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PRESENTATION

Over its 35 years of operation, the Inter-American Court has accompanied the peoples of the Americas in the transformation of their social, political and institutional realities. During this time, it has decided more than 200 cases, delivered almost 300 judgments, issued over 20 advisory opinions, and provided immediate protection to individuals and groups by means of its preventive function.

Nevertheless, we are aware that the work of the Inter-American Court does not end when an order, a judgment, or an advisory opinion has been emitted. The effective protection of human rights is only achieved by a dynamic dialogue with national institutions, particularly those of a jurisdictional nature. In this context, it is the national actors who, by means of jurisprudential dialogue and a satisfactory control of conventionality, all within the framework of their competences, who ensure that the decisions of the Inter-American Court have real effect. A dynamic and complementary control of the treaty-based obligation to respect and to ensure human rights is being exercised in an increasingly vigorous manner, in conjunction with the domestic authorities.

In this spirit and with this encouragement, the Inter-American Court has been decisively fostering jurisprudential dialogue to ensure that inter-American justice is truly and effectively accessible. Every individual in the Americas should be aware of, take ownership of, and demand the human rights recognized in the American Convention or in the interpretations that the Inter-American Court makes of this instrument.

Accordingly and to this end, the publication of these bulletins has been commenced as an important effort to disseminate the Court's rulings periodically with the main purpose of allowing more people to get to know the work and the decisions of the Inter-American Court. Thus, these bulletins, which will be published every six months in Spanish, English and Portuguese, should become a useful tool for researchers, students, human rights defenders, and all those who would like to find

out about the impact of the Court's work, and about the innovative human rights standards that the Court is constantly developing.

This first publication includes the rulings made by the Court between August and October 2014. During this period the Court delivered seven judgments: six on preliminary objections, merits and reparations, and one on interpretation. Over the same period, the Court also adopted four orders on monitoring compliance with judgment, two orders on provisional measures, and one advisory opinion.

The significance of the issues dealt with by the Court in its decisions over this period resides in the fact that they are particularly timely given the current reality of our continent, and that they respond to present-day problems that are common to our different States. Among other matters, I would like to highlight those relating to the rights of migrants; the right of indigenous peoples to their lands; the protection of human rights defenders, and enforced disappearances of children during armed conflicts.

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We trust that this first bulletin will help publicize the Court's case law throughout the region.

Humberto A. Sierra Porto
President of the Inter-American Court

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I. CONTENTIOUS CASES



Number of cases¹ heard by the Court with regard to each State

¹These are cases submitted to the contentious jurisdiction of the Court by the Inter-American Commission or by a State that may result in the delivery of one or more judgments (preliminary objections, competence, merits, reparations, and interpretation of judgment).

Case of the Landaeta Mejías Brothers et al. v. Venezuela

(use of force by police agents / individuals in State custody, protection of their personal integrity)

The facts examined in this Judgment, delivered on August 27, 2014, focus on a series of abusive acts by the police in different states of Venezuela, including the State of Aragua, where the facts took place. The case refers to the death of Igmarr Alexander Landaeta Mejías, 18 years of age, which occurred on November 17, 1996, and the detention and death of his brother, Eduardo José Landaeta Mejías, 17 years of age, on December 29 and 31 that year, respectively. As a result of these two deaths, investigations and criminal proceedings were commenced in order to identify those presumably responsible and to impose the corresponding penalties. In the case of Igmarr Landaeta, the proceedings were dismissed and archived after three years. In the case of Eduardo Landaeta, more than 17 years have passed without the delivery of a final judgment in first instance.

The Court analyzed the alleged violation of the right to life of Igmarr Landaeta owing to the use of force by the authorities at three different moments: (a) the preventive actions; (b) the actions at the time of the facts, and (c) the actions following the facts. Regarding the preventive actions, the Court determined that Venezuela had not complied with its obligation to ensure the right to life by appropriate legislation on the use of force, violating the right to life (Article 4) and the obligation to adapt its domestic law (Article 2). In addition, the Court reiterated that it was essential that the State: (a) possess an adequate legal framework regulating the use of force; (b) provide appropriate equipment to the agents responsible for the use of force, and (c) select and train those agents properly. With regard to the actions at the time of the facts, the Court reiterated that in an incident during which the authorities use force, the actions of the police must be directed to the arrest of the presumed offender and not at the deprivation of his life. If the use of force becomes imperative, it must be used based on the principles of legitimate purpose, absolute necessity, and proportionality. Thus, the Court concluded that the second shot exceeded the proportionality of the

use of force. Regarding the actions following the facts, the Court considered that the State had failed to comply with its obligation, based on the principles of due diligence and humanity, to provide assistance to anyone injured by the use of force. In this regard, it indicated that if injuries occur owing to the use of force, the necessary medical aid must be facilitated and rendered and relatives or close friends notified at the earliest possible moment; a report on the situation must be prepared; the incident must be investigated in order to determine the level and manner of participation of each of those who intervened, whether directly or indirectly, so that the corresponding responsibilities may be established. Consequently, the Court concluded that the State had violated the obligation to respect and to ensure the right to life (Article 4), in relation to the obligation to respect rights (Article 1) and the obligation to adopt domestic legal provisions (Article 2).

In the case of Eduardo Landaeta, the Court examined his rights to personal liberty (Article 7), personal integrity (Article 5) and life (Article 4), crosscut by the rights of the child (Article 19). In relation to the right to personal liberty (Article 7) and the rights of the child (Article 19), the Court considered that these rights had been violated because he had been detained for around 38 hours without having been brought before a juvenile judge or authority with competence in this area. Regarding the obligation to respect and ensure the right to life of those in custody (Article 4), the Court found that this had been violated because of the State's position of guarantor with regard to any individual in its custody. According to the Court, in cases of deaths in the custody of State agents, the measures taken by the State must be guided by the following standards: (i) a complete, impartial and independent investigation *ex officio*, taking into account the level of participation of all the State agents; (ii) the investigation must be given a certain degree of public scrutiny owing to the public interest it could arouse; (iii) prompt intervention at the scene of the incident and appropriate handling of the scene of the crime, as well as preserving this in order to protect all the evidence, and also ballistic tests when firearms have been used, especially by State agents; (iv) determination of whether the body has been touched or moved and of the sequence of events that could have led to the death, as well as a preliminary examination of the corpse to protect any evidence that could be lost in its manipulation and transport, and (v) performance of an autopsy by trained professionals that includes any test that would indicate presumed acts of torture by State agents.

The Court also analyzed the investigations and the criminal proceedings instituted for the death of Igmara Landaeta. In this regard, the Court determined that the State had not carried out an exhaustive and diligent investigation that would have allowed it to obtain sufficient technical, consistent, congruent and reliable evidence and this had had a significant impact on impeding the clarification of the events in the domestic jurisdiction and on the establishment of the corresponding responsibilities. In addition, the Court determined that the State had not provided an effective judicial remedy to the members of Igmara Landaeta's family, owing to the existence of specific procedural delays in the case. Regarding the criminal proceedings instituted following the death of Eduardo Landaeta, the Court determined that Venezuela had not conducted a diligent investigation owing to errors committed during the collection of evidence which meant that important procedures were carried out more than eight years after the facts had occurred. Furthermore, the Court determined that there were serious delays and irregularities in the criminal proceedings which had been pointed out by the domestic authorities themselves. Consequently, the Court found that the State was responsible for the violation of the rights to a fair trial and to judicial protection (Articles 8 and 25).

In addition, the Court established that the State had not conducted any type of investigation into the illegal and arbitrary detention of Eduardo Landaeta or into the indications of torture during his detention. The Court also found that there had been a violation of the personal integrity (Article 5) of the next of kin of the Landaeta brothers.

As measures of reparation, the Court ordered the State, among other matters: (i) to investigate, prosecute and punish, as appropriate, those responsible for the facts; (ii) to provide psychological treatment to the next of kin of Igmara and Eduardo; (iii) to organize a public act to acknowledge its international responsibility and to publish the judgment; (iv) to improve its monitoring ability and to require accountability from police agents involved in episodes of the use of force based on the international standards set out in the judgment, and (v) to pay compensation and the costs and expenses of the proceedings, and also to reimburse the Victims' Legal Assistance Fund the amount provided to the victims.

The hearing before the Court is available at the following link:

<http://www.corteidh.or.cr/index.php/es/al-dia/galeria-multimedia>

Case of the Human Rights Defender et al. v. Guatemala

(protection of human rights defenders)

The judgment handed down on August 28, 2014, was based on the murder of the human rights defender A.A. and threats to his daughter B.A. (also a human rights defender) and his family, including his minor children. These threats even caused the family to leave their place of residence and move to another town.

In its analysis of the merits, the Court emphasized the work of human rights defenders considering it "essential for strengthening democracy and the rule of law." In this regard, it referred to the activities of monitoring, reporting violations, and education carried out by human rights defenders, stressing that the defense of human rights referred not only to civil and political rights, but also necessarily encompassed economic, social and cultural rights, based on the principle of the universality, indivisibility and interdependence of all human rights.

The Court also took into consideration the **2006 and 2012 Reports on the Situation of Human Rights Defenders in the Americas** by the Inter-American Commission establishing special protection for human rights defenders, and indicated that the defense of human rights can only be exercised freely when human rights defenders are not subjected to threats or any type of physical, mental or moral aggression, or other acts of harassment. It indicated that the State has the obligation not only to create the formal and legal conditions for human rights defenders to be able to perform their functions freely, but also to ensure that such conditions exist in actual fact. Furthermore, States must provide the necessary means to ensure that human rights defenders, or individuals who perform a public function regarding which they have received threats or are at risk, or who denounce human rights violations, may carry out their activities freely; protect them when they are threatened in order to prevent attempts on their life and integrity; create the conditions for the eradication of violations by State agents or by private individuals; abstain from imposing obstacles that make it difficult for them to perform their task, and investigate any violations committed against them in a serious and effective manner.

The analysis of the violation of the right to personal integrity with regard to the defender B.A. and her family was based on the elaboration of criteria concerning special measures of protection that are adequate and effective for individuals who have been threatened. In the case of human rights defenders, in order to comply with the requirement of adequacy or appropriateness, the special measures of protection must: (a) accord with the functions performed by the defenders; (b) include a risk assessment in order to adopt measures and monitor those that are in effect, and (c) be modifiable in keeping with changes in the level of risk. To this end, the measures of protection must be mutually agreed with the defenders in order to put in place an intervention that is timely, specialized and proportionate to the risk that the defender could face. The Court also underlined the need to take a gender perspective into account when assessing the risk, since this could have a differentiated impact on the level of risk, and on the implementation of the protection measures. Moreover, to ensure the effectiveness of the measures, it was essential that: (a) the State's response be immediate from the moment it became aware of the existence of the risk, so that the measures were timely; (b) those who intervened in the protection of defenders had the necessary training to perform their functions and with regard to the importance of their actions, and (c) the measures were in force for as long as the victims of violence or threats required them.

Applying those standards, the Court found that the State had violated the right to personal integrity (Article 5(1)), in relation to the obligation to ensure rights (Article 1(1)) and the rights of the child (Article 19). This was because, at least in 2001 and repeatedly since then, the State had been made fully aware by the reports of different national and international organizations that, in Guatemala, human rights defenders were in a vulnerable situation, and it had not adopted adequate and effective measures of protection for B.A. and her family after it became aware of the real and imminent danger they faced. The Court added that this lack of protection signified that B.A. and her family were forced to displace from their usual places of residence, without the State providing the conditions required to facilitate their voluntary return in a decent and safe manner to their usual places of resident or their voluntary resettlement in another part of the country, which also gave rise to a violation of the right to freedom of movement and residence (Article 22(1)) and the rights of the child (Article 19).

Furthermore, with regard to political rights (Article 23), the Court recalled that individuals must be able to enjoy political rights, but also added the concept of

“opportunity,” signifying that States must take positive measures to ensure that everyone who is formally a holder of political rights has the real opportunity to exercise them, taking into account the specific vulnerability of some of those who possess such rights. Thus, it was essential that the State create optimal mechanisms and conditions to ensure that political rights could be exercised effectively through appointed or designated positions, and also through elected office. In this regard, the Court considered that Guatemala had failed to ensure the necessary conditions for B.A. to continue exercising her political rights through the political positions she held, in violation of Article 23(1) of the American Convention, in relation to the obligation to respect and ensure rights (Article 1(1)).

Although the case was also submitted in relation to the violation of the right to life and political rights of the defender A.A., the Court considered that it had insufficient evidence to declare that the State had failed to comply with the obligation to ensure those rights.

Lastly, the Court indicated that the domestic criminal investigation into the death of A.A. had not been diligent, serious and effective, owing to a series of irregularities in the initial procedures that, in this specific case, could not be rectified; that the procedures that were performed were characterized by the State's apathy when conducting the investigation; that the follow-up on logical lines of investigation was neither complete nor exhaustive, and that the witnesses and deponents were afraid of suffering reprisals for any information they could provide, without being offered any protection whatsoever. Similarly, in relation to the complaints filed by B.A., the Court considered that the investigations were characterized by a lack of due diligence and that the time that had passed had been unduly in excess of a reasonable time for the State to open the corresponding investigative procedures. All this was in violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25) of the family of A.A.

Among the measures of reparation ordered, the Court established that the State of Guatemala should implement, within a reasonable time, an effective public policy for the protection of human rights defenders

It should be emphasized that, at their request, the Inter-American Court ordered that the names of the victims in this case be kept confidential. Consequently, the judgment was entitled the Human Rights Defender et al. v. Guatemala.

Case of Expelled Dominicans and Haitians v. Dominican Republic

(rights of migrants faced with expulsion procedures)

The judgment delivered on August 28, 2014, relates to 24 Haitians or persons of Haitian descent born in the Dominican Republic, including children, who were subjected to pejorative or discriminatory treatment, difficulties to obtain personal identification documents, arrest on the street or by intrusion in the home, and expulsion. In some cases, the expulsion signified the break-up of the family unit which included underage children, without the State undertaking reunification procedures.

In its judgment the Court reiterated its case law that the determination of nationality continues to fall within the competence of the States. However, it recalled that there are two limits to this competence: the obligation to prevent, avoid and reduce statelessness, and the obligation to provide equal protection without discrimination. Regarding the latter, the Court also recalled its case law to the effect that the migratory status of the parents cannot be transmitted to the children. Furthermore, the Court recalled that, in the case of [Contreras et al. v. El Salvador](#), it had established that the right to identity is a right enforceable erga omnes as an expression of a collective interest of the international community as a whole that does not admit annulment or suspension.

Thus, the Court considered that by ignoring the victims' identity documents at the time of the expulsions, the authorities disregarded their right to a name (Article 18), to the recognition of juridical personality (Article 3) and to nationality (Article 20), which together signify the right to identity. In addition, it determined that, considering that three of the victims were minors, there had been a violation of the best interests of the child, which forms part of the international corpus iuris on the rights of the child (Article 19).

Furthermore, in light of the *iura novit curiae* principle, the

Court found that the State had failed to comply with the obligation to adopt domestic legal provisions (Article 2), in relation to judgment TC/0168/13 handed down by the Constitutional Court of the Dominican Republic on September 23, 2013, and articles 6, 8 and 11 of Law No. 169-14 of May 23, 2014. The judgment of the Dominican Constitutional Court differentiated between those born in Dominican territory of foreign parents. This distinction was not made based on their situation, but rather based on the regular or irregular migratory situation of the parents. Thus, the Court found no reason to diverge from its opinion in its judgment in the case of the Yean and Bosico Girls v. Dominican Republic, that "the migratory status of a person is not transmitted to the children," and decided that the differentiation indicated in judgment TC/0168/13 was discriminatory in the Dominican Republic, and this had resulted in a violation of the right to equality before the law (Article 24).

The Constitutional Court's judgment also interpreted that the children of irregular migrants did not have the right to Dominican nationality even though they were born in the territory of the State. Furthermore, it ordered a general policy to audit the birth records starting in 1929 to detect "aliens who were registered irregularly." This entailed retroactive application of the measure, because the State would not apply the *ius soli* standard of granting nationality to individuals of Haitian descent born in Dominican territory since, instead of considering them aliens in transit, it considered that they were in an illegal situation. In addition, even though article 11 of the Haitian Constitution recognized the *ius sanguinis* standard, *de iure* and *de facto* situations existed that would have prevented the acquisition of this nationality; this meant that not only was the right to identity impaired, but also the individuals concerned became stateless, and the best interests of the child were adversely affected.

Regarding the rights to a fair trial (Article 8), to freedom of movement and residence (Article 22) and to judicial protection (Article 25), the rights of the child (Article 19) and the obligation to ensure rights without discrimination (Article 1(1)), the Court took into account the **procedural guarantees enjoyed by persons expelled or in the process of being expelled drawn up by the International Law Commission**. These include: basic detention conditions during the proceedings; the right to receive notice of the expulsion decision; the right to challenge the expulsion decision; the right to be heard by a competent authority; the right to be represented before the competent authority; the right to have the free assistance of an interpreter, and the right to

consular assistance. The Court also indicated that a proceeding that may lead to the expulsion of an alien must be individualized and allow that person's personal circumstances to be evaluated. Lastly, applying the standards developed in its recent **Advisory Opinion 21**, the Court indicated that when such proceedings entail separating children owing to the migratory situation of one or both parents, the specific circumstances must be assessed, ensuring an individualized decision that seeks a legitimate purpose in keeping with the American Convention, and that this decision be appropriate, necessary and proportionate. In addition, it established the prohibition of collective expulsions and the expulsion of nationals as a guarantee of the right to freedom of movement and residence (Article 22(5)). It considered that the "collective" nature of an expulsion of aliens was not determined by the number of persons expelled, because any expulsion decision should be based on an objective analysis of the individual circumstances of each alien.

With regard to the right to personal liberty (Article 7), the Court considered that: (a) the guarantees established in the domestic laws in force at the time were not observed and, therefore, the detentions of the victims were unlawful; (b) the victims were not advised of the specific reasons why they were being deported; (c) the victims were unable to have recourse to a competent judicial authority who could decide on their eventual release, because they were not released in Dominican territory, and (d) the deprivations of liberty were arbitrary because the State agents had detained individuals whose racial profile appeared to indicate that they belonged to the group of Haitians or those of Haitian descent who live in the Dominican Republic).

Lastly, the Court did not rule on the alleged violation of the rights to personal integrity (Article 5(1)) and private property (Article 21(1)). However, it did order various measures of reparation, in particular: (i) the adoption of measures to ensure that the Dominican victims were duly registered and had the necessary documentation to prove their Dominican nationality and identity; (ii) in the case of the victims who were under investigation, the annulment of the administrative investigations, as well as the civil and criminal judicial proceedings underway relating to their records and documentation; (iii) the adoption of the necessary measures to ensure that the Haitian victim could reside or remain lawfully in the territory of the Dominican Republic; (iv) the adoption of the domestic measures required to prevent judgment TC/O168/13 and the provisions of articles 6, 8 and 11 of

Law No. 169-14 from continuing to have legal effects; (v) the adoption of the measures required to annul any law or regulation of any nature, whether administrative, regulatory, legal or constitutional, as well as any practice or decision or interpretation that established or resulted in the irregular situation of the parents who were aliens being used as a reason to deny Dominican nationality to those born in the territory of the Dominican Republic, and (vi) the adoption of the necessary measures to regulate a simple and accessible birth registration procedure, in order to ensure that all those born in Dominican territory could be registered immediately after birth, regardless of their descent or origin and the migratory situation of their parents. In addition, the Court ordered the implementation of training programs for the members of the Armed Forces, border control agents, and agents responsible for migratory proceedings and judicial proceedings on migratory matters.

The hearing before the Court is accessible at the following link:

<http://vimeopro.com/corteidh/audiencia-publica-caso-tide-mendez-y-otros-vs-republica-dominicana/video/76479051>

Case of Rochac Hernández et al. v. El Salvador

(forced disappearance of children during the armed conflict)

The judgment, handed down on October 14, 2014, refers to the forced disappearance of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayaoacijla, commencing on December 12, 1980, October 25, 1981, December 12, 1981, and August 22, 1982, respectively, without their subsequent fate or whereabouts having been established to date. The disappearances occurred in the course of different counterinsurgency operations during the armed conflict in El Salvador and were not isolated incidents, because they were inserted in the systematic State pattern of enforced disappearances of children verified during this armed conflict. A situation of total impunity prevails in this case and the right of the victims' families to know the truth has not been satisfied, even though the State has made an acknowledgement of international responsibility in which it accepted all the facts.

The Court decided to accept this acknowledgement. However, it found it necessary to examine the scope of the violations of the rights to personal liberty, personal integrity, life and juridical personality, because such violations have been extensively established by the Inter-American Court in other cases concerning the enforced disappearance of persons, in particular children in the context of the armed conflict in El Salvador. In this regard, it recalled that the enforced disappearance of persons is a continuing offense that violates multiple rights, and that its prohibition has achieved the status of *ius cogens*; it also referred to the obligation to prevent and to punish this offense.

Regarding the scope of the alleged violations of the rights of the child (Article 19), and to privacy and family life (Article 11), as well as the right of the family members to protection of the family (Article 17), the Court indicated that even though the State had the duty to protect the civilian population during the armed conflict, and especially the children who were in a situation of greater vulnerability and danger of having their rights impaired, in this case the State agents acted

entirely outside the legal order, using State structures and facilities to perpetrate the enforced disappearance of children, under the systematic repression to which certain members of the population who were considered subversives or members of the guerrilla were subjected.

Taking into consideration that the facts occurred in the context of a non-international armed conflict, the Court considered it useful and appropriate to analyze and interpret the scope of the norms of the American Convention in accordance with Article 29 of this instrument, and also had recourse to other international treaties such as the Geneva Conventions of 12 August 1949 and, in particular, Article 3 common to the four conventions; Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-international Armed Conflicts of 8 June 1977, to which the State is a party, and customary international humanitarian law, as complementary instruments and taking into account their specificity in this area. Thus, the Court considered that international humanitarian law provides a general protection to children as part of the civilian population; in other words, those who do not play an active role in the hostilities, who should receive humane treatment and not be subject to attacks. However, children, who are more vulnerable to suffering violations of their rights during armed conflicts, are beneficiaries of special protection based on their age and, for this reason, States must provide them with the care and aid they require. Article 38 of the Convention on the Rights of the Child also reflects this principle. The list of measures of this nature included in treaties on international humanitarian law include those whose purpose is to preserve family unity and to facilitate the search for, identification, and reunification of family members who have been dispersed owing to an armed conflict and, in particular, of unaccompanied or separated children. Furthermore, in the context of non-international armed conflicts, the State's obligations towards children are defined in Article 4(3) of Protocol II Additional to the Geneva Conventions, which stipulates, among other matters, that: "(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated."

Consequently, the Court considered that the State interfered in the family life of the disappeared victims by removing them and retaining them illegally, violating their right to remain within their family unit and to establish relationships with other persons who formed part of this unit, and declared that Articles 11(2) and 17 of the American Convention had been violated, in relation to Articles 19 and 1(1) of this instrument.

Such separations had and continue to have specific effects on each member of the families concerned, as well as on the essential dynamics of each family. Accordingly, the Court concluded that the State had violated the right to protection of honor and dignity (Article 11(1)) and the rights of the family (Article 17), in relation to the obligation to respect and ensure rights (Article 1(1)), of the family members.

In relation to the right to identity, the Court recalled that this right consisted of several elements including, although not restricted to, nationality, name and family relationships. In this regard, the Court reiterated that the American Convention protected those elements as rights in themselves. However, not all those rights were necessarily involved in all cases relating to the right to identity. In this case, the Court considered that the infringement of the right to identity was reflected in the acts of arbitrary or abusive interference in private and family life, as well as in violations of the rights of the family and to the enjoyment of family relationships.

In this context, facts such as the personal, physical and emotional consequences or the uncertainty about the whereabouts of the victims impeded the families from mourning and, in addition, they were deprived of knowing the truth about the victims' whereabouts. This led the Court to declare a violation of the right to personal integrity (Articles 5(1) and 5(2)) of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the families of the disappeared victims.

The Court also indicated that the State had still not ensured the right of the families to know the truth, understood as the right of the victim or of his or her family to obtain from the competent State bodies the clarification of the facts that violated the Convention and the corresponding responsibilities, by the corresponding investigation and prosecution.

First, the Court indicated that the State had not complied with the obligation to open a prompt criminal investigation into what happened. Second, the Court considered that the State had failed to comply with its obligation of due diligence in the criminal investigations, because it did not implement a serious and decided investigation strategy leading to the identification and prosecution of those presumably responsible. In this regard, the Court indicated that the authorities in charge of the investigations had the obligation to ensure that, during the investigations, they assessed the systematic patterns that had permitted the perpetration of egregious human

rights violations, such as those committed in this case. More than 30 years had passed since the facts began to be executed, and 12 years since the first investigation was opened; the criminal proceedings remained at their initial stages, without any of those responsible having been individualized, prosecuted and eventually punished. This had been unduly in excess of the length of time that could be considered reasonable for this purpose. Third, the Court referred to the ineffectiveness of the five applications for habeas corpus filed in order to discover the whereabouts of the victims, and questioned the fact that the violation of the right to physical liberty had not been acknowledged, so that any protection under that remedy was illusory. Consequently, the Court considered that the State of El Salvador had violated the right to personal liberty (Article 7(6)), as well as to a fair trial (Articles 8(1) and 25) in relation to the obligation to respect and ensure rights (Article 1(1)), to the detriment of the disappeared children. The violation of Article 7(6) was declared in application of the *iura novit curia* principle.

Lastly, regarding the reparations ordered, it is worth noting the following: (i) the adoption of measures to ensure that agents of justice, and also Salvadoran society, have public, technical and systematized access to the files containing information that is useful and relevant for the investigation in actions brought for human rights violations during the armed conflict, and (ii) the construction of a "garden-museum" where children who were forcibly disappeared during the armed conflict may be remembered.

The hearing before the Court is accessible at the following link:

<http://vimeopro.com/corteidh/caso-rochac-hernandez-y-otros-vs-el-salvador/video/90698194>

Case of Tarazona Arrieta et al. v. Peru

(use of force by State agents/ principle of complementarity)

The judgment delivered on October 15, 2014, originated from facts that took place in 1994, during the armed conflict that Peru experienced from 1980 to 2000, when a military squad unit was patrolling the district of Ate Vitarte in Lima. In this context, a soldier fired against a public transport vehicle, causing the death of the passengers Zulema Tarazona Arrieta and Norma Pérez Chávez, and injuring Luis Bejarano Laura. As a result of this incident, investigations were opened simultaneously in the military criminal jurisdiction and in the ordinary criminal jurisdiction. However, they were archived on June 20, 1995, and September 11, 1995, respectively, owing to the application of Amnesty Law No. 26,479. On January 21, 2003, the case was “de-archived” in the ordinary jurisdiction and the criminal proceedings were re-opened, as a result of the judgment handed down by the Inter-American Court in the case of **Barrios Altos v. Peru**, which declared that Amnesty Laws Nos. 26,479 and 26,492 were incompatible with the American Convention and, consequently, had no legal effects. Following a series of obstructions to the investigative procedures, in 2008, the Peruvian judicial authorities handed down a criminal conviction, which became final. The judgment convicted the perpetrator of the crimes of murder and serious injuries and ordered financial compensation for the next of kin of the persons deceased as civil reparation.

In its judgment, the Court analyzed the violation of the guarantee of a hearing within a reasonable time (Article 8(1)), in relation to the right to life (Article 4) and personal integrity (Article 5), all in relation to the general obligations to respect rights and to adopt domestic legal provisions (Articles 1(1) and 2). Regarding the first aspect, the Court declared that the State was responsible for violating the principle of a reasonable time in the domestic criminal proceedings. To this end, the Court applied the four criteria it had developed in its case law to the proceedings, which had lasted 16 years and two months: (i) the complexity of the case; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the effects on the legal situation of the interested party. In particular, the Court considered that several elements had had a negative

impact on the duration of the criminal proceedings: (a) the fact that the proceedings were archived for over seven years and four months owing to the application of Amnesty Law No. 26,479; (b) the extension of several deadlines after the criminal proceedings had been re-opened in 2003, and (c) the time that elapsed before the State paid the compensation.

The Court also concluded that the State had failed to comply with the obligation to adapt its domestic law (Article 2), in relation to the rights to a fair trial and to judicial protection (8(1) and 25) owing to the application of Amnesty Law No. 26,479 in the proceedings filed by the victims against the soldier who fired the shots. Its analysis focused on two aspects: (i) the application of the amnesty laws, and (ii) the absence of regulations concerning the use of force. First, regarding the application of the amnesty laws, the Court reiterated the criteria developed in the case of **Barrios Altos v. Peru**, in which it had indicated that the Peruvian amnesty laws were incompatible with the American Convention, because they did not permit the investigation of acts that constituted gross human rights violations, and therefore lacked legal effects. Second, regarding the absence of a legal framework on care and prevention in the use of force, and the assistance due to anyone injured or in any way affected, the Court considered that Peru was responsible for violating its duty to adapt domestic law, because at the time of the incident it did not have domestic regulations adapted to the **1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**. In addition, the Court stressed that this case was different from other cases concerning the use of force by State authorities that it had decided. Those cases did not relate to an “accidental” shot, but rather to actions or operations carried out by the authorities during which the use of force was foreseen or occurred intentionally. Consequently, the standards established in those cases referred to that type of situation by requiring, for example, that, during an incident involving the use of force, State agents must, insofar as possible, assess the situation and draw up a plan of action before they intervene. Also, the principles of legality, necessity and proportionality address situations in which the use of force has a pre-established objective or purpose, which was absent in this case owing to the “accidental” nature of the shot. The Court rejected the request by the victims’ representatives that it rule on the supposed incompatibility with the American Convention of Legislative Decree No. 1095, adopted in 2009, because this was beyond the factual framework of the Inter-American Commission’s report.

In addition, in application of the principle of complementarity, the Court decided that it would not rule on the supposed violation of the rights to life and personal integrity (Articles 4(1) and 5(1)) to the detriment of Zulema Tarazona Arrieta, Norma Pérez Chávez and Luis Beharano Laura, because the facts had been investigated in the criminal jurisdiction, the person responsible had been prosecuted and punished, and the next of kin of the presumed victims had received financial reparation in the domestic sphere.

The Court reiterated that the State's responsibility under the Convention may only be required at the international level after the State has had the opportunity to establish the violation of a right, where applicable, and to repair the harm caused by its own means. This is based on the principle of complementarity (or subsidiarity) that crosscuts the inter-American human rights system, which, as stated in the Preamble to the American Convention, "reinforce[es] or complement[s] the protection provided by the domestic law of the American States." Thus, the Court also recalled that the said subsidiary nature of the international jurisdiction signifies that the protection system instituted by the American Convention does not substitute the national jurisdictions, but rather complements them, so that, according to the Convention, when a matter has been definitively resolved under domestic law it is not necessary to submit it to the Court for its "approval" or "confirmation."

Lastly, the Court found that the State had not violated the right to personal integrity of the next of kin of Zulema Tarazona Arrieta, Norma Pérez Chávez and Luis Bejarano Laura owing to the duration of the criminal proceedings instituted against Antonio Evangelista Pinedo.

Regarding reparations, the Court established that its judgment constituted per se a form of reparation and ordered the State: (i) to publish the judgment and its summary, and (ii) to pay a sum to reimburse costs and expenses. The Court also established that the State should reimburse the Victims' Legal Assistance Fund of the Court the amounts disbursed during the processing of this case.

The hearing before the Court is accessible at the following link:

<http://vimeopro.com/corteidh/audiencia-publica-caso-zulema-tarazona-arrieta-y-otros-vs-peru/video/96122361>

Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members v. Panama

(right to collective ownership of alternative indigenous lands)

On October 14, 2014, the Court delivered judgment in the case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members. The facts of the case refer to the construction of a hydroelectric dam in Alto Bayano, province of Panama, in 1972, owing to which part of the area's indigenous reservation was flooded and the relocation of the population was ordered. To this end, the State awarded new lands to the indigenous communities that had been affected, adjoining the indigenous reservation to the east, and financial compensation was granted. The victims in this case argued, on the one hand, the supposed non-compliance by the State with the payment of compensation related to the flooding of the territories owned collectively by the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members and, on the other hand, the failure to delimit, demarcate and grant title to the lands assigned to the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano, as well as the absence of a guarantee for the effective enjoyment of the collective property title of the Emberá Piriati community.

The State presented three preliminary objections. In one of them it questioned the Court's temporal competence with regard to the presumed failure of the State to pay the compensation related to the flooding and relocation of the indigenous communities, which occurred prior to 1990 (the year in which Panama accepted the Court's contentious jurisdiction). The Court accepted this objection and concluded that the facts of the flooding, the relocation of the indigenous communities,

the domestic laws that provided for compensation, and the agreements signed by State authorities and representatives of the indigenous peoples were outside its temporal competence.

In its judgment, the Court reiterated its case law concerning the protection of the communal ownership of indigenous territories, recalling that: (1) the traditional possession of their land by the indigenous peoples has effects that are equivalent to the full title granted by the State; (2) traditional possession grants the indigenous peoples the right to demand official recognition of ownership and its registration, and (3) the State must delimit, demarcate and grant collective title to the land to the members of the indigenous communities. Based on these criteria, the Court indicated that, despite the non-ancestral nature of the land, the State's obligation to ensure the enjoyment of the right to property of the indigenous peoples subsisted in the case of alternative lands, even when the recovery of the ancestral land was no longer possible. Otherwise, the enjoyment of the right to collective property of the Kuna and Emberá peoples would be restricted because they had only occupied the alternative lands for a short time, or because they did not have an ancestral relationship to them, when the fact that they had not occupied the alternative land for very long was precisely the consequence of the relocation implemented by the State, for reasons beyond the control of the indigenous peoples. Hence, the Court indicated that any private property title superimposed on the collective property title of the indigenous peoples had no legal effects. Consequently, the Court considered that the State was responsible for having violated the right to collective property (Article 21) and the obligation to adapt domestic legislation (Article 2), because it had failed to establish domestic norms that would allow the delimitation, demarcation and titling of indigenous collective lands prior to 2008, to the detriment of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members.

In addition, the Court considered that the State had violated the rights to judicial guarantees (Article 8(1)) and to judicial protection (Article 25) to the detriment of the communities of the Emberá people of Bayano and their members, because the remedies they had filed to defend their lands from third parties had not obtained a response that would permit a satisfactory determination of their rights and obligations. Lastly, the Court concluded that Panama had violated the principle of a reasonable time (Article 8(1)), to the detriment of

the Kuna community and its members in relation to two criminal proceedings and one administrative proceeding to evict illegal occupants.

The Court did not rule on the presumed violation of the right to equality before the law (Article 24), considering that the Inter-American Commission had not indicated how the facts alleged in this regard had resulted in specific violations that differed from those already established in the judgment, and that the representatives had not presented evidence indicating that there was a difference in treatment between indigenous peoples, specifically the said communities, and non-indigenous persons in relation to the procedures for the recognition of property titles over the land.

Among other reparations, the Court ordered the State of Panama: (i) to publish the judgment and its summary, and also to broadcast it by radio; (ii) to organize a public act to acknowledge its international responsibility for the facts of the case; (iii) to demarcate the lands corresponding to the Emberá Ipetí and Piriati Communities and to award title to the Ipetí lands as the collective property of that community; (iv) to adopt the necessary measures to annul the private property title granted to Mr. Melgar within the territory of the Emberá Community of Piriati, and (v) to pay the sums established in the judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses. The Court also established that the State must reimburse the Victims' Legal Assistance Fund of the Court the amounts disbursed during the processing of this case.

The hearing before the Court is available at the following link:

<http://vimeopro.com/corteidh/audiencia-publica-caso-pueblos-indigenas-kuna-de-madungandi-y-embera-de-bayano-y-sus-miembros-vs-panama>

II. ADVISORY OPINIONS

Advisory Opinion OC-21/14: Rights and guarantees of children in the context of migration and/or in need of international protection

On August 19, 2014, the Court issued Advisory Opinion OC-21/14 on “Rights and guarantees of children in the context of migration and/or in need of international protection” (hereinafter “OC-21”), requested by Argentina, Brazil, Paraguay and Uruguay. The request asked the Court to determine with greater precision the obligations of States as regards the measures that should be adopted concerning children in relation to their immigration status or that of their parents, in light of the authorized interpretation of Articles 1(1), 2, 4(1), 5, 7, 8, 11, 17, 19, 22(7), 22(8), 25 and 29 of the American Convention on Human Rights, Articles 1, 6, 8, 25 and 27 of the American Declaration of the Rights and Duties of Man, and Article 13 of the Inter-American Convention to Prevent and Punish Torture.

In OC-21, the Court determined the obligations of States with regard to children in relation to their immigration status or that of their parents with the greatest possible precision and pursuant to the articles cited. Hence the States must take these obligations into consideration when designing, adopting, implementing and applying their immigration policies, including in them, as required, both the adoption or application of the corresponding norms of domestic law and the signature or application of the pertinent treaties and/or other international instruments. The Court understood that its answer to the request would be of specific benefit in the context of

a regional reality in which elements of State obligations concerning migrant children and/or those in need of international protection have not been clearly and systematically established, based on the interpretation of the relevant norms. This usefulness was revealed by the significant interest indicated by all the participants in this advisory procedure.

The Court referred to three provisions of the American Convention that had influenced the formulation of OC-21: Articles 1(1), 2 and 19. Regarding Article 1(1), the Court indicated that, for the effects of the obligation to respect and to ensure respect for the human rights of children, whether or not the entry of the person into the State’s territory was in keeping with domestic law had no significance whatsoever. Article 2 stipulated that States Parties must adapt their domestic law to the provisions of the Convention in order to give effect to the rights recognized therein, and this meant that the measures under domestic law must be effective (principle of the practical effects or *effet utile*). In the case of Article 19, the Court considered that it referred to the obligation to adopt measures of protection in favor of all children, based on their condition as minors, and this had an impact on the interpretation of all the other rights when the case related to children. In this regard the Court emphasized that Article 19 was the only article that embodied an obligation not only for the State, but also for society and the family. Thus, the measures of protection that the child required, owing to his or her condition as such, and that were adopted by the State might, of themselves, be insufficient and should, therefore, be supplementary to those that society and the family must adopt. The Court also stressed the need to take into consideration those conditions and circumstances in which migrant children may find themselves in a situation of additional vulnerability that entails an increased risk of the violation of their rights. In addition, the Court considered that the following four guiding principles of the Convention on the Rights of the Child should be applied transversally and be implemented in any system of comprehensive protection: the principle of non-discrimination; the principle of the best interests of the child; the principle of

respect for the right to life, survival and development, and the principle of respect for the opinion of children in any procedure that affects them, so that their participation is ensured.

The Court established the following State obligations:

a) It considered that the establishment of procedures to identify needs for protection is a positive obligation of the States and failure to do so would constitute a lack of due diligence. Owing to the wide range of situations that may lead children to displace from their country of origin, the Court emphasized the relevance of distinguishing between those who emigrate in search of opportunities to improve their standard of living, and those who require some kind of international protection, including but not limited to protection for refugees or asylum seekers. The Court affirmed that the initial evaluation process should include effective mechanisms for obtaining information following the child's arrival at the entry place, post or port, or as soon as the authorities become aware of his or her presence in the country, in order to determine the child's identity and, if possible, that of the parents and siblings, in order to transmit this to the State agencies responsible for making the evaluation and providing the measures of protection, based on the principle of the child's best interests. Since this is an initial stage of identification and assessment, the Court considered that, apart from offering certain basic guarantees, the procedural mechanisms that the States adopt should be aimed, in accordance with the practice generally followed, at achieving the following essential priority objectives: (i) treatment in keeping with the child's condition as such and, in case of doubt about the age, assessment and determination of this. When it is not possible to determine the age with certainty, it should be considered that the individual in question is a child and he or she should be treated as such; (ii) determination of whether the child is unaccompanied or separated; (iii) determination of the nationality of the child and, if appropriate, his or her statelessness; (iv) obtaining information on the reasons for the child's departure from the country of origin, on his or her separation from the family if this is the case, on the child's vulnerabilities and any other element that reveals or refutes the need for some type of international protection, and (v) adoption of special measures of protection, if necessary and pertinent in view of the best interests of the child. The information should be collected during the initial interview and recorded adequately so as to ensure its confidentiality.

b) States must guarantee that the administrative or judicial proceedings in which a decision is taken on the rights of migrant children are adapted to their needs and accessible to them in order to ensure access to justice in conditions of equality, to guarantee due process, and to ensure that the best interests of the child have been the paramount consideration in all the administrative or judicial decisions adopted.

c) The guarantees of due process that must govern any immigration proceedings, whether administrative or judicial, involving children are: the right to be notified of the existence of proceedings and of the decision adopted in the context of the immigration proceedings; the right that the immigration proceedings are conducted by a specialized official or judge; the right to be heard and to take part in the different procedural stages; the right to be assisted without charge by a translator and/or interpreter; real access to communication with consular officials and consular assistance; the right to be assisted by a legal representative and to communicate freely with this representative; the obligation to appoint a guardian in the case of children who are unaccompanied or separated; the right that the decision adopted takes into consideration the best interests of the child and is duly reasoned; the right to appeal the decision before a higher judge or court with suspensive effects, and a reasonable time for the duration of the proceedings.

d) States may not resort to the deprivation of liberty of children in order to safeguard the objectives of immigration procedures nor can they base this preventive measure on failure to comply with the requirements to enter and remain in the country, on the fact that the child is alone or separated from his or her family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority. The Court affirmed that the deprivation of liberty of a child in this context may never be understood as a measure that responds to his or her best interests.

e) States must design and incorporate into their respective domestic law a series of non-custodial measures to be ordered and implemented while immigration proceedings are being held that give priority to the comprehensive protection of the child's rights.

f) In situations of restriction of personal liberty that may constitute a measure that essentially corresponds to deprivation of liberty or that, owing to the circumstances of a particular case, may eventually lead to this, States

must respect the guarantees that become applicable in such situations.

g) The places for accommodating children should respect the principle of separation and the right to family unity; hence, unaccompanied or separated children should be lodged in places other than those that correspond to adults, and accompanied children should be lodged with the members of their family.

h) States are prohibited from returning, expelling, deporting, repatriating, rejecting at the border or not admitting, or in any way transferring or removing a child to a State where his or her life, integrity and/or liberty are at risk of being violated owing to persecution or threat, generalized violence or massive violations of human rights, among other factors, as well as if the child runs the risk of being subjected to torture or other cruel, inhuman or degrading treatment, or to a third State from which the child may be sent to one in which he or she may run these risks. Any decision on the return of a child to the country of origin or to a safe third country may only be based on the requirements of his or her best interests.

i) The State obligation to establish and follow fair and effective procedures in order to identify potential asylum-seekers and to determine refugee status by an adequate and individualized analysis of applications with the corresponding guarantees must include the specific components developed in light of the comprehensive protection due to all children, applying fully the guiding principles and, especially, those referring to the child's best interests and participation.

j) Any administrative or judicial organ that must decide on family separation owing to the expulsion of one or both parents based on their migratory situation must make a weighted analysis that considers the particular circumstances of the specific case and ensures an individual decision that, in every case, gives priority to the best interests of the child. In those situations in which the child has a right to the nationality of the country from which one or both of his or her parents may be expelled, or the child meets the legal requirements for permanent residence in that country, States may not expel one or both parents for immigration offenses of an administrative nature, because this sacrifices the child's right to family life unreasonably and disproportionately.

III. INTERPRETATION OF JUDGMENT

Case of The Supreme Court of Justice (Quintana Coello et al.) v. Ecuador

In the judgment of August 21, 2014, on the request for interpretation of the Judgment on Merits, Reparations and Costs of August 23, 2013, the Court determined that the request was inadmissible because it constituted a form of contesting the considerations and decisions adopted by the Court based on the information, arguments and evidence available when it took a decision on the compensation for the victims. Furthermore, it considered that, by their request for interpretation, the representatives sought a re-assessment of matters that had been decided by the Court, even though there was no possibility that the judgment could be amended or expanded, in accordance with Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure.

IV. MONITORING COMPLIANCE WITH JUDGMENTS

Summary of the orders on monitoring of judgments issued between August and October 2014

Case	Date and stage of monitoring	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
Joint monitoring of 11 cases against Guatemala in relation to the obligation to investigate, prosecute and punish, as appropriate, those responsible for the human rights violations	August 21, 2014 First joint monitoring order			The Court only ruled on the obligation to investigate, prosecute and punish, as appropriate, those responsible for the human rights violations established in the judgments.
Joint monitoring of the cases of the Río Negro Massacres and Gudiel Álvarez et al. ("Diario Militar") v. Guatemala	August 21, 2014 First joint monitoring order			All the measures of reparation ordered.
Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador	August 21, 2014 First joint monitoring order	The Court only ruled on the determination of the final compensation amounts for Justices Donoso, Troya and Velasco		
Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil	October 17, 2014 First joint monitoring order	<p>Publications of the judgment</p> <p>Allowing the next of kin to present their requests for compensation</p> <p>Documentation on dates of death</p> <p>Creation of the National Truth</p> <p>Commission</p>	<p>Continuation of the search, systematization, publication and access to information on the Araguaia guerrilla and the human rights violations during the military regime</p> <p>Compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses</p> <p>Announcement to identify next of kin of the persons indicated in the judgment</p>	<p>Investigation and determination of the corresponding criminal responsibilities</p> <p>Determination of the whereabouts of the disappeared victims</p> <p>Medical and psychological or psychiatric treatment</p> <p>Public act to acknowledge international responsibility</p> <p>Human rights training for the Armed Forces</p> <p>Codification and effective prosecution of the crime of forced disappearance</p>

Joint monitoring of 11 cases against Guatemala in relation to the obligation to investigate, prosecute and punish, as appropriate, those responsible for the human rights violations

On August 21, 2014, the Court issued a joint order on monitoring compliance with judgment in the cases of *Blake, “Street Children” (Villagrán Morales), Bámaca Velásquez, Mack Chang, Maritza Urrutia, Plan de Sánchez Massacre, Molina Theissen, Carpio Nicolle et al., Tiu Tojín, Las Dos Erres Massacre* and *Chitay Nech*, specifically with regard to the measure of reparation relating to the obligation to investigate, prosecute and punish, as appropriate, those responsible for the human rights violations. These cases do not represent all the cases at the stage of monitoring compliance with judgment in which this measure remains pending. However, the Court found it necessary to join the said cases since it was monitoring compliance with judgments, all of which had been handed down before December 2011, and because they were at the same stage of the criminal proceedings or confronted similar difficulties or problems.

In the order, the Court placed on record that, during the joint monitoring hearing held in May 2014, Guatemala had failed to provide information on any progress in complying with this obligation, but rather changed its position radically by questioning the Court’s decisions at the merits stage. In particular, it asserted the Court’s lack of temporal competence in five of the eleven cases and affirmed that the facts referred to in seven of these eleven cases related to situations covered by the National Reconciliation Law so that “criminal liability had extinguished.” It also indicated that in none of the cases was it admissible to assert that the statute of limitations was not applicable, and that enforced disappearance could not be prosecuted. Lastly, it affirmed that legal certainty concerning the validity and scope of the amnesties in force would be decided in the domestic jurisdiction.

In addition to reiterating the obligations arising from the American Convention, the Court considered that the position assumed by Guatemala constituted an act of evident contempt of the binding nature of the Court’s judgments, contrary to the international principle that a State must abide by its treaty-based obligations in good faith, and of non-compliance with the obligation to keep the Court informed. Furthermore, the Court recalled that it had decided the preliminary objections filed by Guatemala in the judgments in these eleven cases, and that the factual and legal matters had been decided at the merits stage of the contentious proceedings. It also recalled that, in most of these cases, Guatemala had made a partial or total acknowledgement of international responsibility and the Court had assessed this to be a positive contribution to the development of

the proceedings and to the effective observation of the principles that embodied in the American Convention. Consequently, the Court found that it was not incumbent on it to respond to these arguments at the stage of monitoring compliance with judgment and considered that the position taken by Guatemala was an “act of evident disregard [...] of the binding nature of the judgments handed down by this Court,” requiring it to adopt, finally and forthwith, all necessary measures to comply with the judgments promptly and effectively.

Joint monitoring of the cases of the Río Negro Massacres and Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala

On August 21, 2014, the Court issued a joint order on monitoring compliance with judgment in the cases of the *Río Negro Massacres*, and *t*. This was the first monitoring order in each of these cases.

In the order, the Court placed on record that, in the briefs on the two cases presented at the monitoring stage, Guatemala had failed to provide information on any progress in complying with the reparations; rather, to the contrary, it indicated that it did not accept the Court’s decisions in these judgments and expressed its “disagreement” with the Court’s interpretation of the reservation made by Guatemala when accepting its contentious jurisdiction. Guatemala also stated that it did not accept that it had been sentenced “to make reparations other than those that may be determined under the National Compensation Program for acts that occurred during the internal armed conflict.”

In response to these arguments, the Court indicated that it had already made a final ruling on the preliminary objection filed in the case of the Río Negro Massacres, and on the merits and reparations in the two judgments and, therefore, did not find it appropriate to answer the arguments introduced by Guatemala at the stage of monitoring compliance. The Court considered that the position assumed by Guatemala constituted “an act of evident disregard of the binding nature of the Court’s judgments, contrary to the international principle that a State must abide by its treaty-based obligations in good faith, and of non-compliance with the obligation to keep the Court informed.” In addition, it required Guatemala to adopt, finally and forthwith, all necessary measures to comply with the judgments promptly and effectively.

Case of The Supreme Court of Justice (Quintana Coello et al.) v. Ecuador

On August 21, 2014, the Court issued the first order on compliance with judgment in the case of the **Supreme Court of Justice (Quintana Coello et al.) v. Ecuador**. In the judgment, the Court had established, among other measures, that the State must pay various amounts as compensation for pecuniary damage (to 24 justices) and non-pecuniary damage, and to reimburse costs and expenses, in accordance with paragraphs 248 to 251, 261 and 276 of the judgment.

Regarding the pecuniary damages for the three remaining justices, in its judgment, the Court granted a three month-period for the State to establish and forward the specific amount that Justices Donoso, Troya and Velasco had received when they occupied public positions, so that this amount could be subtracted from the compensation that would be decided subsequently in the course of monitoring compliance with the judgment. Accordingly, this order on monitoring compliance with the judgment referred to determination of the compensation for these three justices.

Thus, the Court considered that, with regard to Mr. Donoso, the amounts advised by the State had been paid outside the period of time used by the Court to calculate the compensation for pecuniary damage; therefore, it did not consider it proved that any amount should be subtracted from the compensation and determined that this amounted to US\$334,608.38. In the case of Mr. Troya, the State indicated that it had paid him US\$456,594.30. Based on this payment, the Court established the final compensation at US\$316,320.78. Lastly, regarding Mr. Velasco, the State indicated that it had paid him US\$318,032.07. Consequently, the Court established the sum of US\$312,931.28 as the final compensation. Having established these amounts, the Court concluded by ordering the State to pay the compensation for pecuniary damage to Justices Donoso, Troya and Velasco.

Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil

On October 17, 2014 the Court issued the first order monitoring the judgment in the case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil. The Court made the following observations with regard to each measure of reparation ordered:

a. Investigation and determination of criminal responsibilities: the Court noted that, during the stage of monitoring compliance, Brazil had instituted two criminal actions against two members of the Army for the offense of abduction aggravated by ill-treatment. It observed with concern that, the said actions were frozen at that time owing to judicial decisions in favor of the accused in the applications for habeas corpus. During these criminal actions, judicial decisions had been issued that interpreted and applied the Brazilian Amnesty Law, disregarding the implications of the Court’s decision in this regard, and without making a control of conventionality. Therefore, the Court considered that this measure of reparation remained pending compliance.

b. Determination of the whereabouts of the disappeared victims and, as appropriate, identification and return of the mortal remains to their next of kin: the Court verified the State’s willingness to make a technical, institutional and budgetary effort to comply with this measure of reparation, but also stressed that, three years and eleven months after delivery of the judgment, no concrete results had been achieved in determining the whereabouts or discovering the remains of the victims in this case. Therefore, the Court considered that this measure of reparation remained pending compliance.

c. Medical and psychological or psychiatric treatment: the Court took note that, during the private hearing held in May 2014, the State had acknowledged that the measures taken in this regard were insufficient to declare that the measure had been complied with, even partially. Although the Court took note of the measures taken by the State to create, in February 2014, the Inter-ministerial Working Group (SDHPR and Ministry of Health), specialized in the implementation of this measure of reparation, it considered that, from the information presented by Brazil, it could not be inferred that the State had taken the necessary measures

to provide the victims with the medical, psychological and/or psychiatric treatment they required, in the terms established by the Court. Consequently, it considered that this measure remained pending.

d. Publication of the judgment: the Court noted that the State had complied with the publications ordered in the judgment. Consequently, the Court declared that the State had complied fully with this measure.

e. Public act to acknowledge international responsibility: the representatives of the victims indicated that they had asked that the public act to acknowledge responsibility be carried out after compliance with operative paragraphs 9 and 16 of the judgment had truly been initiated. Although the Court found that the reasons indicated to request the postponement of this act were understandable, it noted that the judgment had not established that the act to acknowledge responsibility was conditional on progress in compliance with other measures ordered in the judgment. Thus, it urged the victims and their representatives to remain in communication with the State in order to reach agreement, within a reasonable time, on the implementation of this act, and declared that this measures remained pending compliance.

f. Human rights training for the Armed Forces: the Court noted that the State had provided two documents issued by the Ministry of Defense establishing the general components of a program or course on human rights. It would be for each branch of the Armed Forces, based on its training system, to implement this training for the different ranks. The Court found that the design of these general directives constituted a significant action. However, it considered that, to be able to assess compliance with this measure of reparation adequately, it would require specific information on the implementation of the courses by the different branches of the Armed Forces at all levels, as well as on their permanent and compulsory nature. Hence, it considered that the measure remained pending compliance.

g. Definition of the offense of enforced disappearance and its prosecution: the Court observed that the State had taken measures to define this offense; however, it took note of the criticisms and objections to the definition of the offense of enforced disappearance established in the bills that had been drawn up. The Court therefore found it pertinent to recall the relevant inter-American standards for an adequate definition of the offense of enforced disappearance of persons and urged the State to take them into account to ensure that the legislative

procedure did not end in the adoption of a norm that was not adapted to these standards. The Court considered that this measure remained pending compliance. Nevertheless, it assessed positively that, on February 3, 2014, Brazil had deposited its instrument ratifying the Inter-American Convention on Forced Disappearance of Persons and urged the State to proceed to promulgate the Convention on Forced Disappearance throughout the country without delay.

h. Continuation of the search, systematization, publication and access to information on the Araguaia guerrilla and the human rights violations during the military regime: the Court recognized the measures taken by Brazil in this regard following the delivery of the judgment; in particular: (i) implementation of the Truth Commission, and (ii) the project for the “Memorial on the Political Amnesty in Brazil,” which will have a documentation center that will allow anyone interested to access the documents produced by the Amnesty Commission. On this basis, the Court declared that this point had been complied with partially.

i. Compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses: the Court found that, having paid the compensation for pecuniary and non-pecuniary damage to 39 of the next of kin considered victims who are alive, and to the heirs of the 18 deceased victims, the State had complied partially with this measure of reparation. In addition, the Court reminded the State that it should continue to implement the necessary measures to comply, promptly, with all the payments ordered in the judgment as established therein, taking into account its observations in the order on monitoring compliance. Regarding the reimbursement of costs and expenses, the Court pointed out that, in its reports, the State had not mentioned this aspect or submitted vouchers that would prove that the payment had been made. Consequently, it considered that this element remained pending compliance.

j. Announcement to identify family members of the persons indicated in paragraph 119 of the judgment and, if appropriate, consider them victims: the Court noted that the State had made an announcement in the national newspaper O Globo and observed that it established a period of 25 months for the family members of the persons indicated in paragraph 119 of the judgment to authenticate their identity. Regarding the publication that Brazil alleged it had made in the regional newspaper Jornal do Pará, the Court noted that the State had not provided any evidence that would

prove this. Consequently, the Court concluded that this measure had been complied with partially.

k. Allowing the next of kin of the persons indicated in paragraph 303 of the judgment to present their requests for compensation to the State: the Court appreciated that, even though the time limit indicated in the judgment had expired, Brazil had given notice to the next of kin of the said victims by publishing an announcement in a newspaper with widespread circulation, granting these family members a time frame to present their request for compensation in the terms of the said paragraph of the judgment. The Court considered that the State had complied with this measure.

l. Documentation on the date of death of the persons indicated in paragraphs 181, 213, 225 and 244 of the Judgment: the Court noted that, within the time frame established in the judgment, the representatives had proved by means of death certificates that the date of death of five direct relatives of five individuals who had been declared victims of enforced disappearance in the judgment was after December 10, 1998, the date on which Brazil had accepted the Court's contentious jurisdiction, expressed its appreciation that the State had indicated that it recognized them as an injured party in the case. Consequently, the Court concluded that the status of the said five persons as victims in this case has been confirmed, and it was for the State to adopt the corresponding measures of compensation in their favor. On this basis, the Court declared that this operative paragraph of the judgment had been fulfilled.

V. PROVISIONAL MEASURES

Summary of the orders for provisional measures issued between August and October 2014

Matter	State	Precedent	Status of the measure	Protected rights	Beneficiaries of the measure before the IACHR
Socio-educational Internment Unit	Brazil	Precautionary measure (2009)	Reiterated the 2011 provisional measure	Life and integrity	Children and adolescents deprived of liberty, and any person in the Socio-educational Internment Unit
Meléndez Quijano et al.	Precautionary measure (2006)	El Salvador	Partially rejected Partially confirmed (excluding two beneficiaries)	Life and integrity	Adrián Meléndez Quijano and seven family members

Socio-educational Internment Unit with regard to Brazil (provisional measures for children deprived of liberty)

On September 26, 2014, by an order of the President of the Court, the provisional measures granted in favor of the children detained in the Socio-educational Internment Unit or any other person who was inside the Unit were reiterated, because their life and integrity were at risk. This was the eighth time that the Court had ruled on the situation of this detention center. The 2011 order granting the provisional measures emphasized the need for the State to avoid violent situations among the inmates, and that the use of handcuffs, threats or prolonged confinement could not be sanctioned as a means of exercising disciplinary control. Consequently, although the Court accepted that the State had reduced the violent incidents, it maintained the provisional measures because it considered that the State had been unable to prove that the risks to the life and integrity of the children had been eliminated.

It is important to recall that, regarding the beneficiaries of the measures, in the first order granting provisional measures in 2011, the Court indicated that it did not find it necessary to identify them, because (as it had already indicated in previous orders such as in the **matter of the Peace Community of San José Apartadó**), they could be identified and determined, and were in a situation of grave danger because they belonged to a group or community, as is the case of persons deprived of liberty in a detention center.

Meléndez Quijano et al. with regard to El Salvador (provisional measures for a public official and his family)

In an order of October 14, 2014, for the seventh time,² the Court examined the situation of Adrián Meléndez Quijano, a public official who had filed complaints against members of the Armed Forces of El Salvador for the presumed perpetration of human rights violations. The situation dates back to **March 2007**, when the Court granted provisional measures owing to the threats to Mr. Meléndez Quijano and ten members of his family. Under these provisional measures, the Court ordered the State to take all necessary measures to protect their life and integrity.

Seven orders on provisional measures have been issued between 2007 and 2014, gradually increasing the number of beneficiaries.

Regarding this last order in 2014, an expansion of the measures had been requested in favor of other family members who had been victims of an attack on the home of a relative of Mr. Meléndez Quijano. Applying the rules for the admissibility of provisional measures, the Court determined that there was no connection between that attack and the events that had led to the provisional measures. Consequently, it did not expand the measures to those persons, although it did confirm the 2007 provisional measures (for the beneficiaries, Adrián Meléndez Quijano and seven family members). In addition, the Court decided to lift the measures granted since 2007 in favor of Roxana Mejía and Manuel Meléndez, because no incidents directly related to the purpose of the measures had been verified.

Although provisional measures have been granted and confirmed in this matter on seven occasions to date, it should be noted that only four orders on provisional measures (including that of 2014) were discussed and granted by the Court in plenary.