



Organización de los
Estados Americanos



Inter-American Commission On Human Rights

Application to the
Inter-American Court of Human Rights
in the Case of
Jesús Tranquilino Vélez Loor
(Case 12.581)
against the Republic of Panama

DELEGATES:

Paolo Carozza, Commissioner
Santiago A. Canton, Executive Secretary

LEGAL ADVISORS:

Elizabeth Abi-Mershed
Isabel Madariaga
Silvia Serrano Guzmán
Mark Fleming

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1889 F Street, N.W.
Washington, D.C., 20006

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**APPLICATION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF PANAMA**

**CASE 12.581
JESÚS TRANQUILINO VÉLEZ LOOR**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") this application in Case 12.581, Jesús Tranquilino Vélez Loor, against the Republic of Panama (hereinafter "the Panamanian State," "the State," or "Panama") for the arrest and subsequent prosecution of the victim – an Ecuadorian national – for crimes relating to his immigration status, in the absence of due guarantees and without affording him the possibility of being heard or of exercising his right of defense. The case also deals with the failure to investigate the allegations of torture Mr. Vélez Loor filed with the Panamanian authorities, as well as with the inhumane detention conditions in which he was held at various Panamanian prisons between his arrest on November 11, 2002, and his deportation to the Republic of Ecuador on September 10, 2003.

2. The Inter-American Commission asks the Court to establish the international responsibility of the State of Panama, which has failed to meet its international obligations and has consequently violated Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with the obligations set by Articles 1.1 and 2 thereof, together with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all with respect to Jesús Tranquilino Vélez Loor.

3. This case has been processed in accordance with the terms of the American Convention and is submitted to the Court in compliance with Article 34 of its amended Rules of Procedure. Attached hereto, in the appendixes, is a copy of Report No. 37/09, drawn up according to Article 50 of the Convention.¹

4. The Commission believes it is justified in referring this case to the Court because of the need to secure justice and redress for the victim, and because of the need for measures of nonrepetition to be implemented to ensure that both the immigration system and the prison system in Panama are in line with the international obligations assumed by the State in ratifying the American Convention. The Commission also believes that this case will enable the Honorable Court to establish jurisprudence, in a contentious case, on the guarantees under the American Convention that must be upheld in any trial of a criminal or other nature relating to the immigration status of a person and/or that could lead to the imposition of punishments arising from that status.

¹ IACHR, Report No. 37/09 (Merits), Case 12.581, *Jesús Tranquilino Vélez Loor*, March 27, 2009; Appendix 1.

II. PURPOSE OF THE APPLICATION

5. The purpose of this application is to respectfully request that the Court conclude and declare that:

- a) The State of Panama is responsible for violating the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights, in conjunction with the general obligations of respecting and ensuring those rights and of adapting its domestic legislation set out in Articles 1.1 and 2 thereof, with respect to Jesús Tranquilino Vélez Loo; and,
- b) The State of Panama is responsible for failing to conduct an investigation as required by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Jesús Tranquilino Vélez Loo.

6. As a consequence of the foregoing, the Inter-American Commission asks the Court to order the Panamanian State:

- a) To provide Jesús Tranquilino Vélez Loo with redress for the material and nonmaterial harm he suffered;
- b) To order measures of rehabilitation on behalf of Jesús Tranquilino Vélez Loo;
- c) To order measures of satisfaction on behalf of Jesús Tranquilino Vélez Loo;
- d) To conduct a serious and diligent investigation into the reports of torture allegedly committed against Jesús Tranquilino Vélez Loo under the jurisdiction of the Panamanian State;
- e) To guarantee that its national immigration law and the enforcement thereof are in line with the minimum guarantees set out in Articles 7 and 8 of the American Convention;
- f) To ensure that Panama's detention centers meet minimum standards that are compatible with humane treatment and that afford detainees a decent existence;
- g) To take steps so that the Panamanian authorities are aware of and abide by their obligation of opening investigations on an ex officio basis whenever allegations or reasonable grounds exist for believing that an act of torture has been committed under its jurisdiction; and,
- h) To reimburse the legal costs and expenses incurred in processing this case before the Inter-American Commission and Inter-American Court.

III. REPRESENTATION

7. In accordance with the provisions of Articles 23 and 34 of the Court's amended Rules of Procedure, the Commission has appointed Commissioner Paolo Carozza and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed, and the lawyers Silvia Serrano Guzmán, Isabel Madariaga, and Mark Fleming, specialists with the Commission's Executive Secretariat, have been appointed to serve as legal advisors.

IV. COMPETENCE OF THE COURT

8. Under Article 62.3 of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. In turn, Article 8 of the Inter-American Convention to Prevent and Punish Torture provides that "after all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State."

10. The State of Panama ratified the American Convention on June 22, 1978, and it accepted the contentious jurisdiction of the Court on May 9, 1990. Similarly, the Panamanian State ratified the Inter-American Convention to Prevent and Punish Torture on August 28, 1991. All the alleged violations in this application took place under the jurisdiction of the State of Panama and began after the dates on which those two instruments came into force for the State.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION²

11. The original petition was received at the Commission on February 10, 2004, and was registered as No. P-92/04. On August 3, 2004, the Commission received additional information from Vélez Loor. On March 17, 2005, Mr. José Villagrán registered as a petitioner and he filed arguments on April 12, April 21, and June 14, 2005.

12. On December 21, 2005, the Commission forwarded the petition to the State in compliance with Article 30.3 of its Rules of Procedure, giving it a deadline of two months in which to return its response. On February 10, 2006, the State requested an extension of one month for submitting its observations. That extension was granted. The Commission received the State's reply on March 7, 2006, and forwarded it to the petitioners on that same date.

13. On March 13, 2006, the Commission held a hearing on the admissibility of the case during its 124th regular session. On May 1, 2006, the Commission sent the State the petitioners' comments on its reply, along with the arguments made at the March 2006 hearing.

14. On October 23, 2006, the Commission declared the petition admissible and, on November 30, 2006, in compliance with its Rules of Procedure, the Commission suggested to the parties the possibility of beginning friendly settlement proceedings. The State did not reply to this offer.

15. In February 2007, the petitioners submitted their comments on the merits. On May 25, 2007, Mr. Vélez Loor transferred his legal representation to the Center for Justice and International Law.

16. On June 15, 2007, the State submitted its comments on the merits. On September 3, 2008, the petitioners submitted additional comments.

17. On October 28, 2008, a hearing on the merits was held during the 133rd regular session. On January 21, 2009, the Commission asked both parties to submit

² The formalities referred to in this section may be found in the record of the case before the IACHR; Appendix 3.

additional information. The Commission received the petitioners' reply on February 9, 2009. The State requested an extension on February 26, 2009, and an extension was granted until March 12, 2009. On that date the State submitted its response to the Commission's request.

18. On March 27, 2009, during its 134th regular session, the Commission adopted Report on Merits 37/09, drawn up in compliance with Article 50 of the Convention. In the conclusions of that report, the Commission established that:

the Panamanian State is responsible for violations to Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), in conjunction with Articles 1.1 and 2, of the American Convention. The Commission, likewise, finds the State violated Articles 1, 6, and 8 of the Inter-American Convention Against Torture for failure to investigate Mr. Vélez Lóor's allegations of torture. The Commission presents its recommendations to the State regarding these violations. The Commission, however, concludes that the petitioners have not provided sufficient evidence to find a violation of Article 21 of the American Convention. Finally, the Commission does not address the petitioners' new claim of violations of Article 9 of the American Convention because it was not presented at the admissibility stage and petitioners do not provide a sufficient foundation to find a violation.³

19. In the report, the Commission recommended that the Panamanian State:

- a) Fully compensate the victim, Jesús Tranquilino Vélez Lóor, in both moral and material terms for human rights violations as determined in the report on the merits.
- b) Implement measures to prevent inhumane treatment to occur at La Joya-Joyita and La Palma penitentiaries and to bring them into compliance with the Interamerican standards.
- c) Report to the Commission on the application of Decree Law No. 3 of February 22, 2008, eliminating incarceration as a form of penalty for repeated illegal entry into Panamá, and Article 66 of Decree Law 3.
- d) Implement laws to ensure that immigration proceedings are conducted before a competent, independent and impartial juridical authority.
- e) Implement the required measures to ensure that the accusations of torture of Mr. Jesús Tranquilino Vélez Lóor within the State's jurisdiction are properly investigated as required by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.⁴

20. On April 8, 2009, the State was notified that Report 37/09 had been adopted and it was given a period of two months to report back on the steps taken to comply with the Commission's recommendations.

21. On that same date, in compliance with the terms of Article 43.3 of its Rules of Procedure, the Commission informed the petitioners that a report on the merits had been adopted and conveyed to the State, and it asked them to indicate, within the following

³ IACHR, Report No. 37/09 (Merits), Case 12.581, *Jesús Tranquilino Vélez Lóor*, March 27, 2009, paragraph 99; Appendix 1.

⁴ IACHR, Report No. 37/09 (Merits), Case 12.581, *Jesús Tranquilino Vélez Lóor*, March 27, 2009, paragraph 100; Appendix 1.

month, their position and that of the victim regarding the possible referral of the case to the Inter-American Court.

22. On April 20, 2009, the Commission sent the petitioners, confidentially, the relevant parts of the merits report.

23. By means of a communication received on May 11, 2009, the petitioners expressed their wish, and that of the victim, for the case to be taken before the Inter-American Court.

24. On June 10 and 11, communications were received from the Panamanian State requesting an extension of the deadline for compliance with the recommendations in Report 37/09. In the second communication, the State of Panama expressly waived the right to lodge preliminary objections regarding compliance with the deadline provided for in Article 51.1 of the Convention, should the case be referred to the Inter-American Court.

25. On June 25, 2009, the Commission informed the State that by means of a decision of June 19, 2009, it had resolved to grant the requested extension for a period of three months. In that same communication, the Commission asked the State to submit, on July 25, 2009, a report on progress with its compliance with the recommendations and to present a final report thereon on September 25, 2009.

26. In communications of July 24 and 27, 2009, the State submitted information on some steps taken to implement the recommendations. Thus, the State described certain efforts in its prisons that could have an effect in the medium and long terms, along with the opening of an investigation into the alleged torture Mr. Vélez Looor suffered in Panama. As regards the remaining recommendations, the State merely reported that it was pursuing consultations with the corresponding agencies.

27. Regarding the redress ordered, the State asked the Commission for a "preliminary monetary appraisal of the material and moral damages." On August 18, 2009, the Commission wrote to the State to inform it that "it is not the IACHR's practice to establish fixed parameters regarding financial reparations; instead, it speaks of fair redress, according to the circumstances of the case." The Commission also told the Panamanian State that "in previous cases, the parties have taken into account the relevant jurisprudence in similar cases ruled on by the Inter-American Court." On that same date, the Commission forwarded the State's communications to the petitioners and asked them to return their comments within the following 20 days.

28. On September 14, 2009, a communication was received from the petitioners in which they claimed that the Panamanian State had failed to comply with the Inter-American Commission's recommendations. They therefore reiterated their opinion regarding the referral of the case to the Inter-American Court. On September 28, 2009, the Commission conveyed this communication to the Panamanian State.

29. On September 25, 2009, a communication was received from the State containing a report on its compliance with the Commission's recommendations. In that report, the State indicated that, *inter alia*, it had set an amount of redress of 12,500 balboas, equal to 12,500 U.S. dollars. This information was conveyed to the petitioners, who in a communication received on October 2, 2009, again noted the noncompliance with the recommendations and pointed out that in its offer, the State was attempting to reduce the redress to the monetary element alone, ignoring other important aspects.

30. After analyzing the available information regarding the implementation of the recommendations set out in the Report on the Merits, and taking into consideration the absence of any substantive progress with their effective implementation, on October 6, 2009, the Commission resolved to refer the case to the Inter-American Court.

VI. CONSIDERATIONS OF FACT

1. Arrest and Prosecution of Jesús Tranquilino Vélez Loor

31. On November 11, 2002, Mr. Vélez Loor was apprehended in Darién Province of Panamá and transferred to the detention facility in Metetí, Darién Province.⁵ On or around November 19, 2002, Mr. Vélez was transferred to La Palma detention facility in Darién Province.⁶ On December 6, 2002, Mr. Vélez Loor was sentenced by the Director of the National Migration Office, under Decree Law No. 16 paragraphs 67 and 85, to a two year prison term for violation of the terms of his previous deportation orders in 1996 and January 2002.⁷

32. Mr. Vélez Loor was not given access to a state-appointed attorney; he was unable to consult with his own attorney; and he was not given the opportunity to contact the Ecuadorian consulate. The victim was given no hearing before a judicial authority, nor was he granted an opportunity in the proceedings to defend himself against the charges leveled at him.

33. Approximately two weeks after receiving his sentence, Mr. Vélez Loor was transferred to la Joya-Joyita Penitentiary in Panama City.⁸

2. Conditions of Jesús Tranquilino Vélez Loor's Imprisonment

34. The information available indicates that during his detention at La Joya-Joyita, Mr. Vélez Loor received basic medical attention;⁹ however, he did not receive the specialized treatment necessitated by the fractured skull he apparently suffered.¹⁰

⁵ Annex 8: Handwritten incident report of November 11, 2002, from the National Police. Annex 9: Deed No. ZPD/SDIIP 192-02 of November 12, 2002, from the Subdirectorate of Information and Police Investigation, Darién Police Zone.

⁶ Annex 11: Personal Details Form, La Palma Public Prison, Darién, Penitentiary System, Ministry of the Interior and Justice, November 12, 2002.

⁷ Annex 4: Resolution No. 7306 of December 6, 2002, from the National Directorate of Immigration and Naturalization. Annex 1: Decree Law No. 16 of June 30, 1960.

⁸ Annex 10: Note No. 208-DGSP.DAL of February 22, 2006, from the General Directorate of the Penitentiary System of the Ministry of the Interior and Justice.

⁹ Annex 12: Medical examination sheet dated January 15, 2003, from La Joyita's clinic. Annex 13: Medical record sheet, dated April 10, 2003, from La Joyita's clinic, addressed to Mr. Adalides Batista, Director of La Joyita Prison, National Prison System Directorate. Annex 14: Medical record sheet, dated June 27, 2003, from La Joyita's clinic. Annex 15: Entries on Jesús Tranquilino Vélez Loor's medical records, in the case file. Annex 16: Document of June 11, 2003, addressed to Mr. Adalides Batista, Director of La Joyita Prison, National Prison System Directorate.

¹⁰ Annex 12: Medical examination sheet dated January 15, 2003, from La Joyita's clinic. Annex 13: Medical record sheet, dated April 10, 2003, from La Joyita's clinic, addressed to Mr. Adalides Batista, Director of La Joyita Prison, National Prison System Directorate.

35. International agencies, human rights organizations, and human rights clinics at renowned universities have been monitoring detention conditions at that site over the past decade, and they have agreed that the conditions are incompatible with the applicable international standards.¹¹

36. Following a visit to Panama and, specifically, to La Joya-Joyita Penitentiary in June 2001, the Commission issued a press release stating:

[T]he prison situation in the La Joya and La Joyita jails is truly deplorable. The two prisons, the biggest in the country, house more than 4,000 men, almost double their physical capacity. As a result, a large number of prisoners have to sleep on the floor or in hammocks, which are sometimes placed four meters above the floor. Sanitation facilities are inadequate and in poor condition, and thus pose health risks to the current population. In addition, the IACHR noted serious deficiencies in the health services available to detainees, and a dearth of employment opportunities, rehabilitation programs, and recreational activities.¹²

37. On July 1, 2003, the Ombudsman with jurisdiction over the detention facility investigated inmate complaints that the facility had been without potable water for more than two weeks.¹³

38. In October 2007, La Joya's prison population was 2,200 inmates even though it only has the physical capacity for 1,556 inmates.¹⁴ Likewise, La Joyita's prison population was around 3,375, yet the facility only had a maximum capacity of 1,850 people.¹⁵ This extreme disparity has resulted in deplorable living conditions for detainees—including the frequent lack of potable water and excessive use of tear gas and physical abuse to control the inmates.¹⁶

39. In December 2007, the Commission received a petition from the Center for Democratic Initiatives (CIDEM) for provisional measures against the State to resolve the

¹¹ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008. Annex 29: IACHR, Press Release No. 10/01, available at: <http://www.cidh.org/Comunicados/English/2001/Press10-01.htm>. Annex 28: Human Rights Network / Panama "Alternative Report on the Situation of Human Rights in Panama," presented to the Office of the United Nations High Commissioner for Human Rights, March 2008, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/RDDHPanama92_en.pdf.

¹² Annex 29: IACHR, Press Release No. 10/01, available at: <http://www.cidh.org/Comunicados/English/2001/Press10-01.htm>.

¹³ Annex 30: Newspaper article, "Following complaint by inmates at La Joyita Prison, Defense Office launches an investigation into more than 15 days without drinking water," available at: <http://www.defensoriadelpueblo.gob.pa/ActividadesCuerpo.asp?ActividadesID=1057096161>.

¹⁴ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, p. 34.

¹⁵ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, p. 34.

¹⁶ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, pp. 36-65. Annex 29: IACHR, Press Release No. 10/01, available at: <http://www.cidh.org/Comunicados/English/2001/Press10-01.htm>. Annex 28: Human Rights Network / Panama "Alternative Report on the Situation of Human Rights in Panama," presented to the Office of the United Nations High Commissioner for Human Rights, March 2008, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/RDDHPanama92_en.pdf.

deplorable living reflected in the chronic shortage of potable water at la Joya-Joyita due to the complete collapse of the water system serving the detention facility.¹⁷

40. Based on the follow up performed by Harvard University, the overcrowding also has led to deplorable, inhumane conditions at la Joya-Joyita. The Harvard report provides disturbing evidence of a lack of even the basics of sanitary living conditions. According to their findings, there are approximately one toilet and two showers for every 120 inmates.¹⁸ In addition, la Joyita's drainage system, for both human excrements and bath water, is in a state of disrepair.¹⁹

41. To survive in such cramped conditions, many inmates create makeshift hammocks that they hang at different levels above the floor, up to the ceiling's six meter height.²⁰ Inmates reported frequent falls that cause serious injuries.²¹ That was the prevailing situation while Mr. Vélez Loor was being held at La Joya-Joyita. In fact, the victim complained of having injured his hip falling from a hammock.²²

42. The organizations that monitored the situation, found that prison officials did not separate prisoners convicted of violent or other serious crimes from the rest of the prison population.³ This problem was also found while Mr. Vélez Loor was incarcerated at La Joya-Joyita. Specifically, the victim complained that he was held along with violent criminals.²³

43. The various independent investigations report that prison officials continued to excessively use tear gas and other chemical irritants to enter into the different cellblocks and to quell any disturbances.²⁴ Likewise, prison officials often deployed excessive use of force against prisoners, causing serious injuries to inmates.²⁵

3. Deportation of Jesús Tranquilino Vélez Loor

¹⁷ Annex 32: Letter of January 11, 2008, from the IACHR to the Panamanian State, regarding a request for precautionary measures related to prison conditions at La Joya-Joyita.

¹⁸ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, p. 40.

¹⁹ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, pp. 40-41.

²⁰ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, p. 44.

²¹ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, pp. 44-45.

²² Annex 24: Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist), p. 25.

²³ Annex 24: Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist), pp. 53-54. Annex 32: Letter of January 11, 2008, from the IACHR to the Panamanian State, regarding a request for precautionary measures related to prison conditions at La Joya-Joyita.

²⁴ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, pp. 98-105.

²⁵ Annex 27: Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008, pp. 98-105.

44. On March 30, 2003, Mr. Vélez Loor filed a complaint with the Panamanian Ombudsman seeking an immediate deportation.²⁶ Approximately two months after, Mr. Vélez Loor initiated a hunger strike in protest of his continued detention and sewed at least part of his mouth shut.²⁷ On June 30, 2003, three months after the complaint was filed the Panamanian Ombudsman filed a petition with the Office of Migration on behalf of Mr. Vélez Loor, seeking immediate deportation.²⁸ His request was denied on July 29, 2003, because the law requires an undocumented migrant who violates the terms of a prior order of deportation by attempting to reenter the country illegally, to either serve a two year prison sentence or provide the financial means for the State's removal of the migrant from Panamá.²⁹ After Mr. Vélez Loor contacted the Ecuadorian Embassy and received three visits from representatives from the Embassy, Ecuadorian officials in Panamá were able to gather the funds for his deportation.³⁰

45. On September 8, 2003, the National Office of Migration, by Resolution No. 8230, commuted Mr. Vélez Loor's sentence.³¹ He was deported to Ecuador on September 10, 2003.³²

4. Reports of Torture and Other Accusations in Panama and Ecuador

46. On January 27, 2004, Mr. Vélez Loor filed a complaint with the Panamanian Embassy in Ecuador, alleging acts of torture supposedly committed while he was deprived of liberty in Panama.³³ He likewise filed complaints with the Permanent Committee on the Defense of Human Rights in Ecuador (September 15, 2003), and the Ombudsman's Office in Ecuador (November 10, 2003).³⁴ The Panamanian Office of Foreign Affairs initiated an investigation and solicited reports from the National Office on Migration and the National Police.³⁵

47. On September 15, 2004, Mr. Vélez Loor filed a complaint directly with the Panamanian Foreign Affairs Office alleging that he was charged US\$2,500 for a visa at the

²⁶ Annex 20: Jesús Tranquilino Vélez Loor's case file from the Office of the People's Defender.

²⁷ In Appendix 3, Case file from the Inter-American Commission on Human Rights; compare petitioners' second presentation on the merits, p. 5 (September 3, 2008), with State's second presentation on the merits (October 28, 2008).

²⁸ Annex 20: Jesús Tranquilino Vélez Loor's case file from the Office of the People's Defender.

²⁹ Annex 20: Jesús Tranquilino Vélez Loor's case file from the Office of the People's Defender.

³⁰ Annex 5: Note No. DNMYN-AL-32-04 of February 17, 2004, from the National Directorate of Immigration and Naturalization.

³¹ Annex 5: Note No. DNMYN-AL-32-04 of February 17, 2004, from the National Directorate of Immigration and Naturalization.

³² Annex 21: Safe conduct No. 59/03, Consulate General of Ecuador, Panama City, Republic of Panama.

³³ Annex 23: Petition of February 2004, filed by Jesús Tranquilino Vélez Loor with the Embassy of Panama in Quito, Ecuador.

³⁴ Annex 19: Complaint of November 10, 2003, filed by Jesús Tranquilino Vélez Loor with the Office of the People's Defender of Ecuador; Annex 22: Complaint of September 15, 2003, filed by Jesús Tranquilino Vélez Loor with the Permanent Committee for the Defense of Human Rights in Ecuador.

³⁵ Annex 17: Note E.P.Ec. No. 311-06 of October 25, 2006, from the Embassy of Panama in Quito, Ecuador. Annex 25: Letter of February 10, 2004, from the Ministry of Foreign Affairs to the Ambassador of Panama in Ecuador. Annex 26: Letter of February 11, 2004, from the Embassy of Panama in Quito, Ecuador, to the Ministry of Foreign Affairs.

Panamanian Consulate in Cartagena, Colombia.³⁶ The Office of Foreign Affairs responded to Mr. Vélez Loor's second complaint providing records that indicated that Mr. Vélez Loor paid 940 balboas for a visa.³⁷ The Office of Foreign Affairs requested that Mr. Vélez Loor provide documentation of his alleged payment of US\$2,500.³⁸ The Commission never received information regarding a response from Mr. Vélez Loor or whether Mr. Vélez Loor in fact had a valid visa to enter Panamá.

48. On April 4, 2006, the IACHR received a petition against the State of Ecuador, indicating that around February, 2005, Mr. Vélez Loor was kidnapped and tortured by private security forces in Guayaquil, Ecuador.³⁹ During this incident, Mr. Vélez Loor alleges that he was hit over the head with a police baton, had his wallet stolen, received five cigarette burns, including a number high up on both arms near his shoulders, and was denied medical attention.⁴⁰ The petitioners in the present case, however, have never addressed these subsequent allegations of torture in their submissions in the case 12.581 or rebutted the State's claims challenging the veracity of Mr. Vélez Loor's claims against Panamá, in light of their similarity to his subsequent claims of torture against Ecuador.

49. In June 2008, Mr. Vélez Loor underwent an expert medical and psychological exam for this case in La Paz, Bolivia.⁴¹ The expert report indicates that Mr. Vélez Loor underwent a forensic medical exam in 2004, although the Commission has not received a copy of that report. The second report (June 2008) did include four photographs showing scars on Mr. Vélez Loor's body.⁴² Three of the photographs show five cigarette burns, four near his shoulders and another on his left arm, which would be consistent with Mr. Vélez Loor's allegations of torture at the hands of private security forces in Guayaquil, Ecuador.⁴³ Indeed, Mr. Vélez Loor submitted photos of these same scars in his other petition before the Commission, as evidence of the torture he allegedly suffered at the hands of the private security forces in Guayaquil, Ecuador.⁴⁴ The alleged victim has never alleged receiving cigarette burns during the alleged torture in Panamá. The last photograph shows a scar on the left side of Mr. Vélez Loor's head, which could be consistent with his allegations of torture in Panamá or in Ecuador.

50. In any event, beyond the steps described above in paragraph 45, the Panamanian State conducted no criminal investigation to establish the truth of Mr. Vélez Loor's allegations that he suffered acts of torture while imprisoned in Panama.

³⁶ Annex 7: Note DGPE-DC-2666-04 of September 27, 2004, from the General Directorate of Foreign Policy, with annexes.

³⁷ Annex 7: Note DGPE-DC-2666-04 of September 27, 2004, from the General Directorate of Foreign Policy, with annexes.

³⁸ Annex 7: Note DGPE-DC-2666-04 of September 27, 2004, from the General Directorate of Foreign Policy, with annexes.

³⁹ Jesús Tranquilino Vélez Loor, petition recorded as No. P-325-06 [Commission's archives].

⁴⁰ Jesús Tranquilino Vélez Loor, petition recorded as No. P-325-06 [Commission's archives].

⁴¹ Annex 24: Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist).

⁴² Annex 24: Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist).

⁴³ Compare Annex 24: Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist), and Annex 18: Newspaper article of March 6, 2005, "Call for International Cooperation, Jesús Tranquilino Vélez Loor," available at: <http://ecuador.indymedia.org/es/2005/02/8071.shtml>.

⁴⁴ Jesús Tranquilino Vélez Loor, petition recorded as No. P-325-06 [Commission's archives].

VII. CONSIDERATIONS OF LAW

1. Right to Personal Liberty (Article 7 of the American Convention)

51. Article 7 of the American Convention establishes in pertinent part:

1. Every person has the right to personal liberty and security.

[. . .]

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Any person detained shall be informed of the reason for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized to exercise judicial power and shall be entitled to trial within a reasonable time or be released without prejudice to the continuation of proceedings. His release may be subject to guarantees to assure appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. .

..

7. [. . .]

52. The Inter-American Court “emphasizes that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person’s right to liberty.”⁴⁵

53. As the Inter-American Court has established repeatedly, under Article 7(3) “no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.”⁴⁶

54. In a similar way, regarding the concept of arbitrariness, the Court has ruled that “[A]rbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.⁴⁷

55. Articles 7.4 and 7.5 establish certain procedural guarantees that must be observed when a person is held in custody.

⁴⁵ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez, v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paragraph 54.

⁴⁶ I/A Court H. R., *Case of Gangaram Panday v. Suriname*, Judgment of January 21, 1994, Series C No. 16, paragraph 47; and I/A Court H. R., *Case of López Álvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141, paragraph 66.

⁴⁷ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez, v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paragraph 92.

56. The Inter-American Court has established that Article 7(4) of the American Convention:

sets forth a mechanism to avoid unlawful or arbitrary conduct from the very act of deprivation of liberty on, and to ensure defense of the detainee. Both the detainee and those representing him or with legal custody over him have the right to be informed of the motives of and reasons for the detention and about the rights of the detainee.⁴⁸

57. Analyzing a violation of article 7.4 of the American Convention, the Court defined the content of that norm as follows:

the detainee [who] is deprived of his liberty . . . must be informed of his right to establish contact with another person, for example, a next of kin, an attorney, or a consular official, as appropriate, to inform this person that he has been taken into custody by the State. Notification to a next of kin or to a close relation is especially significant, for this person to know the whereabouts and the circumstances of the accused and to provide him with the appropriate assistance and protection. In case of notification to an attorney, it is especially important for the detainee to be able to meet privately with him, which is inherent to his right to benefit from a true defense. In case of consular notification, the Court has pointed out that the consul 'may assist the detainee in various acts of defense, such as granting or hiring legal counsel, obtaining evidence in the country of origin, corroborating the conditions under which legal assistance is provided, and observing the situation of the accused while he is in prison.'⁴⁹

58. With regards to article 7(5) on the American Convention, the Court has stressed that it ensures a detainee of the right to be promptly brought before a judicial authority to review the reasonableness of the person's continued detention and to set a date for trial within a reasonable timeframe. The Inter-American Court has stressed,

the terms of the guarantee established in Article 7(5) of the Convention are clear in what refers to the fact that the person arrested must be taken before a competent judge or judicial authority, pursuant to the principles of judicial control and procedural immediacy. This is essential for the protection of the right to personal liberty and to grant protection to other rights, such as life and personal integrity. The simple awareness of a judge that a person is detained does not satisfy this guarantee, since the detainee must appear personally and give his statement before the competent judge or authority.⁵⁰

59. In connection with this, in a more recent judgement, the Court repeated that article 7.5 of the American Convention establishes that any detention should be submitted promptly for judicial review. Prompt judicial control is a measure intended to avoid arbitrary or unlawful arrests, bearing in mind that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or

⁴⁸ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 109.

⁴⁹ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 112; See: Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V, available at: <http://www.cidh.oas.org/Basicos/Basicos.Principios%20y%20Buenas%20Prácticas%20para%20PPL.htm>.

⁵⁰ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 118.

coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence.⁵¹

60. In the case at hand, although Mr. Vélez Loor was aware of the reasons for his arrest immediately after he was taken into custody in the province of Darién, he was not officially informed of the charges against him, nor was he notified of his legal rights⁵² at any time between November 10, 2002, and the day of his conviction, December 6, 2002.

61. During that period, Mr. Vélez Loor was never taken before a judge or other officer authorized by law to exercise judicial power. Thus, the only authority aware of his situation was the Director of the National Immigration Directorate, who does not meet the characteristics set by Article 7.5 of the American Convention.

62. As the Court has stated in other cases, to satisfy Article 7 of the American Convention, Panama should have promptly provided Mr. Vélez Loor with an initial hearing before a judicial authority for it to decide on the legality of his arrest and imprisonment, formally indicate the charges against him, inform him of his legal rights, and set a date for his trial.⁵³ The State never afforded Mr. Vélez Loor that opportunity in the proceedings.

63. For its part, Article 7(6) of the American Convention states that anyone deprived of liberty “shall be entitled to recourse to a competent court . . . without delay” to determine the lawfulness of that person’s detention. The State must ensure that a detainee has access to judicial remedies, namely in this case *habeas corpus*, to challenge the lawfulness of the person’s detention. The Inter-American Court has stressed that “protection of the individual against arbitrary exercise of public authority is a fundamental objective of international human rights protection. In this regard, non-existence of effective domestic remedies places the individual in a state of defenselessness.”⁵⁴

64. To that end, the Court has stated, “writs of habeas corpus and of ‘amparo’ are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by [the American Convention].”⁵⁵ The Inter-American Court emphasizes that “it is not enough for the resources to exist formally, but rather they must be effective, in other words, the individual must have an effective possibility of filing a

⁵¹ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez, v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paragraph 81; *Case of Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 27, 2003, Series C No. 103, paragraph 66; and *Case of Bulacio v. Argentina*, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, paragraph 129.

⁵² The case file indicates that the State never informed Mr. Vélez Loor of his right to contact a lawyer, a consular official, and/or a family member. The State does not dispute Mr. Vélez Loor’s contention that he was unable to use a telephone or other form of communication to contact a lawyer, consular official, and/or family member. It is significant that when Mr. Vélez Loor was able to reach the Ecuadorian Consulate, Ecuadorian officials were able to accelerate his release and subsequent deportation to Ecuador. Finally, the State imprisoned Mr. Vélez Loor in the remote and sparsely populated province of Darién, where there are probably few practicing attorneys, until he was convicted.

⁵³ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 108.

⁵⁴ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 130.

⁵⁵ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 128; citing: *Habeas Corpus in Emergency Situations*, Series A, Advisory Opinion OC-8/87 of January 30, 1987, paragraph 42; and *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 33.

simple and prompt remedy that enables attainment, if appropriate, of the judicial protection requested.”⁵⁶

65. The State argued that Mr. Vélez Loor had habeas corpus, amparo relief, and administrative human rights proceedings available to him, but that he decided not to pursue them; however, the Commission believes that the failure to observe minimum guarantees in his detention as indicated in the preceding paragraphs, together with the violations of due process that will be argued below in the section dealing with Article 8 of the Convention, prevented Mr. Vélez Loor from filing for the remedies indicated by the State, habeas corpus in particular.

66. Mr. Vélez Loor made use of the mechanisms available to him under the circumstances. Thus, in March 2003 he filed a complaint with the People’s Defender, requesting his release and deportation. As indicated in the considerations of fact, it took the People’s Defender three months to file a petition with the National Immigration Directorate and only after Mr. Vélez had embarked on a hunger strike. The People’s Defender did not file amparo or habeas corpus action on the victim’s behalf. The request for release and deportation was merely formal and did not include any legal arguments on the irregularities committed by the State in connection with the procedural guarantees described above.

67. Article 7.6 provides that any detainee who disputes the legality of his arrest or imprisonment must be afforded “recourse to a competent court.” The process pursued by the Office of the People’s Defender did not satisfy the requirements of Article 7.6 of the American Convention. Due to the lack of information, lack of judicial oversight, and absence of procedural guarantees prevented Mr. Vélez Loor from filing for habeas corpus relief on his own initiative. The Commission therefore believes that although remedies for challenging the legality of his arrest did formally exist, they were not effectively made available to the victim in the instant case.

68. In light of the arguments set out in this section, the Inter-American Commission asks the Honorable Court to conclude and declare that the Panamanian State did violate the right to personal liberty and guarantees enshrined in Articles 7.1, 7.3, 7.4, 7.5, and 7.6 of the American Convention, in conjunction with Article 1.1 thereof.

2. Right to a Fair Trial and to Judicial Protection (Articles 8 and 25 of the American Convention)

69. The relevant parts of Article 8 of the American Convention provide the following minimum guarantees:

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

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

⁵⁶ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 131.

(...)

- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- h. the right to appeal the judgment to a higher court.

(...)

70. Article 25 of the Convention, in turn, provides:

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

71. First of all, the Commission would like to note that the evidence in the case file indicates that the proceedings brought against Mr. Vélez Llor were criminal in nature. Thus, the decision whereby Mr. Vélez Llor was given a two-year prison term does not describe that ruling as the consequence of a merely administrative offense, as the Panamanian State has maintained throughout the processing of the case by the Commission, but as a criminal offense. The punishment was handed down under Article 67 of Decree Law No. 16 of June 30, 1960, which establishes a prison term of two years. As indicated by that decree law, the punishment is criminal in nature, which means it must be imposed by a competent, independent, and impartial court, in proceedings that strictly observe all the guarantees contained in Article 8 of the American Convention. The Commission believes that the State cannot elude its responsibility of ensuring guarantees of due process, as provided for in the American Convention, by arguing that the proceedings were administrative, particularly in light of the severity of the punishment that was imposed.

72. The Commission will therefore argue that there was a violation of the right to a fair trial on the assumption that the offense allegedly committed by Jesús Tranquilino Vélez Llor was criminal in nature and, consequently, so was the sanction imposed on him.

73. Irrespective of the foregoing and even if, for the sake of argument, the State's contention regarding the nature of the victim's trial were to be admitted, the Commission notes that according to the constant jurisprudence of the system's agencies, the guarantees of due process enshrined in the American Convention apply to both criminal trials and to proceedings of an administrative or any other nature that may culminate in the

imposition of a sanction or imply the determination of rights.⁵⁷ In dealing with another case involving immigration, the Inter-American Court ruled that “although this article [Article 8] does not stipulate minimum guarantees in matters which concern the determination of the rights and obligations of a civil, labor, fiscal or any other nature, the minimum guarantees established in paragraph 2 of the article should also apply to those categories and, therefore, in that respect, a person has the right to due process in the terms recognized for criminal matters, to the extent that it is applicable to the respective procedure.”⁵⁸

74. It having been established that the punishment imposed on the victim was of a criminal nature, the Commission will proceed to examine the specific violations of Article 8 of the American Convention in the case at hand.

75. First of all, the sanction was imposed by an administrative authority, the Director of the National Immigration Directorate, who cannot be considered a competent, independent, and impartial judge in accordance with Article 8.1 of the American Convention. Second, the available information clearly indicates a series of irregularities that disregarded several guarantees enshrined in Article 8.2 of the Convention.

76. Between November 10, 2002, when he was arrested, and December 6, 2002, when his prison term was handed down, Mr. Vélez Loo remained unaware of the specific charges made against him since he was never formally accused. During that period, there is no evidence at all to indicate that Mr. Vélez Loo was afforded any opportunity to defend himself against the charges. Neither was the victim able to consult with defense counsel of his choosing or, should he have waived that right, with a public defender appointed by the State. The authorities failed to provide Mr. Vélez Loo with the possibility of contacting his home country’s consulate. All these omissions necessarily had an adverse effect on Mr. Vélez Loo’s ability to exercise his right of defense. To summarize: the victim was not given an opportunity to be heard in his defense prior to his conviction, and he was at no time afforded an opportunity to make a statement regarding the alleged immigration violations with which he was accused.

77. All these claims were submitted by the petitioners during the Commission’s processing of the case, and they were at no time challenged by the State. On the contrary, the State’s central argument was that since the proceedings were of an administrative nature, the aforesaid guarantees were not applicable. The Commission has already made its position on this point clear (*supra*, paragraphs 70 – 72); however, it should be noted that this specific argument indicates that the petitioners’ contentions are true.

78. In connection with this, the Commission invokes the Court’s jurisprudence regarding the burden of proof when it is claimed that a State has failed to grant given conventional guarantees. Specifically, the Court has ruled that:

In the instant case, the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is

⁵⁷ See, for example: I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, paragraphs 69-70; I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, paragraph 118; Inter-American Commission on Human Rights, *José Sánchez Guner Espinales et al. v. Costa Rica*, Report No. 37-01, Case No. 11.529 (February 22, 2001); Inter-American Commission on Human Rights, *Wayne Smith v. United States*, Report on Admissibility, Report No. 56/06, paragraph 51 (July 20, 2006).

⁵⁸ I/A Court H. R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74, paragraph 103.

an allegation of a positive nature and, thus, susceptible of proof. Moreover, if it is recalled that, on other occasions, the Court has established that "in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State," this leads to the conclusion that the burden of proof on this point corresponds to the State.⁵⁹

79. In the case at hand, the State has provided no evidence to indicate that the guarantees enshrined in Article 8.2 of the American Convention were observed.

80. Even Mr. Vélez Loor's right of appeal was limited. The sentence, Resolution No. 7306 of December 6, 2002, mentions that Mr. Vélez Loor is afforded the rights under Article 86 of Decree Law No. 16 of June 30, 1960, but does not describe what those rights are. According to Article 86 of Decree Law No. 16, Mr. Vélez Loor was permitted to two forms of appeal: (1) request reconsideration from the Director of Migration; or (2) an appeal to the Ministry of Foreign Relations, the governing authority for the Migration Office. Under Article 86, either of these actions must be taken within three days of sentencing. Under the Immigration Law in force at the time of the events, there was no right of appeal to a judicial body offering guarantees of independence and impartiality.

81. As stated above, with reference to Article 7.6, "writs of habeas corpus and of amparo are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by [the American Convention]."⁶⁰ As noted in the section dealing with that article, the Commission believes that Mr. Vélez Loor was indeed not afforded effective recourse before a competent, independent, and impartial judge for challenging the legality of either his imprisonment or the punishment that he received.

82. In light of the above considerations, the Commission asks the Honorable Court to conclude and declare that the Panamanian State did violate the rights enshrined in Articles 8.1, 8.2, and 25 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof, by failing to afford Mr. Vélez Loor guarantees of due process with respect to his alleged immigration offenses or other judicial remedies for safeguarding his rights under the American Convention.

3. Right to Humane Treatment (Article 5.1 and 5.2 of the American Convention, and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture)

83. Articles 5.1 and 5.2 of the American Convention provide as follows:

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

84. Similarly, the relevant parts of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture stipulate:

⁵⁹ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez, v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paragraph 73.

⁶⁰ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 128.

Article 1

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

Article 6

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

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

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

Article 8

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

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

(...)

3.1 Regarding the Prison Conditions

85. The Inter-American Court has held, "According to Article 5 of the Convention, all persons deprived of their liberty shall be treated with regard for their inherent dignity. The State, as the entity responsible for detention centers, must guarantee prison inmates the existence of conditions that respect their fundamental rights and a decent life".⁶¹

86. The State contends that Mr. Vélez Looor was sentenced to an administrative infraction. The Commission observes in this regard that when states detain persons for reasons of migration, such persons are to be held apart from persons detained in relation to criminal sentences.⁶² Yet, after Mr. Vélez Looor received his sentence for immigration violations under Decree Law No. 16, he was transferred to la Joya-Joyita Penitentiary, the largest criminal prison facility in Panamá.

⁶¹ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez, v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paragraph 170. In its Declaration of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the Inter-American Commission established guidelines to assist the States in interpreting their obligations under Article 5 of the American Convention. See: Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, available at: <http://www.cidh.oas.org/Basicos/Basicos.Principios%20y%20Buenas%20Prácticas%20para%20PPL.htm>.

⁶² Principle XIX of the Principles and Best Practices on the Protection of Persons Deprived of Liberty states: "Asylum or refugee status seekers and persons deprived of liberty due to migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges."

87. In the considerations of fact, the Commission has described the inhumane detention conditions at the La Joya-Joyita prison, which have been monitored by international organizations, universities, and even the office of the People's Defender over the past decade. Among those conditions, particularly worthy of note is the overcrowding at patently dangerous levels. Another problem is the failure to separate inmates according to the seriousness of their crimes. Mention should also be made of the shortage of cells with beds for inmates, who must consequently improvise with hammocks at different heights in the confined areas, which poses a danger to their physical integrity. Also noteworthy are shortcomings in access to basic services, such as a shortage of showers, drinking water, and an adequate system for disposing of prisoners' waste. To summarize, several agencies agree that La Joya-Joyita does not even satisfy the basic necessities of human survival.

88. In addition, various investigations have revealed that prison officials regularly made excessive use of tear gas and other chemical irritants. It has also been claimed that officials frequently used excessive force against inmates, causing them serious injuries.

89. These phenomena are not new, and the available evidence and the investigations carried out by the Commission in the year 2001 indicate that Mr. Vélez Loor faced those conditions during that time he was held at La Joya-Joyita, between December 2002 and September 2003. As noted in the considerations of fact, when Mr. Vélez Loor describes his time there, he refers to many of these problems.

90. These conditions are likewise at the La Palma detention center, where Mr. Vélez Loor spent his first month of imprisonment. In connection with this, the petitioners reported that the National Office for Refugee Attention in Panama has issued similar reports on living conditions at La Palma, and the State has not disputed those claims regarding the living conditions and general mistreatment at the two prisons where Mr. Vélez Loor served his sentence.

91. In light of the above arguments, the Commission asks the Honorable Court to conclude and declare that the Panamanian State did violate Jesús Tranquilino Vélez Loor's right to humane treatment as enshrined in Articles 5.1 and 5.2 of the American Convention, in conjunction with Article 1.1 thereof, by failing to provide him appropriate living conditions and safeguards against general mistreatment during his time in prison.

3.2 Regarding the Complaints of Torture and the Failure to Investigate those Claims

92. The Inter-American Court has stressed,

in the light of the general obligation of the State Parties to respect and guarantee the rights of all persons subject to its jurisdiction, contained in Article 1(1) of the American Convention, the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention. Furthermore, this action is specifically regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which Articles bind the State Parties to take all steps that may be effective to prevent and punish all acts of torture within

the scope of their jurisdiction, as well as to guarantee that all torture cases be examined impartially.”⁶³

93. Article 8 of the Inter-American Convention Against Torture explicitly compels States Parties to criminally investigate allegations of torture within their jurisdiction. Proactive State investigations of allegations of torture are essential to preventing acts of torture from occurring.

94. The available information demonstrates that, after his return to his country, on January 27, 2004 Mr. Vélez Loor presented his allegations of torture to Panamanian officials at the embassy in Quito, Ecuador. Mr. Vélez Loor’s complaint to the Panamanian embassy was detailed and alleged he was tortured while in Panamanian custody. Mr. Vélez Loor’s allegations of abuse by Panamanian officials have remained consistent in all of the petitioners’ submissions to the Commission in this case. In response to Mr. Vélez Loor’s allegations, the Panamanian embassy did solicit information from the Ministry of Foreign Affairs, who sought information from the Panamanian National Police and the National Office for Migration. The available information demonstrate, however, that it did not open any kind of criminal investigation into the allegations of torture. The reports submitted by the Panamanian National Police and National Office of Migration only confirm that Mr. Vélez Loor was in Panamanian custody. There is no indication that either agency interviewed any individuals or did any fact-finding beyond consulting Mr. Vélez Loor’s file. Neither report even makes reference to the allegations of torture.

95. The Commission highlights that according to article 8 of the Inter-American Convention to Prevent and Punish Torture, allegations of torture under the jurisdiction of a State Party, merit the opening of a criminal investigation, which did not occur in the present case. Thus, only after it was notified that the Inter-American Commission had adopted Report on Merits No. 37/09 did the State indicate that it had begun an investigation – which, to date, has yielded no results.⁶⁴

96. It is worth mentioning that at the time of his allegations to the Panamanian Embassy, Mr. Vélez Loor’s subsequent allegations against private security forces in Ecuador (February 2005) had not occurred. In that sense, the State’s position before the Commission, challenging Mr. Vélez Loor’s credibility, does not mitigate the State’s failure in January 2004 to investigate the serious allegations of torture that allegedly occurred in Panamá.⁶⁵

97. In consideration whereof, the Commission asks the Court to conclude and declare that the State of Panama did violate Article 5 of the American Convention, in conjunction with the guarantee obligation contained in Article 1.1 thereof, together with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, by failing to conduct a serious and diligent investigation of the victim’s torture allegations.

⁶³ I/A Court H. R., *Case of Gutiérrez Soler v. Colombia*, Judgment of September 12, 2005, Series C No. 132, paragraph 54; I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, paragraph 88.

⁶⁴ See: Appendix 3: Case file from the Inter-American Commission on Human Rights, communications following the adoption of Report on Merits No. 37/09.

⁶⁵ In Report on the Merits No. 37/09, the Commission concluded that it did not have sufficient evidence to find that acts of torture had in fact been committed against the victim in Panama. That decision was without prejudice to its conclusion on the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture through failing to order an investigation into the complaints made by Mr. Vélez Loor.

4. Duty of Adopting Domestic Legal Effects (Article 2 of the American Convention)

98. Article 2 of the American Convention establishes:

Where the exercise of any of the rights or freedoms referred to in [the American Convention] is not already ensured by legislative or other provisions, the States Parties undertake to adopt (...) such legislative or other measures as may be necessary to give effects to those rights or freedoms.

99. The Commission takes note of Decree Law No. 3 of February 22, 2008, which the State asserts eliminates the penalty of imprisonment for repeated illegal entry to Panamá.⁶⁶ This positive change in domestic law, however, does not resolve the violation of Article 2 due to the application of Decree Law No. 16 of June 30, 1960 in Mr. Vélez Loo's case, and the consequent lack of due process afforded to him as a migrant in violation of Articles 7, 8, and 25 of the American Convention.

100. Consequently, the Commission concludes that the State did violate Article 2 of the American Convention by failing to bring its domestic law into line with the rights enshrined in Articles 7, 8, and 25 of that instrument.

VIII. REPARATIONS AND COSTS

101. In light of the facts alleged in this application and of the consistent jurisprudence of the Inter-American Court, which establishes "that it is a principle of International Law that any violation of an international obligation that has caused damages triggers the duty to make adequate amends,"⁶⁷ the Commission hereby submits to the Court its views on the reparations and costs that the Panamanian State must provide as a result of its responsibility in the human rights violations committed with respect to the victim.

102. In consideration of the Court's Rules of Procedure, whereby individuals can be granted autonomous representation, the Commission will merely present the general guidelines and aspirations for reparations and costs that it believes the Court should follow in the case at hand. The Commission understands that it falls to the victim and his representatives to substantiate their contentions in greater detail, in compliance with Article 63 of the American Convention and Articles 24 and others of the Court's amended Rules of Procedure. However, should the victim's representatives not make use of this right, the Inter-American Commission asks the Court to grant it an opportunity during the proceedings to quantify the relevant claims. In addition, the Commission will in due course inform the Court if it has any comments on the amount sought by the representatives of the victim.

1. Obligation of Making Reparations

103. In the case at hand, the Inter-American Commission has asked the Honorable Court to conclude and declare that the Panamanian State is internationally responsible for violating the rights to humane treatment, to personal liberty, to a fair trial, and to judicial protection, as enshrined in Articles 5, 7, 8, and 25 of the American Convention, in conjunction with the general obligations of respecting and ensuring those rights and of

⁶⁶ Annex 2: Decree Law No. 3 of February 22, 2008.

⁶⁷ I/A Court H. R., *Case of Cantoral Huamaní and García Santacruz*, Judgment of July 10, 2007, Series C No. 167, paragraph 156; I/A Court H. R., *Case of Zambrano Vélez et al.*, Judgment of July 4, 2007, Series C No. 166, paragraph 103; and I/A Court H. R., *Case of Escué Zapata*, Judgment of July 4, 2007, Series C No. 165, paragraph 126.

adapting the provisions of its domestic law set out in Articles 1.1 and 2 thereof, together with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Jesús Tranquilino Vélez Loor.

104. Article 63.1 of the American Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

105. As the Court has consistently maintained in its jurisprudence, "Article 63.1 of the American Convention embodies an accepted tenet that is a fundamental principle of the contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."⁶⁸

106. Reparations are crucial in ensuring that justice is done in a given case, and they are the mechanism whereby the Court's decisions move beyond the realm of mere moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear. Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred.

107. If full restitution is not possible, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.⁶⁹

108. A respondent state may not invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by international law.⁷⁰

2. Reparation Measures

109. The Court has said that reparations tend to eliminate the effects of the violations committed.⁷¹ These measures cover the different ways in which a state can meet

⁶⁸ I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 414; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 116.

⁶⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 201; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

⁷⁰ I/A Court H. R., *Case of Cantoral Huamani and García Santacruz*, Judgment of July 10, 2007, Series C No. 167, paragraph 190; I/A Court H. R., *Case of Zambrano Vélez et al.*, Judgment of July 4, 2007, Series C No. 166, paragraph 148; I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415.

⁷¹ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 202; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 416; I/A Court H. R., *Case of the Dismissed*

the international responsibility in which it incurred and, in accordance with international law, can be measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.⁷²

110. These elements that make up redress have also been dealt with by the universal system. Thus, the United Nations Special Rapporteur on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrepetition.⁷³

111. Similarly, the since disbanded United Nations Commission on Human Rights found that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of nonrepetition.⁷⁴

112. Although Mr. Vélez Loo has recovered his freedom, the nature of the violations of humane treatment and of the right to fair trial and judicial protection he suffered while facing his criminal trial and serving his sentence requires the State of Panama to order a series of additional forms of redress to attenuate, to the extent possible, the effects of the violations described in this application.

113. In the following paragraphs, and in consideration of the criteria established by inter-American and universal jurisprudence, the Commission presents its conclusions and general aspirations regarding the forms of redress due to Jesús Tranquilino Vélez Loo.

2.1 Compensation Measures

114. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory in nature, and that it is to be granted in volume and fashion sufficient to repair both the material and the nonmaterial harm inflicted.⁷⁵

Congressional Employees (Aguado Alfaro et al.), Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 144.

⁷² See: United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the Right to Reparation for Victims of Gross Violations of Human Rights, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H. R., *Blake Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, paragraph 31; I/A Court H. R., *Suárez Rosero Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, paragraph 41.

⁷³ Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, prepared by Dr. Theodore Van Boven pursuant to Human Rights Sub-Commission decision 1995/117, E/CN.4/sub.2/1997/17.

⁷⁴ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, paragraph 7.

⁷⁵ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Hilaire, Constantine, Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 204; I/A Court H. R., *Garrido and Baigorria Case*,

115. The Commission believes that in accordance with the criteria of equity that have always guided its decisions regarding reparations, and in line with its existing jurisprudence, the Court must establish the compensation due to the victim in this case, covering both the material and nonmaterial injuries inflicted.

2.1.1. Material Damages

116. In its jurisprudence on reparations, the Court has been consistent in maintaining that material damages include consequential damages and future losses, together with nonmaterial and moral damages, for both the victims and, in certain cases, their immediate families.⁷⁶

117. Consequential damages have been defined as the direct and immediate effect of the incident on property,⁷⁷ while future losses are understood as the loss of economic income or benefits not accrued on account of a given circumstance, which can be quantified using certain measurable and objective indicators.⁷⁸

118. Regardless of the claims that the victim's representatives may present in due course during the proceedings, the Commission asks the Court to set an equitably determined sum of money as indemnification for consequential damages and future losses, in exercise of its broad powers in this regard.

2.1.2. Nonmaterial Damages

119. With respect to nonmaterial damages, the Court has stated that:

Non-pecuniary damage may include the suffering and affliction caused to the direct victims and to their next-of-kin and the impairment of values that are very significant for a person, together with changes, of a non-pecuniary nature, in the living conditions of victims or their next-of-kin. As it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for purposes of integral reparation to the victims all that can be done is for them to receive compensation, and this in two ways. First, by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity. Secondly, by carrying out acts or public works whose scope or public repercussion have an effect in terms of the remembrance of the victims, recovery of their dignity, consolation to

Reparations (Art. 63.1 American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, paragraph 41.

⁷⁶ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraphs 213 and 214; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 423.

⁷⁷ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 215; I/A Court H. R., *Loayza Tamayo Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 42, paragraph 147; and I/A Court H. R., *Aloeboetoe et al. Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of September 10, 1993, Series C No. 15, paragraph 50.

⁷⁸ See, for example: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraphs 105 *et seq.*; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraphs 151 and 152.

their relatives or issuing a message of official reproof of the violations of human rights involved and of commitment to avoid their repetition.⁷⁹

120. In light of the nature of this case, the Commission asks the Court to set an equitably determined sum as compensation for nonmaterial damages. In addition, among the measures of satisfaction indicated in the following section, the Commission will identify certain forms of satisfaction that, in addition to the compensation for nonmaterial damages, could help provide the victim in this case with moral redress.

2.2 Measures of Satisfaction

121. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.⁸⁰ It takes place when, generally in sequential order, apologies or any other gesture showing acknowledgement of responsibility for the act in question are offered, and, when applicable, the individuals responsible are prosecuted and punished.⁸¹

122. In that regard, the Commission believes that in the case at hand, in addition to setting an amount of compensation for nonmaterial damages, the Court should order the Panamanian State to implement measures of satisfaction, as it has ordered in other cases involving violations of personal liberty, humane treatment, the right to a fair trial, and judicial protection.

2.3 Measures of Rehabilitation

123. In addition, the Commission asks the Court to order the State of Panama to adopt measures of rehabilitation on behalf of the victim, including medical and psychological assistance to mitigate the physical and mental effects of the inhumane detention conditions in which Mr. Vélez Loo was held.

2.4 Guarantees of Nonrepetition

124. At the same time, the Commission believes that the State is obliged to prevent the recurrence of human rights violations.

125. In accordance with the nature of the violations suffered by the victim, the Commission believes that the State of Panama must make every possible effort to ensure that its detention centers meet minimum standards that are compatible with humane treatment and that ensure inmates a decent existence.

126. In addition, the State of Panama must ensure that its domestic immigration laws and the way they are enforced are compatible with the minimum guarantees established by Articles 7 and 8 of the American Convention as regards the right to personal liberty and to due process.

⁷⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 216; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 430; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 383; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 254.

⁸⁰ Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

⁸¹ Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

127. The Commission also believes that the State of Panama must take steps to investigate Mr. Vélez Loor's allegations of torture allegedly occurring under the jurisdiction of the Panamanian State. Similarly, the State must effectively enforce the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and, in that regard, it must ensure that its authorities understand and abide by their obligation of beginning ex officio investigations whenever allegations or reasonable grounds exist for believing that an act of torture has been committed under its jurisdiction.

3. Beneficiaries

128. Article 63.1 of the American Convention requires that the consequences of a violation be remedied and that fair compensation be paid to the injured party. In accordance with the nature of the instant case, the beneficiary of any reparations that the Court may order the Panamanian State to extend is the victim already identified in this application, Jesús Tranquilino Vélez Loor.

4. Costs and Expenses

129. In accordance with the Court's consistent jurisprudence, costs and expenses must be included in the reparations described in Article 63.1 of the American Convention. This is because the activities pursued by the injured parties, their heirs, or their representatives in securing access to international justice imply expenditures and financial commitments that must be compensated.⁸²

130. In the case at hand, the Commission asks the Court, after hearing the representatives of the victim, to order the reimbursement of the costs and expenses incurred in pursuing this case at the national level, as well as those arising from its processing before the inter-American human rights system.

IX. PETITION

131. Based on the considerations of fact and law set out above, the Inter-American Commission on Human Rights asks the Court to conclude and declare that:

- a) The State of Panama is responsible for violating the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights, in conjunction with the general obligations of respecting and ensuring those rights and of adapting its domestic legislation set out in Articles 1.1 and 2 thereof, with respect to Jesús Tranquilino Vélez Loor; and,
- b) The State of Panama is responsible for failing to conduct an investigation as required by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Jesús Tranquilino Vélez Loor.

And, consequently, to order the State:

- a) To provide Jesús Tranquilino Vélez Loor with redress for the material and nonmaterial harm he suffered;

⁸² I/A Court H. R., *Case of La Cantuta*, Judgment on Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, paragraph 243; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 455; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 152.

- b) To order measures of rehabilitation on behalf of Jesús Tranquilino Vélez Loor;
- c) To order measures of satisfaction on behalf of Jesús Tranquilino Vélez Loor;
- d) To conduct a serious and diligent investigation into the reports of torture allegedly committed against Jesús Tranquilino Vélez Loor under the jurisdiction of the Panamanian State;
- e) To guarantee that its national immigration law and the enforcement thereof are in line with the minimum guarantees set out in Articles 7 and 8 of the American Convention;
- f) To ensure that Panama's detention centers meet minimum standards that are compatible with humane treatment and that afford detainees a decent existence;
- g) To take steps so that the Panamanian authorities are aware of and abide by their obligation of opening investigations on an ex officio basis whenever allegations or reasonable grounds exist for believing that an act of torture has been committed under its jurisdiction; and,
- h) To reimburse the legal costs and expenses incurred in processing this case before the Inter-American Commission and Inter-American Court.

X. EVIDENCE

1. Documentary Evidence

132. The documentary evidence available at this time is listed below:

Appendix 1. IACHR, Report No. 37/09 (Merits), Case 12.581, Jesús Tranquilino Vélez Loor, Panama, March 27, 2009.

Appendix 2. IACHR, Report No. 95/06 (Admissibility), Petition 92-04, Jesús Tranquilino Vélez Loor, Panama, October 23, 2006.

Appendix 3. Case file from the Inter-American Commission on Human Rights.

Annex 1. Decree Law No. 16 of June 30, 1960.

Annex 2. Decree Law No. 3 of February 22, 2008.

Annex 3. Resolution No. 6425 of September 18, 1996, from the National Directorate of Immigration and Naturalization.

Annex 4. Resolution No. 7306 of December 6, 2002, from the National Directorate of Immigration and Naturalization.

Annex 5. Note No. DNMYN-AL-32-04 of February 17, 2004, from the National Directorate of Immigration and Naturalization.

Annex 6. Note AL-0874-04 of March 30, 2004, from the Legal Advisory Services Directorate of the National Police.

Annex 7. Note DGPE-DC-2666-04 of September 27, 2004, from the General Directorate of Foreign Policy, with annexes.

- Annex 8.** Handwritten incident report of November 11, 2002, from the National Police.
- Annex 9.** Deed No. ZPD/SDIIP 192-02 of November 12, 2002, from the Subdirectorato of Information and Police Investigation, Darién Police Zone.
- Annex 10.** Note No. 208-DGSP.DAL of February 22, 2006, from the General Directorate of the Penitentiary System of the Ministry of the Interior and Justice.
- Annex 11.** Personal Details Form, La Palma Public Prison, Darién, Penitentiary System, Ministry of the Interior and Justice, November 12, 2002.
- Annex 12.** Medical examination sheet dated January 15, 2003, from La Joyita's clinic.
- Annex 13.** Medical record sheet, dated April 10, 2003, from La Joyita's clinic, addressed to Mr. Adalides Batista, Director of La Joyita Prison, National Prison System Directorate.
- Annex 14.** Medical record sheet, dated June 27, 2003, from La Joyita's clinic.
- Annex 15.** Entries on Jesús Tranquilino Vélez Loor's medical records, in the case file.
- Annex 16.** Document of June 11, 2003, addressed to Mr. Adalides Batista, Director of La Joyita Prison, National Prison System Directorate.
- Annex 17.** Note E.P.Ec. No. 311-06 of October 25, 2006, from the Embassy of Panama in Quito, Ecuador.
- Annex 18.** Newspaper article of March 6, 2005, "Call for International Cooperation, Jesús Tranquilino Vélez Loor." Available at: <http://ecuador.indymedia.org/es/2005/02/8071.shtml>.
- Annex 19.** Complaint of November 10, 2003, filed by Jesús Tranquilino Vélez Loor with the Office of the People's Defender of Ecuador.
- Annex 20.** Jesús Tranquilino Vélez Loor's case file from the Office of the People's Defender.
- Annex 21.** Safe conduct No. 59/03, Consulate General of Ecuador, Panama City, Republic of Panama.
- Annex 22.** Complaint of September 15, 2003, filed by Jesús Tranquilino Vélez Loor with the Permanent Committee for the Defense of Human Rights in Ecuador.
- Annex 23.** Petition of February 2004, filed by Jesús Tranquilino Vélez Loor with the Embassy of Panama in Quito, Ecuador.
- Annex 24.** Medical/psychological expert opinion on possible torture and/or mistreatment, issued in July 2008 by Drs. Marcelo Flores Torrico (expert physician) and Andrés Gautier (expert psychologist).
- Annex 25.** Letter of February 10, 2004, from the Ministry of Foreign Affairs to the Ambassador of Panama in Ecuador.

- Annex 26.** Letter of February 11, 2004, from the Embassy of Panama in Quito, Ecuador, to the Ministry of Foreign Affairs.
- Annex 27.** Harvard University International Human Rights Clinic, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," March 2008.
- Annex 28.** Human Rights Network / Panama "Alternative Report on the Situation of Human Rights in Panama," presented to the Office of the United Nations High Commissioner for Human Rights, March 2008, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/RDDHPanama92_en.pdf.
- Annex 29.** IACHR, Press Release No. 10/01, available at: <http://www.cidh.org/Comunicados/English/2001/Press10-01.htm>.
- Annex 30.** Newspaper article of August 30, 2006, "Following complaint by inmates at La Joyita Prison, Defense Office launches an investigation into more than 15 days without drinking water," available at: <http://www.defensoriadelpueblo.gob.pa/ActividadesCuerpo.asp?ActividadesID=1057096161>.
- Annex 31.** Newspaper article of April 10, 2006, on the deplorable conditions at La Joya-Joyita, available at: <http://www.elsiglo.com/siglov2/Nacion.php?idnews=15695&idsec=1&fechaz=10-04-2006>.
- Annex 32.** Letter of January 11, 2008, from the IACHR to the Panamanian State, regarding a request for precautionary measures related to prison conditions at La Joya-Joyita.
- Annex 33.** Powers of Attorney.
- Annex 34.** Curriculum vitae of Gabriela Rodríguez Pizarro, expert called by the Commission.
- Annex 35.** Curriculum vitae of Víctor Atencio Gómez, expert called by the Commission.

133. The Commission notes at this juncture that some of the documents it is sending as annexes – in particular, certain records of domestic proceedings, newspaper articles, etc. – are the best that it has and has been able to obtain to date. Some of the pages are incomplete or illegible.

134. Consequently, the Commission asks the Court to order the illustrious State of Panama to submit certified copies of all the documents relating to the proceedings conducted under its domestic jurisdiction in connection with these incidents, together with authenticated copies of the applicable laws.

2. Witness Evidence

135. The Commission asks the Court to hear the testimony of the victim:

- Jesús Tranquilino Vélez Loo, who will give a statement on his arrest, on his prosecution, on the conditions in which he was imprisoned, and on the absence of an

appropriate response to his allegations of torture.

3. Expert Evidence

136. The Commission asks the Court to hear the opinions of the following expert witnesses:

- Gabriela Rodríguez Pizarro: Former United Nations Special Rapporteur for the rights of migrants and current Head of Mission of the International Organization for Migration, who will speak on the minimum guarantees that, under international human rights standards, must be assured in all criminal trials or proceedings of other kinds that involve the determination of a person's immigration status or that could lead to the imposition of a punishment arising from that status, as well as on other relevant aspects of the case.
- Víctor Atencio Gómez: A Panamanian attorney, who will speak on the detention conditions at the Panamanian prisons of La Palma and La Joya-Joyita in the years 2002 and 2003 and their compatibility with applicable international human rights standards, as well as on other relevant aspects of the case.

XI. INFORMATION ON THE VICTIM'S REPRESENTATIVES

137. In compliance with Article 34 of the Court's amended Rules of Procedure, the Inter-American Commission submits the following information: the victim has appointed the Center for Justice and International Law as his representative for the judicial phase of proceedings before the system, as indicated in the attached documents.⁸³

138. The details of the victim's representatives are as follows:

Address:

[REDACTED]

Telephone:

Fax:

E-mail:

Washington, D.C.
October 8, 2009.

⁸³ Annex 33. Powers of Attorney.