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Doc. 34

29 October 2008

Original: [Spanish](#)

THE RIGHTS OF THE CHILD IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM SECOND EDITION

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INTRODUCTION

1. The development of international human rights law pertaining to children in the region uses as a legal basis the American Convention on Human Rights, adopted on November 22, 1969. This treaty includes a clause on the rights of the child and various provisions that specifically recognize their rights.
2. With this as a precedent, the adoption of the United Nations Convention on the Rights of the Child in 1989 represented a landmark in the development of international human rights law related to protection of the human rights of children, as it changed the concept that identified the child as the object of protection to a concept that recognizes the child as a subject with human rights. The impact of the Convention on the Rights of the Child is seen clearly in the growing importance of the issue of children in regional systems for the protection of human rights in Europe, Africa, and the Americas.
3. The Rapporteurship on the Rights of the Child (the "Rapporteurship") of the Inter-American Commission on Human Rights (the "IACHR" or "the Commission") presents this second edition of the book entitled "Children and their Rights in the Inter-American System of Human Rights," first published in 2002. In this second edition there is a general discussion of mechanisms, and inter-American decisions on the rights of children. The attached compact disc includes the complete texts of instruments in the inter-American and universal systems related to children, the decisions adopted by the Inter-American Court of Human Rights (the "Court" or "the Inter-American Court"), of cases involving children and the information required for access to the inter-American system.
4. The Inter-American Commission on Human Rights thanks the Inter-American Development Bank (IDB) for the financial support it provided for this publication.

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American Convention on Human Rights: see Articles 4.5, 5.5, 13.4, 17, 19, 27.2.

CHAPTER I

GENERAL INFORMATION

A. Creation, Composition, and Mandate of the Rapporteurship on the Rights of the Child

5. The Rapporteurship on the Rights of the Child of the Inter-American Commission on Human Rights was created during its 100th regular session held in Washington D.C. from September 24 to October 13, 1998, for the purpose of bolstering respect for the human rights of children and adolescents in the Americas.

6. The mandate of the Rapporteurship is based on Article 41 of the American Convention on Human Rights and Article 18 of the IACHR Statute, which together establish specific functions in the sphere of promoting human rights. In addition, Article 15 of the IACHR Rules of Procedure stipulates that the Commission has the power to create rapporteurships to better fulfill its functions, and sets a few guidelines on the operations of rapporteurships.

7. One of the seven Commissioners designated by the Inter-American Commission on Human Rights is responsible for the rapporteurship. The first Rapporteur on the Rights of the Child was former Commissioner Hélio Bicudo of Brazil (1998-2001). The second Rapporteur was former Commissioner Susana Villarán de la Puente of Peru (2002-2003). Since 2004, Commissioner Paulo Sérgio Pinheiro of Brazil has served as Rapporteur.

8. The primary mandate of the Rapporteurship on the Rights of the Child is the promotion of the human rights of children and adolescents within the jurisdiction of the 35 member states of the Organization of American States (OAS). Thus, it has its office at IACHR headquarters, so that it can perform all of the functions assigned to it to promote and defend human rights.

B. Principal Functions of the Rapporteurship

9. The Rapporteurship on the Rights of the Child has the following duties:

1. Analysis of petitions being processed

10. Provides a specialized analysis in examining petitions lodged with the Inter-American Commission on Human Rights regarding alleged violations of the human rights of children and adolescents.

2. Visits to OAS member States

11. With the consent of the state, the Rapporteurship may visit countries in the region. During these visits, it establishes contacts with government officials, civil society organizations, and children and adolescents. The visits make it possible to expand its knowledge of the problems affecting children and adolescents in the region and to make recommendations to states in order to guarantee the full exercise of human rights.

3. Preparation of specialized studies

12. Supports the Commission by preparing studies on the human rights of children and adolescents. These studies contribute to the development of international human rights law as it pertains to children. The Rapporteurship also guides states on how to adequately fulfill their international obligations.

4. Promotional activities

13. Conducts promotional activities on protection of the human rights of children and adolescents. For instance, the Rapporteurship organizes seminars, specialized meetings, and workshops on the international obligations assumed by the states.

5. Precautionary and provisional measures

14. In the case of petitions denouncing serious and urgent situations involving violation of the human rights of children and adolescents in the region, the IACHR may request states to adopt urgent measures to prevent irreparable harm.

15. In addition, in cases of extreme gravity and urgency, the IACHR may request the Inter-American Court to order states to adopt provisional measures to prevent irreparable harm.

C. General approach to the inter-American human rights system, with a special emphasis on children

16. The provisions contained in regional instruments for protection of the rights of children and adolescents are presented below, along with some general considerations regarding rules governing matters pertaining to children in the inter-American human rights system. To this end, the concept of the term children will be defined, and reference will be made to the *corpus juris* concept developed by the Inter-American Court, among other aspects.

1. Nature of the instruments in the inter-American system applicable to children

17. The inter-American instruments of a general nature, such as the 1948 American Declaration on the Rights and Duties of Man and the 1969 American Convention on Human Rights, are applied indiscriminately to protect the human rights of children and adolescents under the jurisdiction of OAS member states.

18. Both the American Declaration and the American Convention contain provisions that specifically refer to the human rights of children.

19. The American Declaration contains the following Articles:

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it. (...)

20. The aforesaid provisions view children as human beings that deserve assistance and care due to their status as minors. Although it is true that the references to the right to support and education are positive, and expressed as a duty of the parents vis-à-vis their children, neither of the provisions manages to go beyond a restricted view of children's rights. It was not until the adoption of the American Convention on Human Rights in 1969 that this limited concept of children's rights was surpassed.

21. The American Convention contains 26 Articles pertaining to rights, all of which apply to the protection of the rights of the child. Moreover, the Convention contains specific references to children, as seen in the provisions referring to children in conflict with the law and the right of children deprived of their liberty to be separated from adults, established in Article 5, as well as Article 17, that regulates matters related to protection of the family, such as the equal rights of children born out of wedlock and those born in wedlock.

22. Article 19 of the American Convention on Human Rights determines a special scope for protection of the human rights of children and adolescents, and regulates the special protection obligations of states, in the following terms:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

2. Definition of the child in international human rights law

23. The definition of child as right holders under international law and the scope of application of international standards in matters related to childhood must be examined on the basis of preparatory documents and studies leading up to the adoption of the Convention on the Rights of the Child (hereinafter "CRC"), the text of the Convention, and the decisions of the Committee on the Rights of the Child.

a. Review of the preparatory work of the Convention on the Rights of the Child

24. As indicated earlier, the definition of the child as a subject of international human rights law is established in the 1989 Convention on the Rights of the Child. It is therefore especially important to consider the arguments used to define the child as a right holder on the basis of the objective category of age. In this context, it is interesting to note that the first text adopted on the first reading (E/CN.4/1988/WG.1/WP/Rev.1), during the process of drafting the Convention on the Rights of the Child established:

Article 1

In accordance with the Convention, a child is every human to the age of 18, unless, under the law of the State, he has attained his age of majority earlier.”

25. However, a review of later texts and proposals of state delegations refers to a definition of a child that specifies the age range to include only human beings “who have not attained 18 years of age.” Based on the texts cited, the Convention adopted the text that refers to “every human being below the age of eighteen years” in its Article 1.

b. Definition of the child in the Convention on the Rights of the Child and in decisions adopted by the Committee on the Rights of the Child

26. The Convention on the Rights of the Child is the international norm that defines who must be considered as a child for legal purposes, hence to whom the effects of this treaty apply. Thus Article 1 of the Convention on the Rights of the Child defines “child” for the purposes of interpreting and applying this treaty as “every human being below the age of eighteen years.” In this way, the Convention establishes a legal definition of children on the basis of the objective category of age.

27. According to the Convention itself, majority age may be attained prior to 18 years if the national law of a state so establishes, but in that case the Convention will be applicable until the person reaches 18 years of age. It is important to note that the Convention does not use as a parameter the term “of legal age” (age of legal competence), but instead simply states “the age of 18 years.” On this point, it is relevant to point out that the Human Rights Committee has established that “the ages for protection” should not be “unreasonably brief” and that in no case may a state fail to comply with its obligations of protection of children and adolescents, even if they attained legal age prior to 18 years under national legislation.

28. On the contrary, the Convention does not establish an exception to the age limit to consider a person as a child; consequently the provisions of this treaty are applicable to them after completing 18 years. In this regard, the Committee on the Rights of the Child has stated that Article 1 establishes “a general maximum reference age of 18 years. States parties should use this age limit as a norm and a reference for establishing any other age for specific purposes or activities.

29. Moreover, this provision emphasizes that states parties must guarantee special protection to every child below that age limit...”.

30. Along the same lines as the Convention on the Rights of the Child, Agreement 182 of the International Labour Organization (ILO), on the Worst Forms of Child Labour, establishes in its Article 2 that the term child designates “(...) every person under 18 years of age,” as does the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, that supplements the United Nations Convention Against Transnational Crime.

c. Definition of the child in the Inter-American Human Rights System

31. In the inter-American arena, there is no standard definition of the child for legal purposes. On the one hand, the American Declaration of the Rights and Duties of Man only provides for protection of the child, but does not define the term. Although the Convention on the Rights of the Child establishes the scope for protection of the human rights of the child, it

does not define the child as a legal subject either.

32. By virtue of the foregoing, both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have stipulated that the definition of the child is based on the provisions of Article 1 of the Convention on the Rights of the Child. The Inter-American Court stated in its Advisory Opinion 17 that the term child “obviously covers boys, girls, and adolescents.” Section V of Advisory Opinion 17 on the Legal Status of the Human Rights of the Child entitled “Definition of Child” establishes who should be considered as a child for legal purposes:

Indeed, taking into account international norms and the criterion upheld by the Court in other cases, “child” refers to any person who has not yet turned 18 years of age.

33. Thus, for example, in the first case that the Court heard on children, it established that application of Article 19 is limited to victims under 18 years of age:

Article 19 of the American Convention does not define the term “child.” The Convention on the Rights of the Child defines a child as every human being below the age of 18 years, “unless under the law applicable to the child, majority is attained earlier.” (Article 1). According to Guatemalan legislation in force at the time the events of this case occurred, persons who had not attained 18 years of age were also minors. *According to these criteria, only three of the victims, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, and Anstrau Villagrán Morales, had the status of children.* However, in this judgment, the Court uses the colloquial expression “street children” to refer to the five victims in the present case, who were living in the streets, in a situation of risk.

34. In the case of Bulacio versus Argentina, the court reiterated:

Walter David Bulacio was 17 years of age when he was arrested by the Argentine Federal Police. The Court established in its Advisory Opinion OC-17 that: “definitively, taking into account international law and the criterion upheld by the Court in other cases, a ‘child’ is understood as every person who has not attained 18 years of age.”

35. In the case of the girls Dilcia Yean and Violeta Bosico versus the Dominican Republic, the Court states that “at the time that the State accepted the contentious jurisdiction of the Court, Dilcia Yean and Violeta Bosico were children, who by virtue of that condition had special rights entailing special duties on the part of their family, society, and the state, and required special protection from the State, which should be understood as an additional, complementary right.”

36. It is important to note that in later cases involving children, the Court does not include considerations that define the child in greater detail. However, it is interesting to observe that in its judgment in the 2004 case involving the Juvenile Reeducation Institute versus Paraguay, the Court used the criterion of majority age to establish the level of protection, and held that since domestic legislation in force at the time the events occurred established majority age as 20 years, it considered it necessary to refer to Ricardo Daniel Martínez, who died at 18 years of age, as a child. It should be pointed out that in this line of reasoning, the Court did not apply the objective

criterion of age established in the Convention on the Rights of the Child and recognized in its previous decisions, but instead used the criterion of majority age, which is not consistent with the definition in Article 1 of the Convention on the Rights of the Child, as cited earlier.

d. Definition of the child in the European Human Rights System

37. The European system for the protection of human rights applies the same objective criterion to define the time that childhood ends. Thus, for instance, Article 1 of the European Convention on the Exercise of Children's Rights establishes that its provisions apply to children, namely, to every human being who has not attained 18 years of age. Along the same lines, the European Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote, Spain on October 25, 2007, defines the child as "any person less than 18 years of age."

e. Definition of the child in the African Human Rights System

38. The African Charter on the Rights and Well-being of Children, adopted in July 1990, defines as a child every human being less than eighteen years of age.

3. Concept of *corpus juris* in the human rights of children and adolescents

39. The concept of *corpus juris* in matters related to children implies recognition of a series of fundamental norms that are linked for the purpose of guaranteeing the human rights of children and adolescents. In this regard, the Inter-American Court of Human Rights has established that "the *corpus juris* of International Human Rights Law is formed by a series of international instruments with different legal content and effects (treaties, conventions, decisions, and declarations), in addition to the decisions adopted by international organizations. Its dynamic development has had a positive impact on international law, by confirming and developing the capacity of the latter to regulate relations between states and the human being under their respective jurisdictions."

40. In this context, the Inter-American Court has recognized through its jurisprudence the existence of a *corpus juris* on the human rights of children and adolescents, as the following text indicates:

Both the American Convention and the Convention on the Rights of the Child are part of a very comprehensive international *corpus juris* on protection of children which should be used by this Court to determine the content and scope of the general provision established in Article 19 of the American Convention.

41. The Court has emphasized that the existence of the so-called *corpus juris* is the result of the evolution of international human rights law in matters related to children, which focuses on recognition of children and adolescents as persons with legal rights. Consequently, the legal framework of protection of the human rights of children is not confined to the provisions of Article 19 of the American Convention, but also includes, for purposes of interpretation, the terms of the Declarations on the Rights of the Child of 1924 and 1959, the 1989 Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of

Juvenile Justice (1985 Beijing Rules), the Standard Minimum Rules for Non-Custodial Measures (1990 Tokyo Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (1990 Riyadh guidelines), in addition to international instruments on human rights in general.

42. The Court has examined human rights cases involving children and adolescents from this perspective, applying *corpus juris* in children's matters, and establishing that:

To determine the content and scope of this Article, consideration will be given to the pertinent provisions of the Convention on the Rights of the Child, which was ratified by Paraguay on September 25, 1990, and took effect on September 2, 1990, and the Additional Protocol to the American Convention on Human Rights on Economic, Social, and Cultural Rights (Protocol of San Salvador), which was ratified by Paraguay on June 3, 1997 and entered into force on November 16, 1999, since these instruments and the American Convention are part of an extremely comprehensive international *corpus juris* for protection of children's rights that the Court is bound to observe.

43. It is therefore possible to conceive that the concept of *corpus juris* allows us to use the laws and decisions that have been adopted, as tools for interpretation, including those outside the regional system for the protection of human rights. In this way, it is possible to use the text of the United Nations Convention on the Rights of the Child and decisions adopted by the Committee on the Rights of the Child, in compliance with its mandate to interpret the content and scope of the children's rights enshrined in Article 19 of the American Convention.

44. In this context, it is critically important to incorporate the fundamental principles on children established in the text of the Convention on the Rights of the Child, such as the principle of nondiscrimination, the principle of participation, the principle of the development and survival of children, and the principle of the best interests of children which are reflected in decisions adopted in the regional system. For example, one of the first references to the best interests of the child in decisions of the Commission appeared in its 1997 Annual Report, where it determined that (...) in all cases involving decisions that affect the life, liberty, physical or moral integrity, development, education, health, or other rights of minors, these decisions must be made on the basis of what is most advantageous to the child. For its part, the Inter-American Court of Human Rights, in Advisory Opinion 17 on the Juridical Condition and Human Rights of the Child, also conceived of the best interests of the child as a "regulating principle regarding children's rights based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential, as well as on the nature and scope of the Convention on the Rights of the Child."

45. This approach represents a significant step forward that shows not only a common legal framework in international human rights law applicable to children, but also the global interdependence of the different international systems for protection of human rights of children and adolescents.

4. Prohibition of suspension of international obligations related to the human rights of children

46. International human rights law establishes that the fundamental obligations of states in the area of human rights are to respect and guarantee the full exercise of those rights. International law also provides for suspension of these obligations in highly exceptional circumstances in which certain human rights are restricted or limited. This does not imply the temporary suspension of the rule of law, or the absence of legal limits on the action of the state.

47. Thus suspension of the obligations assumed by a state party to an international instrument is not absolute under exceptional regimes, or in other words, it may not indiscriminately affect any one of those obligations.

48. In this context, both the International Covenant of Civil and Political Rights (Art. 4.2) and the American Convention on Human Rights (Art. 27.2) establish that states may not suspend their international obligations regarding the right to life, prohibition of torture and cruel, inhumane, or degrading treatment or punishments, prohibition of slavery, trafficking in persons and servitude, prohibition of imprisonment for noncompliance with contractual obligations, observance of the principle of legality in criminal matters (there is no punishment or crime without the law), the principle of application of the punishment most favorable to the convicted person, the right to recognition of legal personality, and to freedom of conscience and religion.

49. Moreover, the American Convention on Human Rights adds to this list the impossibility of suspending obligations assumed regarding protection of the family, the right to a name, the right to nationality, political rights, and the rights of the child. The Convention is the only binding international human rights instrument that prohibits suspension of international obligations related to the human rights of children and adolescents.

50. The American Convention on Human Rights further establishes the non-suspension of the right to a fair trial, which is essential to protect all the aforesaid rights that may not be suspended. For the Inter-American Court of Human Rights, included among the judicial guarantees that may not be suspended during exceptional regimes are *habeas corpus*, *amparo*, and any other effective remedy available in the competent courts or before the competent judges that is designed to guarantee respect for the rights and liberties that may not be suspended in such situations.

51. Therefore, judges must always process legal actions brought for protection of the human rights of children and adolescents during states of emergency, and must, as applicable, exercise judicial control based on the reasonability and proportionality of the restricted act.

5. Interaction between the inter-American and the universal systems for protection of the rights of children

52. The inter-American system coexists with other international human rights systems, such as the universal system, in addition to regional systems in place in Europe and Africa. This means that the different systems for protection of human rights are inter-related and complement each other in developing international human rights standards. For instance, in the case of children, it is possible to observe how the interaction between the inter-American system and the

universal system has occurred essentially in the following areas:

- i) **Scope of substantive development:** This is based on recognition and application of a *corpus juris* of the human rights of children and adolescents that allows both systems to exert mutual influence in the substantive development of the scope and content of their human rights.
- ii) **Scope of evidence:** the evidentiary value of decisions adopted in both systems to demonstrate the violation of the human rights of children and adolescents or to support a general human rights situation within the scope of a state's international responsibility. This effect is clearly seen in the inter-American system, where there is a procedure for the processing of individual cases, in which evidence of the alleged violations must be presented. It is important to note that in processing individual cases, evidence of a specific situation could be brought in the form of the final comments issued by the Committee on the Rights of the Child regarding the country that is alleged to have international responsibility. Moreover, one should bear in mind that within the jurisdiction of the universal system, there are various international organizations monitoring human rights that are competent to hear individual cases, and that, in processing these cases, may present decisions adopted by institutions of the inter-American system relevant to the specific case under examination in the universal system.
- iii) **Scope of monitoring and evaluation of general situations:** both systems analyze and evaluate the human rights situation of children and adolescents in states. In the case of the United Nations, the Committee on the Rights of the Child evaluates the situation in the countries that are states parties to the Convention on the Rights of the Child, whereas in the case of the IACHR, it may evaluate the situation of states that are parties to the American Convention, as well as that in other states that have not ratified this treaty, but are members of the OAS.

53. The interaction between the two systems is seen in the mutual references by the Inter-American Commission and Court on the one hand and the Committee on the Rights of the Child, on the other, in the international decisions they adopt. An example of this is the statement by the Inter-American Court regarding the concept of *corpus juris* in cases regarding children in international human rights law. The Court has applied this conceptual development to expand the legal framework governing the human rights of children and to strengthen the protection offered in the regional system. In this way, the text of the Convention on the Rights of the Child and decisions adopted by the Committee--such as their General and Final Comments on the periodic reports presented by the states parties to the Convention on the Rights of the Child—are incorporated into the system as reference material for interpretation purposes.

54. This relationship strengthens the defense and promotion of the human rights of children and adolescents. A concrete example of how the Committee on the Rights of the Child uses decisions of the inter-American system is found in General Comment No. 8 on protection of children against corporal punishment and other forms of cruel, inhuman, or degrading treatment, where the Committee cites the jurisprudence of the Inter-American Court to establish the scope of the state's obligation to adopt positive measures to guarantee the rights of children and adolescents. On this point, the Committee maintained:

24. An advisory opinion of the Inter-American Court of Human Rights on the *Juridical Condition and Human Rights of the Child* (2002) holds that states parties to the American Convention on Human Rights “have the duty ... to adopt any positive measures that ensure protection of children against mistreatment, whether in their relations with public authorities, or in interrelationships with individuals or nonstate entities.” The court cites provisions of the Convention on the Rights of the Child, conclusions of the Committee on the Rights of the Child, and also judgments of the European Court of Human Rights regarding the obligations of states to protect children against violence, including in the family. The Court states in conclusion that “the state has the duty to adopt positive measures to fully ensure the effective exercise of the rights of the child.

55. In addition, the Committee on the Rights of the Child, in evaluating the situation of children and adolescents, takes into account compliance with decisions adopted by regional institutions for protection of human rights. An example of this can be found in the observations issued by the Committee in relation to the periodic report presented by the State of El Salvador, in respect of which it stated:

The Committee is concerned that the resources needed to duly implement the decision issued by the Inter-American Court of Human Rights in the case of the Serrano Cruz Sisters vs. El Salvador of March 1, 2005, have still not been allocated.

56. For its part, the IACHR has also referred to the comments issued by the Committee on the Rights of the Child regarding situations existing in OAS member states. For instance, in its Special Report on “Justice and Social Inclusion: the Challenges of Democracy in Guatemala,” the IACHR stated: “The IACHR adopts the recommendation made by the United Nations Committee on the Rights of the Child to the State of Guatemala to suspend adoptions until it puts in place adequate legislative and institutional measures to prevent the sale of and trafficking in children, and to establish an adoption procedure that is consistent with the principles and provisions of the Convention.”

57. This interaction is also appreciated in evidentiary matters, where the IACHR, in analyzing an individual case, may refer to observations of the Committee regarding the existence of patterns of systematic violations of the human rights of children and adolescents in a state. As a rule, the final comments on situations of countries issued by the Committee on the Rights of the Child are used for reference purposes by the IACHR in monitoring human rights situations in the region.

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers: a. to develop an awareness of human rights among the peoples of America; b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights; c. to prepare such studies or reports as it considers advisable in the performance of its duties; d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights; e. to

respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request; f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and g. to submit an annual report to the General Assembly of the Organization of American States.

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Costa Rica, Cuba (by Resolution of the Eighth Meeting of Consultation of Ministers of Foreign Affairs (1962), the present Government of Cuba does not participate in the OAS), Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Surinam, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

In this document, the term “children” refers indiscriminately to newborns, infants, children, and adolescents under 18 years of age.

Organization of the United Nations, *Legislative History of the Convention on the Rights of the Child*, Volumen I, New York, 2007, p. 308. Article 1 According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier”.

Organization of the United Nations, *Legislative History of the Convention on the Rights of the Child*, Volumen I, New York, 2007, pp. 301-313.

Human Rights Committee, General Comment 17, Rights of the child, 07/24/89, para. 4.

Manual for preparation of human rights reports, cited in UNICEF, *Manual for Application of the Convention on the Rights of the Child*, Geneva, 2004, p. 4.

United Nations [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 3\(d\). Available at http://www2.ohchr.org/english/](http://www2.ohchr.org/english/).

American Declaration of The Rights and Duties of Man (Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948). Article VII establishes: “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”

American Convention on Human Rights (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969). Article 19 establishes: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, Chapter V.

IACHR, *Annual Report 1991*: Chapter VI: Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights: [Strengthening of the OAS in the area of Human Rights: Respect for the Rights of Minors](#), Section VI Recommendations.

OEA/Ser.L/V/II.81, Doc. 6 rev. 1, 14 February 1992.

Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and Entry into force 2 September 1990, in accordance with article 49). Article 1 of the Convention on the Rights of the Child establishes:

For the purposes of the present Convention, a child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is reached earlier.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, note 45.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42.

I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 188.

I/A Court H. R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 133.

The Court notes that at the time that the judgment was issued, Dilcia Yean was 9 years old and Violeta Bosico was 20 years old; however, since on March 25, 1999, Dilcia and Violeta were 2 and 14 years of age, respectively, the Court will refer to the alleged victims as children; see: *Juridical Status and Human Rights of the Child*, Advisory Opinion 17/02 of August 28, 2002, Series A, N. 17, para. 42.

See: /A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, note 84, paras. 53, 54 and 60, and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, Series C No. 110, para. 164.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 112, paragraph 181.

European Convention on the Exercise of Children’s Rights Article 1 – Scope and object of the Convention

"1. This Convention shall apply to children who have not reached the age of 18 years.”

Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse.(*Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies*) available at

[https://wcd.coe.int/ViewDoc.jsp?id=1164081&Site=COE&BackColorInternet=DBDCF2&Back](https://wcd.coe.int/ViewDoc.jsp?id=1164081&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=)

[ColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?id=1164081&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

Article II: Definition of a child for the purposes of this Charter, a child means every human being below the age of 18 years.

The Inter-American Court of Human Rights has applied this concept on repeated occasions. For instance, in the case of the *Yakye Axa Community*, the Court used this concept to determine broader standards for protection of the rights of indigenous peoples and to apply human rights treaties that were not part of the inter-American human rights system, such as ILO Convention 169.

I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para.115.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 37, 53, and *Case of the Street Children (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 112, para. 148, *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 166; *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194; and, Advisory Opinion OC-07 on the *Juridical Condition and Human Rights of the Child*, para. 24.

IACHR, *1997 Annual Report*, Chapter VII. Recommendations to member states in areas where they should adopt measures to ensure full observance of human rights, in accordance with the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

See also the preamble of the American Convention on Human Rights.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 56.

I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 24.

American Convention on Human Rights, *supra* footnote 11, Article 27.2 establishes: “(...) 2. The preceding provision does not authorize suspension of the rights established in the following Articles: 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 6 (freedom from slavery and servitude), 9 (freedom from ex post facto laws), 12 (freedom of conscience and religion), 17 (right of the family), 18 (right to a name), 19 (rights of the child), 20 (right to nationality), and 23 (right to participate in government); nor does it authorize suspension of the right to a fair trial essential for the protection of these rights(...)”.

I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 41.1.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraphs; 37, 53 and I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 87 and 91.

Committee on the Rights of the Child, General Comment N° 8, The right of the child to protection against bodily punishment and other forms of cruel and degrading punishment, CRC/C/GC/8, August 21, 2006, para. 24.

Committee on the Rights of the Child, Final Comments regarding the Second Periodic Report presented by El Salvador, CRC/C/OPAC/SLV/CO/1, June 2, 2006, para.12.

IACHR, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, para.363, citing the Committee on the Rights of the Child, Final Comments: Guatemala CRC/C/15/Add.154, July 9, 2001, para. 34.

CHAPTER II

SUMMARY ON JURISPRUDENCE OF THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS PERTAINING TO CHILDREN

58. This chapter presents a brief survey of the evolution in applying the human rights of children and adolescents in the inter-American human rights system, based on the recommendations adopted by the Inter-American Commission on Human Rights and the decisions of the Inter-American Court of Human Rights.

59. The first stage in developing standards applicable to children in the inter-American system runs from the creation of the system to the end of the 1980's, when the Convention on the Rights of the Child was adopted. This period is characterized by action by the Commission in recording and monitoring human rights violations through petitions and individual cases, and in analyzing situations in countries. During this initial period, most of the petitions and cases heard by the IACHR had to do with violations of the right to life, to personal liberty, or to humane treatment.

60. A second stage in the evolution of the treatment of the issue of children's rights in the inter-American system began with the entry into force of the Convention on the Rights of the Child by the United Nations General Assembly in 1989, and continues to the present day. This period witnessed a more substantive development of the content of Article 19 of the American Convention on Human Rights.

61. Finally, based on recognition of the progress the system has made to date, it should be noted that in view of the current evolution of the regional system in children's rights, it could be said that a third stage in the development of the regional system is beginning, where the primary challenge is the establishment of a comprehensive view of the protection of the human rights of children and adolescents that will lead to inter-American standards on the human rights of children and adolescents that have not yet been specifically dealt with by the organs of the system. Examples are issues related to protection of identity, adoption, the right not to be separated from one's parents, and the duty of the state to protect the rights of children when private actors are present, among others.

62. There follows an indicative, but not exhaustive survey of the decisions on matters related to children in the region adopted by the Commission and the Court in each of the stages of their evolution.

A. Decisions of the Inter-American Commission on Human Rights

63. Since its creation, the IACHR has referred to children's rights in general reports and in its decisions on petitions and cases it has examined. During the 1960's, 1970's and 1980's, the Commission issued recommendations on general situations of human rights violations or decided

on whether or not the human rights of a child were violated without proceeding to substantive development of the content of the law. During the 1960's and 1970's, the IACHR used exclusively as a legal framework the American Declaration of the Rights and Duties of Man, an international instrument adopted at a time when the prevailing doctrine conceived of children as objects of protection, but did not recognize their status as persons with legal rights. In accordance with this doctrine, the Declaration does not contain a specific clause on the rights of children and adolescents, but rather includes reference to various types of protection for children and adolescents. Of course, the Declaration is still applied in states that are not parties to the Convention, to understand the later concept according to which children are recognized persons with rights.

64. For instance, the first special reports published by the IACHR refer to the arbitrary detention of children, the death of children by private militia in the service of the Government, and children who remain with their parents deprived of liberty in inadequate conditions. The Commission has also analyzed general situations in its annual reports of 1970 (Mexico), 1971 (Chile and the United States of America), 1972 (Colombia), 1973 (Chile, Costa Rica, and Uruguay), 1974 (Nicaragua), 1975 (Argentina and Mexico), 1976 (Chile), and 1978 (Jamaica). Another situation evaluated by the IACHR was the pattern of kidnappings of the children of political opponents of military dictatorships, and the expulsion of children from schools or the refusal to register them because of their religious beliefs.

65. With the entry into force of the American Convention, the IACHR began to develop points of law on the content of the right to personal liberty and the right to a fair trial. Thus, in its 1984-1985 Annual Report, the IACHR for the first time made specific nominal reference to Article 19 of the American Convention. Between 1985 and 1990, the IACHR issued various reports on violations of the right to life, to humane treatment, to a fair trial, and to personal liberty of children. Moreover, in relation to children in conflict with criminal law, the Commission stated that these cases should be heard by a special judge and that they should be detained in places separate from the adult population.

66. A review of cases on the rights to life, humane treatment, and personal liberty during the period immediately following the entry into force of the American Convention shows that there were no specific references to Article 19, in spite of the fact that they involved children whose human rights had been violated. Up to that time, the examination of situations related to violations of the human rights of children and adolescents focused primarily on the law and not as much on the conditions that require special protection for children and adolescents. For instance, there were references to violations of the right to humane treatment of children, but they did not include reference to the failure by states to comply with obligations assumed under the provisions of Article 19 of the American Convention on Human Rights.

67. An analysis of the decisions adopted by the system shows that with the entry into force of the Convention on the Rights of the Child in 1990, there was a growing recognition of children as legal subjects with rights, as supported by the doctrine of comprehensive protection. In its 1991 Annual Report, for instance, the IACHR referred to the situation of repatriated children, the majority of whom were separated from their progenitors, or were used to capture the parents who were illegal in the receiving country. Subsequently, the IACHR decided cases involving street

children, use of children in armed conflicts and recruitment of children into compulsory military service, imprisonment of children with their parents, the situation of displaced children, abusive treatment and deplorable conditions in detention centers for children, sexual exploitation, and labor exploitation.

68. Another issue that the IACHR took up in general terms is corporal punishment. It stated that “[...] *physical punishment has been used traditionally by parents and guardians as a corrective measure. Physical mistreatment is the type of correction most used in 48.2% of cases (...) 442. The Commission recommends to the State [...] that it implement programs for strict monitoring of the situation of children and adopt any necessary measures to guarantee the rights of minors, especially those who are victims of domestic violence.*”

69. In addition, on the gender issue, in Chapter V on the status of women in the Hemisphere, the IACHR expressed its concern over the situation of “invisible girls” or “girls in especially difficult circumstances,” as a specific group that requires special attention to protect their human rights. This subject has also been evaluated through individual cases.

70. On another point, one of the first references to the principle of the best interests of children in the system can be found in its 1997 Annual Report, which established that (...) *in any case involving decisions affecting the life liberty, physical or moral integrity, development, education, health, or other rights of minors, these decisions should be made in light of what is most advantageous for the child.*

71. Finally, it is important to highlight the proactive role of the IACHR in promoting not only the development of the contentious jurisprudence of the Inter-American Court, but also the development of its advisory capacity in cases related to children. An example of this was the request for an Advisory Opinion on the Juridical Status and Human Rights of the Child.

B. Summary of a selection of decisions related to children, adopted by the Inter-American Commission on Human Rights

72. There follows a summary of seven cases examined by the IACHR that contain significant conclusions pertaining to children, both because they involve recurrent themes, such as violations of the right to humane treatment and personal liberty, and because they raise new issues in the system, such as discrimination for reasons of gender or religion, which, in the substantive development of children’s rights, still pose a challenge for the evolution of the regional system.

1. Case 2137 – Jehovah’s Witnesses vs. Argentina, 1978

Facts

73. This case refers to restrictions imposed by the Argentine military dictatorship on the worship and the religion of Jehovah’s Witnesses. The facts alleged by the Jehovah’s Witnesses include the expulsion of around 300 school-age children who were denied primary schooling by expulsion from the schools they were attending, or simply by not being permitting to register in

the schools because of their religion.

Alleged rights

74. Right of assembly (Article XXI), right to personal security, life, and liberty (Article I), right to education (Article XII), right of protection from arbitrary arrest (Article XXV), and right to religious freedom and worship (Article III) of the American Declaration of the Rights and Duties of Man.

Conclusions of the Commission

75. In this case, the IACHR concluded, among other things, that the Jehovah's Witnesses Religious Association was prohibited from exercising its activities in the Argentine Republic; that the State had violated the right to religious freedom and worship, hence the possibility of manifesting and practicing it both in public and in private; and, that it had also violated the right to equal opportunities for education and safety and security on the part of the members of the Association of Jehovah's Witnesses. Consequently, the Commission recommended to the State that it cease any type of persecution of the members of the Religious Association of Jehovah's Witnesses.

2. Case 11.491 – Detained Minors vs. Honduras

Facts

76. This case refers to the arbitrary detention of children living in the streets in the city of Tegucigalpa, Honduras, who after being arrested, were sent to the San Pedro de Sula prison, where they were held together with adults in inhuman conditions and were subject to physical and sexual abuse. At that time, the imprisonment of persons under 18 years of age in Honduras was related to the Supreme Court ruling of January 16, 1995, which authorized the incarceration of minors in prison blocks separate from the adults. This judicial decision led to an increase in the number of children and adolescents incarcerated in prisons for adults, and also in the judgment of persons under 18 years of age by criminal judges rather than by judges specializing in juvenile matters. Moreover, in this case the habeas corpus writs filed in favor of the children were not effective.

Alleged rights

77. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), right to judicial protection (Article 25), and rights of the child (Article 19).

Conclusions of the Commission

78. To determine the scope of the specific obligations stipulated in Article 19 of the American Convention, the IACHR uses international laws on children which would subsequently be recognized by the Inter-American Court as *corpus juris*. Thus it is relevant to cite paragraph

72, which establishes that: “To interpret the obligations of the state *vis-à-vis* minors, in addition to the provisions of the American Convention, the Commission considers it important to refer to other international instruments that contain more specific provisions pertaining to protection of children, including the Convention on the Rights of the Child and various declarations of the United Nations on the subject. This integration of the regional system with the universal system of human rights for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the repeated practices of the Court and the Commission in these matters.”

79. With regard to the right to personal liberty, this case refers to the situation of abandoned children who were living in the streets of Tegucigalpa, in respect of which the IACHR held: “109. (...) that the detention of minors for noncriminal acts, but merely because they were in a situation of social abandonment, risk, orphanhood, or vagrancy, represents a grave danger to Honduran children. The State may not deprive of their freedom those children who have not committed acts classified as offenses without incurring international responsibility for violating the right to personal liberty (Article 7 of the Convention).” This finding would be examined in greater detail by the Inter-American Court in the case of Villagrán Morales, where evidence showed that street children detained arbitrarily were victims of aggravated violations of their rights, both because they did not enjoy the minimum conditions for a decent life and because the state not only did not provide them with these minimum conditions, but also arbitrarily deprived them of their liberty.

80. With regard to the right to humane treatment, the IACHR maintained: “125. In the view of the Commission, the duty of the state to keep minors in detention in separate establishments from those occupied by adults is based on Article 5(5), considered together with Article 19 of the Convention. It is obvious that the obligation emanating from Article 19, of according children special treatment, cannot be interpreted exclusively as the requirement to create a juvenile court and judges, but also, to ensure the “protection required by his condition as a minor,” requires that the minor be held separately from adults, namely in specialized institutions.” The Commission adds that in examining the State’s compliance with its special obligations to protect the right to humane treatment, of particular relevance is the role of guarantor that the state assumes whenever a person is deprived of his liberty. On this point, the IACHR wrote that: “136. The obligation emanating from this position of guarantor implies that the agents of the state not only should refrain from carrying out acts that could be harmful to the life and physical safety of the detainee, but it should also endeavor by every means at its disposal to maintain the fundamental rights of the person in detention, and especially the right to life and humane treatment. The state has the specific obligation here to protect prisoners from attacks coming from third parties, including those from other inmates.”

3. Case of Bulacio vs. Argentina (2000)

Facts

81. Walter David Bulacio a 17 year old boy was detained by the Federal Argentinean Police on April 19, 1991, during a massive detention operation called “*razzia*”. He was taken to the Police station 35, room for children where he was tortured by police officials. The detention was not informed to the competent judge or his relatives. On April 21, the adolescent Walter Bulacio

was taken to the Mitre hospital, where a doctor examined him and denounced the registration of a young guy with injuries. On April 26, the adolescent Walter Bulacio died. In April a judicial process was initiated to punish the alleged responsible. Ten years after the arbitrary detention and the death of Walter Bulacio, domestic proceedings had not been concluded. On November 21, 2002 the VI Section of the Chamber of Appeals ruled the prescription of the criminal action.

Alleged Rights

82. Right to life (Article 4), right to personal integrity (Article 5), right to personal liberty (Article 7), right to judicial guarantees (Article 8), right of the child (Article 19) and right to judicial protection (Article 25).

Conclusions of the Commission

83. The Commission filed a lawsuit requiring the Court to decide if the State of Argentina had breached Articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 8 (judicial guarantees), 19 (rights of the child) y 25 (judicial protection) in relation to Article 1 (obligation to respect and ensure) of the American Convention in regards to Walter Bulacio. Additionally, the IACHR requested to compel the State to undertake a complete, impartial and effective investigation of the circumstances and to punish those responsible in accordance with the Argentinean legislation, the adoption of necessary measures to ensure that all detention facilities for persons under 18 years old are appropriate, the public recognition of the State's responsibility and the reparation for material and immaterial damage for Walter Bulacio's relatives as stated in Article 63.1 of the Convention, and to request the State the compensations and reimbursement of legal costs and expenses for those who assisted the Commission.

84. In its Report N° 72/00, the Commission concluded that the State breached the right to life (Article 4), personal integrity (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), rights of the child (Article 19), and judicial protection (Article 25), in relation with the obligation to respect and to ensure human rights (Article 1), enshrined in the American Convention, against the adolescent Walter David Bulacio. The IACHR recommended the State to adopt the following measures:

1. Adopt such measures as may be necessary for the facts stated above not to go unpunished, including a complete, impartial and effective investigation to establish the circumstances of the detention, injuries and death of Walter David Bulacio, and punishment of those responsible in accordance with Argentine legislation.

2. Adopt such measures as may be necessary for the next of kin of Walter David Bulacio, Víctor David Bulacio and Graciela Scavone de Bulacio, to receive adequate and timely reparation for the violations [...] found.

85. During the proceedings before the Court a friendly settlement was reached and was validated by the Inter-American Court. It is pertinent to observe that some of the arguments raised by the IACHR regarding reparations were different to those of the Court. For instance, as regards to pecuniary damage, the IACHR alleged the need to consider his income as caddie in a

golf camp to determine the compensation for material damage. On the same issue, the Court stated in paragraph 84 of its judgment of September 18, 2003 that:

The Court also deems that it is reasonable to assume that youth Bulacio would not have carried out this activity the rest of his life, but there is no certain fact that makes it possible to ascertain the activity or profession that he would have exercised in the future, that it, that there are insufficient grounds to establish the loss of a definite chance, which “must be estimated on the basis of certain damage with sufficient grounds to establish the probable realization of said damage.” Due to the above, the Court decides to set, in fairness, US\$100,000.00 (one hundred thousand United States dollars) as compensation for Walter David Bulacio’s lost earnings.

4. Case of the girls Yean and Bosico vs. Dominican Republic (2001)

Facts

86. The girls Dilcia Yean and Violeta Bosico were born in Sabana Grande de Boyá, in the District of Monte Plata in Dominican Republic; both girls have Dominican mothers and Haitian fathers. In this case, petitioners alleged that the State denied the late registration of birth because they did not fulfill certain conditions that were usually required from persons over 13 years old. Although at the moment of the registration, Dilcia Yean was 10 months and Violeta Bosico was 12 years old, the above mentioned conditions were demanded to these girls. This situation placed both girls under an imminent threat to be expelled from their own country because they did not have an official identification as Dominican citizens. Additionally, due to that fact that Violeta Bosico did not have a birth certificate, she was deprived of her right to access to education during the period 1998-1999.

Alleged Rights

87. Right to juridical personality (Article 3), right to judicial guarantees (Article 8), Rights of the child (Article 19), right to nationality (Article 20), right to equal protection (Article 24) and right to judicial protection (Article 25) in relation with the obligation to adapt domestic law (Article 2) and the general obligations enshrined in Article 1.1 of the American Convention on Human Rights and the right to education enshrined in Article XII of the American Declaration of the Rights and Duties of Man.

Conclusions of the Commission

88. The Commission analyzed the alleged violation of the obligations to respect and to ensure human Rights, and to adapt domestic law to the standards set in the American Convention in relation to the following Rights: right to juridical personality (Article 3), personal integrity (Article 5), protection of the family (Article 17), name (Article 18), rights of the child (Article 19), right to property (Article 21), freedom of movement and residence (Article 22), and right to participate in government (Article 23). The Commission analyzed the right to education enshrined in Article XII of the American Declaration of the Rights and Duties of Man.

89. On March 6, 2003, the IACHR approved its Merits Report N° 30/03 and recommended the State the adoption of the following measures:

- a) Establish guidelines that contain reasonable requirements and do not impose excessive or discriminatory obligations in order to facilitate the registration of Dominican-Haitian children with the Registry Office officials.
- b) Establish a procedure that allows the requirements established in paragraph (a) to be applied in the case of late declarations of the birth of those born on Dominican territory.
- c) Create a legal mechanism that, in case of dispute, allows individuals to file their reports directly before the judicial instance, so that their complaints can be reviewed by an independent and impartial judicial organ.
- d) This mechanism should provide a simple, prompt and inexpensive recourse for individuals without a birth certificate.
- e) Adopt the necessary measures to ensure that the children Dilcia Yean and Violeta Bosico, and also their mothers, Leonidas Yean and Tiramen Bosico Cofi, receive adequate and timely reparation and public acknowledgement of the violations of their human rights contained in Articles 1, 2, 3, 8, 19, 20, 24 and 25 of the American Convention on Human Rights and [in] Article XII of the American Declaration of the Rights and Duties of Man. When making this recommendation, the Commission recognize[d] that the State had made an effort to remedy the situation; however, some measures remained pending.
- f) Adopt the necessary measures to prevent such facts being repeated in future.

90. In relation to the right to education, the Commission deemed that although this right is enshrined in Article XII of the American Declaration, it is not protected by the Convention. Nevertheless, the Commission considered that this circumstance did not exclude its competence *ratione materiae*, because pursuant to Article 29(d) of the Convention “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have. “No provision of this Convention shall be interpreted as: d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have”. Consequently, the Commission examined the violation of the right to education in relation to Article XII of the Declaration. It is pertinent to notice that in its ruling of September 2005, the Court analyzed the alleged violation of the right to education in relation to Article 19 of the American Convention, the Convention on the Rights of the Child and the Additional Protocol to the American Convention on Human Rights in the area of Economical, Social and Cultural Rights in relation to the obligation of progressive development enshrined in Article 26 of the Convention and stated:

185. (...)according to the child’s right to special protection embodied in Article 19 of the American Convention, interpreted in light of the Convention on the Rights of the Child and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, in relation to the obligation to ensure progressive development contained in Article 26 of the American Convention, the State must provide free primary education to all children in an appropriate environment and in the conditions necessary to ensure

their full intellectual development.

91. In relation to the analysis of the right to juridical personality, the Commission stated some relevant comments as regards to the right to an identity and the right to birth registration. For instance, the IACHR stated:

124. The birth registration is a necessary corollary to ensure the juridical identity, which at the same time is necessary to guarantee fundamental Rights enshrined in the Convention. (...) It has been stated that “the birth registration is one of the fundamental human rights. It assures a legal recognition of the child and identity, and also establishes family relations, to what community and nation he belong. It demonstrate that the child has a place (and right to participate) in all and each of the above mentioned institutions. It opened the path to other rights, such the access to healthcare and education, it allows protection against discrimination and abandonment, and determines the treatment that a child has as member of a legal system and last for all his life, ensuring the right of the individual to have a place in social and political life of his country.

92. Additionally, it is pertinent to indicate that in this case neither the IACHR nor the Court concluded that the State was responsible for the violation of the right to a name. However, the Court in its ruling of September 8, 2005, included some relevant statements as regards to the scope of the right to a name in the following terms:

182. The right to a name, embodied in Article 18 of the American Convention, constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State. This right is also established in several international instruments.

183. Under Article 18 of the Convention, States are obliged not only to protect the right to a name, but also to provide the necessary measures to facilitate the registration of an individual, immediately after birth.

5. Case 12.285, Michael Domingues vs. United States of America (2002)

Facts

93. This case refers to the conviction of Michael Domingues to the death penalty for acts committed when he was 16 years of age.

Alleged rights

94. Right to life (Article I) of the Declaration of the Rights and Duties of Man.

Conclusions of the Commission

95. One of the points of law concerns the “*jus cogens*” nature of the prohibition of the death penalty for persons less than 18 years of age. Thus the Commission indicated that Article I of the American Declaration “does not absolutely prohibit the death penalty, but it does prohibit its imposition whenever it would cause an arbitrary deprivation of life or for other reasons would

constitute cruel, degrading, or unusual punishment.” In addition, in view of the fact that this case involves a person under 18 years of age, the IACHR concluded that “a rule of international customary law has come into play that prohibits the execution of delinquents under 18 years of age who commit a crime.” In view of these considerations, among others, the Commission concluded that the “United States is obligated by a rule of *jus cogens* not to impose capital punishment on persons who commit crimes before they attain 18 years of age.”

6. Case 12.406 - Mónica Carabantes Galleguillos vs. Chile (2002)

Facts

96. This case refers to the expulsion of a 15-year old adolescent, Mónica Carabantes Galleguillos, from a private school due to her pregnancy and the subsequent denial of justice in response to the complaint filed by the victim in the domestic courts.

Alleged rights

97. In this case, the petitioners alleged violation of the right to equal protection before the law (Article 24) and the right to have her honor and dignity respected (Article 11) of the American Convention.

Conclusions of the Commission

98. This case was resolved in a friendly settlement. Thus, although it raises interesting issues involved in the protection of human rights of girls, such as the right to be free of discrimination for reasons of gender, the right to education, and the right to protection against arbitrary interference in one’s private life, the IACHR did not have an opportunity to examine the issues raised in the phase on the merits.

7. Case 10.506, X and Y vs. Argentina, (1996)

Facts

99. This case refers to the practice of vaginal examinations of women and girls who visit family members incarcerated in prisons in Argentina. Thus, Mrs. X and her daughter Y, 13 years of age, were subjected to vaginal examinations on every occasion that they visited the father of daughter Y. Mrs. X filed a *writ of amparo*, that was declared without merit, in a special appeal to the Federal Supreme Court of Argentina.

Alleged rights

100. Right to humane treatment (Article 5), right to protection of one’s honor and dignity (Article 11), protection of the family (Article 17), and rights of the child (Article 19) of the American Convention.

Conclusions of the Commission

101. In this case, the Commission developed certain conclusions regarding the impact of the practice of vaginal examinations in the case of girls, in accordance with the criteria of legality, need, reasonableness, and proportionality. The IACHR stated that: “The practice of vaginal examination or inspection in certain circumstances may be acceptable, provided the measure is applied in accordance with the principles of due process and safeguards the rights protected by the Convention. However, if certain conditions such as legality, need, and proportionality are not considered, and the procedure is not performed with due respect for certain minimum standards that protect the legitimacy of the act and the physical safety and well-being of the persons subjected to it, it cannot be considered as respecting the rights and guarantees enshrined in the Convention.” (para. 78) From this standpoint, although it did not regard “the procedure as illegal *per se* [...], when the state performs any type of physical intervention on an individual, it must observe certain conditions to ensure that it does not generate more anxiety and humiliation than inevitable. In order to apply this measure, a judicial order should be required in all cases, to ensure some control over the decision as to the need to apply this measure, and to ensure that the person to be subjected to it does not feel defenseless vis-à-vis the authorities. Moreover, the procedure should always be conducted by appropriate staff who use due care, so as not to cause physical injury, and the examination must be conducted in such a way that the person subjected to it does not feel that it violates her mental and moral well-being. (para. 87)

102. In analyzing the situation of girl Y, the Commission indicated that for her, “it was impossible for to obtain real consent, since at the time she was a child of 13 years of age, totally dependent on the decision made by her mother, Mrs. X, and on the protection offered by the State. Moreover, for the obvious reason of the girl’s age, the method of vaginal examination used was absolutely inappropriate and unreasonable.” (para. 79)

103. With regard to the personal safety and well-being of the child, the IACHR believes that “the Argentine State proposed and practiced a procedure with possible traumatic consequences on a minor, who did not have the legal capacity to consent [...]. Moreover, the State did not provide Y with minimum protection against abuses or physical injury.” (para. 104).

8. Case 11.364, Jailton Neri Da Fonseca vs. Brazil (2004)

Facts

104. The case involves the arbitrary detention and extrajudicial execution of a child, Jailton Neri da Fonseca, 14 years of age, in the “*favela*” of Roquete Pinto, on December 22, 1992, by the military police of the Ramos Community Station.

Alleged rights

105. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), right to judicial protection (Article 25), and rights of the child (Article 19).

Conclusions of the Commission

106. This is a case involving systematic violations of the human rights of children and adolescents living in the streets of Brazil. In this report, the Commission established that it was not “an isolated case,” but instead reflected a pattern of conduct outside the law on the part of the State Military Police. The Commission has received reports for years of an escalation of violence on the part of the national police, and especially the military police, who have been accused of acting with violence. In its 1997 General Report on the Human Rights Situation in Brazil, the Commission indicated that “since February 1996, the average number of deaths per month at the hands of the Military Police has risen from 3.2 to 20.55 persons, for a total of 201 in 1996.”

107. The Commission arrived at some conclusions regarding the interpretation of the scope of Article 19 of the Convention, by establishing that “respect for the rights of the child constitutes a fundamental value in a society that claims to ensure social justice and human rights. This not only entails providing children care and protection, basic parameters that have traditionally guided the legal and theoretical concept of the content of such rights, but also means recognizing, respecting, and guaranteeing the individual personality of the child, as a holder of rights and obligations.”

108. In addition, the Commission established that “in the case of children consideration must also be given to a more rigorous standard for the degree of suffering that could imply torture, taking into account, for instance, factors such as age, sex, the effect of the stress and fear experienced, the health of the victim, and his maturity.”

9. Case 12.300 Gerardo Vargas Areco vs. Paraguay (2004)

Facts

109. The adolescent Gerardo Vargas Areco was recruited into military service in the Paraguayan Armed Forces on January 26, 1989, at the age of 15. On December 30, 1989, Gerardo Vargas Areco was allegedly arrested as punishment for failing to voluntarily and timely return to the military post after a leave of absence to spend Christmas with his family. As was proved during the proceedings the adolescent Vargas Areco appeared at the infirmary of the military unit where he was treated for a nasal bleeding. After leaving the infirmary, the minor Vargas-Areco allegedly ran to flee from the military post and evade the punishment imposed upon him. In that moment, a non-commissioned officer shot him to death.

Alleged rights

110. Right to personal liberty (Article 7), right to personal integrity (Article 5), right to life (Article 4), rights of the child (Article 19) right to judicial protection (Article 25) in relation to the obligation to respect and ensure human rights enshrined in Article 1.1 of the American Convention.

Conclusions of the Commission

111. In its Merits Report N° 76/04 of October 19, 2004, the Commission stated that “lack of

the obligation to prevent consist in allowing, against what is stated in its Constitution and its domestic laws, that children under 18 years old, such Gerardo Vargas Areco, are recruited into military service. To place a child under that situation implies a breach of the obligation to ensure the right to life”. Likewise, the IACHR, included some statements to strength the recognition of the child as a right holder:

The respect of the rights of the child constitutes a fundamental value for a society that intends to practice social justice and human rights. This does not only imply provide care and protection as basic parameters that used to guide the academic and legal conceptualization of the scope of those rights, but, in addition it means to recognize, respect and guarantee the individual personality of the child, as a right and duty holder.

112. In this light, it is pertinent to remind that the conceptualization of the special protection of the child that was stated by the IACHR in this case:

155 The integral protection recognized in Article 19 of the Convention demands in the present case, that the State enforces its Constitution and its domestic laws. It implied that the armed forces do not recruited Vargas Areco into compulsory military service(...)

156. The integral protection that required Vargas Areco also demanded that he was not treated as an adult, instead of being treated as a child. It also meant not to torture or to subject him to cruel, inhuman and degrading treatment, as it happened.

113. In this light, the IACHR not only deem the recognition of the right of the child to enjoy a special protection such the right to have a special treatment different from the one that is given to adults; at the same time it deems that the conceptualization of the obligation of the State to ensure especial protection for children has as one of its axis the prevention of all situations that violates their human rights.

114. After the timeframe given by the IACHR for the implementation of its recommendations concluded, pursuing to Article 51 of the American Convention, the IACHR filed a lawsuit to the Inter-American Court of Human Rights and requested the Tribunal to declare the international responsibility of the State for the violation of the rights enshrined in Article 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect) of the said Convention against the relatives of Gerardo Vargas Areco. Furthermore, the Commission argued that the State breached the rights herein mentioned above because it did not “investigate, prosecute and punish those responsible for the violations perpetrated against their relatives in due term” and “for lack of a proper reparation on behalf of the relatives of the child”.

10. Petition 1070-04 Milagros and Leonardo Fornerón vs. Argentina (2006)

Facts

115. This case refers to the exercise of the right of guardianship and custody of a 6-year old child, Milagros Fornerón. According to the petitioners’ report, the girl was turned over to her

biological mother for temporary custody without the authorization of the father, who instituted proceedings for guardianship and the return of the child once he learned of this.

Alleged rights

116. On the date of this publication, there is an admissibility report on this case in which evidence has been found of the alleged violation of the following rights: right to a fair trial (Article 8), right to the protection of the family (Article 17), right to judicial protection (Article 25), and rights of the child (Article 19) of the American Convention.

Conclusions of the Commission

117. Although this case involves an Admissibility Report, it is relevant to emphasize the criterion applied by the Commission to determine exhaustion of domestic remedies in the case of alleged violations of the rights of children. For instance, the Commission established that the evaluation of the concept of a reasonable time in cases involving children's rights is closely related to the scope of the obligation of special protection and consequently the obligation to act with diligence whenever issues affecting the human rights of children and adolescents are in dispute or the subject of a decision. In this context, the Commission established that "41. To evaluate the delay in the resolution of domestic remedies, account must also be taken of the objective of the judicial action. In this regard, the Commission gives due consideration to the fact that the purpose of the proceedings initiated by Leonardo Aníbal Javier Fornerón is to establish and maintain a relationship of affection and care of his daughter, Milagros. The Commission also takes into account the fact that the petitioners consider that the length of time of the proceedings very seriously affected the rights of Leonardo Aníbal Javier Fornerón and his daughter, Milagros, since as time went by, the child created closer links with her guardians, a factor used to maintain the adoption and to reject the requests of the biological parent. On this point, the Commission observes that judicial proceedings related to guardianship and custody of a child must be handled expeditiously, in view of the importance of the interests at issue."

118. In this regard, it should be noted that this criterion is based on the jurisprudence of the European Court of Human Rights, which has developed the concept of the "duty to act with exceptional diligence," especially in administrative and judicial proceedings involving the protection of the human rights of persons under 18 years of age.

IACHR, *Report on the Procedures of the Inter-American Commission on Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.13, doc. 14 Rev. (Spanish), October 15, 1965, Chapter IV, Case of the Dominican child Felipe de Jesús, 14 years of age, who was detained at his residence at Calle 17 by the terrible, infamous CEFA Balá and troops on May 20, 1965.

IACHR, *Report on the Human Rights Situation in Haiti*, OEA/Ser.L/V/II.21 doc. 6 (Spanish) Rev. 21, of May 1969, Chapter II; IACHR, *Report on the Human Rights Situation in Chile*, OEA/Ser.L/V/II.34, doc. 21, October 25, 1974, Chapter V.

IACHR, *Report on the Situation of Political Prisoners and their Families in Cuba*, OEA/Ser.L/V/II.7, doc. 4 (Spanish), May 17, 1963, Chapter IV, and the *Second IACHR Report on the Situation of Political Prisoners and their Families in Cuba*, OEA/Ser.L/V/II.23, doc. 6 (Spanish), May 7, 1970, Chapter II.

IACHR, *1978 Annual Report*, Case 2271, Nérida Azucena Rosa de Forti, November 18, 1978. *Ibid.*

The American Convention on Human Rights entered into force on July 18, 1978.

IACHR, *1984-85 Annual Report*. Reference may also be made to the Country Report for Guatemala, 1985 (Available in Spanish only).

IACHR, Case 9647 (James Terry Roach and Jay Pinkerton – (United States) *1986-87 Annual Report*; IACHR, Case 9449 (Peru), June 30, 1987; IACHR, Case 9619 (Honduras), March 28, 1987; Case 10.124 (Surinam), September 27, 1989, and IACHR, Case 10.179 (El Salvador), September 28, 1989; IACHR, Report N° 100/03, Case of Douglas Christopher Thomas, (United States), December 29, 2003; Report N° 97/03. Case 11193, Gary t. Graham (Sr. Sankofa), (United States), December 29, 2003.

IACHR. *1986-1987 Annual Report*, Case 9619 (Honduras), March 28, 1987.

IACHR. *1986-1987 Annual Report*, Case 9619 (Honduras), March 28, 1987.

IACHR. *1986-1987 Annual Report*, Case 9449 (Peru), June 30, 1987.

IACHR. *1978 Report on the Human Rights Situation in Nicaragua*, Chapter IV.

IACHR, *1983-1984 Annual Report*, Case 6720 (El Salvador) October 4, 1983 and Case 6717 (El Salvador) October 4, 1983.

IACHR, *1981-1982 Annual Report*, Case 4666 (Chile), October 16, 1981; Case 7481 (Bolivia), March 8, 1982; and *1983-1984 Annual Report*, Case 6720 (El Salvador), October 4, 1983, Case 6717 (El Salvador), October 4, 1983.

IACHR, *1981-1982 Annual Report*, Case 4666 (Chile), October 16, 1981; Case 7822 (Guatemala), March 9, 1982, and *1983-1984 Annual Report*, Case 6720 (El Salvador), October 4, 1983.

On this point, refer to the *1991 Annual Report*, Chapter IV.

IACHR, *1991 Annual Report*, Chapter IV.

I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63.

1993 Report on the Situation of Human Rights in Peru and on the *Second Report on the Situation of Human Rights in Colombia*, where measures need to be taken to ensure the full exercise of human rights pursuant to the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

IACHR, *Third Report of the Human Rights Situation in Paraguay*, Chapter VII, 2001.

On this point, it is recommended that the country reports of Ecuador (1997), Brazil (1997), Mexico (1998), and Colombia (1999) be reviewed.

IACHR, *Report on the Human Rights Situation in Dominican Republic*, 1999.

Reports on individual cases: IACHR, Case 10.506 X and Y (Argentina), IACHR, Case 11.565 Ana, Beatriz and Celia González (Mexico), Report N° 53/01, April 4, 2001. IACHR, Case 12.046, Mónica Carabantes (Chile), Report N° 32/02, friendly settlement of March 12, 2002.

IACHR, *1997 Annual Report*, Chapter VII, Recommendations to member states in areas where they should adopt measures for the full respect of human rights, pursuant to the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

IACHR, Report N° 41/99, Case 11.491, detained minors (Honduras), March 10, 1999, para. 72.

IACHR, Report N° 41/99 Case 11.491, Minors in Detention Honduras, March 10, 1999, para. 109.

IACHR, Report N° 41/99 Case 11.491, Minors in Detention Honduras, March 10, 1999, paragraph 125.

IACHR, Report N° 41/99 Case 11.491, Minors in Detention Honduras, March 10, 1999, paragraph 136.

I/A Court H.R., *Castillo Páez Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 74.

Concluding observation of the Committee on the Rights of the Child: Nicaragua.

CRC/C/15/Add.36 (Ninth session, 1995), paragraph 16.

IACHR, Brief submitted to the Inter-American Court of Human Rights against the Dominican Republic. Case 12.189 (Dilcia Yean and Violeta Bosico Cofi) July 11, 2003, para. 179.

IACHR, Report N° 62/02, Case 12.285, Michael Domingues, (United States of America) October 22, 2002, para. 200.

Cf. among others, the International Covenant on Civil and Political Rights, Article 24(2); the Convention on the Rights of the Child, Article 7(1); the African Charter on the Rights and Welfare of the Child, Article 6(1), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29. The European Court has stated that the right to a name is protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, even though it is not specifically mentioned; *cf. Stjerna v. Finland*, judgment of 25 November 1994, Series A, No. 299-B, p. 60, para. 37, and *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A No. 280-B, p. 28, para. 24.

IACHR, Report N° 62/02, Case 12.285, Case of Michael Domingues (United States of America), October 2002, para. 52.

IACHR, Report N° 62/02, Case 12.285, Case of Michael Domingues (United States of America), October 2002, para. 84.

IACHR, Report N° 62/02, Case 12.285, Case of Michael Domingues (United States of America), October 2002, para. 85.

IACHR, Report N° 32/02, Case 12.046, Mónica Carabantes Galleguillos (Chile), March 12, 2002.

IACHR, Report N° 33/04, Jailton Neri Da Fonseca (Brazil), Case 11.634 of March 11, 2004, para. 77.

IACHR, Report N° 33/04, Jailton Neri Da Fonseca (Brazil), Case 11.634 of March 11, 2004, para. 80.

IACHR, Report N° 33/04, Jailton Neri Da Fonseca (Brazil), Case 11.634 of March 11, 2004, para. 64.

IACHR, Report N° 76/04, Gerardo Vargas Areco (Paraguay), October 11, 2004, paragraph 144.

IACHR, *Third Report on the situation of Human Rights in Colombia*, 1999, chapter XIII, paragraph 1.

IACHR, Report N° 76/04, Gerardo Vargas Areco (Paraguay), October 11, 2004, paragraph 70.

IACHR, Report N° 76/04, Gerardo Vargas Areco (Paraguay), October 11, 2004.

I/A Court H.R., *The Case of Vargas Areco*. Judgment of 26 September 2006. Series C N° 155, paragraph 3.

IACHR, Report N° 117/06, Petition 1070-04, Milagros Fornerón and Leonardo Aníbal Fornerón (Argentina), October 26, 2006.

For reference, see the European Court of Human Rights, Case of Johansen vs. Norway, judgment of July 8, 1996, para. 88.

C. Jurisprudence of the Inter-American Court of Human Rights

119. In this section, there are references to the provisional measures adopted by the Court to protect the human rights of children and adolescents, and a summary of each of the contentious cases and the advisory opinion issued by the Court on the human rights of children and adolescents. The complete text of the decisions issued by the Inter-American Court of Human Rights in each case involving provisional measures, contentious cases, and the advisory opinion can be found in the compact disc of this publication.

- **Provisional measures adopted by the Court to protect the human rights of children and adolescents**

120. Up to now, the Inter-American Court of Human Rights has granted few provisional measures referring exclusively to protection of the rights of children and adolescents. The case of Reggiardo Tolosa and the FEBEM case are highlighted.

Case of the children Gonzalo Xavier and Matías Angel Reggiardo Tolosa vs. Argentina

121. In accordance with the decisions issued on November 19, 1993 and January 19, 1994 in response to the request for provisional measures presented to the Inter-American Commission on Human Rights, on November 8, 1993, to protect the personal well-being and safety of the children Gonzalo Xavier and Matías Angel Reggiardo Tolosa, who were illegally appropriated and registered as the children of third persons, who falsified their identity during the dictatorship in Argentina. Following the decisions of the Court, the Argentine State adopted the measures that allowed the children to be placed with their biological families.

Case of the children and adolescents deprived of liberty in the “Tatuapé Compound” of the “Fundação Estadual do Bem-Estar do Menor” (FEBEM) in São Paulo, Brazil

122. This request was based on the need to adopt urgent measures to protect the life and safety of the adolescents residing in the Tatuapé Compound of the Fundação Estadual do Bem-Estar do Menor [State Juvenile Welfare Foundation] of São Paulo (FEBEM) in Brazil, due to inhuman living conditions, constant fights among the adolescents, allegations of torture, and uprisings that posed extremely serious threats to the life and safety of the adolescents. It should be noted that after the IACHR adopted precautionary measures, four of the beneficiaries of those measures died, and that placed the adolescents in an extremely serious situation.

123. Consequently, in a decision issued on November 17, 2005, the Court requested the State to “immediately adopt the necessary measures to protect the life and personal safety of all the children and adolescents residing in the Tatuapé Compound of FEBEM, as well as all the

persons inside it.” In view of the fact that the same day that the Court adopted the decision on provisional measures there was an uprising that left various inmates wounded in Units 19, 20, and 39 of the FEBEM Tatuapé Complex, the Court again requested the State to adopt measures to: a) substantially reduce the overcrowding in “Tatuapé Compound”, b) confiscate the weapons in the possession of the youth, c) separate the detainees, according to international standards on the subject and to the best interests of the child, and d) provide the necessary medical care to the children detained there, so as to guarantee their right to humane treatment. To this end, it urged the State to conduct periodic supervisions of detention conditions and the physical and emotional condition of the juvenile detainees, with the participation of representatives of the beneficiaries of these provisional measures.

- **Contentious cases**

Case of the "Street Children" Case (Villagrán Morales et al.) vs. Guatemala

Facts

124. This case refers to the kidnapping, torture, and death of Henry Giovanni Contreras, 18 years of age, Federico Clemente Figueroa Túnchez, 20 years of age, and the adolescents Julio Roberto Caal Sandoval, 15 years old, Jovito Josué Juárez Cifuentes, 17 years old, and Anstrum Aman Villagrán, also 17. All were living in the streets of Guatemala City.

125 The acts were perpetrated by members of the Guatemalan National Police, as part of a systematic pattern of violence against the “street children” that included threats, detentions, cruel, inhuman, and degrading treatment, and homicides, as a means for countering juvenile delinquency and destitution.

Violated rights

126 Right to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), judicial protection (Article 25), and the rights of the child (Article 19).

Principal conclusions of the Inter-American Court of Human Rights

127 In this case, the Court advanced concepts that were fundamental to the subsequent development of its jurisprudence on children’s rights. Prominent among these concepts are the notion of *corpus juris*, the double discrimination affecting children living in the streets, the situation of children in conflict with the law or juvenile delinquents, the scope of protective measures applicable to children’s rights, and the concept of a decent life, among others.

128 On the notion of *corpus juris*, the Court established that the American Convention on Human Rights and the Convention on the Rights of the Child are part of an international *corpus juris* for protection of the rights of children. This means that there is a substantive connection between the two treaties and that they should be applied together in cases pertaining to children and adolescents.

129 As regards special protection obligations, the Court determined that special protection obligations imply the existence of an additional, complementary right of children, supported by the specificity of these obligations. Thus, the protective measures referred to in Article 19 of the Convention should include special care for children deprived of their family environment, the guarantee of the child's survival and development, the right to adequate living conditions, and social rehabilitation or reinsertion of all children who are victims of abandonment or exploitation. In this context, the Court maintained that the State has the duty to adopt every positive measure to ensure the full exercise of the child's human rights.

130 Concerning the violation of personal liberty, the Court declared that the State violated the right to personal liberty of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez and the adolescents Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes, because it failed to comply with both the procedural and the material rules governing detention.

131. As for the concept of a decent life, the Court established that the right to life includes not only the right to exist and not to be arbitrarily deprived of life, but also the right not to be impeded from access to conditions that ensure a decent existence or a life with dignity. In this way, the Court set an important jurisprudential precedent, in underlining the obligation of states to ensure the conditions necessary so that all human beings may enjoy and exercise this right. Since three of the victims in this case were children, the Court asserted that states need to adopt special measures for the protection and care of children and adolescents.

132. The Court described the situation of children and adolescents living in the streets as a "situación de doble agresión" [situation involving a twofold violation of their rights]. In the first place, because the state did not prevent these children from living in misery, thereby depriving them of the minimal conditions for a decent life and impeding their integral development. In this way, the state, by allowing this type of situation, denies all children their right to realize a project of life that should be tended to and fostered by the public authorities, so that it evolves to their benefit and to the benefit of the society in which they live. In the second place, because their physical and moral safety or well-being are at risk, as are their very lives.

Decision of the Court on the merits

133. The Court decided:

1. to declare that the State violated Article 7 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes;

2. to declare that the State violated Article 4 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstrum Aman Villagrán Morales;

3. to declare that the State violated Article 5.1 and 5.2 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras,

Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval;

4. to declare that the State violated Article 5.2 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of the mothers of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval, Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Sandoval Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes;

5. to declare that the State violated Article 19 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstrum Aman Villagrán Morales;

6. to declare that the State violated Articles 8.1 and 25 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez and Anstrum Aman Villagrán Morales and their immediate next of kin;

7. to declare that the State violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes;

8. to declare that the State violated Article 1.1 of the American Convention on Human Rights regarding the obligation to investigate, that the State should conduct a real and effective investigation to determine the persons responsible for the human rights violations referred to in this judgment and eventually punish them; and

9. to open the phase of reparations and costs and authorize the President to adopt the corresponding procedural measures.

Decisions issued in this case:

- Merits. Judgment of November 19, 1999
- Opinions of Judges Antonio Cançado and Abreu Burelli
- Reparations, Judgment of May 26, 2001
- Monitoring of compliance with judgment, decision of June 14, 2005
- Monitoring of compliance with judgment, decision of December 13, 2007
- Monitoring of compliance with judgment, decision of January 16, 2008

Case of Bulacio vs. Argentina

Facts

134. Walter David Bulacio, 17 years of age, was arrested by the Federal Police of Argentina on April 19, 1991, as part of a massive detention operation known as “razzia.” He was transferred to the 35th Police Station, to the room for juveniles, where he was tortured by police

agents. The detention was not reported to the competent judge or to his next of kin. On April 21, the adolescent Walter Bulacio was transferred to Sanatorio Mitre, where a physician examined him, and reported the admittance of an adolescent with injuries. On April 26, the adolescent Walter Bulacio died. In April a judicial proceeding was opened to punish the responsible parties. Ten years after the arbitrary arrest and death of Walter Bulacio, the domestic proceedings had still not been concluded. On November 21, 2002, Courtroom VI of the Chamber of Appeals ruled that criminal legal action could not be pursued due to the statute of limitations.

Rights violated

135. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), rights of the child (Article 19), in addition to the right to a fair trial (Article 8) and to judicial protection (Article 25), to the detriment of Walter Bulacio and his next of kin.

Principal conclusions of the Inter-American Court of Human Rights

136. In this case, the Argentine State acknowledged its international responsibility for violating the human rights of Walter David Bulacio. Thus, the Court proceeded to determine the corresponding reparations.

137. With regard to the right to personal liberty, the Court indicated that in the case of children, detention must be exceptional and for the shortest possible time. Moreover, it held that in cases of detentions of children, the right to establish contact with next of kin takes on special importance, to ensure that the child receives the necessary care. It also stressed the need for detention centers to have adequately trained staff to attend to and protect the children.

138. In relation to the right to humane treatment, the Court opined that in cases involving children, account must be taken of their special vulnerability, in accordance with the state's obligation to provide for a special guarantee of the rights of children, which is particularly important when the detainee is a minor.

139. The Court pointed out that the acts committed by the State were especially serious, because they constituted failure of the State to comply with its obligation to adopt special measures of protection and care for children who come under its jurisdiction. In this context, the Court declared that the prevailing principle in the area of protection of children's rights is the principle of the best interests of the child, based on "the very dignity of the human being, on the intrinsic characteristics of children, and on the need to foster their development, so that they may fully realize their potential."

Decision of the Court on the merits

140. The Court decided:

1. to admit the acknowledgment of international responsibility made by the State.

2. to approve the February 26, 2003 agreement, under the terms of the instant Judgment, on the merits and some aspects of reparations, and the March 6, 2003 explanatory document regarding that agreement, both of them signed by the State, the Inter-American Commission on Human Rights and the next of kin of the victim and their legal representatives.

DECLARES THAT:

3. pursuant to the terms of the acknowledgment of international responsibility made by the State, it violated the rights enshrined in Articles 4, 5, 7 and 19 of the American Convention on Human Rights to the detriment of Walter David Bulacio, and the rights enshrined in Articles 8 and 25 also of the American Convention on Human Rights to the detriment of Walter David Bulacio and his next of kin, all the above in connection with Articles 1(1) and 2 of the American Convention on Human Rights, under the terms of paragraph 38 of the instant Judgment.

AND DECIDES THAT:

4. the State must continue and complete the investigation of all the facts of this case and punish those responsible for them; that the next of kin of the victim must have full access and be able to act, at all stages and levels of said investigations, pursuant to domestic legislation and the provisions of the American Convention on Human Rights; and that the results of the investigations must be publicly disseminated, under the terms set forth in paragraphs 110 to 121 of the instant Judgment.

5. the State must guarantee non-recidivism of acts such as those of the instant case, adopting such legislative and any other measures as may be necessary to adjust the domestic legal system to international human rights provisions, and to make them fully effective, pursuant to Article 2 of the American Convention on Human Rights, under the terms of paragraphs 122 to 144 of the instant Judgment.

6. the State must publish in the Daily Gazette, once only, chapter VI and the operative section of this Judgment, under the terms of paragraph 145 of this Judgment.

7. the State must pay the total sum of US\$124,000.00 (one hundred and twenty-four United States dollars) or its equivalent in Argentinean currency, as compensation for pecuniary damage, distributed as follows:

a) US\$110,000.00 (one hundred and ten thousand United States dollars) or their equivalent in Argentinean currency to be paid to Graciela Rosa Scavone under the terms of paragraphs 85, 87, 88, 89, 157 to 159 of the instant Judgment; and

b) US\$14,000.00 (fourteen thousand United States dollars) or their equivalent in Argentinean currency, to be distributed equally between María Ramona Armas de Bulacio and Lorena Beatriz Bulacio, under the terms of paragraphs 88 and 157 to 159 of the instant Judgment.

8. the State must pay the total sum of US\$210,000.00 (two hundred ten thousand United States dollars) or their equivalent in Argentinean currency, as compensation for non-pecuniary

damages, distributed as follows:

- a) US\$114,333.00 (one hundred and fourteen thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to Graciela Rosa Scavone under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment;
 - b) US\$44,333.00 (forty-four thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to María Ramona Armas de Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment;
 - c) US\$39,333.00 (thirty-nine thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to be paid to Lorena Beatriz Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the instant Judgment; and
 - d) US\$12,000.00 (twelve thousand United States dollars), or their equivalent in Argentinean currency, to be distributed in equal parts between the children Matías Emanuel and Tamara Florencia Bulacio under the terms of paragraphs 104, 157 to 160 of the instant Judgment.
9. the State must pay the total sum of US\$40,000.00 (forty thousand United States dollars), or their equivalent in Argentinean currency, for legal costs and expenses, under the terms of paragraphs 152 and 157 to 159 of the instant Judgment.
 10. the State must pay the compensations and the reimbursement of legal costs and expenses ordered in the instant Judgment within six months of the date it receives notice of this Judgment.
 11. compensation for pecuniary damages, non-pecuniary damages, and legal costs and expenses set forth in the instant Judgment cannot be subject to currently existing or future taxes, liens or levies.
 12. if the State were to be in arrears, it must pay interest on the amount owed according to the interest rate for arrearages in the Argentinean banking system.
 13. compensation ordered in favor of the children, Tamara Florencia and Matías Emanuel Bulacio, must be deposited by the State in their name in an investment fund at a solid Argentinean banking institution, in United States dollars or their equivalent in Argentinean currency, within six months, and under the most favorable financial conditions allowed by banking laws and practices while they are minors, pursuant to the provisions of paragraph 160 of the instant Judgment.
 14. it will oversee compliance with this Judgment and it will close the instant case once the State has fully complied with the provisions ordered in the instant ruling. Within six months of the date it receives notice of this Judgment, the State must submit a report to the Court on steps taken to comply with it, pursuant to the provisions set forth in paragraph 161 of this Judgment.

Decisions issued in this case

- Judgment on the merits of September 18, 2003
- Monitoring of compliance with judgment. Decision of the Inter-American Court of Human Rights of November 17, 2004

Case of Molina Theissen vs. Guatemala

Facts

141. This case involves the forced disappearance of Marco Antonio Molina Theissen, 14 years of age, who was kidnapped from his parents' home by members of the Guatemalan Army on October 6, 1981. At the time these events occurred, forced disappearance was a practice of the State perpetrated primarily by security or law enforcement forces.

Rights violated

142. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), rights of the child (Article 19), and right to judicial protection (Article 25).

Principal considerations of the Inter-American Court of Human Rights

143. The State of Guatemala acknowledged its international responsibility for violation of the human rights of Marco Antonio Molina Theissen. Consequently, the Court proceeded to decide on reparations, and declared that in cases involving children, the state has a special obligation of protection, that it should have fulfilled vis-à-vis Marco Antonio Molina, due to his status as a minor. As regards reparations, the Court ordered the State to establish an educational center as a tribute to the children who disappeared during the armed conflict.

Decision of the Court on the merits

144. The Court decided in this case:

1. To reaffirm its Order of April 26, 2004, in which it considered that the preliminary objections filed by the State had been withdrawn and accepted the State's acknowledgement of international responsibility.
2. To declare that the dispute concerning the facts that gave rise to this case has ceased.
3. To declare, in accordance with the terms of the State's acknowledgement of international responsibility and with the facts that have been established, that the State violated the rights embodied in Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child) and 25 (Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Marco Antonio Molina Theissen; the State also failed to comply with the obligation established in Articles I and II of the Inter-American

Convention on Forced Disappearance of Persons to the detriment of Marco Antonio Molina Theissen, in the terms of paragraph 43 of this judgment.

4. To declare, in accordance with the terms [of the State's acknowledgement of international responsibility and with] the facts that have been established, that the State violated the rights embodied in Articles, 5(1) and 5(2) (Right to Humane Treatment); 8 (Right to a Fair Trial); 17 (Rights of the Family), and 25 (Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the next of kin of Marco Antonio Molina Theissen: Emma Theissen Álvarez vda. de Molina (mother), Carlos Augusto Molina Palma (deceased father), Emma Guadalupe, Ana Lucrecia and María Eugenia Molina Theissen (sisters), in the terms of paragraph 44 of this judgment.

5. To continue hearing the reparations and costs stage of this case.

Decisions issued in this case

- Judgment on the merits of May 4, 2004
- Judgment on reparations, July 3, 2004

Case of the Gómez Paquiyauri Brothers vs. Peru

Facts

145. This case involves the kidnapping and extrajudicial execution of two brothers, Emilio Moisés and Rafael Samuel Gómez Paquiyauri, which occurred on June 21, 1991. On that day, the Gómez Paquiyauri brothers, 14 and 17 years of age, were detained by national police agents and put into the trunk of a police patrol car. They were executed along the route taken by the policemen following their detention.

Violated rights

146. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), rights of the child (Article 19), and right to judicial protection (Article 25).

Principal considerations of the Inter-American Court of Human Rights

147. In issuing this decision, the court applied the principle of the best interests of the child, reiterating that this principle was based on human dignity, on the special characteristics of children, and on the need to foster their development so that they may fully realize their potential.

148. On the right to life of the children, the Court reiterated that in the case of the right to life, states have a negative obligation not to arbitrarily deprive any person of his or her life, as well as a positive obligation to adopt all adequate measures to protect and preserve this right. Thus it

held that the obligation of the State with respect to this right takes on special characteristics, in accordance with the provisions of the American Convention and the Convention on the Rights of the Child. In this context, the Court explained that whenever victims are children, the state's role as guarantor of the right to life requires it to prevent situations that could lead to violation of that right, either by act or omission.

149. As regards the right to humane treatment, the Court established that the state has the obligation to apply the highest standard in any acts that violate the right of children to humane treatment.

150. In this case, the Court ordered as measures of redress that the State organize an act of public acknowledgement of the acts that gave rise to the case and as amends to the victims, that it name a school in the Constitutional Province of El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, and grant a scholarship to Nora Emely Gómez Peralta, the daughter of Samuel Gómez Paquiyauri, and that it publish the relevant parts of the judgment in the Official Gazette. In addition, the Court ordered payment of compensation to the victims' next of kin, and ordered an investigation to be opened and the responsible parties to be punished for the violations committed to the detriment of the Gómez Paquiyauri brothers.

Decision of the Court on the merits

151. The Court decided:

Unanimously,

1. the State violated the Right to Life set forth in Article 4(1) of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri, under the terms set forth in paragraphs 124 to 133 of the instant Judgment.

Unanimously,

2. the State violated the Right to Personal Liberty set forth in Article 7 of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri, under the terms set forth in paragraphs 81 to 100 of the instant Judgment.

Unanimously,

3. the State violated the Right to Humane Treatment set forth in Article 5 of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, and the obligations set forth in Articles 1, 6 and 9 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri. The State also violated Article 5 of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of Marcelina Paquiyauri Illanes de Gómez, Ricardo Samuel Gómez Quispe, Marcelina Haydeé Gómez Paquiyauri, Ricardo Emilio Gómez Paquiyauri, Carlos Pedro Gómez Paquiyauri, Lucy Rosa Gómez Paquiyauri, Miguel Ángel

Gómez Paquiyauri and Jacinta Peralta Allicarima, under the terms set forth in paragraphs 106 to 119 of the instant Judgment.

By six votes to one,

4. the State violated the rights to Right to Fair Trial and to Judicial Protection enshrined in Articles 8 and 25, respectively, of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri, Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Ricardo Emilio Gómez Paquiyauri, Carlos Pedro Gómez Paquiyauri, Marcelina Haydeé Gómez Paquiyauri, Lucy Rosa Gómez Paquiyauri, and Miguel Ángel Gómez Paquiyauri, under the terms set forth in paragraphs 140 to 156 of the instant Judgment.

Judge Medina Quiroga partially dissenting.

Unanimously,

5. the State violated the obligations set forth in Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri, under the terms set forth in paragraphs 153 to 156 of the instant Judgment.

Unanimously,

6. the State violated Article 19 of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri under the terms set forth in paragraphs 161 to 173 of the instant Judgment.

Unanimously,

7. the State violated Article 11 of the American Convention on Human Rights, in combination with Article 1(1) of this same Convention, to the detriment of the members of the family of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, mentioned in paragraphs 67.t and 67.u of this ruling, under the terms set forth in paragraphs 178 to 182 of the instant Judgment.

Unanimously,

8. this Judgment is *per se* a form of reparation, as set forth in paragraph 215 of the instant Judgment.

AND, UNANIMOUSLY, ORDERS THAT:

9. The State must, within a reasonable term, effectively investigate the facts of the instant case, with the aim of identifying, trying, and punish all the perpetrators of the violations against Rafael Samuel and Emilio Moisés Gómez Paquiyauri. The outcome of this proceeding must be

made known to the public, under the terms set forth in paragraphs 227 to 233 of the instant Judgment.

10. The State must carry out a public act of acknowledgment of its responsibility in connection with the facts of this case and of apology to the victims, under the terms set forth in paragraph 234 of the instant Judgment.

11. The State must publish once in the official gazette, and in another national coverage daily the chapter of this Judgment on proven facts, without the respective footnotes, and the operative paragraphs of this Judgment, under the terms set forth in paragraph 235 of the instant Judgment.

12. The State must officially name a school in the province of El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, in a public ceremony and in the presence of the next of kin of the victims, under the terms set forth in paragraph 236 of the instant Judgment.

13. The State must establish a scholarship up to university level, in favor of Nora Emely Gómez Peralta, and facilitate her registry as the daughter of Rafael Samuel Gómez Paquiyauri, under the terms set forth in paragraphs 237 and 238 of the instant Judgment.

14. The State must pay the total sum of US\$240,500.00 (two hundred and forty thousand five hundred United States dollars) or its equivalent in Peruvian currency, for pecuniary damages, under the terms set forth in paragraphs 206, 208 and 210 of the instant Judgment, distributed as follows:

a) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Emilio Moisés Gómez Paquiyauri, US\$ 100,000.00 (one hundred thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraphs 206 and 199 of the instant Judgment;

b) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Rafael Samuel Gómez Paquiyauri; and to Nora Emely Gómez Peralta, as daughter of Rafael Samuel Gómez Paquiyauri, US\$ 100,000.00 (one hundred thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraphs 206 and 200 of the instant Judgment; and

c) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, US\$ 40,500.00 (forty thousand five hundred United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraph 208 of the instant Judgment.

15. The State must pay US\$500,000.00 (five hundred thousand United States dollars) or their equivalent in Peruvian currency, as compensation for non-pecuniary damages, under the terms set forth in paragraphs 217, 219 and 220 of the instant Judgment, distributed as follows:

a) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Emilio Moisés Gómez Paquiyauri, US\$ 100,000.00 (one hundred thousand United

States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraphs 217 and 199 of the instant Judgment;

b) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Rafael Samuel Gómez Paquiyauri; and to Nora Emely Gómez Peralta, as daughter of Rafael Samuel Gómez Paquiyauri, US\$ 100,000.00 (one hundred thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraphs 217 and 200 of the instant Judgment;

c) to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, US\$ 200,000.00 (two hundred thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraph 219 of the instant Judgment;

d) to Jacinta Peralta Alccarima, US\$ 40,000.00 (forty thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraph 220 of the instant Judgment; and

e) to Nora Emely Gómez Peralta, US\$ 60,000.00 (sixty thousand United States dollars) or their equivalent in Peruvian currency, under the terms set forth in paragraph 220 of the instant Judgment.

16. The State must pay US\$30,000.00 (thirty thousand United States dollars) or their equivalent in Peruvian currency, which must be given to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, for costs and expenses in the domestic proceeding and in the international proceeding before the inter-American system for protection of human rights, under the terms set forth in paragraph 243 of the instant Judgment.

17. The State must deposit the compensation ordered in favor of the child Nora Emely Gómez Peralta in a banking investment in her behalf at a solid Peruvian institution, in United States dollars, within one year's time and under the most favorable financial conditions allowed by banking practices and legislation while she is a minor, under the terms set forth in paragraph 248 of the instant Judgment.

18. The State must pay the total amount ordered as compensation for pecuniary damages, non-pecuniary damages, costs and expenses established in the instant Judgment, without any of its items being subject to existing taxes, levies or charges, or any that may be decreed in the future.

19. The State must carry out the measures of reparation and of reimbursement of expenses listed in operative paragraphs 10 to 17 of the instant Judgment within one year's time, counted from the date this Judgment is notified, under the terms set forth in paragraph 244 of the instant Judgment.

20. If the State were to be in arrears, it must pay interest on the amount owed, and the interest will be at the banking rate in Peru, under the terms set forth in paragraph 251 of the instant Judgment.

21. If due to causes attributable to the beneficiaries of the compensations it were not possible for them to receive those compensations within the one-year term that has been set, the State will deposit those amounts on behalf of the beneficiaries in a deposit certificate or account at a solid Peruvian banking institution, under the terms set forth in paragraph 247 of the instant Judgment.

22. The Court will oversee execution of this Judgment and will close this case once the State has fully complied with its provisions. Within one year from the date when notice is served of this Judgment, the State must submit a report to the Court on steps taken to comply with it, pursuant to paragraph 252 of the instant Judgment.

Judge Cançado informed the Court of his Separate Opinion, Judge Medina Quiroga informed the Court of her Partially Dissenting Opinion, and Judge Eguiguren Praeli informed the Court of his Separate Opinion. These opinions are attached to the instant judgment.

Decisions issued in this case:

- Judgment of July 8, 2004
- Supervision of compliance with judgment, decision of November 17, 2005
- Supervision of compliance with judgment, decision of September 22, 2006

Case of the "Juvenile Reeduction Institute" vs. Paraguay

Facts

152. This case originated with the death and injuries suffered by children who were inmates in the "Coronel Panchito López Juvenile Reeduction Institute" in Paraguay between August 14, 1996 and July 25, 2001.

153. In this case, it was proven that the children detained in the Juvenile Reeduction Institute were living under a system of deprivation of liberty contrary to international human rights standards, due to the fact that they were confined in conditions of overcrowding, lack of sanitation, lack of adequate infrastructure, insufficient number of guards, and lack of personnel trained in handling children.

Violated rights

154. Right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), and rights of the child (Article 19).

Principal considerations of the Inter-American Court of Human Rights

155. With regard to the right to life, the Court applied this concept to ensure adequate protection of social rights.

156. With regard to special protection obligations, the Court reiterated that in view of the physical and emotional development of children, international standards recognize an additional,

complementary right that requires states to adopt special measures for their protection. The concept of special protection obligations is linked to the existence of additional or supplementary obligations *vis-à-vis* children and adolescents. To this is added the fact that the nature of the supplementary obligation has to do with the condition of the child as a holder of rights, whose integral development as a human being must be guaranteed by the state. Thus the Court has found that these measures become critically important, because children are at a crucial stage in their physical, mental, spiritual, moral, psychological, and social development, that will have an impact on their life plan in one way or another.

157. The Court has spoken to the scope of specificity and complementarity of state obligations *vis-à-vis* children in relation to the right to life, in the following terms: “161. (...)Articles 6 and 27 of the Convention on the Rights of the Child include within the right to life the State’s obligation to ‘ensure to the maximum extent possible the survival and development of the child.’” The Committee on the Rights of the Child has interpreted the word “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Viewed in this way, the state has the obligation to provide children deprived of their liberty and thus under its custody with health care and education, *inter alia*, to ensure in that way that their detention will not destroy their life plans.

158. Concerning application of Article 19 of the Convention, it is interesting to note that in this case, the Court perceives a comprehensive application of standards on the human rights of children. It is important to recall that on other occasions, the Court has analyzed Article 19 in a separate section; in this case, however, the court conducted a systematic analysis of the violations of children’s human rights under the specific obligations and criteria established in Article 19 of the Convention. In this way, the Court considered the transcendent and comprehensive nature of this Article, and stated that: “The examination of the State’s possible failure to comply with its obligations under Article 19 of the American Convention should take into account that the measures of which this provision speaks go well beyond the sphere of strictly civil and political rights. The measures that the State must undertake, particularly given the provisions of the Convention on the Rights of the Child, encompass economic, social and cultural aspects that pertain, first and foremost, to the child’s right to life and right to humane treatment.”

159. With regard to the right to personal liberty, the Court referred extensively to the state’s position as guarantor in cases involving children and adolescents deprived of their liberty. It stated that the role of guarantor played by the state in these cases is justified because of the heavy control and dominance of the role of state agents over the persons in their custody, which generates a particularly intensive relationship in which the inmate is incapable of satisfying on his own many of his needs, and thus is completely dependent on the state to guarantee these essential needs for him. An example of this is the state’s obligation to ensure the right to education to children deprived of their liberty.

160. With regard to children’s right to a fair trial, the Court stated that to exercise this right, certain specific measures need to be adopted so that children may effectively enjoy these rights and guarantees in a manner consistent with the special conditions of children. Thus, the Court recognizes that criminal proceedings have a greater impact on children and so it has established

certain minimum elements that must be present in the juvenile justice system.

Decision of the Court on the merits

161. In this case, the Court decided:

Unanimously,

1. To dismiss the State's preliminary objections claiming a legal defect in the filing of the application and failure to claim violation of Article 26 of the American Convention at the proper stage in the proceedings.
2. Given the State's withdrawal of its preliminary objection claiming *litis pendencia*, to consider that preliminary objection withdrawn.
3. To continue taking cognizance of the instant case, and

DECLARES,

Unanimously that:

4. The State violated the rights to life and to humane treatment, recognized in Articles 4(1), 5(1), 5(2) and 5(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof and, where the victims were children, also in relation to Article 19 thereof, to the detriment of all the inmates at the center between August 14, 1996 and July 25, 2001, as set forth in paragraphs 176 and 190 of the present Judgment.
5. The State violated the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof and, where the victims were children, also in relation to its Article 19, to the detriment of the 12 deceased inmates, as set forth in paragraphs 179, 184, 186 and 190 of the present Judgment.
6. The State violated the right to humane treatment, recognized in Articles 5(1) and 5(2) of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of the children injured as a result of the fires; and the right to humane treatment recognized in Article 5(1) of the Convention, in relation to its Article 1(1), to the detriment of the identified next of kin of the deceased and injured inmates, all as set forth in paragraphs 188, 190 and 193 of the present Judgment.
7. The State failed to comply with its duty to adopt domestic legislative measures and violated the right to a fair trial recognized, respectively, in Articles 2 and 8(1) of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of all the children interned at the Center in the period from August 14, 1996 to July 25, 2001, as set forth in paragraph 213 of the present Judgment.
8. The State violated the right to judicial protection, recognized in Article 25 of the

American Convention, in relation to Article 1(1) thereof, to the detriment of the 239 inmates named in the writ of generic *habeas corpus*, as set forth in paragraph 251 of the present Judgment.

AND ORDERS,

Unanimously, that:

9. This Judgment constitutes, *per se*, a form of reparation, as set forth in paragraphs 299 and 323 of the present Judgment.

10. The State is to publish, at least once, within six months from the date of notification of the present Judgment and in the Official Gazette and another widely circulated national newspaper, both the section titled “Facts Proven” in this Judgment -absent the corresponding footnotes- and the operative part of this Judgment, in the terms set forth in paragraph 315 of the present Judgment.

11. In consultation with civil society and within six months’ time, the State is to carry out a public act of acknowledgement of international responsibility and issue a declaration setting forth a short-, medium- and long-term State policy on the matter of children in conflict with the law that fully comports with Paraguay’s international commitments. That policy must:

a) be presented by high-ranking State officials in a public ceremony wherein Paraguay’s responsibility for the substandard detention conditions at the center between August 14, 1996 and July 25, 2001 is acknowledged; and

b) plan, *inter alia*, strategies and other appropriate measures and the allocation of the resources needed so that children deprived of their liberty are separated from adults; so that children awaiting or standing trial are separated from convicted inmates; and in order to create education programs and comprehensive medical and psychological treatment programs for all children deprived of their liberty.

12. The State must provide psychological treatment to all persons who were inmates at the center in the period from August 14, 1996 to July 25, 2001; medical and psychological treatment to the former inmates injured in the fires, and psychological treatment to the next of kin of the injured and deceased inmates, as set forth in paragraphs 318 to 320 of the present Judgment.

13. The State must provide vocational guidance and a special education program geared to those who had been inmates at the center at any time during the period between August 14, 1996 and July 25, 2001, as set forth in paragraph 321 of the present Judgment.

14. Within 15 days of the date of notification of this Judgment, the State must provide Mrs. María Teresa de Jesús Pérez with a place in a mausoleum, near her home, where she can lay her sons remains to rest, as set forth in paragraph 322 of the present Judgment.

15. The State must take particular care to ensure the life, personal integrity and safety of the

persons who gave affidavits and their next of kin and must provide them with protection against anyone, taking into account the circumstances of this case, in the terms set forth in paragraph 324 of the present Judgment.

16. The State must pay pecuniary damages totaling US\$ 953,000.00 (nine hundred fifty-three thousand United States dollars) or the equivalent in the State's national currency, as set forth in paragraphs 288 to 294 of the present Judgment, divided as follows:

- a) to each of the deceased inmates Elvio Epifanio Acosta Ocampos, Marco Antonio Jiménez, Diego Walter Valdez, Sergio Daniel Vega Figueredo, Sergio David Poletti Domínguez, Mario del Pilar Álvarez Pérez, Juan Alcides Román Barrios, Antonio Damián Escobar Morinigo, Carlos Raúl de la Cruz, Benito Augusto Adorno, Richard Daniel Martínez and Héctor Ramón Vázquez, the sum of US\$ 40,000.00 (forty thousand United States dollars) or the equivalent in the State's national currency, in the terms set forth in paragraphs 288, 289 and 294 of the present Judgment;
- b) to Juan Carlos Zarza Viveros, Miguel Ángel Coronel Ramírez, Sergio Vincent Navarro Moraez, Alberto David Martínez, Miguel Ángel Martínez, Raúl Esteban Portillo, César Fidelino Ojeda Acevedo, Pedro Iván Peña, Ever Ramón Molinas Zárate, Arsenio Joel Barrios Báez and Francisco Ramón Adorno, the sum of US\$15,000.00 (fifteen thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 290, 291 and 294 of the present Judgment;
- c) to Alfredo Duarte Ramos, Abel Achar Acuña, Osvaldo Mora Espinola, Ismael Méndez Aranda and Hugo Antonio Vera Quintana, the sum of US\$ 13,000.00 (thirteen thousand United States dollars) each or the equivalent in the State's national currency, as set forth in paragraphs 290, 291 and 294 of the present Judgment;
- d) to Clemente Luis Escobar González, Juan Ramón Lugo and Carlos Román Feris Almirón, the sum of US\$ 11,000.00 (eleven thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 290, 291 and 294 of the present Judgment;
- e) to Pablo Ayala Azola, Julio César García, José Amado Jara Fernández, Rolando Benítez, Antonio Delgado, Aristides Ramón Ortiz Bernal, Carlos Raúl Romero Giacomo, Claudio Coronel Quiroga, Demetrio Silguero, Eduardo Vera, Francisco Noé Andrada, Heriberto Zarate, Hugo Olmedo, Jorge Daniel Toledo, José Milciades Cañete Chamorro, Nelson Rodríguez, Osmar López Verón, Osvaldo Daniel Sosa, Pablo Emmanuel Rojas, Oscar Rafael Aquino Acuña, Sixto Gonzáles Franco, Cándido Ulises Zelaya Flores and Walter Javier Riveros Rojas, the sum of US\$ 9,000.00 (nine thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 290, 291, 292 and 294 of the present Judgment; and
- f) to the next of kin of former inmates Francisco Ramón Adorno, Sergio David Poletti Domínguez and Mario del Pilar Álvarez Pérez, US\$ 1,000.00 (one thousand United States dollars) or the equivalent in the State's national currency, in the terms set forth in paragraphs 293

and 294 of the present Judgment.

17. The State must pay non-pecuniary damages of US\$2,706,000.00 (two million seven hundred and six thousand United States dollars) or the equivalent in the State's national currency, in the terms set forth in paragraphs 304 to 309 of the present Judgment, divided as follows:

a) to deceased inmates Elvio Epifanio Acosta Ocampos, Marco Antonio Jiménez, Diego Walter Valdez, Sergio Daniel Vega Figueredo, Sergio David Poletti Domínguez, Mario del Pilar Álvarez Pérez, Juan Alcides Román Barrios, Antonio Damián Escobar Morinigo and Carlos Raúl de la Cruz, the sum of US\$ 65,000.00 (sixty-five thousand United States dollars) each or the equivalent in the State's national currency, as set forth in paragraphs 304 and 309 of the present Judgment;

b) to deceased inmates Benito Augusto Adorno, Richard Daniel Martínez and Héctor Ramón Vázquez, the sum of US\$ 50,000.00 (fifty thousand United States dollars) each or the equivalent in the State's national currency, as set forth in paragraphs 304 and 309 of the present Judgment;

c) to Juan Carlos Zarza Viveros, Miguel Ángel Coronel Ramírez, Sergio Vincent Navarro Moraez, Alberto David Martínez, Miguel Ángel Martínez, Raúl Esteban Portillo and César Fidelino Ojeda Acevedo, the sum of US\$ 50,000.00 (fifty thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 305 and 309 of the present Judgment;

d) to Pedro Iván Peña, Ever Ramón Molinas Zárate, Arsenio Joel Barrios Báez and Francisco Ramón Adorno, the sum of US\$ 45,000.00 (forty-five thousand United States dollars) each or the equivalent in the State's national currency, as set forth in paragraphs 305 and 309 of the present Judgment;

e) to Alfredo Duarte Ramos, Abel Achar Acuña, Osvaldo Mora Espinola, Ismael Méndez Aranda and Hugo Antonio Vera Quintana, the sum of US\$ 40,000.00 (forty thousand United States dollars) each or the equivalent in the State's national currency, as set forth in paragraphs 305 and 309 of the present Judgment;

f) to Clemente Luis Escobar González, Juan Ramón Lugo and Carlos Román Feris Almirón, the sum of US\$ 30,000.00 (thirty thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 305 and 309 of the present Judgment;

g) to Pablo Ayala Azola, Julio César García, José Amado Jara Fernández, Rolando Benítez, Antonio Delgado, Aristides Ramón Ortiz Bernal, Carlos Raúl Romero Giacomo, Claudio Coronel Quiroga, Demetrio Silguero, Eduardo Vera, Francisco Noé Andrada, Heriberto Zarate, Hugo Olmedo, Jorge Daniel Toledo, José Milciades Cañete Chamorro, Nelson Rodríguez, Osmar López Verón, Osvaldo Daniel Sosa, Pablo Emmanuel Rojas, Oscar Rafael Aquino Acuña, Sixto Gonzáles Franco, Cándido Ulises Zelaya Flores and Walter Javier Riveros Rojas, the sum

of US\$ 22,000.00 (twenty-two thousand United States dollars) each or the equivalent in the State's national currency, in the terms set forth in paragraphs 305, 306 and 309 of the present Judgment;

h) to the identified next of kin of the deceased inmates, the sum of US\$ 25,000.00 (twenty-five thousand United States dollars) or the equivalent in the State's national currency, in the terms set forth in paragraphs 307 and 309, and

i) to the identified next of kin of the former inmates injured in the fires, the sum of US\$ 15,000.00 (fifteen thousand United States dollars) or the equivalent in the State's national currency, in the terms set forth in paragraphs 307 and 309 of the present Judgment.

18. In costs and expenses, the State must pay the Tekojojá Foundation the sum of US\$ 5,000.00 (five thousand United States dollars) or the equivalent in the State's national currency, and the Center for Justice and International Law (CEJIL) the sum of US\$12,500.00 (twelve thousand five hundred United States dollars) or the equivalent in the State's national currency, as set forth in paragraph 330 of the present Judgment.

19. The State must pay the compensation and costs and expenses within one year of the date of notification of the present Judgment, as set forth in paragraph 331 thereof, unless different deadlines should be established, pursuant to the terms of paragraphs 315 to 322 and 331 of this Judgment.

20. The State must deposit the compensation ordered for victims who are minors in a bank investment in their name, in a sound Paraguayan institution, in United States dollars, within one year and under the most advantageous terms allowed under banking law and practice, for as long as they are minors, as set forth in paragraph 336 of this Judgment.

21. The State may fulfill the pecuniary obligations through payment in United States dollars or in an equivalent sum in the State's national currency, using for the respective calculation the exchange rate between both currencies at the New York exchange the day before the payment. The bank investment will be in United States dollars in keeping with the terms of paragraphs 335 and 336 of this Judgment.

22. The payments for pecuniary and non-pecuniary damages and costs and expenses established in the present Judgment shall not be subject to, reduced by or conditional upon current or future fiscal considerations, in the terms of paragraph 337 of the present Judgment.

23. Should the State fall into arrears, it shall pay interest on the amount owed, which will be at the banking arrearage interest rate in effect in Paraguay.

24. If for any reason attributable to the beneficiaries of the compensations, they are unable to receive them within the stipulated one-year period from the date of notification of the present Judgment, the State shall deposit the respective amount in favor of said beneficiaries in a bank account or certificate of deposit, at a sound Paraguayan financial institution, in accordance with the terms of paragraph 335 of the present Judgment.

25. The Court will oversee full compliance with this Judgment and will declare the case closed once the State has fully complied with the present Judgment. Within one year of the date of notification of this Judgment, Paraguay will submit a report to the Court on the measures adopted to comply with this Judgment, as set forth in paragraph 339 thereof.

Judge Cançado Trindade informed the Court of his Concurring Opinion, which is affixed to this Judgment.

Decisions issued in this case:

- Judgment of September 2, 2004
- Concurring opinion of Antonio Cançado
- Supervision of compliance with judgment, decision of July 4, 2006
- Supervision of compliance with judgment, decision of December 10, 2007
- Supervision of compliance with judgment, decision of February 6, 2008

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Inter-American Court, Matter of Reggiardo Tolosa regarding Argentina. Provisional measures requested by the Inter-American Commission on Human Rights regarding the Republic of Argentina, decisions of November 19, 1993 and January 19, 1994.

Currently known as *Fundação CASA* [CASA Foundation].

I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194.

I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 144.

I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 193.

I/A Court H. R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paras. 126 ff.

I/A Court H. R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 132.

I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 163.

I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 129.

I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 170.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 11, para. 255.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 11, para. 147 ff.

According to the Inter-American Court, the concept of a life plan “(...) is akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options

are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard.” (Case of Loayza Tamayo vs. Peru, Judgment on reparations and costs, November 27, 1998, Series C, N° 42, para.148).

United Nations Committee on the Rights of the Child, General Comment No. 5 of November 27, 2003, para. 12.

I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 80-81, 84, and 86-88; *Case of the “Street Children” (Villagrán Morales et al)*, para. 196; and Rule 13.5 of the Minimum Rules of the United Nations for the Administration of Justice of Minors (Beijing Rules), adopted by the General Assembly in its decision 40/33 of November 28, 1985.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 112, para. 149.

I/A Court H. R., *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 112, paras. 299 ff.

Case of the Serrano Cruz Sisters vs. El Salvador

Facts

162. This case refers to the kidnapping and forced disappearance of the girls Ernestina and Erlinda Serrano Cruz, 7 and 3 years of age, respectively, on June 2, 1982, perpetrated by members of the Salvadoran Atlacatl Army Battalion during a military operation known as “Operation Clean Up” or “la guinda de mayo,” which was carried out in the Municipality of San Antonio de La Cruz, Department of Chalatenango, El Salvador, among other places.

Rights violated

163. In this case, the following rights are alleged to have been violated: right to life (Article 4), right to personal liberty (Article 7), right to a name (Article 18), and rights of the child (Article 19), to the detriment of Ernestina and Erlinda, and the right to humane treatment (Article 5) and the right to a fair trial and judicial protection (Articles 8 and 25, respectively) in respect of the victims’ next of kin. The Court did not issue a decision on the right to family protection, the right to a name, and the rights of the child, since it did not have jurisdiction to analyze possible violations arising from acts that took place prior to June 6, 1995.

Principal considerations of the Inter-American Court of Human Rights

164. In this case the Court did not elaborate on considerations pertaining to children’s rights; on the contrary, it decided not to rule on the alleged violations of Articles 17, 18, and 19 of the Convention, because it concluded that it did not have jurisdiction to rule on possible violations arising from events or acts that occurred prior to June 6, 1995, or that began to be executed before that date on which El Salvador deposited the instrument accepting the Court’s jurisdiction with the OAS General Secretariat. (see paragraph 125 of the judgment on the merits). However, it is relevant to refer to the dissenting opinion issued by Judge Antônio Cançado Trindade with respect to the judgment issued in it. In that opinion, Professor Cançado referred to important considerations on the right to identity, to the effect that: “Even though the right to identity is not expressly established in the American Convention, its material content is implied, *in the circumstances of the specific case*, particularly from Articles 18 (Right to a Name) and 17 (Rights of the Family) of the American Convention, in relation to Article 1(1) thereof.”

Decision of the Court on the merits

165. The Court declared:

By six votes to one, that:

1. The State has violated the right to judicial guarantees and judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernestina and Erlinda Serrano Cruz and their next of kin, in the terms of paragraphs 53 to 107 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

By six votes to one, that:

2. The State has violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 111 to 115 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

By five votes to two, that:

3. It will not rule on the alleged violations of the rights of the family, the right to a name, and the rights of the child, embodied in Articles 17, 18 and 19 of the American Convention on Human Rights, respectively, in the terms of paragraph 125 of this judgment.

Dissenting Judges Cançado Trindade and Ventura Robles.

By six votes to one, that:

4. It will not rule on the alleged violation of the right to life embodied in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 130 to 132 of this judgment.

Dissenting Judge Cançado Trindade.

AND DECIDES:

By six votes to one, that:

5. This judgment constitutes *per se* a form of reparation, in the terms of paragraphs 157 and 201 thereof.

Dissenting Judge ad hoc Montiel Argüello.

6. The State shall, within a reasonable time, carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure*, which prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and shall publicize the result of the criminal proceedings, in the terms of paragraphs 166 to 182 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

7. The State shall adopt the following measures to determine the whereabouts of Ernestina and Erlinda Serrano Cruz: establishment of a national commission to trace the young people who disappeared during the armed conflict when they were children, with the participation of civil society; creation of a search web page; and creation of a genetic information system, in the terms of paragraphs 183 to 193 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

8. The State shall, within one year, organize a public act acknowledging its responsibility for the violations declared in this judgment and in reparation to the victims and their next of kin, in the presence of senior State authorities and the members of the Serrano Cruz family, in the terms of paragraphs 194 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

9. The State shall publish, within six months, at least once in the official gazette and in another national newspaper, Chapter I, entitled “Introduction of the case,” Chapter III, entitled “Jurisdiction” and Chapter VI, entitled “Proven facts,” as well as the operative paragraphs of this judgment, and shall also establish a link to the complete text of this judgment in the search web page, in the terms of paragraph 195 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

10. The State shall designate, within six months, a day dedicated to the children who disappeared during the internal armed conflict for different reasons, in the terms of paragraph 196 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

11. The State shall provide free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and within six months, inform the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and provide them with the treatment, in the terms of paragraphs 197 to 200 of this judgment. If Ernestina and Erlinda Serrano Cruz are found alive, the State shall also provide them with the said medical and psychological treatment, in the terms of paragraph 198 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

12. The State shall pay Suyapa Serrano Cruz the amount established in paragraph 152 of this judgment in reparation for the pecuniary damage suffered by the next of kin of the victims, part of which was assumed by the *Asociación Pro-Búsqueda*, in the terms of paragraph 152 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

13. The State shall pay, in compensation for non-pecuniary damage caused to the victims and their next of kin, the amounts established in paragraph 160 of this judgment, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all Serrano Cruz, in the terms of paragraph 160 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

14. The State shall pay the amounts established in paragraph 207 of this judgment to the *Asociación Pro-Búsqueda*, for the costs and expenses generated in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights,

and to CEJIL, for the costs and expenses it incurred in the said international proceedings, in the terms of paragraph 207 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

15. The State shall pay the compensations, reimburse the costs and expenses, and adopt the measures of reparation established in the eighth operative paragraph of this judgment, within one year of its notification, in the terms of paragraph 208 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

16. The State shall adopt the measures of reparation ordered in paragraphs 183 to 191 and 195 to 200 of this judgment within six months of its notification.

Dissenting Judge ad hoc Montiel Argüello.

17. The State shall adopt the measures of reparation ordered in paragraphs 166 to 182, 192 and 193 of this judgment within a reasonable time, in the terms of the said paragraphs.

Dissenting Judge ad hoc Montiel Argüello.

18. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in Salvadoran currency, in the terms of paragraph 209 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

19. The State shall deposit the compensation ordered in favor of Ernestina and Erlinda Serrano Cruz in a deposit certificate or account in a reputable Salvadoran banking institution and in the most favorable financial conditions permitted by Salvadoran legislation and banking practice. If, after 10 years, the compensation has not been claimed, the amount shall be given, with the earned interest, to the siblings of Ernestina and Erlinda in equal parts, who will have two years to claim it, after which, if it has not been claimed, it shall be returned to the State, in the terms of paragraph 210 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

20. The payment of the compensation corresponding to María Victoria Cruz Franco, mother of Ernestina and Erlinda Serrano Cruz, shall be given to her children in equal parts, in the terms of paragraph 211 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

21. The payment of the compensation established in favor of the siblings of Ernestina and Erlinda Serrano Cruz shall be made directly to them. If any of them have died, the payment shall be made to the heirs, in the terms of paragraph 212 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

22. The payments of compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, shall not be affected, reduced or conditioned by current or future taxes or charges, in the terms of paragraph 214 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

23. If, due to causes that can be attributed to the next of kin of the victims, beneficiaries of the payment of compensation, they are unable to receive it within the said period of one year, the State shall deposit such amounts in their favor in an account or a deposit certificate in a reputable Salvadoran banking institution in United States dollars, in the terms of paragraph 215 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

24. Should the State fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on payments in arrears in El Salvador, in the terms of paragraph 216 of this judgment

Dissenting Judge ad hoc Montiel Argüello.

25. It shall monitor compliance with this judgment and shall file the instant case, when the State has fully implemented all its provisions. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 217 of this judgment.

Dissenting Judge ad hoc Montiel Argüello.

Decisions issued in this case

· Preliminary objections: judgment of November 23, 2003

Opinion of Judge Cançado Trindade

Opinion of Judge Montiel Argüello

· Merits: judgment of March 1, 2005

Opinion of Judge Cançado Trindade

Opinion of Judge Ventura Robles

Opinion of Judge Montiel Argüello

· Request for interpretation of the Judgment on the merits, reparations, and costs (Art. 67 of the American Convention on Human Rights), judgment of September 9, 2005.

Opinion of Judge Montiel Argüello

Case of the girls Yean and Bosico vs. the Dominican Republic

Facts

166. This case is based on the refusal by the authorities of the Civil Registry of the Dominican Republic to issue birth certificates for Dilcia Yean and Violeta Bosico, daughters of Dominican mothers and Haitian fathers, when they requested a late registration at the Official Registry of Births, Deaths, and Marriages. The girls were 10 months and 12 years old, respectively. This denial occurred despite the fact that they were born on the territory of the state whose constitution recognizes the right to nationality by reason of birth, *ius soli*. In this way, the State of the Dominican Republic denied the girls their right to nationality, which affected the exercise of other human rights, such as the right to education, since the child Violeta Bosico was unable to attend school for one year owing to a lack of identity documents.

Rights violated

167. Right to recognition of juridical personality (Article 3), rights of the child (Article 19), right to nationality (Article 20), and right to equal protection (Article 24).

Principal considerations of the Inter-American Court of Human Rights

168. On the principle of the best interests of the child, the Court stated that this is a criterion for interpretation of cases related to children, and established that “the prevalence of the best interest of the child should be understood as the need to satisfy all the rights of children, and this obligates the state and affects the interpretation of all the other rights of the Convention when the case refers to minors.”

169. The Court held that the condition of statelessness in which the two girls lived affected the free development of their personalities, since it impeded access to their rights, such as the right to education, health, and housing, among others, and the special protection to which they are entitled. It further stated that denial of the right to Dominican nationality was arbitrary, discriminatory, and contrary to the best interests of the child.

170. With regard to the right to nationality in the instant case, the Court argued that the arbitrary denial of the right to nationality had consequences that affected the right of the children Dilcia Yean and Violeta Bosico to recognition of juridical personality and the right to a name.

171. As for the right to recognition of juridical personality, the Court asserted that violation of this right directly affects human dignity, since it means the absolute denial of an individual's status as the holder of rights and renders him vulnerable to nonobservance of his rights by the state or by individuals. The Court pointed out that the condition of statelessness meant that the girls were not legally recognized, and therefore did not have juridical personality.

172. With regard to the right to a name, the Court held that states have the duty not only to protect this right, but also to offer persons the necessary measures to facilitate the registration of the person immediately after birth. The Court also underlined the freedom of persons to choose the name of their children, as well as the right to preserve and re-establish the name. On this point, the Court maintained that the right to a name “constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State.” The Court ruled that in this case, the Dominican Republic did not guarantee the right to a name to the girls Yean and Bosico.

173. In this case, the Court elaborated on the obligation of states to ensure the right to education. To this end, the Court referred to the special protection obligation that the Dominican Republic assumed *vis-à-vis* children stipulated in Article 19 of the Convention, and stated that in accordance with the provisions of the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights and Article 26 of the American Convention, “the State must provide free primary education to all children in an appropriate environment and in the conditions necessary to ensure their full intellectual development.” This finding is highly

relevant inasmuch as it is not part of the previous case law of the Court, according to which, based on the concept of a life with dignity, it established that states have different economic or social obligations, and this has had a significant impact on inter-American jurisprudence. However, in this case the Court went a little further, since it made specific reference to a social right, namely the right to education, which as such is linked to the special protection for children, and is beginning to be the subject of jurisprudential considerations and points of law in the system.

174. The Court rejected the allegations regarding the violation of the right to a fair trial and freedom of conscience.

175. The Court established that the State must pay compensation to the victims. Moreover, it established as an additional compensatory measure publication of the relevant parts of the judgment in the Official Gazette, acknowledgement of its international responsibility in a public act, adoption of measures to adapt domestic law on late registration of Dominican citizens, and implementation of a program for training in human rights for state agents competent to register births. In these training programs, the State must give priority to nondiscrimination and the rights of the child.

Decision of the Court on the merits

176. The Court decided:

Unanimously,

1. To reject the three preliminary objections filed by the State, in accordance with paragraphs 59 to 65, 69 to 74, and 78 and 79 of this judgment.

DECLARES:

Unanimously that:

2. The State violated the rights to nationality and to equal protection embodied, respectively, in Articles 20 and 24 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico, in the terms of paragraphs 131 to 174 of this judgment.

3. The State violated the rights to a name and to juridical personality embodied, respectively, in Articles 3 and 18 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico, in the terms of paragraphs 131 to 135 and 175 to 187 of this judgment.

4. The State violated the right to humane treatment embodied in Article 5 of the American Convention, in relation to 1(1) thereof, to the detriment of Leonidas Oliven Yean, Tiramen Bosico Cofi and Teresa Tucent Mena, in the terms of paragraphs 205 to 206 of this judgment.

5. This judgment constitutes *per se* a form of reparation, in the terms of paragraph 223 thereof.

AND ORDERS,

Unanimously that:

6. The State should publish at least once, within six months of notification of this judgment, in the official gazette and in another newspaper with national circulation in the Dominican Republic, both the section entitled “Proven Facts”, without the corresponding footnotes, and also the operative paragraphs of this judgment, in the terms of paragraph 234 thereof.

7. The State should organize a public act acknowledging its international responsibility and apologizing to the victims Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, within six months, in the presence of State authorities, the victims and their next of kin, and also the representatives and this shall be disseminated in the media (radio, press and television). The purpose of this act is to provide satisfaction and to serve as a guarantee of non-repetition, in the terms of paragraph 235 of this judgment.

8. The State should adopt within its domestic law, within a reasonable time, in accordance with Article 2 of the American Convention, the legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth. This procedure should be simple, accessible and reasonable since, to the contrary, applicants could remain stateless. Also, an effective remedy should exist for cases in which the request is rejected in the terms of the American Convention, in accordance with paragraphs 239 to 241 of this judgment.

9. The State should pay, as compensation for non-pecuniary damage, the amount established in paragraph 226 of this judgment to the child Dilcia Yean and the amount established in the same paragraph to the child Violeta Bosico.

10. The State should pay the amount established in paragraph 250 of this judgment to Leonidas Oliven Yean and Tiramén Bosico Cofi for costs and expenses arising in the domestic sphere and in the international sphere before the Inter-American System for the protection of human rights; and they should make the payments to the *Movimiento de Mujeres Dominicano Haitianas* (MUDHA), the Center for Justice and International Law (CEJIL), and the International Human Rights Law Clinic, Boalt Hall School of Law, University of California, Berkeley, to compensate the expenses they incurred.

11. The Court shall monitor implementation of this judgment and will deem the case closed when the State has fully complied with the terms of this judgment. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it, in the terms of paragraph 259 of this judgment.

Decisions issued in this case

- Merits: judgment of September 8, 2005
Opinion of Judge Cançado Trindade
- Interpretation of the judgment on preliminary objections, merits, reparations, and costs (Article 67 of the American Convention on Human Rights): judgment of November 23, 2006
- Monitoring of compliance with judgment: decision of November 28, 2007

Case of *Servellón García et al. vs. Honduras*

Facts

177. This case refers to the degrading detention conditions of the victims by police agents, to the detriment of Marco Antonio Servellón García, 16 years of age, and Rony Alexis Betancourt Vásquez, 17 years old, who were detained together with adults September 15 and 16, 1995 during an operation conducted by the Public Security Forces (FUSEP). The victims were executed extrajudicially by FUSEP on September 17, 1995, and their bodies were found in different places in Tegucigalpa, Honduras.

178. In this case, the State acknowledged its international responsibility for violation of the rights to life, to humane treatment, and to personal liberty, and the rights of the child.

Violated rights

179. Right to life (Article 4), to humane treatment, and to personal liberty (Articles 5 and 7, respectively), and the right to a fair trial and to judicial protection (Articles 8 and 25, respectively).

Principal considerations of the Inter-American Court of Human Rights

180. In this case, the Court developed substantive points of law regarding violence against children, which takes on special relevance in the way in which many states are trying to cope with the insecurity of citizens in their countries and the risks that such measures represent for the human rights of children. The Court established that the violations of the human rights of the children Servellón and Betancourt occurred as a result of the situation of risk in which they were living. Thus, the Court asserted that “at the time the events occurred, there was a systematic pattern of violations of human rights in detriment to children and adolescents in situations of risk, and the context of violence within which the violations to the rights to life, humane treatment, and personal liberty occurred in this case has been proven.”

181. The Court called attention to the social stigmatization which victimizes poor children who are living in conditions of vagrancy, without regular jobs, or who suffer from other social problems. In this context, the Court determined that the stigmatization, which in many cases is permitted by states for alleged reasons of citizen security, constitutes a violation of the principles of equality before the law and nondiscrimination.

182. The Court ordered the State to investigate and punish the persons responsible for the

violations committed to the detriment of the victims.

Decision of the Court on the merits

183. In this case, the Court decided:

Unanimously to,

1. Admit the acknowledgment of international responsibility made by the State for the violation of the rights to personal liberty and humane treatment, to life, to a fair trial, and the judicial protection enshrined in Articles 7(1), 7(2), 7(3), 7(4) 7(5) and 7(6), 5(1) and 5(2), 4(1), 8(1) and 8(2), 25(1) of the American Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, and the right to humane treatment enshrined in Article 19 of the Convention, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 54, 55, 60, and 65 of the present Judgment.

2. Admit the acknowledgment of international responsibility made by the State for the violation of the rights to a fair trial and to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 54, 55, and 66 of the present Judgment.

DECLARES,

Unanimously, that

3. The State violated the rights to personal liberty and humane treatment and to life enshrined in Articles 7(1), 7(2), 7(3), 7(4), and 7(5), 5(1) and 5(2), and 4(1) of the American Convention, and the right to humane treatment enshrined in Article 5(5) of the Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, in relation to the rights of the child enshrined in Article 19 of the Convention, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 86 through 125 of the present Judgment.

4. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention, in detriment of the next of kin of Marco Antonio Servellón García, Reyes Servellón Santos, father; Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, sister; of the next of kin of Rony Alexis Betancourth Vásquez, Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, and Ana Luisa Vargas Soto, partner, and of the sister of Orlando Álvarez Ríos, Dilcia Álvarez Ríos, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 126 through 139 of the present Judgment.

5. The State violated Articles 8(1), 8(2), 7(6), and 25(1) of the Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 140 and 155 of the present Judgment.

6. The State violated the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in detriment of the next of kin of Marco Antonio Servellón García, Reyes Servellón Santos, father, Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, Pablo Servellón García, and Héctor Vicente Castro García, siblings; of the next of kin of Rony Alexis Betancourth Vásquez, Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, Ana Luisa Vargas Soto, partner, and Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian María Betancourt Álvarez, siblings; of the next of kin of Orlando Álvarez Ríos, Antonia Ríos, mother, and Dilcia Álvarez Ríos, sister, and of the next of kin of Diomedes Obed García Sánchez, Diomedes Tito García Casildo, father, and Esther Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 140, 145 through 154, and 156 through 159 of the present Judgment.

7. This Judgment is, *per se*, a form of reparation, in the terms of paragraph 180 of the same.

And Decides:

Unanimously, that:

8. The State must seriously undertake, within a reasonable period of time, all actions necessary to identify, prosecute, and, in its case, punish all the perpetrators and planners of the violations committed in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, for criminal effects and any other that may result from the investigation of the facts. For this, the State must remove, in a reasonable period of time, all obstacles and mechanisms of fact and law that have maintained the impunity in the present case, in the terms of paragraphs 192 through 196 of the present Judgment.

9. The State must publish, within a six-month period, the Chapter on facts proven of this Judgment, without the corresponding footnotes, and the operative part of the same, once, in the terms of paragraph 197 of the present Judgment.

10. The State must hold, within a six-month period, a public act of acknowledgment of its international responsibility, in the terms of paragraph 198 of the present Judgment.

11. The State must name, within a one-year period, a street or a plaza, in the city of Tegucigalpa, in memory of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez,

Diomedes Obed García Sánchez, and Orlando Álvarez Ríos. The State must place a plaque on said street or plaza with the names of the mentioned four victims, in the terms of paragraph 199 of the present Judgment.

12. The State must establish, within a reasonable period of time, a program for the formation and training of police and judicial personnel as well as personnel of the Public Prosecutors' Office and of the penitentiary regarding the special protection that must be offered by the State to children and youngsters, the principle of equality and non-discrimination, and the principles and norms for the protection of human rights, related to the application of international standards for the arrest of people, respect for their rights and judicial guarantees, the treatment that they must receive, their detention conditions, treatment, and medical control, the right to have an attorney, to receive visits, and that minors and adults, as well as those being processed and those already convicted, be located in different installations, in the terms of paragraph 200 of the present Judgment.

13. The State must carry out, within a reasonable period of time, a campaign with the purpose of creating awareness in the Honduran society regarding the importance of the protection of children and youngsters, inform it of the specific duties for their protection that correspond to the family, society, and the State, and make the population see that children and youngsters in situations of social risk are not identified with delinquency. Likewise, the State must issue, within a one-year period, a postal stamp allusive to the protection due by the State and society to children and youngsters in risky situations, in order to prevent them from becoming victims of violence, in the terms of paragraphs 201 and 202 of the present Judgment.

14. The State must create, within a reasonable period of time, a unified data base between all institutions involved in the investigation, identification, and punishment of those responsible for the violent deaths of children and youngsters in risky situations, in the terms of paragraph 203 of the present Judgment.

15. The State must pay the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos, in their condition of successors, and in a one-year period, as compensations for pecuniary and non-pecuniary damages, the amounts determined in paragraphs 176 and 184(a) and 184(b) of the present Judgment, in the terms of paragraphs 169 through 172, 176, 180, 182, 184(a) and 184(b) and 185 of the same.

16. The State must pay Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilia Álvarez Ríos, within a one-year period, as compensation for pecuniary damages, the amount set in paragraph 177 of the present term, pursuant to its terms.

17. The State must pay Reyes Servellón Santos, Bricelda Aide García Lobo, Marja Ibeth Castro García, Manases Betancourth Núñez, Hilda Estebana Hernández López, Zara Beatris Bustillo Rivera, Ana Luisa Vargas Soto, and Dilia Álvarez Ríos, within a one-year period, as compensation for non-pecuniary damages, the amounts set in paragraphs 184(c), 184(d), 184(e), 184(f) and 184(g) of the present Judgment, in the terms of paragraphs 180, 181, 183, 184(c), 184(d), 184(e), 184(f) and 184(g), and 185 of the same.

18. The State must pay, within a one-year period, in the concept of costs and expenses generated in the domestic realm and in the international proceedings before the Inter-American system for the protection of human rights, the amount set in paragraph 205 of the present Judgment, which must be delivered to Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilia Álvarez Ríos, in the terms of paragraphs 204 and 205 of the same.

19. It will monitor the compliance of the present Judgment in all its aspects, and it will close the present case once the State has fully implemented all of the provisions of this Judgment. Within one year of notification of this Judgment, the State must present a report of the measures taken in compliance of this Judgment to the Court.

Judge Antônio A. Cançado Trindade advised the Court of his Concurring Opinion, which accompanies the present Judgment.

Decisions issued in this case

- Judgment of September 21, 2006
- Monitoring of judgment: decision of January 29, 2008

Case of Gerardo Vargas Areco vs. Paraguay

Facts

184. On January 26, 1989, the boy, Gerardo Vargas Areco, 15 years of age, was recruited into the military service in Paraguay. On December 30, 1989, the boy was arrested in punishment for not having returned to the military establishment on time after being on leave to visit his family. Allegedly, when the boy tried to run away to avoid the punishment, a noncommissioned officer at the military post shot him in the back, causing his death. The body of the boy was found the next day, 100 meters from the military post. The State acknowledged international responsibility in this case.

Rights violated

185. Right to life (Article 4), to humane treatment and personal liberty (Articles 5 and 7, respectively), and rights of the child (Article 19), to the detriment of the boy, Gerardo Vargas Areco, and right to a fair trial and judicial protection (Articles 8 and 25, respectively), to the detriment of the boy's next of kin.

Principal considerations of the Inter-American Court of Human Rights

186. This is the first case referring to recruitment of children into the military service. Although the Court did not rule on the case prior to acceptance of the Court's jurisdiction by Paraguay, the Court included a few general considerations on this subject, and emphasized that the prevailing trend in international law is to avoid having persons under 18 years of age in the Armed Forces, and to ensure in all cases that minors less than 18 years of age do not participate

directly in hostilities.

Decision of the Court on the merits

187. In this case, the Court decided:

Unanimously,

1. To admit the acknowledgment of international responsibility by the State regarding the violation of the duty to guarantee the rights set forth in Articles 4 and 5(1) of the American Convention on Human Rights, together with Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

2. To admit the acknowledgment of international responsibility by the State regarding the violation of the right set forth in Article 5(1) of the American Convention on Human rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

3. To admit the acknowledgment of international responsibility by the State regarding the violation of the right set forth in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

4. To reject the acknowledgement of international responsibility by the State regarding the alleged violation of the right to special protection measures for children as set forth in Article 19 of the American Convention on Human Rights, in relation to Articles 1(1), 2 and 7 of said treaty, to the detriment of the children of Paraguay, in general, and the minor Gerardo Vargas-Areco, in particular, in accordance with paragraphs 59 to 63 of this Judgment.

Declared unanimously that:

5. The State violated the duty to guarantee the rights set forth in Articles 4 and 5(1) of the American Convention on Human Rights, together with Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 84 to 94 of this Judgment.

6. The State violated the right set forth in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 95 to 97 of this Judgment.

7. The State violated the right set forth in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment

of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 98 to 110 of this Judgment.

8. This judgment is, in and of itself, a form of reparation, as set forth in paragraph 150 herein.

and ruled unanimously that:

9. The State shall adopt, in full compliance with the right to fair trial and within reasonable time, all measures necessary to identify, prosecute and punish the physical perpetrators of the violations committed in the instant case, as set forth in paragraphs 153 to 156 and 168 of this Judgment.

10. The State shall make a public apology and acknowledgement of international liability regarding the violations declared in this Judgment, in the community where the family of Gerardo Vargas-Areco lives, in their presence and that of the State's civil and military authorities. In the course of said act, a plaque in the memory of the minor Vargas-Areco will be affixed, as set forth in paragraphs 157, 158 and 168 of this Judgment.

11. The State shall provide medical, psychological and psychiatric treatment, as applicable, to Mrs. De Belén Areco, Mr. Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all members of the Vargas-Areco family, at their discretion and for as long as necessary, as set forth in paragraphs 159, 160 and 168 of this Judgment.

12. The State shall design and implement training programs and regular courses in human rights, which must be made available to all members of the Paraguayan Armed Forces, as set forth in paragraphs 161 and 168 of this Judgment.

13. The State shall publish at least once, in the Official Gazette and in another nationwide daily newspaper, the chapter on Proven Facts of this Judgment, without the corresponding footnotes, and the related operative paragraphs, as set forth in paragraphs 162 and 168 hereof.

14. The State shall adapt its domestic legislation regarding the recruitment of minors under the age of 18 into the Paraguayan Armed Forces to applicable international standards, as set forth in paragraphs 163, 164 and 168 of this Judgment.

15. The State shall pay to Mrs. De Belén Areco and Mr. Pedro Vargas the compensation for pecuniary damage in the amount established in paragraph 148 of this Judgment, as set forth in paragraphs 168 and 174 hereof.

16. The State shall pay to Mrs. De Belén Areco, Mr. Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family, a compensation for non-pecuniary damage in the amount established in paragraph 151 of this Judgment, as set forth in paragraphs 168 and 174 hereof.

17. The State shall reimburse the costs and expenses incurred in the domestic jurisdiction and

in the course of international proceedings before the Inter-American System for Human Rights Protection, pursuant to the amount established in paragraph 167 of this Judgment. Said amount must be delivered to Mrs. De Belén Areco and Mr. Pedro Vargas, as set forth in paragraphs 168 and 174 hereof.

18. The State shall monitor full compliance with this Judgment and the instant case shall be closed once the State implements in full the provisions herein. Within a year from the date notice of this Judgment is served upon it, the State shall submit to the Court a report on the measures taken to comply with the Judgment, as set forth in paragraph 175 herein.

Decisions issued in this case

- Judgment of September 26, 2006

- **Advisory opinions**

Advisory Opinion OC 17/02 Juridical Condition and Human Rights of the Child

188. On August 28, 2002, the Court issued OC-17, which contains considerations on the following subjects: definition of the child; equality; best interests of the child, duties of the family, society, and the state; right to a fair trial in all judicial processes involving children.

189. The following concepts were elaborated on and clarified by the Court:

190. On the principle of the best interests of the child, the Court stated that this *“regulating principle regarding children’s rights is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential, as well as on the nature and scope of the Convention on the Rights of the Child.*

191. With regard to special measures of protection stipulated in Article 19 of the American Convention, the Court merely referred to their application to ensure protection against abusive treatment on the part of individuals or state agents. Unfortunately, it did not examine all the potentials inherent in Article 19 for the regional system pertaining to children’s rights.

192. With regard to a fair trial, the Court established an interpretation of all the provisions regulating this right in international law on children to the effect that: *“the rules of due process and the right to fair trial must be applied not only to judicial proceedings, but also to any other proceedings conducted by the State, or under its supervision”. In this context, the Court advised that: “it is also appropriate to consider the possibility and convenience of all procedural forms followed in those courts to have features of their own, in accordance with the characteristics and needs of the proceedings that take place there, bearing in mind the principle set forth in the Convention on the Rights of the Child, that at this level can be reflected both in court intervention, as regards the form of procedural acts, and in the use of alternative means of solving controversies, mentioned below.”*

193. From a general perspective, it is noted that OC -17 contains considerations which are relevant and substantive, but which at the same time, owing to their generality, can become ambiguous. However, OC-17 marks a milestone in the development of regional jurisprudence in children's matters, because it places the item on the region's agenda and establishes parameters that open the way for an interesting and encouraging process of development in the protection of the human rights of children in the region.

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