of this order.
2. To require the State of Panama to ensure immediate and effective access, for all persons in the migrant reception station of Lajas Blancas, to essential health services without discrimination, including early detection and treatment of COVID-19.
3. To declare that the provisional measures adopted in favor of the persons in the migrant reception station of La Peñita have ceased to have a purpose, given the closure of that establishment, pursuant to considering paragraph 64 of this order.
4. To extend the provisional measures in favor of the persons in the migrant reception station of San Vicente and in the reception community of Bajo Chiquito, in the province of Darien, pursuant to considering paragraphs 66 and 67.
5. To require the State to submit, no later than September 27, 2021, a complete and detailed report on its compliance with the provisions of the first, second and fourth operative paragraphs of this order, pursuant to considering paragraphs 18 to 21, 23, 28, 43 to 45, 50 and 55 to 57 thereof, after which it shall continue to report to the Court every eight weeks from the date of the submission of its last report.
6. To require the representatives of the victim to present their observations within two weeks from notification of the aforementioned State reports, and to require the Inter-American Commission of Human Rights to present its respective observations within one week of receiving the observations of the representatives.
7. To require the Secretariat of the Court to notify this order to the Secretary General of the Organization of American States, for the purposes stated in considering paragraph 68 of this order.

8. 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 Eduardo Vio Grossi advised the Court of his Dissenting Opinion, which accompanies this order.

I/A Court HR. *Case of Vélez Loor v. Panama*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 24, 2021. Order adopted at San José, Costa Rica in a virtual session.

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

**DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI,
ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 24, 2021
PROVISIONAL MEASURES
CASE OF VÉLEZ LOOR V. PANAMA**

This dissenting opinion is issued with regard to the Order in the epigraph, in view of the fact that, according to the law, the Inter-American Court of Human Rights does not have the power to decree provisional measures in a case in which a final and unappealable judgment has already been delivered, such as in the instant case, for the reasons set forth especially, though not exclusively, in paragraph 25 and in the following paragraphs of the *Dissenting Opinion of Judge Eduardo Vio Grossi, Order of the Inter-American Court of Human Rights of September 2, 2020, in the Provisional Measures regarding Honduras, Cases of the Garífuna Communities of Triunfo de la Cruz and Punta Piedra* and in paragraph 29 and following paragraphs of the *Dissenting Opinion of Judge Eduardo Vio Grossi, Order of the Inter-American Court of Human Rights of July 29, 2020, Adoption of Provisional Measures, in the Case of Vélez Loor v. Panama*, arguments which, by this act and instrument, are hereby reiterated.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary