INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE PACHECO TINEO FAMILY *v.* PLURINATIONAL STATE OF BOLIVIA

JUDGMENT OF NOVEMBER 25, 2013
(Preliminary objections, merits, reparations and costs)

In the case of the *Pacheco Tineo family*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Roberto F. Caldas, Judge
Humberto Antonio Sierra Porto, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge.

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 31, 32, 56, 57, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this Judgment structured as follows:

CASE OF THE PACHECO TINEO FAMILY *v.* BOLIVIA

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I.
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court*. On February 21, 2012, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court, under Articles 51 and 61 of the Convention, the case of the *Pacheco Tineo family* with regard to the Plurinational State of Bolivia (hereinafter also "the State" or "Bolivia"). The case refers to the alleged return of the Pacheco Tineo family from the State of Bolivia to the State of Peru on February 24, 2001, as a result of the denial of their request for recognition of refugee status in Bolivia, and of the decision to expel them adopted by the Bolivian immigration authorities. The members of the Pacheco Tineo family, consisting of Rumaldo Juan Pacheco Osco, his wife Fredesvinda Tineo Godos, and their children Juana Guadalupe, Frida Edith and Juan Ricardo Pacheco Tineo (the latter a Chilean national), had entered Bolivia on February 19, 2001. The immigration authorities noted their irregular situation and took measures in order to deport them to Peru. Meanwhile, Mr. Pacheco Osco asked the State to grant him and the members of his family refugee status. It is alleged that this requested was denied in a summary manner and in violation of various guarantees of due process of law, following which the members of the family were deported to Peru.

2. *Proceedings before the Commission*. The proceedings before the Commission were as follows:

a. *Petition*. On April 25, 2002, Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos, on behalf of themselves and their children, Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo (hereinafter "the petitioners" or "the presumed victims") lodged the initial petition before the Commission (No. 301-02);

b. *Admissibility Report*. On October 13, 2004, the Commission approved Admissibility Report No. 53/04;[1]

c. *Merits Report*. On October 31, 2011, the Commission approved Merits Report 136/11,[2] pursuant to Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 136/11"), in which it reached the following conclusions and made the following recommendations to the State:

i. Conclusions. The Commission concluded that:

1. Based on the principle of subsidiarity, it was not in order to rule on the possible violation of the right to personal liberty of Fredesvinda Tineo Godos.
2. The State of Bolivia was responsible for the violation of the rights to judicial guarantees and to request asylum, and the guarantee of non-refoulement, recognized in Articles 8, 22(7) and 22(8) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, their daughters Frida Edith and Juana Guadalupe, and their son Juan Ricardo, all with the surnames Pacheco Tineo.
3. Under the *iura novit curia* principle, the State of Bolivia was responsible for the violation of the right to judicial protection, recognized in Article 25 of the American Convention in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, their daughters Frida Edith and Juana Guadalupe, and their son Juan Ricardo, all three with the surnames Pacheco Tineo.
4. The State of Bolivia did not violate the right to physical integrity recognized in Article 5 of the American Convention, to the detriment of the Pacheco Tineo family.

[1] In this report, the Commission decided that the case was "admissible in relation to Articles 1(1), 5, 7, 8, 17(1), 19 and 22 of the American Convention." *Cf.* IACHR, Admissibility Report No. 53/04 (Admissibility), Petition 301-02, Rumaldo Juan Pacheco Osco, Frida Pacheco Tineo, Juana Guadalupe and Juan Ricardo Pacheco Tineo, Bolivia, October 13, 2004.

[2] Merits Report No. 136/11, Case 12,474, Pacheco Tineo family, Bolivia, October 31, 2011 (merits file, folios 6 to 53).

5. The State of Bolivia had violated the right to mental and moral integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, their daughters Frida Edith and Juana Guadalupe, and their son Juan Ricardo, all three with the last name Pacheco Tineo.

6. The State of Bolivia was responsible for the violation of the obligation to provide special protection to children, recognized in Article 19 of the American Convention, in relation to Article 1(1) of this instrument.

7. It was not necessary to rule on the alleged violation of the rights of the family, recognized in Article 17 of the American Convention.

ii. *Recommendations*. The Commission recommended that the State:

1. Provide integral reparation in favor of the members of the Pacheco Tineo family for the human rights violations declared in the report. This reparation should include compensation for the pecuniary and non-pecuniary damage suffered. The presence of the Pacheco Tineo family in another country should not be considered an obstacle for complying with this recommendation. The Bolivian State must take the necessary diplomatic and consular measures required to implement this reparation.

2. Order administrative, disciplinary or other types of measure to deal with the acts and omissions of the State officials who took part in the human rights violations declared in the report.

3. Adopt measures of non-repetition that include training officials in charge of immigration proceedings that could result in the deportation or expulsion of migrants, as well as procedures to determine refugee status. This training should include the standards described in the Merits Report. The State must also adopt other measures of non-repetition in order to ensure that the practices of the internal authorities in these two areas are compatible with the American Convention, as described in the report.

d. *Notification of the State*. On November 21, 2004, the Commission notified this report to the State and granted it two month to provide information on compliance with the recommendations.

e. *Extension.* The Commission granted the State three more months to comply with the recommendations. On February 9, 2012, the State presented a report in this regard.

f. *Submission to the Court*. On February 21, 2012, the Commission submitted the case to the Court, "owing to the need to obtain justice for the victims in view of the State's failure to make progress in complying with the recommendations." The Commission appointed Commissioner Rodrigo Escobar Gil and the then Executive Secretary Santiago A. Canton as its delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, lawyer of the Executive Secretariat, as legal advisers.

3. *Requests of the Inter-American Commission.* Based on the foregoing, in its brief submitting the case the Commission asked that the Court declare the international responsibility of the State for the violation of the rights to judicial guarantees and to request asylum, and of the guarantee of non-refoulement, recognized in Articles 8, 22(7) and 22(8) of the American Convention, to the detriment of Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos and of Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo; of the rights to judicial protection, and to mental and moral integrity, recognized in Articles 25 and 5(1) of the Convention, to their detriment, and for the violation of the obligation to provide special protection to children, recognized in Article 19 of the Convention, to the detriment of their daughters and son, all in relation to Article 1(1) of the Convention. In addition, the Commission asked the Court to order the State to take the specific measures of reparation described in its report.

II.
PROCEEDINGS BEFORE THE COURT

4. *Inter-American defenders.* Following a communication sent to the presumed victims by the Secretariat on the instructions of the President of the Court during the preliminary

examination of the submission of the case,[3] on March 29, 2012, Rumaldo Pacheco Osco and Fredesvinda Tineo Godos requested that they be provided with "legal assistance under the agreement signed with the Inter-American Association of Public Defenders (AIDEF)" (hereinafter "AIDEF"). Following the respective communications with AIDEF,[4] on April 30, 2012, the presumed victims and the defenders were informed of the communication of April 23, 2012, in which AIDEF advised that Roberto Tadeu Vaz Curvo (Brazil) and Gustavo Zapata Baez (Paraguay) had been appointed as inter-American public defenders to exercise the legal representation of the presumed victims in this case (hereinafter "the representatives").[5]

5. *Notification to the State and to the representatives*. The submission of the case was notified to the State and to the representatives on May 8, 2012.[6]

6. *Brief with motions, arguments and evidence*. On July 14, 2012, the representatives presented their brief with motions, arguments and evidence (hereinafter "brief with motions and arguments"), in keeping with Articles 25 and 40 of the Rules of Procedure. In addition to being in general agreement with the violations alleged by the Commission following their own assessment, they alleged the violation of the rights to physical integrity and protection of the family, recognized in Articles 5(2) and 17 of the Convention, and of the principle of legality, recognized in Article 9 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the presumed victims.

7. *Answering brief*. On October 27, 2012, the State submitted to the Court its brief with preliminary objections, answering the submission of the case, and with observations on the brief with motions and arguments (hereinafter "answer" or "answering brief"). The State contested all the claims presented by the Commission and the representatives and rejected its international responsibility for the alleged violations of the American Convention. In addition, it disputed the reparations requested by the Commission and the representatives and therefore asked the Court to reject them entirely. The State appointed Hugo Montero Lara, Attorney General, and Elizabeth Arismendi Chumacero, Assistant Attorney for the Legal Representation and Defense of the State, as its agents; and Miguel Ángel Estrada Aspiazu, Director General of Human Rights and Environmental Proceedings, Cesar Siles Bazán, President of the National Refugees Council (CONARE), Cosset Estenssoro Torricos, Director General of Immigration, Yvanka Oliden Tapia, Chargé d'Affaires of the Embassy of Bolivia in Costa Rica, and Hugo Jemio Mendoza, official of the General Directorate of Human Rights and Environmental Proceedings, as deputy agents.

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[3] On March 23, 2012, the Secretariat advised the presumed victims of the following, *inter alia*: regarding information on the presumed victims' representatives and their accreditation, in the brief submitting the case, the Commission "informed the Court that the Pacheco Tineo family has been representing themselves in this case." Although it was possible to understand that, since they were the presumed victims, their representation was duly accredited in the terms of Article 35(1)(b) of the Court's Rules of Procedure, on the instructions of the President of the Court, they were advised that Article 37 of the Rules of Procedure establishes the concept of the inter-American defender, designed to support and to provide adequate representation to those persons who require legal assistance to process their case before this Court, so that financial reason do not prevent them from having legal representation. Consequently, on the instructions of the President of the Court, they were asked to indicate, by March 29, 2012, at the latest, if they wished to take advantage of this concept to support their participation in the proceedings before the Court.

[4] The Secretariat transmitted the said communication of March 29, 2011, to the General Coordinator and the General Secretary of AIDEF and, taking into account the provisions of article 2 of the Memorandum of Understanding between the Court and this association, on the instructions of the President of the Court, asked the General Coordinator of the association, within 10 days, to appoint the defender who would assume the legal representation in the case and also to advise the address to which the pertinent notifications should be sent.

[5] In application of the provisions of Article 37 (Inter-American Defender) of the Court's Rules of Procedure, which establishes that "[w]hen the presumed victims lack duly accredited legal representation, the Court may, on its own motion, appoint an inter-American defender to represent them during the processing of the case." As indicated in the reasons for the amendments to the Court's the Rules of Procedure, the implementation of the concept of the inter-American defender "ensures that all presumed victims will have a lawyer to represent their interests before the Court, and financial considerations will no longer impede access to legal representation."

[6] For the effects of the calculation of time limits, the brief submitting the case and its annexes were received by the State and the representatives on May 10 and 16, 2012, respectively.

8. *Observations on the preliminary objections*. On December 9 and 12, 2012, the representatives and the Commission, respectively, presented their observations on the preliminary objections filed by the State.

9. *Public hearing*. By an Order of February 19, 2013,[7] the President of the Court required that the statements of three of the presumed victims, and three expert witnesses offered by the representatives, the Commission and the State, be received by affidavit. In addition, the parties and the Commission were convened to a public hearing to receive their oral arguments and observations on the preliminary objections and eventual merits and reparations, as well as the statements of two of the presumed victims, one witness proposed by the State, and one expert witness proposed by the Commission. The public hearing was held on March 19 and 20, 2013, during the forty-seventh special session of the Court, held in Medellin, Colombia.[8]

10. *Amici curiae*. In addition, the Court received *amicus curiae* briefs presented by Ezequiel Heffes and Fernando Alberto Goldar, and by the Human Rights Clinic of the School of Law of Santa Clara University, United States of America. Elizabeth Santalla Vargas also forwarded an *amicus curiae* brief, the admissibility of which was questioned by the State.[9] The Court clarifies that an *amicus curiae* brief can never be assessed as a probative element *per se*. Regarding this brief, Ms. Santalla confirmed that she is connected to an organization that participated in the facts of this case; thus, in the terms of Articles 2(3) of the Court's Rules of Procedure, she is not a person entirely unrelated to the case and to the proceedings, so that this brief will not be taken into consideration.

11. *Final written arguments and observations.* On April 18 and 19, 2013 the State and the representatives forwarded their final written arguments and, on April 19, the Inter-American Commission presented its final written observations. Since the State presented documents attached to its brief, on May 2, 2013, the parties were granted until May 20 to present observations, with the clarification that this did not represent a new procedural opportunity to expand their arguments. The representatives and the Commission presented their observations on May 16 and 20, 2013.

12. *Documentation presented by the presumed victims and their representatives after the final written arguments.* On May 14, 2013, Rumaldo Pacheco Osco, presumed victim, presented certain documentation that had been obtained from the Ministry of Foreign Affairs of the State of Chile. Also, in a brief of May 16, 2013, the representatives presented the same documentation and asked that it be admitted, based on Article 57(2) of the Rules of Procedure. Most of this documentation consists of communications between the Chilean Consulate in La Paz and the Chilean Ministry of Foreign Affairs between February 20 and 24, 2001, and it is relevant to this case because there is a dispute between the parties concerning whether the Bolivian immigration authorities knew or were informed about the resident or refugee status of the presumed victims in Chile or about their real possibility of returning to that country. The

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[7] *Cf. Case of the Pacheco Tineo family v. Bolivia*, Order of the President of the Court of February 19, 2013, available at http://www.corteidh.or.cr/docs/asuntos/pacheco_19_02_13.pdf

[8] At this hearing, there appeared: (a) for the Inter-American Commission: Silvia Serrano Guzmán, Adviser; (b) for the representatives: Roberto Tadeu Vaz Curvo and Gustavo Zapata Baez, and (c) for the State: Hugo Montero Lara, Elizabeth Arismendi Chumacero and Miguel Ángel Estrada Aspiazu, Agents, as well as Hugo Jemio Mendoza and Juana Inés Acosta López, Deputy Agents; Aldo Cortes Milán, Renso Vargas Terrazas, Alberto Páez Bastidas, Guehizza Patricia Zeballos Grossberger and Cosset Estenssoro Torricos, Advisers.

[9] The State indicated that *amici curiae* "are characterized by being objective, independent and impartial, collaborating with courts in the examination and deciding of cases submitted to their jurisdiction"; that Ms. Santalla Vargas was legal adviser to the CEB-UNHCR (Bolivian Episcopal Conference-United Nations High Commissioner for Refugees) project at the time of the events of this case and that, consequently, the main purpose of this *amicus curiae* is absent, because, it is not objective and impartial, since she is aware of the facts of the case. The State asked the Court to reject this brief and to consider that its conclusions do not apply to the instant case.

presumed victims and their representatives were advised that the Court would decide on the admissibility of the documentation that had not been requested by the Court or its President, as well as the arguments regarding them, at the appropriate procedural stage. Also, on the instructions of the President, the State and the Commission were informed that, if they considered it pertinent, they had until May 24, 2013, to present their observations, but this did not represent a new procedural opportunity to expand their arguments. On that date, the State presented its observations and, also, transmitted other documentation[10] and expanded its arguments, which were not admitted.[11] On June 12, 2013, on the instructions of the President, the Secretariat asked the Ministry of Foreign Affairs of Chile to confirm the authenticity and dates of issue and receipt of the documentation forwarded by Mr. Pacheco Osco and his representatives, and received a reply from the Ambassador of Chile to the Republic of Costa Rica on July 5, 2013. In response to a request from the State, and on the instructions of the President, on July 18, 2013, the Secretariat asked the Ambassador of Chile to Costa Rica to provide information on the receipt of a note that had been sent by Bolivian authorities to the Consulate General of Chile in Bolivia on July 5, 2012, and the steps taken in this regard, and a reply was received on September 5, 2013. The State and the Commission presented their corresponding observations on September 19, 2013 (*infra* paras. 48 to 52).

III.
COMPETENCE

13. The Inter-American Court is competent to hear this case pursuant to Article 62(3) of the Convention, because Bolivia has been a State Party to the American Convention since July 19, 1979, and accepted the contentious jurisdiction of the Court on July 27, 1993.

IV.
PRELIMINARY OBJECTIONS

14. In its answering brief, the State presented five preliminary objections, namely: (a) request to exclude new facts and alleged violations presented by the representatives; (b) the Court's lack of competence "to hear this case because the measures established in Articles 46 to 51 of the Convention had not been exhausted"; (c) lack of competence *ratione loci* of the Court; (d) lack of competence *ratione materiae*, and (e) absence of legality in the Inter-American Commission's exercise of its attributes. Nevertheless, during the oral hearing and in its final written arguments, the State indicated that "these partial objections are intrinsically related to the merits of the matter"; that they "may be analyzed together with the merits," and asked the Court, "within the framework of its competence, to address these arguments in the appropriate chapter of the judgment."

15. The Court recalls that preliminary objections are a recourse by which the State seeks, before the case is heard, to prevent the analysis of the merits of the matter contested and, to this end, it may raise an objection to the admissibility of the case, or to the competence of the Court to hear a specific case or any of its aspects, based on the persons, the matter, the time or

[10] Regarding the annexes to the said communication of the State, it was advised that the Court would decide on the admissibility of documentation submitted on this procedural occasion that had not been requested by the Court or its President, as well as any related arguments, at the appropriate procedural stage.

[11] The State presented arguments in relation to the observations made by the representatives and the Inter-American Commission on Human Rights on the annexes to the State's final written arguments. In this regard, in a note of the Secretariat of June 12, 2013, on the instructions of the President of the Court, the State was advised that the Court would not take these arguments into account, because they had not been requested, and their presentation was not established in the Court's the Rules of Procedure.

the place, provided that these objections are of a preliminary nature.[12] If these objections cannot be considered without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.[13]

16. Based on the indication of the State and the said concept of preliminary objections, the Court will analyze these assertions.

A. Request to exclude facts and alleged violations presented by the representatives

Arguments of the parties and of the Commission

17. The State argued that, under Article 35(3) of Court's the Rules of Procedure, the Commission must indicate the facts that it submits to the Court's consideration, and that this article of the Rules of Procedure must be interpreted in keeping with Articles 46 and 47 of the Convention, so that the "facts that supposedly violated this instrument" (Article 35(1)) or the "facts contained in the report" on merits (Article 35(3) cannot include allegations that have been declared inadmissible by the Commission and, especially, facts regarding which domestic remedies have not been exhausted. Thus, if the Inter-American Commission decides in the Merits Report that a specific group of facts do not constitute a violation of a human right, or decides, for any reason, that it is unnecessary to declare a violation, it should be understood that this group of facts is not submitted to the Court. The combined examination of Articles 47, 50 and 61 of the Convention implies that the phrase "facts that supposedly violated this instrument" in Article 35(1) of the Rules of Procedure necessarily refers to facts that characterize a violation of the Convention and were not unfounded or inadmissible, that were included in the Commission's conclusions and, therefore, were submitted to the jurisdiction of the Court. It argued that any other facts exceed the factual framework of the case and the representatives may not include them.[14]

18. Thus, the State argued that the Court should exclude from these proceedings the facts corresponding to the following "categories": the facts introduced by the representatives that do not appear in the Merits Report;[15] the facts that the Commission expressly declared had not been proved;[16] the simple factual allegations or arguments of the petitioners regarding which the Commission did not make a factual determination;[17] the facts that the Commission declared had not violated the Convention, and the facts regarding which the Commission considered it

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[12] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013 Series C No. 260, para. 25.

[13] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 40.

[14] Based on this, the State argued that "two groups of facts exceed the factual framework of the proceedings before the Court: (a) mere allegations of the petitioners that do not constitute 'factual determinations' of the Commission,' and (b) factual arguments that the Commission considered inadmissible." In addition, in the State's opinion, there are two additional groups of facts "that are analogous" to the previous ones, namely: (i) factual allegations by the petitioners that the Commission explicitly declared had not been proved, and (ii) factual allegations to which the Commission did not accord any legal consequences."

[15] This refers to articles of the American Convention that the representatives argue have been violated, and that the Commission did not declare violated, Articles 2, 5 (in relation to physical integrity), 9 and 17.

[16] This refers to the Commission's conclusions that Article 5 of the Convention regarding physical integrity had not been violated, and that it was not necessary to rule on the alleged violation of Article 17 of the Convention.

[17] The State mentioned the representatives' arguments on the violation of Articles 17, 9, 5 and 2 of the Convention.

unnecessary to declare a violation.[18] In its final written arguments, the State specified the facts whose inclusion it questioned,[19] and emphasized that the factual framework of the case before the Court included, exclusively, the facts contained in the Report and not all the facts that may have been discussed before the Commission.

19. The Commission observed that only the first three categories mentioned by the State are related to facts that could be understood to exceed the factual framework, while the two remaining categories do not *per se* exceed the factual framework. Thus, with regard to the facts relating to the violation of the right to personal integrity alleged by the representatives, which the Commission, declared had not been proved, it considered that, "in principle, they exceed the factual framework of the case before the Court." Regarding the facts referred to by the representatives that were not explicitly established in its report, the Commission observed that it was for the Court to establish, on a case by case basis, whether they might be complementary facts.[20] Lastly, the Commission considered that the Court had competence to rule on the additional alleged violations described by the representatives that were based on the said factual framework, because the fact that the Commission might have indicated that it was "unnecessary" to make a legal ruling – considering that it was subsumed in another norm – did not mean that the Court could not rule on the said alleged violation.

20. The representatives indicated that the State had confused the facts with the law, because the comparative list that it presented alluded to norms of the Convention rather than to facts. In addition, they argued that, based on the *iura novit curia* principle, the Court is empowered to make its own determination of the facts of the case, and to decide legal aspects that were not alleged by the parties. They also argued, with regard to the supposed new facts, that the State had contested them in exercise of its right of defense and that they are part of the petition lodged before the Commission, which was expressly ruled on in the report. Even if the Commission did not find the alleged violation of physical integrity, the Court was able to rule in this regard owing to the procedural attributes granted to the presumed victims in the Rules of Procedure. Moreover, prior to their expulsion, the Pacheco family were unable to file a complaint before the Bolivian judicial authorities.

Considerations of the Court

21. This Court has established that the facts contained in the Merits Report submitted to its consideration constitute the factual framework of the proceedings before the Court.[21] Consequently, it is not admissible for the parties to allege new facts that differ from those contained in this report, notwithstanding the possibility of describing those that explain, clarify or reject the facts that are mentioned in the report and submitted to the Court's consideration

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[18] The State again referred to the Commission's conclusions that Article 5 of the Convention had not been violated with regard to physical integrity, and that it was not necessary to rule on the alleged violation of Article 17 of the Convention.

[19] The State contested: "the facts relating to the way in which [the presumed victims] were transported to Peru"; regarding the "supposed mental, moral and physical violence by Stage agents of which they [were allegedly] victims" on both February 20 and 24, 2001; as well as "the facts that occurred under a jurisdiction other than that of Bolivia," specifically those relating to the detention of Mr. Pacheco and Mrs. Tineo in Peru in 2001; the return of the family to Chile, and all the facts narrated by the presumed victims that supposedly occurred between 2002 and 2012.

[20] Also, during the hearing, the Commission stated that "it is one matter to determine that the factual framework of the case before the Court is the facts that the Commission has found to have been proved, and another to consider that the factual framework is what was debated before the Commission in adversarial proceedings." It indicated that all the legal arguments of the representatives and all the facts on which they were based "were debated before the Commission in adversarial proceedings, and it will correspond to the Court to determine what is understood by the factual framework: if it is what was found to have been proved, or if it is what was debated in the adversarial proceedings."

[21] *Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, para. 131.

(also called "complementary facts").[22] The exception to this principle are facts that are classified as supervening, which may be forwarded to the Court at any stage of the proceedings prior to the delivery of the judgment, provided that they are related to the facts of the case.[23] The said report also provides the framework for the legal arguments and the claims for reparations.[24]

22. Thus, the possibility of changing or varying the legal classification of the facts that are the object of a specific case is permitted during proceedings under the inter-American system, and this is reflected clearly in the Court's consistent case law, according to which the presumed victims and their representatives may assert the violation of rights other than those included in the Merits Report, provided they remain within the factual framework,[25] because the presumed victims possess all the rights recognized in the Convention.[26] In sum, it is for the Court to decide in each case on the admissibility of arguments relating to the factual framework, safeguarding the procedural balance between the parties.[27] However, based on the adversarial principle, the discussion on the factual issues must be reflected in the Merits Report.

23. In application of the preceding criteria, it is clear that, within the factual framework of the case, the Court may analyze the alleged failure to comply with or the violation of Articles 2, 5(1) and 5(2) (as regards the right to physical integrity), 9 and 17 of the Convention asserted by the representatives, irrespective of whether the Commission concluded in its Merits Report that the State was responsible for their violation or non-compliance, or whether the Commission considered it unnecessary to rule in this regard.

24. Furthermore, the Court has considered that it does not have to rule in a preliminary manner on the factual framework of the case, because this analysis corresponds to the merits.[28] Therefore, the Court will determine whether it is in order to analyze specific facts in the corresponding sections.

25. Consequently, the Court considers that the State's assertion is not a matter for a preliminary objection, and is therefore inadmissible.

B. Alleged failure to exhaust domestic remedies

Arguments of the parties and of the Commission

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[22] *Cf. Case of the Five Pensioners v. Peru*, para. 153, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica,* para. 131.

[23] *Cf. Case of the Five Pensioners,* para. 154, and Case of *González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs,* Judgment of November 16, 2009*,* para. 17, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 145

[24] *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs. Judgment of May 6, 2008.* Series C No. 180, para. 18, and *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 195, para. 33. See also, *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, para.15. Indeed, Articles 35 and 40 of the Court's the Rules of Procedure establish the procedural opportunity for the Commission to offer expert evidence (in the brief submitting the case) and for the representatives of the presumed victims to present their motions and arguments and to offer evidence, and to this end, they may only base themselves on the factual determinations of the Merits Report. *Cf. Case of the Santo Domingo Massacre v. Colombia*, para. 145.

[25] *Cf. Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 53.

[26] *Cf. Case of the Five Pensioners v. Peru,* para. 155, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica,* para. 131.

[27] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005, para. 58, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica,* para. 131.

[28] *Cf. Case of Las Palmeras v. Colombia*. *Preliminary objections,* para. 34, and *Case of Mendoza et al. v. Argentina*, para. 25.

26. The State argued that the representatives bypassed the procedure established in Articles 46 to 51 of the Convention, because they presented, for the first time, before the Court arguments and violations of the Convention that were not indicated opportunely before the Commission, namely: the allegedly violations of Articles 9 and 2 of the Convention. It argued that this prevented the State from exercising the defense mechanisms established in Articles 46(2) and 47 of the Convention, which resulted in a violation of due process and its right of defense, so that the Court lacks competence to examine these new requests by the representatives.

27. The Commission observed that the legal classification made by the representatives was based on the factual framework of its Merits Report as regards the normative applicable to the deportation procedure. In addition, it considered that, in keeping with the regulation of the system of individual petitions in the American Convention,[29] the fact that a petitioner does not allege a specific violation under an article of the American Convention in the proceedings before the Commission, "does not, in itself, result in a limitation to making autonomous legal arguments that differ from those of the Commission in the proceedings before the Court, and having legal representation."

28. The representatives indicated that the State's position was unclear, but inferring that the supposed new facts to which the State is referring are those related to the violation of Articles 9 and 2 of the Convention, these facts do not modify, alter or impair the factual framework of the case.

Considerations of the Court

29. The Court notes that the legal classification of certain facts under Articles 9 and 2 of the Convention, proposed by the representatives, is based on the factual framework of this case. In particular as regards the normative applicable to the domestic procedures for the deportation of a person owing to his or her migratory situation and for the determination of refugee status. Thus, as indicated in the preceding segment (*supra* paras. 23 and 24), the Court is able to examine the alleged violation of these provisions, without the exhaustion of domestic remedies – which, in any case, the State did not provide grounds for – being relevant in this regard. Consequently, the Court determines that the State's assertion is not a matter for a preliminary objection, so that it is inadmissible.

C. "Competence ratione loci"

Arguments of the parties and of the Commission

30. The State argued that the representatives had attributed to Bolivia facts that had occurred outside its territory, in relation to the alleged violation of Article 17 of the Convention, owing to the separation of the Pacheco Tineo family and the consequences of a pecuniary and non-pecuniary nature that they had faced or suffered as of their first detention in Peru.[30] It indicated that the Court had already declared Mr. Pacheco Osco and Mrs. Tineo Godos to be

[29] It considered that the lodging of a petition does not require legal representation and that a detailed description of the actions that are considered to have violated the Convention was sufficient, as well as adequate information to issue a ruling on whether the admissibility requirements had been met. Throughout the proceedings before the Commission, the procedures should respond to the different levels of representation or experience of the petitioners and, if pertinent, of their representatives. It is the Inter-American Commission that must, based on its attributes, make a legal classification of the facts described by the petitioners in its Admissibility Report, at that time defining the purpose of the case, which will be analyzed at the merits stage.

[30] It indicated that the representatives referred to facts such as the separation of the family, the psychological traumas, and the physical ailments, the attacks on the reputation of the family members, and the harm to their life projects, much of which resulted from the torture, detention, persecution, and other wrongful acts that supposedly occurred in Peru.

victims in the *case of the Miguel Castro Castro Prison v. Peru* and ordered that they receive compensation. The State argued that it should not and must not be made responsible for all these sufferings, because the State mainly responsible for them had already provided redress. Hence, it asked the Court to declare its lack of competence to examine the supposed violations alleged by the representatives, because they sought to make Bolivia provide reparation to the presumed victims for the supposed facts a second time.

31. With regard to the Court's alleged lack of competence to rule on the separation of the family, the Commission observed that consistent international case law exists to the effect that a State may be declared responsible for violations of rights that occur in another jurisdiction, when the situation of risk that permitted the violation was a result of an act or omission attributable to that State. The Commission considered that this is a matter related to the merits, which does not affect the Court's competence to rule on this allegation.

32. The representatives added that in both the briefs of the Commission and their own briefs, it can be seen that the arguments on the rights violated by the State were based on the facts that occurred in Bolivia between February 19 and 24, 2001, when the family was subject to the jurisdiction of Bolivia. In addition, they indicated that the Pacheco Tineo couple would not have been interned in the Castro Castro Prison in Peru if the Bolivian State had not acted in breach of treaty-based provisions that regulate migratory matters, deporting them from that country, which resulted in the harm suffered by the family in the instant case.

Considerations of the Court

33. The Court finds that the alleged separation of the Pacheco Tineo family and the consequences of a pecuniary and non-pecuniary nature that they have faced since their detention in Peru, following their deportation from Bolivia, are facts or situations that may be related to the deportation carried out by acts of Bolivian authorities. Accordingly, to the extent that it is alleged that the expulsion of the Pacheco Tineo family from Bolivia was executed in violation of several rights recognized in the Convention, it is a legally sustainable hypothesis that those alleged facts or situations can be attributed to the State or were a consequence of facts that could be attributed to it; accordingly, they could be relevant in both the chapter on Merits, and in the chapter on Reparations, which does not affect the Court's competence *ratione loci*. Since the determination of whether or not a human rights violation occurred in a third State, or whether it can be attributed to Bolivia, naturally corresponds to the merits of the case, the Court finds that the State's assertion is inadmissible, since it is not a matter for a preliminary objection.

D. "Competence ratione materiae"

Arguments of the parties and of the Commission

34. The State indicated that the documents produced by the United Nations High Commissioner for Refugees (UNHCR), cited by the Commission and the representatives, constitute "soft law" and that "its conclusions reports, directives, etc., are not binding for the States." The State argued that, if the Court interpreted the Convention based on what the indications of UNHCR, "it would be converting 'soft law' into 'hard law' [and] the Court does not have competence to do this, [because] only the States […] can create norms of 'hard law.'"[31] It argued that the Court's competence *ratione materiae* signifies both the impossibility that it apply

[31] According to the State, the 1951 Refugees Convention and its 1967 Protocol, which constitute "hard law," do not establish the procedure that States must follow in order to grant or deny refugee status, and the States "have a large margin of appreciation to define the procedure to follow with regard to abusive or unfounded requests for refuge," which the Court cannot disregard, by imposing obligations that do not arise from conventions and that are based on UNHCR directives. It also argued that the legal doctrine on the control of conformity with the Convention gives rise to the correlative obligation for the Court not "to create" new obligations for the States.

treaties outside the inter-American system or declare that they have been violated, and also its obligation to abstain from imposing on the State, by way of the interpretation of the Convention, supposed obligations that are derived, arise from or have their source in norms outside the system. Lastly, the State indicated that Article 8(2) of the Convention is only applicable to criminal cases and the Court may not extend the protection of Article 8(2) to non-criminal cases, via its case law.

35. The Commission stated that the references to UNHCR documentation in the Merits Report had different objectives: several of the "letters" issued by this agency constitute documentary evidence that supports the Commission's determination of the facts and, as such, were subject to adversarial proceedings and were not analyzed from a legal point of view, so that it is not appropriate to make a determination under the concept of competence *ratione materiae.* Regarding the directives or other UNHCR documents, the Commission clarified that these documents were cited for reference purposes, within other sources used by the Commission to interpret the scope and content of the obligations established by the Convention, so that the State's position constitutes a disagreement with its interpretation of the Convention itself and, as such, corresponds to a matter relating to the merits of the case.

36. The representatives indicated that the State's allegation should be rejected because the critique on which it is based – inapplicability of a complementary or additional source of international law – is an issue that cannot be raised by means of an objection, and because it is incompatible with the Court's criteria on the constitution of the international *corpus juris*.

37. In its final written arguments, the State indicated that it was "satisfied with the Commission's explanation that the said UNHCR documents were cited 'for reference purposes' in order to interpret the rights contained in the American Convention." It added that "the disagreement about the impact that the said documents may have on the interpretation of convention-based rights will be dealt with during the merits of the matter," clarifying that "the citing of UNHCR documents in the development of its arguments does not mean a recognition that these documents are binding for the State or that the Court may apply them in these proceedings."

Considerations of the Court

38. First, the Court points out that several of the letters issued by UNHCR, which the State referred to its arguments, constitute part of the documentary evidence that supports factual determinations made by the Commission, regarding which the State has had every possibility of exercising its right of defense, and this must be analyzed when examining the merits.

39. Second, regarding other documents issued by UNHCR with its interpretation of the international normative applicable to recognition of refugee status, the Court notes that they were cited in the Merits Report, among other sources, in order to interpret the meaning and scope of the obligations established by the American Convention. The Court notes that the State has indicated that its assertion constitutes a disagreement with the impact that the said documents or instruments may have on the interpretation of the convention-based rights (*supra* para. 37), so that there is no dispute that this "disagreement" naturally corresponds to a matter relating to the merits of the case. Consequently, the Court finds that the State's assertion is not a matter for a preliminary objection, so that it is inadmissible.

E. Legality in the exercise of the attributes of the Inter-American Commission

Arguments of the parties and of the Commission

40. The State argued that the Commission violated Article 46(b) of the Convention by admitting the original individual petition ten months after the denial of the request for refugee

status and the deportation, without the petitioners proving an impediment to lodging the petition within the six-month time limit. The State mentioned that the petitioners had not filed an application for *amparo* "with the same right and promptness with which they filed the application for *habeas corpus*," and that they could have filed this through representatives. In its final written arguments, the State indicated that the Court should analyze whether the remedies of *amparo* and *habeas corpus* were appropriate and effective to protect the supposed violation of due process and, in this sense, these arguments "must be analyzed together with the merits." It added that the said remedies were effective, and therefore the Court should declare "not only that there has been no violation of judicial protection, but also that it cannot rule on violations of due process, owing to the principle of subsidiarity," which is part of inter-American public order and "could not be disregarded by the Court, even when States tacitly renounce filing preliminary objections." The Commission considered that the State's assertion was time-barred and the representatives also argued that it was inadmissible and unfounded.

Considerations of the Court

41. The Court notes that, among its assertions, the State confused, on the one hand, the Commission's alleged failure to comply with Article 46 of the Convention and, on the other, a supposed failure to exhaust domestic remedies by the members of the Pacheco Tineo family. Since the State has desisted from its assertions as regards preliminary objections (*supra* paras. 14 and 40), the Court considers that it is not required to review matters that the Commission has already processed and decided in this case.[32] The other arguments of the State relate to issues that should be analyzed, where pertinent, in the respective chapter of the merits; hence, the Court finds that the State's assertion is inadmissible.

V.
EVIDENCE

42. The Court will now examine and assess the probative elements provided to the case file, whether these are documents, statements or expert opinions, in accordance with the pertinent regulations[33] and its consistent case law,[34] abiding by the principles of sound judicial discretion and taking into account the whole body of evidence and the arguments presented during the proceedings.

A. Documentary, testimonial and expert evidence

43. The Court has received documents presented by the Inter-American Commission, the representatives, and the State. The Court has also received the affidavits prepared by three presumed victims, namely: (1) Juana Guadalupe Pacheco Tineo, (2) Juan Ricardo Pacheco

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[32] When an action of the Commission in relation to proceedings before it is called into question, this Court has maintained that the Inter-American Commission has autonomy and independence in the exercise of its mandate as established in the American Convention. Although the Court may control the legality of the actions of the Commission in matters it is hearing, it does not necessarily have to review the proceedings conducted before the Commission, unless one of the parties submits a well-founded claim that there has been a serious error that violated its right of defense; and this must be demonstrated effectively, because a mere complaint or difference of opinions in relation to the actions of the Commission is insufficient. *Cf. Control of Legality in the Exercise of the Attributes of the Inter-American Commission on Human Rights (arts. 41 and 44 of the American Convention on Human Rights).* Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first and third operative paragraphs, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 27.

[33] Articles 46, 47, 48, 50, 51, 57 and 58 of the Court's Rules of Procedure.

[34] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2013*. Series C No. 268, para. 28

Tineo, and (3) Frida Edith Pacheco Tineo, and three expert witnesses: (1) Pablo Ceriani, (2) Rafael Ortiz Pozo, and (3) Mario Uribe Rivera.

44. Regarding the evidence provided during the public hearing, the Court received the statements of the presumed victims Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos, and also of Juan Carlos Molina Remecín, witness offered by the State, and of expert witness Juan Carlos Murillo, offered by the Commission.[35]

B. Admission of documentary evidence

45. In this case, as in others,[36] the Court accepts the probative value of those documents forwarded by the parties at the appropriate procedural stage, which were not contested or opposed, and the authenticity of which was not challenged, exclusively to the extent that they are pertinent and useful to determine the facts and their eventual legal consequences. The Court will now examine the different objections presented by the parties in relation to the documentary evidence.

i. Newspaper articles

46. With regard to newspaper articles, the Court has considered that these may be assessed when they refer to well-known public facts or declarations of State officials, or when they corroborate aspects of the case.[37] Therefore, the Court decides to admit the newspaper articles that are complete or that, at least, allow their source and date of publication to be determined, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

ii. Incorporation of opinions rendered in other cases

47. In relation to the representatives' request to incorporate into the case file the expert opinions rendered by Miguel Cillero and Emilio García Méndez in the case of *Atala Riffo and daughters v. Chile,*[38] the Court recalls that, as established in the Order of February 19, 2013, "the President f[ound] it appropriate to incorporate the said expert opinions […] into the case file […] as documentary evidence." As indicated in that Order, "it is pertinent to emphasize that the incorporation into the file of a case being processed of expert opinions rendered in another case does not mean that these opinions have the probative value or weight of an expert opinion provided under the adversarial principles and the right of defense."[39] Thus, and bearing in mind the objections raised by the State in exercise of its right of defense, the Court incorporates these documents into the case file as opinions and references on legal doctrine provided by authorities in the matter on which they testified, which could be relevant to, or provide guidance

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[35] The purpose of the testimony is determined in the said Order of the President of February 19, 2013 (*supra* note 6).

[36] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 31

[37] *Cf. Case of Velásquez Rodríguez*, para. 146 and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 33

[38] Miguel Cillero provided an opinion on the treatment of the principle of the best interests of the child in international law, and Emilio García Méndez provided an opinion on international standards in relation to the rights of children applicable in cases concerning custody and care; the way in which the best interests of the child and the right to take part in and to be heard in matters that concern them should be reflected in the actions of the judicial authorities who decide these cases, and the adverse consequences on the best interests of the child when discriminatory prejudices are applied in such decisions. *Cf.* Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court on August 4, 2011, in the *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239; and Expert opinion of Emilio García Méndez before the Inter-American Court during the public hearing held in the *Case of Atala Riffo and daughters v. Chile* on August 23, 2011.

[39] Order of the President of February 19, 2013, considering paragraphs 52 and 53.

for, the interpretation or application by the Court of the relevant international *corpus juris* in this case.

iii. Evidence related to communications with the Chilean Consulate presented after the final arguments

48. During the public hearing held in this case, the State provided a certification of the National Immigration Directorate, according to which, "after reviewing its files, it had not found any written record from the Chilean Consulate confirming or refuting the refugee status," clarifying that this "was not a certification from the Chilean Consulate." The State indicated that it had not received a reply from the Consulate and, "since this is evidence of a negative nature – in other words, that there was no reply – the State made a great effort to be able to present evidence to the Court […] verifying whether they were refugees in Chile, and did not obtain an answer to these inquiries."

49. In communications received on May 14 and 16, 2013, Rumaldo Pacheco Osco and his representatives, respectively, presented certain documentation that he had obtained from the Ministry of Foreign Affairs of the State of Chile, in response to his request of April 16, 2013, under a Chilean law on access to public information. The original documents that he received indicate that, on April 30, 2013, the Ministry of Foreign Affairs of Chile answered Mr. Pacheco and sent him certified copies of the originals of these documents. Mr. Pacheco forwarded them to the Court because he considered them relevant for "the Court to consider" and "because the State of Bolivia [had] not reported information that it must have in its files." The representatives asked that this documentation be admitted under Article 57(2) of the Court's Rules of Procedure, arguing that it had only just been able to obtain it, or else (based on what they themselves had requested in their motions and arguments brief), that the Court request this same documentation from Chile. The procedure following in this regard has been described previously (*supra* para. 12).

50. Regarding the admissibility of this documentation, the State indicated the following:

a. Neither the State agents nor the Attorney General were unaware of this documentation and, in this sense, it is also a supervening document for the State. It argued that it was not credible that the document had only been obtained recently, because the presumed victims knew about it and knew how to obtain it, but, "in bad faith and disregarding procedural loyalty," they had kept back this documentation to present it "at the last moment and, with this attitude, try to surprise the Court and prejudice the State," which was placed in a "situation of defenselessness," and with a "limited opportunity to exercise the adversarial principle" and its "right to a broad defense and, consequently, to due process."

b. "If [it] had known of the existence of these documents, and that they had been addressed to the Bolivian authorities, it would have taken exhaustive measures to initiate internal investigations and, if necessary, examined the possibility of acquiescing to the legal consequences";

c. There is no record in the National Archive of the Bolivian General Immigration Directorate of documentation sent by the Chilean Consulate in Bolivia. In July 2012, Bolivia asked the Chilean Government, through the Chilean Consulate General in Bolivia, for information on this case, and on [May 24, 2013,] Chile had not responded to this request;

d. It reiterated the good faith and procedural loyalty of the State during the processing of the case before the Commission and the Court and, in this regard, indicated that the authenticity of the document provided by the presumed victim should be verified, because the stamp indicating the date of reception was illegible;

e. In the absence of *force majeure* or grave impediment to the documents presented extemporaneously by Mr. Pacheco being obtained previously, as established in Article 57(2) of the Rules of Procedure, the documentation was inadmissible;

f. The documents are communications between Chilean authorities and the only one that was supposedly sent to the immigration authorities was Note 168/10 of February 23, 2001, and the date

of its reception is not legible and it does not appear in the files of this entity (the State provided another certification in this regard[40]).

51. The Court notes that, in their motions and arguments brief, the representatives had asked the Court to require certain information from the Chilean Consulate in Bolivia. The Order of the President indicated that "at the appropriate moment, a decision w[ould] be taken on the pertinence of requiring the information requested." Subsequently, following a request of the Court in application of Articles 26 ("Cooperation of the States") and 58(c) ("Procedure for obtaining evidence") of the Rules of Procedure, the State of Chile confirmed the authenticity of the documentation provided by the presumed victim and his representatives and, in particular, of the Chilean authorities that issued it and the respective dates. In other words, there is no doubt about the authenticity of the documentation provided. Following this, on July 12, 2013, the State of Bolivia asked the Court to require "the Chilean Government to send information on the confirmation of receipt and processing given to the note received by the Chilean Consulate General in Bolivia on July 9, 2012, and which had not yet been answered." The State of Chile was asked to provide this information, and answered by forwarding a note from that Consulate dated August 13, 2013, addressed to the Bolivian Ministry of Foreign Affairs in which it responded to the request. On receiving this note, on September 19, 2013, the State advised the Court that it "corroborated that it was unaware of the information" and that "the Chilean State's delay in forwarding the information had influenced the actions of the Plurinational State of Bolivia in the proceedings before this international court, […] so that the State's good faith could not be doubted."

52. The Court notes that the documentation received is related to the request, opportunely presented by the representatives, for the Court to eventually request helpful evidence. In addition, given that the documentation transmitted by the presumed victims refers to actions of Bolivian institutions and agents involved in the facts, the State should have known or could have had access to the same information or a large part of it. To this extent, the burden of proof cannot fall on the presumed victims who could only have access to the information indirectly through another State and forwarded it to the Court. The documentation provided may be relevant to this case, in which one of the central facts disputed between the parties is whether the Bolivian immigration authorities knew or were informed about the resident or refugee status of the presumed victims in Chile, or about their real possibility of returning to that country before their deportation from Bolivia. The relevance of the information is such that the State itself has indicated that, if it had known of its existence, it would have undertaken "internal investigations and, if necessary, would have examined the possibility of acquiescing to the legal consequences." In addition, based on the adversarial principle, once received, this documentation was promptly forwarded to the State, which has had full opportunity to exercise its right of defense and has even provided other documents in this regard. Consequently, because it considers them useful for deciding this case, the Court incorporates the documents referred to above, provided by both the presumed victims and the State, into the body of evidence under Article 58(c) of the Rules of Procedure.

iv. Annexes to the State's final written arguments

53. With regard to the documents provided with its final written arguments, concerning which the representatives and the Commission were given the opportunity to present

[40] During the hearing, the State presented a General Immigration Directorate report of March 15, 2013, which responded to a request of the Attorney General regarding whether there was "documentation sent by the Consulate and/or Embassy of Chile to the General Immigration Service (current General Immigration Directorate) dated February 19, 20, 21 and 22, 2001, accrediting that, at that time, Romualdo Pacheco Osco and Fredesvinda Tineo Godos, Peruvian nationals, had refugee status in Chile." This document indicates that "a report of March 15, 2013, issued by […] the Head of the National Archive of [the said] Directorate […] established that, following a search of the documentation that exists in the National Archive for 2001, no documentation sent by the Consulate and/or Embassy of Chile was found for the dates indicated" (evidence file, folio1345.).

observations, the State merely asked that they be accepted, because they constituted "supervening" evidence."

54. The Court notes that the State had already presented annexes 1, 3 and 5 to this brief as annexes to its answering brief. However, the document forwarded as annex 5 will be examined *infra* because the content varies from the one that was offered in the Merits Report and in the State's answering brief. Moreover, the State did not justify the time-barred presentation of the other documents based on any of the exceptions established in Article 57(2) of the Rules of Procedure for documents that do not refer to supervening facts. This is sufficient to find that the said documentation is inadmissible. In addition, regarding the other documents transmitted by the State, the Court finds it pertinent to observe the following:

a) Regarding the text of bill 2012-2013; a note of the International Organization for Migrations (IOM) of April 11, 2013, on the presentation of a 1998 document and two reports on the police record of Juan Carlos Molina Remecín, the State failed to indicate why it had been unable to obtain or to forward those document previously, so that it is not appropriate to admit them as evidence. In addition, in these proceedings, the Court is not determining the guilt or innocence of State agents involved in the facts, but rather the international responsibility of the State under the American Convention. Regarding the bill, the Court takes note that it is being processed.

b) Regarding a brief with observations and a "professional opinion" of a psychologist with regard to the psychiatric opinion provided by expert witness Mario Uribe Rivera in this case, the Court notes that this was issued at the State's request, by a professional who was a member of the State's delegation during the hearing held in this case, and that the said "opinion" was not offered at the appropriate opportunity by the State, and was not required by the Court at any procedural stage, so that it is not appropriate to admit it as evidence.

v. Other documents

55. In its brief answering the submission of the case, the State objected to annexes 3,[41] 31[42] and 35 of the Inter-American Commission's Report, and annexes G,[43] P1,[44] P4,[45] P6 and D1 of the representatives' brief.

56. Regarding the minutes of the meeting of the Bolivian National Refugee Commission (hereinafter "CONARE") of February 21, 2001, the State objected to the document forwarded by the Commission, which the State itself had sent during the processing of the case before the Commission, because it alleged that the Commission had forwarded the document "in an incomplete form, in order not to make public the cases examined by that organ." Accordingly,

[41] The State referred to it as "Urgent action of the Committee of Peruvian Refugees in Chile, which refers to the existence of acts of repression by the Peruvian State," and alleged that "this case relates to facts that arose in Bolivia, not in Peru."

[42] The State indicated: "Certifications issued by *Garreon y Asociados*, Lawyers, a UNHCR agency in Chile, both dated August 24, 1998; they indicate that Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos, are recognized as refugees by the Government of the Republic of Bolivia, without taking into account that the said persons, by means of a sworn declaration, requested their voluntary repatriation to their country of origin on March 5, 1998, and by Decision No. 156/98, the Bolivian National Immigration Service concluded the temporary courtesy residence granted them."

[43] The State alleged that "they all refer to expenses of public defenders, representatives of the presumed victims; the State refers back to what it has already indicated […] about the supposed expenses of the public defenders."

[44] However, the State referred to this document as "Constitutional Judgment No. 004/2001, because, in this judgment, the Constitutional Court of Bolivia declared the unconstitutionality of articles 20(h), 46(b) and 48(j) of Supreme Decree No. 24423, articles and paragraphs that are directly related to this case."

[45] The State referred to this as "certifications issued by *Garreon y Asociados*, Lawyers, a UNHCR agency in Chile, both dated August 24, 1998."

the State presented a "copy of the complete minutes" of the said meeting and a certification of CONARE dated July 10, 2012, which "show that, during the second meeting on February 21, 2001, in addition to the case of Rumaldo Juan Pacheco Osco, it examined other requests for refugee status and dealt with other administrative issues." The Court points out that, regarding Mr. Pacheco Osco's request, the content of the minutes is the same in both documents provided by the State, so that their authenticity and probative value are not affected.

57. Regarding a judgment of the Constitutional Court of Bolivia declaring that several provisions of Decree No. 24423 were unconstitutional, which was contested by the State, the Court admits it, owing precisely to the indication by the State that these provisions "are directly related to the instant case." Indeed, the State itself referred to this decree in its arguments order to maintain that it had not failed to comply with its obligations under Article 2 of the Convention and even referred to this judgment as a defense argument on several occasions.

58. Regarding the documents that concern expenses incurred by the representatives of the presumed victims, the Court refers to the considerations in the section relating to the Victims' Fund in the chapter on reparations of this Judgment.

59. In relation to a notarized certification of photographs of a web page from the Facebook social network with profiles of members of the Pacheco Tineo family, provided by the State,[46] the Court considers that this is inadmissible because it is irrelevant as regards the facts of this case, which is not related to the financial capacity of this family or their living conditions in Chile.

60. In a brief transmitted after the final written arguments, the State forwarded the text of Law No. 370, the Immigration Act, promulgated on May 8, 2013, alleging that the Court had requested this at the hearing. Although the content of this law is not related to the merits of the case, the Court admits it as information that may be useful in the chapter on reparations.

61. Regarding the other documents that were contested, the Court considers that the State's arguments relate to their probative meaning and scope, but do not affect their admissibility as part of the body of evidence.

C. Admission of the statements of the presumed victims, witness, and expert witnesses

62. Regarding the statements made before notary public and those rendered during the public hearing, the Court admits them and considers them pertinent insofar as they are in keeping with the purpose defined by the President of the Court in the Order requiring them. These statements will be assessed in the corresponding chapter, together with the other elements of the body of evidence, and taking into account any pertinent observations made by the parties.[47] In this regard, the State asked the Court to reject specific parts of the statements, because they were not substantiated and because they lacked a causal nexus to the facts of the case, which relates to their probative value and does not affect their admissibility.

63. On providing his expert opinion during the public hearing, expert witness Juan Carlos Murillo stated that, subsequently, he would present a brief with his opinion and complementary information in relation to the points raised by the parties and the questions of the judges. At

[46] The State presented photographs published on the Facebook social network, in which the Pacheco Tineo couple presumably appear on holiday in other countries.

[47] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Barrios Family v. Venezuela.* Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 238, para. 25.

that time, the President indicated that the Court would await the document which was transmitted by the expert witness on March 29, 2013, as a "written presentation" of the opinion he gave during the hearing, "in which more detailed information was provided on the subject of the proposed expert opinion based on the questions asked." A few days previously, on March 25, 2013, the State had requested "a reasonable time period" to rule on the presentation of the written opinion of Juan Carlos Murillo. In fact, when this was forwarded, on the instructions of the President of the Court the parties and the Commission were advised that, if they considered it pertinent, they could present their observations on the said documentation with their final written arguments and observations. At this last moment, the State asked that "the written document be rejected, because the expert opinion had already been provided sufficiently during the hearing," and that, if it decided to consider the said brief, the Court should reject "everything that was not included in the real purpose of the expert opinion." The Commission asked the Court, in keeping with its practice, to admit the written expansion of the opinion provided by Mr. Murillo, because it would be very useful for deciding the case, and its acceptance had no effect on the adversarial principle or on the procedural balance between the parties.

64. The Court considers that, in fact, the opinion provided by the expert witness was the one rendered during the hearing, which has already been admitted. Meanwhile, the written document provided some time later, and regarding which the parties had had the opportunity to exercise their right of defense, complemented the said expert opinion on issues that were part of its purpose, so that the Court finds that it is part of the opinion and incorporates it into the file of this case considering that it will be useful for deciding the case, and taking into consideration the pertinent observations of the parties in relation to its assessment.

VI.
FACTS

A. The Pacheco Tineo family

65. The Pacheco Tineo family consists of: (a) Rumaldo Juan Pacheco Osco, born on September 7, 1962, in Lima, Peru; (b) Fredesvinda Tineo Godos, born on September 6, 1959, in Piura, Peru; (c) Frida Edith Pacheco Tineo, born on December 21, 1990, in Peru; (d) Juana Guadalupe Pacheco Tineo, born on August 10, 1995, in Peru, and (e) Juan Ricardo Pacheco Tineo, born on June 11, 1999, in Chile.

B. Background information: entry into Bolivia in 1995, granting of refugee status in 1996, and residence in Bolivia until March 1998

66. The Commission advised that, at the beginning of the 1990s, Rumaldo Pacheco and Fredesvinda Tineo were tried in Peru for supposed crimes of terrorism. They were both detained in Peru and were victims of the violation of their right to humane treatment owing to acts that occurred in May 1992 that were examined by the Inter-American Court in the *case of the Miguel Castro Castro Prison v. Peru.*[48] Subsequently, in 1994, they were released after having been acquitted in the said proceedings.

67. On October 13, 1995, Rumaldo Pacheco and Fredesvinda Tineo entered Bolivia, via La Paz,[49] together with their two daughters. They stated that they had entered Bolivia because they had been advised that a warrant had been issued for their arrest in Peru, owing to the

[48] *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160

[49] *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 9 and 28).

annulment by the Peruvian Supreme Court of Justice of the acquittal decided in the context of the above-mentioned trial for terrorism against them in that country.[50] On October 20, 1995, the Peruvian Consulate in La Paz issued them with Peruvian passports while they were in Bolivia.[51]

68. On October 16, 1995. Mr. Pacheco Osco applied to the National Refugee Commission (CONARE) for recognition of refugee status in the State of Bolivia,[52] through the *Centro de Estudios y Servicios Especializados sobre Migraciones Involuntarias* (hereinafter "CESEM") and UNHCR.[53] In application of Supreme Decree No. 19640 of July 4, 1983,[54] CONARE granted refugee status to the members of the Pacheco Tineo family at that time.[55]

69. On March 4, 1998, Rumaldo Pacheco signed a sworn statement "of voluntary repatriation" before CESEM. This document indicated that the repatriation would be executed together with his wife Fredesvinda, and his daughter Juana Guadalupe, and "directly to Peru, without stopovers in another country"; also, underneath his signature there is a handwritten note indicating "because no attention has been provided since January 1998."[56]

70. In its answering brief, the State provided to these proceedings, for the first time, decision No. 156/98 of the SENAMIG Directorate dated March 20, 1998, which indicates the following:[57]

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50 *Cf.* Letter of Rumaldo Pacheco Osco to the IACHR dated January 8, 2007 (evidence file, folios 243).

51 *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 7 and 26).

52 According to Supreme Decree 19639 of July 4, 1983, "Article 1: The National Refugee Commission shall be established, which shall be composed as follows: one delegate of the Ministry of Foreign Affairs and Worship; one delegate of the Ministry of the Interior, Immigration and Justice'; one delegate of the Ministry of Labor and Employment Creation; one delegate of the Church; one delegate of the Permanent Human Rights Assembly; one delegate of the Universidad Mayor de San Andrés, Faculty of Law, and one delegate of UNHCR. This National Commission, which shall be of a transitory nature, shall be responsible for advising both the Ministry of Foreign Affairs and Worship and the Ministry of the Interior, Immigration and Justice, on the determination of refugee status" (evidence file, folios 130 to 162).

53 *Cf.* Certification issued on June 14, 1996, by the UNHCR Office for Southern Latin America (evidence file, folio 115).

54 Supreme Decree 19640 of July 4, 1983: "Article 1. Anyone who, owing to well-founded fears of being persecuted for reasons of race, religion, nationality, membership of a certain social group, or political opinions, is outside their own country and is unable, owing to these fears, or does not wish, to avail themselves of the protection of that country, or who, lacking a nationality and, therefore, finding themselves out of the country where they have had their usual residence previously, is unable or, because of the said fears, does not wish to return to it, shall be considered a refugee under the terms of this Decree. Article 2. All those persons who have been forced to flee from their country owing to internal armed conflicts, violence, foreign occupation or domination, gross human rights violations, or because of events of a political nature that seriously alter public order in the country of origin or provenance, shall also be considered a refugee for humanitarian reasons. […] Article 4. In order to classify an alien as a refugee, application shall be submitted to the Ministry of Foreign Affairs and Worship, and, through the corresponding Directorate, the Ministry shall receive the confidential written statement of the applicant and the evidence that the latter is able to provide, and shall proceed to deal with the applications, after evaluating them, in accordance with the provisions of the relevant international instruments and the recommendations and documents issued by the Office of the United Nations High Commissioner for Refugees. Denials of refugee status shall be communicated to the applicant and to the United Nations High Commissioner for Refugees, and these may be reconsidered within a maximum period of 30 days. Article 5. The declaration of refugee status grants the alien the protection of the State consisting in non-refoulement, whether or not this is the country of origin where his or her right to life or to personal liberty is at risk of violation based on the reasons indicated in articles 1 and 2, owing to the principles established in Article 33 of the 1951 Convention relating to the Status of Refugees and Article 22, paragraph 8, of the American Convention on Human Rights, and pursuant to the provisions of the Constitution of the State, First Title "Fundamental rights and duties of the individual" and Second Title "Guarantees of the individual." Based on this declaration, the refugee will receive: authorization to reside indefinitely or temporarily in Bolivia, a travel and identity document when required, the right to work, and the other attributes and rights that correspond to him or her in accordance with the terms of the said 1951 United Nations Convention."

55 *Cf.* CONARE decision No. 360 of November 22, 1996, signed by the President of CONARE (evidence file, folio 46).

56 *Cf.* Sworn statement on voluntary repatriation signed by Juan Rumaldo Pacheco Osco on March 5, 1998 (evidence file, folio 48).

57 *Cf.* Decision of the Directorate of the National Immigration Service No. 156/1998 of March 20, 1998 (evidence file, folio 987).

> That refugees may return to their countries of origin voluntarily, thereby losing their refugee status, as established in chapter 1, paragraph C(1) of the 1951 United Nations Convention relating to the Status of Refugees) […]
>
> That, pursuant to CESEM note CS/109/98 dated March 20, 1998, which accompanies the "Sworn statement of voluntary repatriation to the Republic of Peru" of Juan Pacheco, with his wife and daughter.
>
> That pursuant to the Sixth Title, Chapter IV "On the Permanence of refugees and those granted asylum" of [Article 41 of] Supreme Decree No. 24423 of November 29, 1996,"[58] […]
>
> THEREFORE:
>
> IT IS DECIDED: To consider concluded the "Temporary courtesy residences" granted on March 10, 1989, by decision No. 142/98 of this National Directorate to Rumaldo Juan Pacheco Osco, […] his wife, Fredesvinda Tineo Godos, […] and his minor daughter Juana Guadalupe Pacheco Tineo […]. Also to his minor daughter Frida Edith Pacheco Tineo […]. Because they are all of Peruvian nationality and owing to CONARE decision No. 360 granted on November 22, 1996, at the express request of the interested person, and owing to his leaving the country of his own free will and without the authorization of the Supreme Government.

71. The Court notes that the State had not provided this decision during the processing of the case before the Commission, and it does not appear in the Merits Report. Furthermore, the supposed issue of this decision is not described in the narration of the events contained in other reports and documents issued by Bolivian authorities in relation to the facts of this case.[59] Consequently, the issue of this decision has not been proved.

72. On March 21, 1998, the Pacheco Tineo family left Bolivian territory to go to the Republic of Chile by Tambo Quemado, in the department of Oruro,[60] on the border with Chile.[61] In their statements, the presumed victims indicated that they never returned to Peru after they left Bolivia, but went directly to Chile. On August 24, 1998, the UNHCR agency in Chile issued certifications indicating that the members of the Pacheco Tineo family at the time had applied to the Government of Chile for refugee status and that they were recognized as such by the UNHCR Regional Office for Southern Latin America.[62] The State of Chile granted them this status on December 29, 1998.[63]

73. On February 3, 2001, Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos left the Republic of Chile by the Chilean border control post on the Chacalluta highway.[64] The Commission indicated in its report that it had no precise information on what happened between

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[58] According to article 41 of Supreme Decree 24423, "aliens to whom the Supreme Government has granted political asylum and those to whom, through the respective national organizations, it has granted refugee status, who must necessarily register on the Aliens Register, shall enjoy a one-year residence permit, renewable for a further year, indefinitely, until the reasons disappear that resulted in the asylum or refuge. […] Those granted political asylum and refugees are obliged to comply with the law, the norms of the Republic, and the directives of the departmental administrations in the area of residence that they may have been assigned or where they establish their domicile, which they are obliged to register. […] The alien who enjoys either refugee status or asylum shall lose this status if he should leave the country of his own free will, without express authorization of the Supreme Government granted through the Subsecretariat of Immigration and without the travel document that he has been granted. He shall also lose it if he returns voluntarily to his country of origin."

[59] Thus, this decision is not mentioned in the reports presented by the former Chief Adviser on Migration to the Director of SENAMIG; in the minutes of the CONARE meeting that rejected the second application for refugee status of the Pacheco Tineo family, in the *habeas corpus* proceeding, or in the SENAMIG deportation decision.

[60] *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 9 and 28).

[61] Both their passports indicate the departure for reasons of "residence concluded," with the dates of March 20 and 28, 1998, although it is not possible to determine whether the stamp was placed by the Bolivian authorities. *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 10 and 29).

[62] *Cf.* Certification issued by the lawyer, Roberto Garretón Merino, Coordinator, UNHCR Chile, on August 24, 1998 (evidence file, folios 119 and 120).

[63] *Cf.* Certification issued by the Social and Pastoral Vicariate, Chilean Implementation Agency for UNHCR, on July 13, 2001 (evidence file, folio 113).

[64] *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 11 and 30).

February 3 and 19, 2001. However, according to the presumed victims, during those days the Pacheco Tineo family entered Peru in order to negotiate their possible return to their country of birth, update their professional documents, check on some investments they had in Peru, and take steps to find employment.[65] In this regard, a document of the presumed victims entitled "events in the life of the Pacheco Tineo family" indicates:

> "2001: Uneventful trip to Lima by land, but with great tension; university procedures to obtain the diploma as a psychologist; contact with the "Santa Rosa" Hospital to request reinstatement in employment; measures taken with the *Azucarera Andahuasi* to opt for employment as son and brother of members, which were favorable for our career path – good relations and contacts with the managers – and, above all, for the interest in our broad curriculum. Contacts with the *Asociación Pro-vivienda "Villa Sur"* of the health sector workers, obtaining acceptance of reinstatement. Contact with lawyer who obtained our release in 1994, who indicated that our legal situation is risky because the arrest warrant issued has not been annulled, and the case has not been archived.[66]

C. Facts that occurred between February 19 and 24, 2001. Second entry of the Pacheco Tineo family into Bolivia. New application for refugee status in Bolivia. Deportation to Peru

- ***February 19, 2001***

C.1 Entry into Bolivia

74. The Pacheco Tineo family entered Bolivia on February 19, 2001, from Peru. The fact that they crossed the border between Peru and Bolivia without passing through immigration control for entry into Bolivia or, at least, that their entry was not officialized by a stamp in their passports, is not in dispute.[67] Although the State of Bolivia alleges that none of the passports had a stamp of departure from or entry into Chile, Peru and Bolivia, the passports of Rumaldo Pacheco and Fredesvinda Tineo contain the departure stamp from Chile dated February 3, 2001, and, as indicated, they entered Peru with their Peruvian identity cards, so that the only stamp that they do not have is that of entry into Bolivia.

75. During the proceedings before the Commission and during the hearing before this Court, the presumed victims stated that the reason for their new entry into Bolivia was to take steps to obtain documents proving their university studies in 1995 and 1998, while they had benefited from refugee status in that country. They added that they had left Peru on realizing that they were still at risk in that country, because, according to information provided by their lawyer in Peru, the decision ordering their detention had not been annulled and the case had not been closed.[68] Fredesvinda Tineo also stated that they entered Bolivia by that border, and did not go directly to Chile, because on leaving Peru they had to hand over their documentation: their

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[65] Statement made by Rumaldo Pacheco before the Inter-American Court at the public hearing held on March 20, 2013

[66] In addition, according to a statement made by Rumaldo Pacheco Osco before the Chilean Consulate in La Paz, when he went there on February 21, 2001: "They were in Chile until February 2, 2001; on February 3 they left Chile with Peruvian passports; he and his family entered Peru via Tacna with their Peruvian identity cards, without any problems on entry; the same day they travelled to Lima and stayed at a hotel for a week; the second day in Lima he consulted the Peruvian human rights agency about his situation and was told that a warrant had been issued for his arrest because he had been a member of subversive groups and was guilty of unlawful association since 1991. […] He had family members [both parents] in Huacho, to the north of Lima; they stayed with his parents for several days […]. They began to take the necessary measures with the university (they are both psychologists) to obtain their diplomas, but this was not possible because they needed to do one more year of courses and present a thesis." Text "Situation of the Peruvian refugee Romualdo Pacheco Osco and family" issued by the Ministry of Foreign Affairs of Chile" (evidence file, folio 1528). See also: Communication No. 116 of CONGECHILE La Paz to DIGENCONSU dated February 21, 2001 (evidence file, folio 1527).

[67] *Cf.* Copy of passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 7 to 16 and 25 to 32).

[68] *Cf.* Letter of Rumaldo Pacheco to the IACHR dated January 9, 2008 (evidence file, no folio number). See also: Statement made by Fredesvinda Tineo before the Inter-American Court at the public hearing held on March 20, 2013.

identity card or passport, and therefore feared that they might be arrested.[69] The presumed victims indicated that they entered Bolivia by the road from Puno to La Paz, "taking advantage of the laxness at the border and the good relations between Peru and Bolivia," because at the border the crossing was "more fluid, for both commerce and tourism," and "it was much easier to be able to cross over illegally," so they decided to cross at that point.[70]

- ***February 20, 2001***

C.2 Visit to the office of the National Immigration Service of Bolivia

76. It is an undisputed fact that, on February 20, 2001, at approximately 10 a.m., Rumaldo Pacheco and Fredesvinda Tineo visited the office of the National Immigration Service (SENAMIG) of Bolivia (hereinafter "SENAMIG") in La Paz. Mr. Pacheco and Mrs. Tineo were attended by Juan Carlos Molina, Head of Immigration and Chief Adviser on Migratory Affairs.

77. The presumed victims indicated that the purpose of this visit was to regularize their documents, to advise that that they intended to cross Bolivian territory to reach Chile, and to ask for support for their journey. Likewise, according to the report of the former Chief Adviser on Migratory Affairs, as well as other documents in the evidence file,[71] the presumed victims had entered Bolivia illegally and the purpose of their visit to this office was "to request that they be allowed to cross Bolivian territory to Chile, or that the Bolivian immigration authorities take them to that country." In his report, the former Chief Adviser also stated the following:

> "It was evident that the whole family had entered Bolivia illegally; that is, evading or circumventing the obligatory immigration control posts of Peru and Bolivia. At no time did they prove that they were refugees. The immigration authorities had information that they had renounced their refugee status and requested voluntary repatriation in March 1998." […] A telephone call was made to that country's Consul. No official response was received regarding whether or not these people could enter Chile. Accordingly, they were treated just like any alien who enters the country illegally. Pacheco left the offices of the

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[69] Statement made by Rumaldo Pacheco before the Inter-American Court at the public hearing held on March 20, 2013

[70] Statement made by Rumaldo Pacheco before the Inter-American Court at the public hearing held on March 20, 2013. According to the statement made by Mr. Pacheco Osco before the Chilean Consul in La Paz on February 21, 2001: "On Sunday, February 18, they flew from Lima to Juliaca (Bolivia) [*sic*] with a stopover in Arequipa, and in microbus to Puno and Copacabana. According to Mr. Pacheco, on Sundays there is no supervision on the border crossing because it is a day of rest. […] On Monday, at around 3 p.m., they filled in forms for entry into Bolivia at the border crossing, but when they handed over their passports to register their entry into the country, the police realized that they did not have the exit stamps from Peru; they returned to Copacabana and they were allowed to be there; then to the Tiquina Straits, stating that they would regularize their situation in La Paz, they arrived there at night and asked UNHCR for assistance. […] They thought that they would not have difficulties to travel because the social assistance unit of UNHCR Chile […] told him that there would be no problems […] The social assistant, Aline Hoger, asked them for more data and information in order to renew their refugee visa, and they therefore decided to travel to Peru." *Cf.* Text "Situation of the Peruvian refugee Romualdo Pacheco Osco and family" issued by the Ministry of Foreign Affairs of Chile (evidence file, folio 1528). See also: Communication No. 116 of CONGECHILE La Paz to DIGENCONSU dated February 21, 2001 (evidence file, folio 1527). In this regard, during the hearing, one of the judges asked witness Molina if the entry system into the country had failed and how they were able to enter without anyone noticing it, and the witness answered: "the peoples of Bolivia and Peru are very interconnected […] in culture, in race, in customs, and in the border villages the border may be a street; it is a space. People in the region live on one side and have relatives on the other side and they are part of the same border community; hence, the passage over the bridges, through the immigration mechanisms, are free, the control is not very strict, as it is in the borders with Chile. […] Thus, anyone can enter or exit freely without passing through border controls; however, the law is, and they know it, that if they want to cross the border to travel to other towns, they must pass through the border control system." *Cf.* Statement made by Juan Carlos Molina before the Inter-American Court on March 20, 2013.

[71] *Cf.* Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1009). See also: Judgment of the Constitutional Court No. 233/01 reviewing the decision ruling that the application for habeas corpus filed on February 21, 2001, was partially admissible (evidence file, folios 72 and 73).

> Immigration Service and did not return. Mrs. Tineo [was] detained by the National Inspectorate and was referred to the Police to be deported from the country the following day."[72]

78. At 4.30 p.m. or 7.59 p.m. the same day, the Consulate General of Chile in La Paz sent "confidential official message" No. 112 to the Chilean Consular Directorate General ("DIGECONSU") advising that Juan Carlos Molina, Adviser to the Director of Immigration, had called the Consulate to advise that Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos had been arrested based on their illegal entry into Bolivia. In this message, the Consulate referred to: "Romualdo [*sic*] Juan Pacheco Osco, RUN Residence in Chile 14,490,765-2, Residence permit expired on January 6, 2001, and his wife, Fredesvinda Tineo Godoy [*sic*], RUN 14691291-5 Residence in Chile expired on January 8, 2001." In the message, he advised that both individuals "had been in Bolivia as refugees and that, on March 23, 1998, they had gone to live in Chile where they obtained residence" and that "according to the Bolivian immigration authorities they had been granted refugee status owing to accusations of terrorism against them in Peru." He also indicated: "Peruvian citizens entered Peru illegally from Chile on February 3, 2001; then entered Bolivia illegally via Copacabana on the Lake Titicaca border; they have told the Bolivian immigration authorities that, if they are deported, they wish to be deported to Chile. Consequently, the [Bolivian] Immigration Service has asked the [Consulate's] opinion and whether it agrees to their deportation to Chile."[73]

79. In these circumstances, the passports of the Pacheco Tineo family were retained in the SENAMIG office. The presumed victims also stated that, on this occasion, they presented all the documents they were carrying,[74] even the one proving their refugee status in Chile,[75] which was denied by witness Molina during the hearing.[76] In this regard, even though, in its answering brief, the State affirmed that "there is no valid proof that the Pacheco Tineo family was stripped of their documentation and other property," the retention of the passports was confirmed by the State itself during the processing of the case before the Commission.[77] Also, according to the report of the former Chief Adviser on Migratory Affairs, "the passports were in the hands of the Immigration Inspectorate and Residence Permit Directorate, because these documents were not in order,"[78] and the Directorate "refused to return them."[79] However, a few days later, the Chilean Consulate itself requested the return of the passports, but did not refer to other

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[72] *Cf.* Report of March 23, 2004, addressed by Juan Carlos Molina, Chief Adviser of SENAMIG to Rodolfo Téllez Flores, Director of Legal Affairs of SENAMIG (evidence file, folios 34, 40 and *ff.*). Report of the Chief Adviser of SENAMIG to the Director of SENAMIG dated February 22, 2001 (evidence file, folio 61), and Report of the Ministry of the Interior of April 9, 2001 (evidence file, folio 85). Also, during the hearing, witness Molina stated: "they never showed, or presented a document, any indication that they had refugee status in Chile. The Chilean Consulate was asked whether these people were refugees in Chile, and the Consulate never sent a letter, a message, anything that could reveal that they were refugees. The UNHCR executing agency in Bolivia was asked whether it had any information that they were refugees in Chile and they never certified this." Statement made by Juan Carlos Molina before the Inter-American Court on March 20, 2013.

[73] *Cf.* Communication No. 112 of CONGECHILE La Paz to DIGECONSU dated February 20, 2001 (evidence file, folio 1511).

[74] The presumed victims stated that they were carrying the following documents: passports, Peruvian identity documents and also Chilean identity document (of the child Juan Ricardo), UNHCR certification, SENAME identity card (Rumaldo), birth certificates, professional diplomas, and documents demonstrating their residence in Chile.

[75] Statement made by Fredesvinda Tineo during the public hearing before the Inter-American Court on March 20, 2013.

[76] Statement made by Juan Carlos Molina during the public hearing before the Inter-American Court on March 20, 2013.

[77] "It should also be mentioned that the petitioners misused the refugee mechanism because they used it as a defense action because their passports had been retained …." 2008 Report of the State of Bolivia to the IACHR, undated, page 6 of the document (evidence file, no folio number).

[78] *Cf.* Report of March 23, 2004, addressed by Juan Carlos Molina, Chief Adviser of SENAMIG, to Rodolfo Téllez Flores, Director of Legal Affairs of SENAMIG (evidence file, folio 36).

[79] *Cf.* Report of the Chief Adviser of SENAMIG to the Director of SENAMIG dated February 22, 2001 (evidence file, folio 32).

documents (*infra* para. 98). Based on the above, it has not been proved that any documents, other than the passports, were retained.

C.3 Arrest of Fredesvinda Tineo. Filing of the application for habeas corpus. New request for refugee status. Communications between Bolivian and Chilean authorities. Participation of the Public Prosecution Service.

80. That same February 20, 2001, Fredesvinda Tineo Godos was arrested. In this regard, the report of the former Chief Adviser on Migratory Affairs reads:

> "Having noted her illegal entry, Mrs. Tineo was made available to the Inspectorate and Residence Permit Directorate of the National Immigration Service. […] Mrs. Tineo had violated the Bolivian (and Peruvian and Chilean) immigration laws; therefore, the National Inspectorate transferred her as a detainee to the offices of the National Police until her deportation from Bolivia the following day. […] The word 'kidnapped' is not appropriate, rather that of arrested or detained." "Pacheco left the offices of the Immigration Service and did not return."[80]

81. The communication of February 20, 2001, addressed by the National Director of the Inspectorate and Residence Permit Directorate of SENAMIG to the Departmental Commander of the Judicial Technical Police (P.T.J.) indicated: "I hereby wish to advise you that I am transferring to your safekeeping FREDESVINDA TINEO GODOS (Peruvian), because we do not have cells in our offices."[81] Mrs. Tineo was taken to the police cells located on Sucre Street,[82] in the afternoon or the evening.[83]

- ***February 21, 2001***

82. On February 21, 2001, an application for *habeas corpus* was filed in the name of Fredesvinda Tineo,[84] against Oswaldo Rea Galloso, Director of the Inspectorate and Residence Permit Directorate of SENAMIG, "and other authorities of the 'P.T.J.', in the person of their director," as follows:

> "On February 20, I arrived through Casani, on the Peru-Bolivia border, illegally, as I am a refugee; once I arrived in this town, I went to the immigration offices in order to regularize my documents, but OSWALDO REA GALLOSO had me detained illegally, and without any charges against me, in addition he lodged me in a cold, dark cell on Sucre Street, without recognizing my constitutional rights and human rights. Therefore, I submit to your consideration this special remedy of *habeas corpus* against that authority and authorities of the PTJ […], hereby requesting my freedom of movement in order to regularize my legal situation and proceed to the Republic of Chile."

83. That same February 21, Mr. Pacheco Osco visited the Episcopal Conference of the *La Paz/Pastoral de Movilidad Humana* (Bolivian Episcopal Conference or "CEB"), at that time in charge of UNHCR Bolivia (CEB-UNHCR project), in order to take the necessary measures for recognition of refugee status on his own behalf and on behalf of his wife Fredesvinda Tineo.[85]

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80 *Cf.* Report of March 23, 2004, addressed by Juan Carlos Molina, Chief Adviser of SENAMIG, to Rodolfo Téllez Flores, Director of Legal Affairs of SENAMIG (evidence file, folio 35-42).

81 Communication of SENAMIG to the National Police dated February 20, 2001 (evidence file, folio 52).

82 *Cf.* Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1011).

83 *Cf.* Report of the Director of SENAMIG to the Office of the Criminal Prosecutors of April 11, 2011 (evidence file, folio 83) stating that "Fredesvinda Tineo was detained on the afternoon of February 20 until 9 a.m. on February 21." See also: Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1011) and Judgment No. 233/01 of the Constitutional Court on the review of the decision ruling that the remedy of *habeas corpus* filed on February 21, 2001, was partially admissible (evidence file, folios 72 and 73).

84 *Cf.* Brief filing the remedy of *habeas corpus* before the acting criminal judge dated February 21, 2001 (evidence file, folio 54).

85 *Cf.* Certification issued by the *Pastoral de Movilidad Humana* (evidence file, folio 111).

In answer to the question posed by one of the judges of the court regarding the meaning and the need for this request, Mrs. Tineo stated that, since she had been detained and since her situation was not being resolved, "I requested asylum, not because I wanted to deny that I had refugee status in Chile, but thinking that when the Bolivian authorities found out that I had refugee status in Chile, they would allow me to leave the country in order to go there."[86]

84. On the same date, the Director of the CEB-UNHCR project, Father Alejandro Ruiz, sent a note to the "Government of Bolivia, CONARE, Ministries of Justice, Human Rights and Immigration," in which he indicated:

> We would like to advise you that Mr. Pacheco OSCO, RUMALDO JUAN, with his wife, FREDESVINDA TINEO GODOS, have just requested asylum in our agency. […] Mr. Pacheco has provided a statement that his wife has been arrested. Accordingly, at the request of the interested parties, we would ask you not to return them to Peru, because they have indicated that they fear they will be persecuted there. Ultimately, if Bolivia is unable to grant them asylum, the interested party has informed our agency that he would prefer to enter Chile where he already has refugee status. […] Based on this information, with the respective decision pending, I would ask you to release his wife, in accordance with the 1951 Convention, until their situation has been decided.[87]

85. The SENAMIG examined this situation, as acknowledged by the Chief Adviser on Migratory Affairs in his report of February 22, 2001, in which he indicated that the fax was received "when the deportation was about to be implemented."[88] In this regard, the State indicated that, on receiving the fax from the CEB-UNHCR, the Inspectorate immediately gave orders to release Mrs. Pacheco.[89]

86. On the afternoon of February 21, during a CONARE meeting (attended only by officials of the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Justice), the matter of the said request for refugee status was discussed, among other matters.[90] The meeting was held without the presence of the Pacheco Tineo family or their representatives, who were not informed of this measure by the authorities, and were not given the opportunity to explain their situation. The State did not contest this. According to the "minutes of the meeting" provided by the State,[91] the request was "denied" as follows:

> "The meeting having been called to order […], the cases of those requesting refugee status were examined, as well as other matters, all of which is described below:
>
> RUMALDO JUAN PACHECHO OSCO
>
> By fax, the CEB-UNHCR Project sent a request for refugee status from the Peruvian citizens, Rumualdo (*sic*) Juan Pacheco Osco and his wife Fredesvinda Tineo Godos.
>
> The information provided revealed that, on March 5, 1998, the said Peruvian citizens made a sworn statement requesting voluntary repatriation to their country and, therefore, tacitly renounced their refugee status, so that

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86 Statement made by Fredesvinda Tineo before the Inter-American Court on March 20, 2013.

87 *Cf.* Note from the Director of the CEB-UNHCR Project to the Bolivian Government dated February 21, 2001 (evidence file, folio 126).

88 *Cf.* Report of March 23, 2004, addressed by Juan Carlos Molina, Chief Adviser of SENAMIG, to Rodolfo Téllez Flores, Director of Legal Affairs of SENAMIG (evidence file, folio 40).

89 This is revealed by the report of March 23, 2004, addressed by Juan Carlos Molina, Chief Adviser of SENAMIG, to Rodolfo Téllez Flores, Director of Legal Affairs of SENAMIG (evidence file, folio 40.) See also: Report of the Director of SENAMIG to the Minister of the Interior of April 9, 2011 (evidence file, folio 85); *Cf.* Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1011).

90 *Cf.* Report of the Director of SENAMIG to the Minister of the Interior of April 9, 2011 (evidence file, folio 85).

91 The "minutes of the meeting" provided by the State indicate that the meeting was attended by the following: the Director General of Bilateral Affairs and President of CONARE, Edgar Pinto Tapia; the head of the General Directorate of Legal Affairs of the Ministry of Foreign Affairs and Worship, Gino Poggí Borda; the Adviser to the National Immigration Directorate, Juan Carlos Molina; the representative of the General Directorate of Human Rights of the Ministry of Justice and Human Rights, Álvaro Guzmán, and the Assistant to the Director General of Bilateral Affairs, Miguel García Salaues. Minutes of the CONARE meeting of February 21, 2001 (evidence file, folios 128 and 129).

> it was decided to deny the request, because the Committee understood that, since the applicants had returned to Peru, the circumstances that gave rise to their seeking asylum in Bolivia had evidently ceased..
>
> The migratory status in the country of the said Peruvian citizens was not considered by CONARE, since this is an exclusive faculty of the National Immigration Directorate and of the Ministry of the Interior."

87. On February 21 also, at 4.45 p.m., Rumaldo Pacheco visited the offices of the Consulate General of Chile in La Paz, where he explained his family's situation.[92] Also, on the same date, the Consulate sent a "regular official message" to the Chilean Ministry of Foreign Affairs regarding the situation of Rumaldo Pacheco, stating that "today, the Immigration Service and UNHCR have informed [the Consulate] that UNHCR has applied to the Bolivian Government for refugee status. The UNCHR letter, which is attached, indicates the desire of the Pacheco family to go to Chile where they already have refugee status." It also indicated that the "Bolivian Immigration Service has informed [the Consulate] that it would not grant refugee status to this family and that they would give them a prudential time to determine their place of residence."[93]

- ***February 22, 2001***

88. At 3 p.m. on February 22, 2001, the hearing was opened on the application for *habeas corpus* filed in favor of Fredesvinda in the Ninth District Criminal Court.[94] During the hearing, the applicant's lawyer mentioned that, even though "immediately after [the application] had been filed, she had been released," Bolivian law "established that the act against her person had already been committed, because this constitutional right had already been violated."[95] He added that the application was not "only for the continued freedom of the person he represented, but also for the termination of the harassment against her."[96]

89. Thus, with Mrs. Tineo Godos having been released, on the same February 22, the Court issued ruling No. 22/2001, declaring admissible the application for *habeas corpus* filed against the Director of the Inspectorate and Residence Permit Directorate of the Immigration Service and the Director of the Judicial Technical Police, considering that they had not complied with the provisions of articles 225 to 228 of the Bolivian Code of Criminal Procedure, and that there had been a violation of articles 9 and 11 of the State's Constitution. In addition, it established a sanction against the said authorities in the sum of 200 Bolivianos each for damages, under the Law of the Constitutional Court.[97] There is no information on whether this element of the ruling was complied with.

90. One month later, on March 23, 2001, the Constitutional Court ruled on a review of the said decision of February 22, partially confirming the admissibility of the remedy based on the lack of competence of the immigration authorities to detain people and, consequently, the violation of article "9-I" of the Bolivian Constitution. However, it declared that the remedy was inadmissible with regard to the Director of the Judicial Technical Police, because it had not been proved that this authority authorized the applicant's entry into the police cells, especially

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92 *Cf.* Text: "Situation of the Peruvian refugee Romualdo Pacheco Osco and family" issued by the Ministry of Foreign Affairs of Chile" (evidence file, folio 1528). See also: Communication No. 116 of CONGECHILE La Paz to DIGENCONSU dated February 21, 2001 (evidence file, folio 1527).

93 *Cf.* Communication No. 115 CONGECHILE to DIGENCONSU dated February 21, 2001 (evidence file, folio 1523).

94 *Cf.* Report of the Director of SENAMIG to the Office of the Criminal Prosecutor of April 11, 2011 (evidence file, folio 83). See also: Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1007).

95 *Cf.* Record of the public hearing on *habeas corpus* issued by the Ninth District Criminal Court on February 22, 2001 (evidence file, folio 1008).

96 *Cf.* Judgment of the Constitutional Court No. 233/01 reviewing the decision that it ruled partially admissible on the application for *habeas corpus* filed on February 21, 2001 (evidence file, folios 72 and 73).

97 *Cf.* Decision of the Ninth District Criminal Court of La Paz of February 22, 2001 (evidence file, folios 58 and 59).

considering that she had been detained in cells of the Police Command, and not of the Judicial Technical Police.[98] The Constitutional Court set out the following grounds, among others:

> That it should be established that aliens must recall that, in Bolivia, extra-territorial rights may only be enjoyed by duly accredit diplomatic and consular officers, and officials of international organizations, who appear as such in the records of the Ministry of Foreign Affairs and Worship of Bolivia, which is not the case of the applicant and, consequently, she is subject to the laws in force in the country.
>
> That the applicant has systematically violated the immigration laws in Bolivia, without respecting the laws of three countries, and has also made a mockery of the norms in force for refugees, repeatedly entering and leaving Bolivia, Peru and Chile, clandestinely, which is not admissible for individuals who say that they have been persecuted for political reasons, particularly as, according to the Sworn Statement on Voluntary Repatriation of March 5, 1998, […] the applicant lost her refugee status in Bolivia as of that date.
>
> That the immigration authorities have the power, among others, to control aliens who are in transit on national territory, and those who enjoy temporary stays or permanent residence, and these authorities have been expressly empowered to deport them in the circumstances described in art. 48 of Supreme Decree No. 24423, with the exception established in paragraph (j) which has been declared unconstitutional by this Court in Constitutional Ruling No. 004/2001 of January 5, 2001; however, they do not have the power to order anyone's detention.
>
> That, in the instant case, the defendant National Director of Inspection and Immigration, by ordering the detention of the applicant in Police cells as a "surety" on February 21 this year at 5 p.m., without having the authority to do so, violated the provisions of article 9-1 of the Constitution, without the fact that he ordered the release of the applicant the following day on becoming aware that the applicant and her family had once again requested refugee status, mitigating the defendant's illegal action.

91. That same February 22, Juan Carlos Molina, then Chief Adviser on Migratory Affairs, presented a report to Oscar Ángel Jordán Bacigalupo, Director of the National Immigration Service, with information on the facts relating to the Pacheco Tineo family. In the document, Mr. Molina mentioned the facts described above, and the following:

> We have certified documents indicating that "arrest warrants have been issued by the Special Correctional Court of Lima for the crime of terrorism" against Mr. Pacheco Tineo and Mrs. Fredesvinda Godos;
>
> They have asked the immigration authorities to let them pass through Bolivia or to take them to Chile, and "for this reason a telephone call was made to the Chilean Consul and Ambassador. No official response was receive indicating that the family could enter Chile [and,] therefore, these persons were treated in the same way as any alien who enters the country illegally"; […]
>
> On Wednesday, 21, when the deportation was about to be implemented, a fax was received indicating that they would once again be requesting refugee status in Bolivia; […] in the afternoon [of February 21,] CONARE met and decided to deny the request";
>
> […] Migration authorities and the PTJ have been sued for undue detention (*habeas corpus*). The Peruvians have come forward to request exiting the country to Chile, but since no decision has been received in this regard from the Chilean authorities and owing to the complaint, the return of their passports was refused. They reacted violently to this, insulting me with words that I cannot include here, and had to be removed from the immigration offices with the aid of members of the National Police.
>
> Based on foregoing, I wish to inform you of the following:
>
> - CONARE certifies that the Pacheco Tineo family; ARE NOT REFUGEES.
> - It includes minors (their children), who have also been travelling illegally through Chilean, Peruvian and now Bolivian territory.
> - At this date and time (5.30 p.m.) no official response has been received from the Chilean authorities.
> - The application of the Peruvian family is irregular, because how can we allow them to exit Bolivia, if they never entered the country?
> - What would be the reaction of the Chilean Immigration authorities when these Peruvian persons "appear" on their border"?

[98] Cf. Judgment of the Constitutional Court No. 233/01 reviewing the decision that it ruled partially admissible the application for *habeas corpus* filed on February 21, 2001 [evidence file, folios 72 and 73].

- What would the Peruvian Government say if it found out that we had regularized the situation of individuals who have left their own country without completing the Immigration formalities, avoiding their migratory control posts?

Owing to all the above, it has been decided that these persons do not enjoy refugee status and, apart from the *habeas corpus* that ruled that the detention had been wrongful, the administrative procedure of deportation can be implemented by the Immigration Legal Affairs Directorate and the Public Prosecution Service, in order to proceed in accordance with the law and the Immigration Regime. [99]

92. Also, on the same February 22, 2001, the Chilean Consulate General in La Paz advised the Consular General Directorate (in Santiago) of the situation of the Pacheco Tineo family at 5 p.m. that day, as follows:

1. We had arranged with Mr. Pacheco that he would come to the Consulate at 9 a.m. today with any documents he could bring regarding himself and his family. He advised that he was unable to come; and he went to the Bolivian Immigration Service. According to information provided by the Immigration Service, he entered into a lengthy verbal argument claiming the return of the five passports. Immigration refused to return them for two reasons:

a) Because their situation in Bolivia was unresolved.

b) Because an application for habeas corpus filed by the Permanent Human Rights Assembly in favor of the release of his wife was pending before the judge.

2. The immigration authorities asked us, in view of the court hearing this afternoon, to indicate that a consultation with Chile about the situation of Mr. Pacheco and his family was pending. I informed them that, based on jurisdictional immunity and the confidentiality with which this type of matter is dealt with, we could not commit to do so.

3. I asked Mr. Pacheco to come to the Consulate. He arrived at 1 p.m. accompanied by his family. I told him that the processing of an application for *habeas corpus* in a public hearing, now that his wife had been released, would attract unnecessary publicity to the processing of his request to reside in Chile and, also, create unnecessary problems for the Bolivian immigration authorities. I told him that I was going to ask for the withdrawal of the complaint against the Bolivian immigration authorities. […]

5. At 5 pm., I received a telephone call from Mr. Molina of the Immigration Service advising that the court hearing had been held and that the complaint had not been withdrawn, and that the judge had fined the Bolivian immigration authorities US$40. He indicated that what had happened was very problematic and difficult to understand, unless it was so seek to manipulate domestic politics in Bolivia or to seek publicity. He indicated that, in the actual circumstances, the Government of Bolivia reserved the right to choose the procedure to follow and that, evidently, what had happened had complicated Mr. Pacheco's situation.

6. I asked Mr. Molina to avoid drastic measures, because we were awaiting a decision of the Chilean Ministry of the Interior, and that they take into consideration that one of the members of the Peruvian family was a Chilean citizen.

7. Sr. Molina told me that he would wait for our response.

8. Apart from the foregoing, Mr. Pacheco requested tickets for travelling to Santiago by air if he was granted authorization to enter Chile. I told him that the Consulate could only help with land transport to Arica – as in the case of any Chilean citizen. UNHCR uses the same criterion; it could only obtain a 20% reduction in the fares if this is approved by the IOM; a matter requiring a long and complex procedure. […][100]

C.4 Deportation of the Pacheco Tineo family from Bolivia to Peru

- ***February 23, 2001***

[99] *Cf.* Report of Juan Carlos Molina, Chief Adviser of SENAMIG to the Director of SENAMIG dated February 22, 2001 (evidence file, folios 61 and 62).

[100] *Cf.* Communication No. 122 CONGECHILE La Paz to DIGECONSU of February 22, 2001 [evidence file, folios 1524 and 1525).

93. On February 23, 2001, the special prosecutor of the La Paz District Prosecutor's Office issued an official request to the Director of SENAMIG on the deportation of the Pacheco Tineo family,[101] as follows:

> […] given that they have not been able to prove their legal entry into the country, the persons who respond to the names RUMALDO JUAN PACHECO OSCO, FREDESVINDA TINEO GODOS, FRIDA EDITH PACHECO TINEO, JUANA GUADALUPE PACHECO PINEDO (*sic*) and JUAN RICARDO PACHECO TINEO, the former Peruvian, and the last one Chilean, all of whom are currently without any type of documentation, and also have lost their refugee status, it is incumbent on your office to order that they be deported from the country pursuant to the country's migratory laws.

94. On the same date, SENAMIG issued Decision No. 136/2001 of February 23, 2001, in which, "pursuant to the official request of the prosecutor and since they are in a situation of illegality, violating the migratory laws in force," and in application of Article 48(b), (c), (g) and (k) of Supreme Decree 24423,[102] it decided "to deport from national territory" all the members of the Pacheco Tineo family "because they had violated the existing immigration laws and regulations." The SENAMIG Inspectorate and Residence Permit Directorate was commissioned to execute this decision, which was signed by the National Director of the Inspectorate and Residence Permit Directorate and by the SENAMIG Adviser on Migration.[103] There is no record that this decision was notified to the members of the Pacheco Tineo family.

95. The Court notes that the State provided a second version of this decision, with the same number and date, with a similar content and wording, but that only orders the deportation of Mr. Pacheco Osco and Mrs. Tineo Godos, without mentioning the children. This second version is signed by the SENAMIG Adviser on Migration and contains another signature above the title "Desaguadero Immigration"; there is an "EXIT" stamp dated February 24, 2001, with the indication "Desaguadero" and another stamp reading "EXPELLED."[104] This will be analyzed below, but it is sufficient to indicate that the Court finds it proved that, despite what is indicated in this second version of the document, the Pacheco Tineo children were also expelled from Bolivia by the SENAMIG decision.

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101 *Cf.* Official request of the La Paz District Prosecutor's Office of February 23, 2001 (evidence file, folio 64).

102 Article 48 of this Decree established that: "Aliens included in the following categories shall be deported from the country and may not enter Bolivian territory in the future: (a) Those who bear or present at any time a forged or falsified passport, identity card, or other document; (b) Those who have entered the country illegally, violating provisions established in this Supreme Decree or who make false statements or present falsified documents or contracts to the immigration or employment authorities; (c) Those who are found remaining in the country, without any justification, after the period authorized in their respective visa or residence permit; (d) Those whose residence or stay in the country has been cancelled or annulled; (e) Those who may be conducting illegal business or have committed acts contrary to public morals or to the health of society, or who are involved in vagrancy; (f) Those who intervene directly or indirectly in activities relating to people-trafficking, drug-trafficking, terrorism, arms-trafficking or possession of firearms, currency counterfeiting, or those who aid and abet or protect those dedicated to the foregoing, even if sentences convicting them have not ordered their deportation; (g) Those who may have defrauded in any way the national Treasury or State institutions; (h) Those who have committed offenses that are punished with more than six months' imprisonment or who have been convicted for fraudulent bankruptcy, even if the respective judgments have not ordered their deportation; (i) Those who intervene in any way in domestic politics or trade union leadership, or incite social, political or labor union unrest by any means; who become members of associations that have direct or indirect political purposes; those who intervene in the organization or leadership of marches, meetings or any type of public demonstrations of a political nature or contrary to the decisions of the Government, or who make statements or publications of this type or that are offensive to national institutions and/or authorities, and those who in any way engage in the incitement of disobedience of the laws of the Republic or of the legally constituted authorities; (j) Those who, in any way, hinder the good international relations of Bolivia, or implement propaganda and agitation activities against the Governments of the countries with which we maintain relations; (k) Those who fail to comply with the residence obligations that may have been imposed on them."

103 *Cf.* SENAMIG Decision No.136/2001 of February 23, 2001 (evidence file, folio 66).

104 Copy of SENAMIG Decision No.136/2001 of February 23, 2001, with some differences in the wording and with the stamp of "Deshuesadero" (evidence file, folio 68). See also: Copy of SENAMIG Decision No.136/2001 of February 23, 2001, with some differences in the wording and with the stamp of "Deshuesadero" (evidence file, folio 1503)

96. It is an undisputed fact that, at approximately 3 p.m. on that February 23, Chilean Consulate officers visited the Bolivian immigration authorities.[105] On the one hand, the petitioners indicate that these Chilean officials reached a verbal agreement with Juan Carlos Molina to allow their departure to Chile,[106] and even that they negotiated bus tickets to travel to the Chilean town of Arica. On the other hand, the State indicates that this agreement did not exist;[107] that SENAMIG did enter into contact with the Chilean Consul;[108] that "Chilean consular officers did visit the offices of the Immigration Service, only to obtain information,"[109] but did not provide any official response as to whether the Pacheco Tineo family could enter that country, or whether they had refugee status in that country.[110]

97. Nevertheless, during the proceedings before the Court, information was provide that confirms a series of communications between Bolivian authorities and officers of the Chilean Consulate concerning the situation of the Pacheco Tineo family prior to their deportation, even that a verbal agreement was reached on their departure to Chile and that the Chilean officials did advise that the members of the Pacheco Tineo family at least had residence in Chile. Indeed, in "ordinary official message" No. 128 dated February 23, 2001, the Chilean Consulate in La Paz advised the Consular General Directorate in Santiago as follows:

> "1. Today, following arduous negotiations with the immigration authorities, we were able to prevent Romualdo (*sic*) Juan Pacheco Osco and family being taken this afternoon to the border at Tambo Quemado.
>
> 2. Mr. Pacheco and family are travelling to La Paz tomorrow in a bus of the El Dorado Company towards Arica. The costs of the bus and accommodation in La Paz tonight, plus expenses for food, have been assumed by this CONGECHILE.
>
> 3. I attach documents that I have given to Mr. Pacheco in order to cross the border and comply with the instructions in your message 066."[111]

98. Also, on February 23, 2001, the Consul General of Chile in La Paz sent letter No. 168/10 to Juan Carlos Molina, Adviser of the Immigration Directorate, informing him that the Ministry of the Interior of Chile had "given its authorization for the entry into Chile of the Pacheco Tineo family," indicating their nationalities. The letter also indicated: "consequently, I would be obliged if you would order the prompt return of the passports of this family" and "there is a possibility that they can travel to Chile, by land, tomorrow, February 24, by the Tambo Quemado-Chungará border."[112] "Ordinary official message" No. 130 of February 26, 2001, addressed by the Consulate to its Consular General Directorate in Santiago indicates that the preceding letter

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[105] *Cf.* Report of Juan Carlos Molina sent to Rodolfo Téllez Flores, Director of Legal Affairs of the National Immigration Service, dated March 23, 2004 (evidence file, folio 36).

[106] *Cf.* Letter of Rumaldo Pacheco Osco to the IACHR dated January 8, 2007 (evidence file, folios 243 and 244).

[107] Report of Juan Carlos Molina sent to Rodolfo Téllez Flores, Director of Legal Affairs of the National Immigration Service, dated March 23, 2004 (evidence file, folio 36) See also: final written arguments of the Plurinational State of Bolivia (merits file, folio 865).

[108] However, the State indicated that it had no written document certifying that, on the day of the facts, a fax was sent to the Chilean Consulate. Final written arguments of the Plurinational State of Bolivia (merits file, folio 865).

[109] *Cf.* Report of the SENAMIG Director to the Minister of the Interior of April 9, 2001 (evidence file, folio 85).

[110] *Cf.* Report of Juan Carlos Molina sent to Rodolfo Téllez Flores, Director of Legal Affairs of the National Immigration Service, dated March 23, 2004 (evidence file, folio 36). Witness Molina, offered by the State, indicated that "the National Immigration Service had informal contact […] [with the Chilean Consulate], which faxed them the documents that they had of these persons and told them that they could come and see them." He also stated that the Chilean consular officers did not say that the members of the family had refugee status in that country and merely requested information from their authorities in Santiago, but never gave either a positive or a negative opinion. *Cf.* Statement made by Juan Carlos Molina before the Inter-American Court on March 20, 2013.

[111] *Cf.* Communication No. 128 of CONGECHILE La Paz to DIGECONSU, dated February 23, 2001 (evidence file, folio 1522). In addition, the evidence shows that the bus tickets had been bought for the family to travel from La Paz to Arica. *Cf.* Bus tickets of the company *Transporte Internacional y Turismo* (evidence file, folio 124).

[112] *Cf.* Letter from the Ambassador/Consul General of Chile to Juan Carlos Molina of February 23, 2001, Letter No. 168/10 (evidence file, folio 1512).

was sent to SENAMIG on that date, by fax, at 11.02 a.m., and then by Messenger at 1 p.m.;[113] and that the original was sent "by hand and was received by the said office, as recorded by the seal stamped on the lower right side," which indicates "Ministry of the Interior, Bolivian National Immigration Service, U.R.D.C. La Paz."

99. Furthermore, on the same date, the Chilean Consulate General in La Paz issued a "document for the International Police and the Chilean *Carabineros* at the Chungará international border post" indicating that "the bearers of this document [citing the members of the Pacheco Tineo family] are authorized to enter Chilean territory," and asking them to "facilitate their entry."[114] The Consul General also informed Rumaldo Pacheco about the entry authorization and he signed the communication and the document for the Police indicating that he had received them.[115]

- ***February 24***

100. Despite the above, the order to deport the Pacheco Tineo family was executed during the morning of February 24.[116]

101. Witness Molina stated that they were deported to Peru because, "according to the norms [in force], persons [whose migratory status was] irregular were returned by the same means, to the same place by which they entered, or otherwise, returned to their country of origin."[117]

102. Regarding the details of the circumstances in which the family was detained and taken to the border with Peru, the undisputed facts are that: (a) the family was going to the La Paz bus station where they were going to get on a bus to Arica, Chile, when they were approached by the Bolivian immigration authorities responsible for detaining and deporting them, accompanied by members of the Bolivian National Police, and (b) the family was taken in two vehicles from La Paz to Desaguadero, and the children were transported in a vehicle separate from at least one of their parents during the trip.[118]

103. Thus, on February 24, 2001, Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos, together with their three children, were deported from Bolivia[119] to Peru by the placed known as Desaguadero.[120] The State indicated that, once in Desaguadero, they had to wait until the corresponding Bolivian and Peruvian immigration offices were open and, while waiting, the family was fed.[121] According to a communication from the Head of Immigration - Desaguadero (on the Bolivian side) to the Head of Immigration of Desaguadero (on the Peruvian side), Mr. Pacheco Osco and Mrs. Tineo Godos were made available to the Peruvian authorities. The

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113 *Cf.* Communication No. 130 CONGECHILE La Paz to DIGECONSU, of February 26, 2001 (evidence file, folio 1513).

114 *Cf.* Document for the International Police and the Chilean *Carabineros* at the Chungará international border post dated February 23, 2001 (evidence file, folio 1520).

115 *Cf.* Communication of the Chilean Consulate General in La Paz to Rumaldo Pacheco dated February 23, 2001 (evidence file, folio 1521).

116 Report of the Director of SENAMIG to the Criminal Prosecutor's Office of April 11, 2011 (evidence file, folio 83).

117 *Cf.* Statement made by Juan Carlos Molina before the Inter-American Court on March 20, 2013.

118 While the Pacheco Tineo couple affirm this, witness Molina stated that Mrs. Tineo was in one vehicle with the children and Mr. Pacheco in the other one. *Cf.* Statement made by Juan Carlos Molina before the Inter-American Court on March 20, 2013.

119 *Cf.* Communication of the Head of Immigration of Desaguadero–Bolivia to the Head of Immigration of Desaguadero–Peru, dated February 24, 2001 (evidence file, folio 70).

120 *Cf.* Copy of the passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 12 and 30).

121 *Cf.* Report of Juan Carlos Molina sent to Rodolfo Téllez Flores, Director of Legal Affairs of the National Immigration Service, dated March 23, 2004 ((evidence file, folio 36).

communication was stamped by the Peruvian General Directorate of Immigration and Naturalization.[122] According to the State, on crossing the border, the Pacheco Tineo family was handed over to the Peruvian immigration authorities and not to the Peruvian police.[123] Nevertheless, the presumed victims allege that, when they reached the border between Bolivia and Peru, they were shut up in a room, their belongings were taken, and they did not receive any food, following which, when crossing the border, they were handed over to the Peruvian police, accused of being terrorists, and it was indicated that subversive materials had been found on them.

104. In this regard, a report on "police record of the citizens Romualdo [*sic*] Juan Pacheco Osco and Fredesvinda Tineo Godos," issued on August 3, 2012, by the Director General of the INTERPOL National Central Office (NCO) of the Bolivian Police, and forwarded by the State with its answering brief, indicates the following:

> [On April 8, 1997,] "message Ref. 824 was received from our counterpart INTERPOL NCO-Lima/Peru, in reply to our message Ref. 481-La Paz dated 03/04/1997 concerning the request for background information for processing the place of residence of the [said] citizens," indicating that an arrest warrant exists for them at the request of the Special Correctional Court of Lima File 296-93 dated 04/12/1996, for the crime of terrorism.
>
> [On March 20, 2001,][124] the following fax was received at […] 7.28 p.m. that information had been received that the couple PACHECO OSCO RUMUALDO JUAN and TINEO GODOS FREDESVINDA, of Peruvian nationality, had been detained bearing false documents, both of whom, in 1966 *[sic]*[125] had been granted political asylum in Bolivia and who subsequently renounced this benefit in order to travel to Chile; it had been planned to deport them to Chile, but learning that the Peruvian citizens were required by the Peruvian Police for the crime of terrorism, the pertinent coordination was carried out with the Police Attaché of the Peruvian Embassy to proceed to hand them over at the Desaguadero border ….
>
> Responding to the note of March 23, 2001, of the INTERPOL NCO with regard to the message sent by its counterpart in Lima Peru, the following information is provided: on February 24, 2001, the Bolivian Immigration Service deported PACHECHO OSCO RUMUALDO JUAN and TINEO GODOS FREDESVINDA, because they had entered the country illegally via Kasani, on the Bolivia-Peru border, bearing passports without the exit stamp from Peru or the entry stamp into Bolivia, and ignoring whether these passports were authentic or false, the Police Attaché of the Peruvian Embassy in Bolivia was informed of the matter."
>
> [In the] Weekly Report of February 19 to March 4, 2001, sent with Note UPACOlvi/Cite No. 0023/2001 dated March 6, 2001, from Lieutenant Osear Muüoz Colodro, Commander of UPACOM, to Osear A. Jordán Bacigalupo, Director of the National Immigration Service, information was provided that on 24/02/2001 at 6.30 a.m., second Sergeants Gualberto Fernández Trujillo and Martin Limachi Kantuta, members of the "UPACOM," together with Oscar Jordán Bacigalupo (National Director of SENAMIG), Juan Carlos Molina (Chief Adviser to SENAMIG) and Lizardo Ortega (Inspector), proceeded to detain two foreign citizens of Peruvian nationality; they detained Rumaldo Pacheco and Fredesvinda Tineo, accompanied by their three underage children on a street of La Paz. They were taken in a vehicle with the license plate 1034-GIL, driven by Félix Ulo. According to the evidence, the purpose of the detention and deportation was "to hand them over to the National Police of Peru (PNP), returning at 1.30 p.m., without any incidents."[126]

105. On February 25, 2001, one day after the deportation of the family, the Chilean Consulate General in La Paz sent a "confidential official message" to its Consular General Directorate in Santiago, with "urgent" priority, in which it advised:

> 1. Regarding the case of the Peruvian refugee Romualdo (*sic*) Pacheco and family, we would like to advise the following:

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122 *Cf.* Communication of the Head of Immigration of Desaguadero–Bolivia to the Head of Immigration of Desaguadero–Peru, stamped February 24, 2001 (evidence file, folio 70)

123 Confirmed by the Report of Juan Carlos Molina sent to Rodolfo Téllez Flores, Director of Legal Affairs of the National Immigration Service, dated March 23, 2004 (evidence file, folio 38).

124 There could be a clerical error in the document, because it could be February 20, although this is unclear.

125 According to the facts, this would be in 1996.

126 *Cf.* Report of second Sergeant Rafael Tarquí Condori, investigator assigned to the case, in answer to Note PROGE-DSPDRLE-DGPDHMA No. 006/2012 (evidence file, folios 1099 to 1101).

- Mr. Pacheco and family should have boarded the bus of the "El Dorado" company yesterday, Saturday, in the direction of Tambo Quemado-Arica and, to this end, this CONGECHILE provided them with tickets with this bus company and accommodation on the Friday night at the Rossel Hotel, located in front of the bus terminal.

- Yesterday, when we contacted the El Dorado bus company, they informed us that citizen Pacheco and his family had been detained on boarding the bus by the local police and immigration authorities.

- During the afternoon we were able to contact the Chief Adviser on Migratory Affairs (in charge of the case), Juan C. Molina, who confirmed the information, indicating that the detention occurred under a deportation order to Peru issued by the prosecutor of the Public Prosecution Service attached to the Intelligence Service, and that Mr. Pacheco and his family had been taken in two vehicles to Desaguadero, on the border with Peru and there they had been handed over to the Peruvian immigration authorities who received them, after preparing the respective record, and delivered to the Peruvian police. I have been told that Pacheco has been charged with terrorism in that country.

  Molina also told us that subversive materials and propaganda had been found in one of Mr. Pacheco's suitcases related to *Sendero Luminoso*, letters addressed to Peruvian refugees who live in Bolivia, and some diskettes, all of which were handed over to the Peruvian police. […]

3. Faced with the unprecedented action of the local Immigration Directorate failing to respect a commitment to allow the departure of Mr. Pacheco and his family to our country, I consider that the Bolivian Government should be informed of this delicate situation. […][127]

106. The foregoing reveals that the Pacheco Tineo family was handed over to immigration and police authorities in Peru.

D. Facts subsequent to the deportation of the Pacheco Tineo family from Bolivia

107. The presumed victims indicated that they were detained in the border town of Puno until March 3, 2011, with their children, and were then separated from them and transferred to Lima, where they remained detained until July 3, 2001.

108. Meanwhile, in Bolivia, on March 5, 2001, the Secretariat for Migrants and Refugees in Bolivia (SEMIRE) filed a complaint before the Bolivian Ombudsman indicating that the Pacheco Tineo family had been arbitrarily detained in Bolivia and subsequently handed over to the Peruvian police authorities, and this was received the following day.[128] In answer to this complaint, on March 19, 2001, the Ombudsman's Office sent a letter indicating that "since the petitioners had obtained refugee status in Chile, their defense counsel should plead the situation of those he represents before the pertinent legal authorities."[129]

109. On March 13, 2001, the Bolivian Ombudsman issued a Detailed Record of Reception and Registration of Complaint certifying that Juan Rumaldo Pacheco Osco and Fredesvinda Tineo, represented by the Secretariat for Migrants and Refugees, had filed a complaint concerning the facts of the detention and handing over to Peru of the members of the Pacheco Tineo family.[130]

110. On March 30, 2001, the Human Rights Committee of the Bolivian Chamber of Representatives requested the Vice Ministry of the Internal Regime and Police of Bolivia to provide a report on these facts, owing to a complaint filed by the Permanent Human Rights

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127 *Cf.* Communication No. 129 CONGECHILE La Paz to DIGECONSU, dated February 25, 2001 (evidence file, folios 1518 and 1519).

128 *Cf.* SEMIRE complaint filed before the Office of the Bolivian Ombudsman on March 5, 2001 (evidence file, folio 102).

129 *Cf.* Response of the Office of the Bolivian Ombudsman dated March 19, 2001 (evidence file, folio 105).

130 *Cf.* Detailed Record of the Ombudsman's Office of March 13, 2001 (evidence file, folios 106 to 109).

Assembly.[131] On the same date, the Head of the Human Rights Unit sent a report to the Vice Minister of Human Rights in which he summarized the facts and indicated:

> "When the Pacheco Tineo family left Bolivian territory [in 1998], they went to the Republic of Chile where they achieved refugee status, under the conditions of the State granting this. […] All this information has been reported to you so that, in the case of the refoulement of the Pacheco Tineo family, you would recommend that this should be to the Republic of Chile, a concern that the National Refugee Commission (CONARE) was informed of at its last meeting."[132]

111. On April 9, 2001, the Director of SENAMIG sent a report to the Ministry of the Interior of Bolivia, recapitulating the facts from the time of the Pacheco Tineo family's visit to the immigration office up until their deportation.[133]

112. The same day, April 9, 2001, the Prosecutor General's Office requested the Director of SENAMIG to provide a report. The request indicated that the Special Operations Division of the Departmental Directorate of the Judicial Technical Police "has been conducting an investigation *ex officio* and at the request of the Human Rights Committee of the Chamber of Representatives with regard to the arbitrary and undue detention of the Pacheco Tineo family, and the fact that they were sent detained to the Peruvian police […]."[134] This request was received by SENAMIG on April 10,[135] and answered by a report the following day.[136] No other results of this investigation were provided.

113. On August 1 and 7, 2001, respectively, Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos entered the Republic of Chile by the immigration control post of the Arturo Merino Benítez airport.[137] Currently, the Pacheco Tineo family live in Chile, with "permanent residence" in this country since May 13, 2002. Rumaldo Pacheco indicated that they have returned to Peru at least once a year and, since then, have not had problems in that country.[138]

VII.
MERITS

114. Based on the alleged violations of the Convention, the Court will now analyze the merits of this case as follows: (1) the rights to judicial guarantees and judicial protection in relation to the right to freedom of movement and residence (right to seek and to be granted asylum and principle of non-refoulement) in cases of deportation of migrants and of applicants for refugee status; (2) the right to personal integrity; (3) the right to special protection of children in relation to the rights to protection of the family, to judicial guarantees and to judicial protection, and (4) the obligation to adopt provisions of domestic law and the principle of legality.

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131 *Cf.* Communication of the Human Rights Committee of the Chamber of Representatives of Bolivia to the Vice Minister of the Interior Regime and Police of Bolivia, of March 30, 2001 (evidence file, folio 75).

132 *Cf.* Report to the Vice Minister of Human Rights of March 30, 2001 (evidence file, folios 78 and 79).

133 *Cf.* Report of the Director of SENAMIG to the Minister of the Interior of April 9, 2001 (evidence file, folios 85 to 87).

134 *Cf.* Request for a report by the Prosecutor General's Office (Office of the Criminal Prosecutor of La Paz) of April 9, 2001 (evidence file, folio 81).

135 *Cf.* Request for a report by the Prosecutor General's Office (Office of the Criminal Prosecutor of La Paz) of April 9, 2001 (evidence file, folio 81).

136 Report of the Director of SENAMIG to the Office of the Criminal Prosecutor of April 11, 2011 (evidence file, folio 83).

137 *Cf.* Copy of passports of Rumaldo Pacheco and Fredesvinda Tineo (evidence file, folios 13 and 30).

138 Statement made by Rumaldo Pacheco before the Inter-American Court at the public hearing held on March 20, 2013.

VII-1.
RIGHT TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION IN RELATION TO FREEDOM OF MOVEMENT AND RESIDENCE IN CASES OF THE DEPORTATION OF MIGRANTS AND REQUESTS FOR REFUGEE STATUS

A. Arguments of the Commission and of the parties

A.1. Arguments of the Commission

115. The Commission observed, with regard to the proceedings relating to the deportation of the Pacheco Tineo family by SENAMIG, that they were not notified of the opening of an administrative proceeding against them; that they were not officially informed of the administrative charges that they were accused of under the Immigration Regime; that they were not given an opportunity to defend themselves and that they were not notified of the decision. It indicated that the decision taken on the admissibility of deportation was summary and made within an unreasonably short period, which prevented meeting the minimum guarantees of due process to which the Pacheco Tineo family had a right, and this prevented them from filing the appropriate administrative and/or judicial remedies. Owing to these facts, the Commission considered that the State was responsible for the violation of the right to be heard with due guarantees, to know the administrative charges against them, to defend themselves, to the possibility of the decision being reviewed, and to judicial protection, established in Articles 8(1), 8(2) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of the Pacheco Tineo family.

116. The Commission also observed that no assessment was made in the deportation decision with regard to the country to which the family should be transferred, even though the child Juan Ricardo Pacheco Tineo was of Chilean nationality and that it had at least been indicated that the other members of the family had been granted refugee status in Chile. The Commission considered that the deportation of a family to its country of origin, in violation of the minimum guarantees of due process and knowing that the said family could have protection as refugees in a third country, was incompatible with the principle of non-refoulement established in Article 22(8) of the American Convention

117. Furthermore, the Commission considered that CONARE had denied the request for asylum in a summary manner, without hearing the applicants, so that the members of the Pacheco Tineo family did not have an opportunity to provide an explanation. In addition, it found that CONARE had not taken into account or assessed the possibility that the circumstances could have changed in February 2001. Under Article 22(7) and 22(8) of the American Convention, a voluntary repatriation in the past should not prevent a person from requesting asylum subsequently, so that the circumstances of potential danger of the applicants should receive a genuine assessment in all cases. In addition, the decision taken by CONARE was not notified, so that their situation could not be reviewed, and this affected their possibility of filing any judicial remedy.

118. The Commission emphasized that the summary action of CONARE rendered the most basic guarantees of due process meaningless. The applicants did not have an opportunity to explain their situation of protection in Chile, and CONARE did not assess that situation. Thus, owing to the actions of CONARE, the State not only acted in violation of the guarantees of due process and the right to seek and to be granted asylum, but failed to comply with the procedural obligations imposed by the principle of non-refoulement, by denying protection – by the consequent deportation – without making a genuine and appropriate assessment of the potential danger that the family faced in its country of origin. The Commission concluded that the State had violated the right to judicial guarantees, to seek and to be granted asylum, the principle of non-refoulement, and the right to judicial protection established in Articles 8(1),

8(2), 22(7), 22(8) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of the Pacheco Tineo family.

A.2 Arguments of the representatives

119. The representatives added that the background information reveals that no explicit administrative decision existed that terminated the refugee status, as required by article 49 of Supreme Decree 24423 of 1996. This necessarily supposed the processing of the petition by the corresponding administrative mechanisms and with the due judicial guarantees.[139] They argued that one of the members of CONARE who participated in the negative decision, was the Immigration Service lawyer who had dealt with the Pacheco Tineo family in SENAMIG and who had mistreated them, taken their personal documents, ordered the illegal detention of Mrs. Tineo, and initiated the procedures for the family's deportation. In other words, this person could not, without infringing the guarantee of impartiality, proceed to take part in, and decide on, a new request for refugee status, because he was manifestly prejudiced against the family. They also indicated that there is no record that important members of CONARE (representatives of UNHCR, the Church, the universities, the Permanent Human Rights Assembly) had been convened, in order to balance the right of the parties involved. In addition, they argued that the State did not take into account that the "voluntary" repatriation that originated the subsequent return of the Pacheco Tineo family to Peru from Bolivian territory was related to the reason why the family abandoned Bolivia in the first place: the violation of their economic, social and cultural rights.[140] In other words, the application on February 21, 2001, was assessed based on a 1998 decision, three years previously, without considering the change in circumstances of the Pacheco Tineo family, whose voluntary repatriation did not prevent them requesting refugee status for a second time.

120. They indicated that, in this case, CONARE eschewed is primary obligation to examine whether or not, with regard to the Pacheco Tineo family, the main requirements for refugee status were met, which, above all and unavoidably, requires hearing the statements of the applicants, and this "gave rise to a manifestly illegal and arbitrary decision in evident violation by the State of Bolivia of Article 22(7) of the American Convention." The State should also have annulled any possible execution of a deportation order that was based on their illegal entry into Bolivian territory. They argued that the deportation to the applicants' country of origin was not admissible also, because the liberty and integrity of the presumed victims was at grave risk. Lastly, if an applicant claims to have been granted refugee status, he has the right to be returned to the State where this refugee status was granted, if its laws allow this, but should never be returned to his country of origin or to any other State where his liberty and integrity would be in danger, as in this case. However, the Pacheco Tineo family was deported immediately, the day after the decision ordering this was issued, in violation of Article 22(7) and 22(8) of the American Convention.

121. They indicated that the domestic laws that were applied recognized the right to file an administrative appeal, but the deportation of the family was carried out less than 48 hours after

[139] They argued that, in the migratory proceeding that culminated with the deportation, the following rights had been violated: (I) the right to a hearing; (II) to be tried by an ordinary, competent, independent and impartial judge or court (which they emphasized, owing to the participation of the Immigration Service lawyer as a member of CONARE); (III) the right to obtain a reasoned decision; (IV) the prior communication, in detail, of the charges against them; (V) adequate time and means for the preparation of their defense; (VI) the right to defend themselves personally or to be assisted by legal counsel of their own choosing and, in this case, to communicate freely and privately with him; (VII) the right to offer evidence for the defense; (VIII) the right to appeal the judgment to a higher court, and (IX) the inalienable right to be assisted by counsel provide by the State.

[140] The representatives indicated, without providing any grounds, the following: "the lack of access to employment, housing, food, education and health was due to the fact that the Bolivian State did not provide them with the necessary documentation to reside in that country with all the rights granted them in the 1951 Convention (Arts. 17 to 23), the American Convention (Arts. 4 and 26), the Protocol of San Salvador (Arts. 1, 2, 3, 6, 9, 10, 12, 13) and the International Covenant on Economic, Social and Cultural Rights (Arts. 2, 6, 11, 12, 13)."

its notification, which is the time frame for appealing; in other words, without the decision ordering the deportation being final. Hence, it can be stated that what took place was a proceeding *in absentia*, expressly and totally incompatible with the Convention. Regarding the right to judicial protection, they added that, even though an administrative appeal was possible, the immigration authorities took away its effectiveness, because not only did they not notify the Pacheco Tineo family of the decisions, but also the deportation decision was executed immediately. Even if not every administrative decision on deportation must be re-examined by the courts, judges must retain a minimum control of the legality and reasonableness of the decisions of the Administration, in order to satisfy the obligation to guarantee the right to a prompt and effective remedy established in Article 25 of the Convention.

A.3 Arguments of the State

122. The State argued that the Pacheco Tineo family had circumvented all the immigration controls of several countries. The State indicated that the presumed victims had not complied with the essential conditions to obtain refugee status. It stressed, in general, that the considerations and grounds set out by the Commission and the representatives "do not explain or justify the voluntary presence of the Pacheco family in Peru," who were freely traveling in Peru, taking steps that a normal person would take who has no fear of being in any danger to his integrity or life, or that of his children. It considered that this is the crucial element that the Court should examine, because, to the contrary, it would be "protecting abuse, fraud, lies, to the benefit of the Pacheco Tineo family, [who] cannot obtain benefits, if they do not respect the noble principles for which refugee status was conceived."

123. The State argued that it had sufficient reason to apply the exclusion clause "1.F.b)" of the 1951 Convention to the members of the Pacheco Tineo family, considering that "Mr. Pacheco and Mrs. Tineo were being prosecuted for terrorism and sought by INTERPOL, at the request of a Peruvian court." It argued that people may request protection as refugees based on credible reasons and not to prevent return to the immigration authorities of the country of origin. Thus, even according to UNHCR directives, it is acceptable for abusive or fraudulent applications to be processed by accelerated proceedings and, in this case, "they were seeking "asylum *à la carte*," in keeping with their interests." It argued that it was only weeks after the facts that "the State became aware" that the petitioners had refugee status in Chile, which prevented them from applying for a new refugee status. According to the international laws on refugees, when a person has to leave the country where he has asylum to return to the country of origin or where his or her life was in danger, this must necessarily be done with a special passport granted by the State or by UNHCR, for a limited time and on justification of the urgency of the trip, requirements with which the Pacheco Tineo family did not comply.

124. Regarding the alleged violation of Article 25(1) of the Convention, the State argued that the laws of Bolivia include guarantees concerning the remedy of *amparo* and *habeas corpus*. It asserted that "Mr. Pacheco and his wife had every right and the necessary time to file these remedies, which, of their own free will, they did not exhaust."

125. In its final written arguments, the State asked the Court to examine "separately, and in keeping with the specific content of each right, the alleged violations of the right to due process of law recognized in Article 8 (if the argument of subsidiarity is not admitted), and the alleged violation of the rights established in Article 22(7) and 22(8) of the American Convention. The State asked the Court, if it did not consider the preceding arguments, to examine carefully whether all the subparagraphs of Article 8(2) of the Convention should really be applicable to requests for refugee status, and whether, at the time of the facts, a requirement of this nature was binding for the State, since there were no binding instruments of international law or rulings of the Court that required this specific conduct by the State.

B. Considerations of the Court

126. The Court notes that, in order to determine whether the State of Bolivia is responsible for the violations of rights recognized in the Convention that have been alleged, the relevant facts of this case occurred between February 19 and 24, 2001, in Bolivia, although other factual events have been the object of litigation. During this lapse, the members of the Pacheco Tineo family, Peruvian (and Chilean in the case of the youngest son), were in Bolivia, both as migrants in an irregular situation, because they had entered the country without passing through the immigration control posts, and as applicants for refugee status. Consequently, during this period, SENAMIG authorities took administrative measures aimed at their deportation, and CONARE decided, in a summary manner and without a hearing, that it would not consider their request for asylum, on the basis that three years previously the family had requested voluntary repatriation to Peru.

127. In order to examine the State's responsibility for the actions taken in both proceedings, the Court will analyze the right to due process and to judicial protection, established in Articles 8 and 25 of the Convention, in relation to: (1) the minimum guarantees of due process in immigration proceedings that may culminate with the expulsion or deportation of an alien; (2) the minimum guarantees of due process concerning requests for recognition of refugee status[141] (right to seek and to be granted asylum and the principle of non-refoulement), and (3) the analysis of the facts of this case under the preceding criteria and norms.

B.1. The minimum guarantees of due process in immigration proceedings that may culminate with the expulsion or deportation of an alien and the principle of non-refoulement

128. Special duties arise from the general obligations to respect and to ensure rights and they can be determined based on the particular needs of protection of the subject of law, owing either to his personal situation or to the specific situation in which he finds himself.[142] In this regard, "migrants who are undocumented or in an irregular situation have been identified as a group in a situation of vulnerability,[143] because they are very exposed to potential or real violations of their rights and, owing to their situation, suffer a significant lack of protection for their rights."[144] Evidently, this condition of vulnerability has "an ideological dimension and occurs in a historical context that is different for each State, and is maintained by situations *de jure* (inequalities between nationals and aliens in the laws) and *de facto* (structural inequalities)."[145]

129. Based on the special needs for protection of migrant persons and groups, this Court interprets and provides content to the rights that the Convention recognizes to them, in keeping with the evolution of the international *corpus juris* applicable to the human rights of migrants.[146]

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[141] The Court clarifies that, technically, "applicant for asylum" is equal in international law to "applicant for recognition of refugee status," so that these expressions are used interchangeably.

[142] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of the Santo Domingo Massacre v. Colombia*, para. 188.

[143] *Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 114.

[144] *Cf. Case of Vélez Loor v. Panama. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2010 Series C No. 218, para. 98, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 152

[145] *Juridical Status and Rights of Undocumented Migrants*, para. 112. *Cf. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 152.

[146] *Cf. Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03, para. 117, citing United Nations, Report of the World Summit for Social Development held in Copenhagen, 6 to 12 March 1995, A/CONF.166/9, of 19 April 1995, Annex II Programme of Action, paras. 63, 77 and 78, available at: http://www.un.org/documents/ga/conf166/aconf166-9.htm; United Nations, Report of the International Conference on

This "does not mean that no action may be filed against migrants who do not comply with the laws of the State, but that, when taking the corresponding measures, States must respect their human rights, in compliance with the obligation to ensure to all persons subject to the State's jurisdiction, the exercise and enjoyment of these rights, without any discrimination based on their regular or irregular status, nationality, race, gender, or any other reason. This is even more relevant if it is borne in mind that, under international law, certain limits have been developed to the application of migratory policies that impose, in proceedings on the expulsion or deportation of aliens, strict observance of the guarantees of due process, judicial protection and respect for human dignity, whatsoever the legal situation or migratory status of the migrant.[147]

130. The Court has indicated that the right to due process, recognized in Article 8 of the American Convention, refers to the series of requirements that must be observed at all procedural stages to ensure that the individual is able to defend his rights adequately in relation to any decision of the State, taken by any public authority, whether administrative, legislative or judicial, that may affect them.[148] In addition, the series of minimum guarantees of due process of law apply to the determination of rights and obligations of a "civil, labor, fiscal, or any other nature."[149] In other words, "any act or omission of the State organs during an administrative, punitive or jurisdictional proceeding, must respect due process of law."[150] Regarding the scope of this rights, the Court has indicated that:

> In order to achieve its objectives, the proceeding must recognize and resolve the factors of real inequality of those who are brought before the courts. This is how the principle of equality before the law and the courts and the related prohibition of discrimination is respected. The presence of conditions of real inequality make it necessary to adopt compensatory measures that help reduce or eliminate the obstacles and deficiencies that prevent or reduce the effective defense of a person's interests.[151]

131. In other cases, the Court has analyzed the compatibility of punitive measures of imprisonment in order to control migratory flows, in particular those of an irregular nature, with the American Convention.[152] However, since both administrative and penal sanctions are an expression of the punitive powers of the State and, on occasions, may be of a similar nature,[153]

Population and Development held in Cairo from 5 to 13 September 1994, A/CONF.171/13, of 18 October 1994, Programme of Action, Chapter X.A. 10.2 to 10.20, available at: http://www.un.org/popin/icpd/conference/offspa/sconf13.html, and United Nations, General Assembly, World Conference on Human Rights held in Vienna, Austria, from 14 to 15 June 1993, A/CONF. 157/23, of 12 July 1993, Declaration and Programme of Action, I.24 and II.33-35, available at: http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.CONF.157.23.En?OpenDocument.

147 *Cf. Case of Vélez Loor v. Panama,* para. 100; *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 154. See also, *Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03, paras. 118 and 119. In this regard, the Court recalls that States are permitted to grant a different treatment to documented migrants in relation to undocumented migrants, or even between migrants and nationals, proved that this treatment is reasonable, objective and proportionate, and does not harm human rights. *Cf. Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03, paras. 119 and 121, and *Case of Vélez Loor v. Panama,* para. 248.

148 *Cf. Case of the Constitutional Court v. Peru*. *Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2011. Series C No. 227, Para. 115 See also: *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, paras. 167 and 168.

149 *Case of the Constitutional Court v. Peru, Merits, reparations and costs,* para. 70, and *Case of Chocrón Chocrón v. Venezuela,* para. 115

150 *Cf. Case of Baena Ricardo et al. v. Panama*. *Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 124, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 157

151 *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 119.

152 *Cf. Case of Vélez Loor v. Panama,* paras. 163 to 172.

153 *Cf. Case of Vélez Loor v. Panama,* para. 172, and *Case of Baena Ricardo et al. v. Panama*. *Merits, reparations and costs*, para. 106.

and given that, in a democratic society, punitive power is only exercised as strictly necessary to protect the fundamental rights from the most serious attacks that harm or endanger them,[154] the detention of an individual for failing to comply with the immigration laws should never be for punitive purposes.[155] Consequently, immigration policies based on the obligatory detention of irregular migrants, without the competent authorities verifying in each specific case, by an individualized evaluation, the possibility of using less restrictive measures that may be effective to achieve these purposes, will be arbitrary.[156]

132. For the above reasons, in certain cases in which the migratory authorities take decisions that affect fundamental rights, such as personal liberty, in proceedings such as those that may result in the expulsion or deportation of aliens, the State cannot decide punitive administrative or judicial decisions without respecting certain minimum guarantees, the content of which is substantially the same as those established in paragraph 2 of Article 8 of the Convention, and so they are applicable as appropriate. The international organs for the protection of human rights are in agreement in this regard.[157]

133. In sum, a proceeding that may lead to the expulsion or deportation of an alien must be of an individual nature, in order to allow the personal circumstances of each person to be assessed, and there must be no discrimination based on nationality, color, race, sex, language, religion, political opinions, social status or other condition, and the following minimum guarantees must be observed:[158]

i) To be informed, expressly and formally, of the charges against him, if applicable, and the reasons for the expulsion or deportation. This notification must include information on his rights, such as:

   a. The possibility of presenting the reasons why he should not be deported and defending himself from any charges against him;

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154 *Cf. Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 76, and *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs.* Judgment of January 27, 2009 Series C No. 193, para. 119."

155 *Cf. Case of Vélez Loor v. Panama*, para. 171. Also, in keeping with the opinion of the Working Group on Arbitrary Detention, the Court established that "criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention." General Assembly of the United Nations, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development," Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53.

156 *Cf. Case of Vélez Loor v. Panama*, para. 171.

157 The International Law Commission (ILC) has stated that an alien subject to expulsion proceedings must enjoy the following procedural rights: (i) minimum detention conditions during the proceedings; (ii) the right to challenge the expulsion decision; (iii) consular assistance; (iv) the right to be represented before the competent authority; (v) the right to have the free assistance of an interpreter, and (vi) the right to receive notice of the expulsion decision and to challenge it. *Cf.* International Law Commission. *Expulsion of aliens*. Texts of draft articles 1-32 provisionally adopted on first reading by the Drafting Committee at the sixty-fourth session of the International Law Commission UN Doc. A/CN.4/L.797, 24 May 2012, Articles 19 and 26. The African Commission on Human and Peoples' Rights has considered that: "[…] it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the Charter [the African Charter on Human and Peoples' Rights] and international law." *Cf.* African Commission on Human and Peoples' Rights, Communication No. 159/96, 22nd ordinary session of 11 November 1997, para. 20. The African Commission has also maintained consistently that the guarantees of due process must be applied in the context of proceedings on the expulsion of migrants and refugees (*Cf., inter alia,* African Commission on Human and Peoples' Rights: Communication 313/05 – *Kenneth Good v. Botswana*, 47th ordinary session, 12 to 26 May 2010, paras. 160-180; and Communications 27/89, 46/91, 49/91, 99/93 - *Organisation Mondiale contre la Torture and Association Internationale des Juristes Democrates), Commission Internationale des Juristes (C.I.J), Union Interafricaine des Droits de l'Homme v. Rwanda*, 20th ordinary session, October 1996, p. 4). See also, Human Rights Committee, General Comment No. 15, The position of aliens under the Covenant (twenty-seventh session, 1986), para. 9.

158 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic*, paras. 161 and 175

b. The possibility of requesting and receiving legal assistance, even by free public services if applicable and, if necessary, translation and interpretation, as well as consular assistance, when required

ii) In the case of an unfavorable decision, he must have the right to submit the case to review before the competent authority, and to appear or to be represented before the competent authorities for this purpose, and

iii) The eventual deportation may only be carried out following a reasoned decision in keeping with the law, which has been duly notified.

134. Regarding the above, Article 22(8) of the American Convention established the prohibition to deport or return an alien to "a country, regardless of whether or not it is his country of origin" (in other words, his country of origin or a third State), in which "his right to life or personal freedom" are "in danger of being violated because of his race, nationality, religion, social status, or political opinions."

135. Hence, if the preceding norms are complemented by the international *corpus juris* applicable to migrants, it may be considered that, under the inter-American system, the right of any alien, and not only refugees or asylees, to non-refoulement is recognized, when his life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country where he is.[159]

136. Consequently, when an alien alleges before a State that he will be in danger if he is returned, the competent authorities of that State must, at the very least, interview that person and make a prior or preliminary assessment, in order to determine whether or not this danger exists if he is deported.[160] This entails respecting the said minimum guarantees, as part of the opportunity to explain the reasons why he should not be expelled and, if this danger is verified, he should not be returned to his country of origin or the one where the danger exists.

B.2. The minimum guarantees of due process in proceedings to determine refugee status and the principle of non-refoulement

137. The right to asylum has been specifically codified by regional treaties, starting with the 1889 *Treaty on International Penal Law,*[161] and up until the adoption of the *Convention on Territorial Asylum* and the *Convention on Diplomatic Asylum*, both in 1954.[162] The adoption of a series of treaties related to territorial and diplomatic asylum and non-extradition on political

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[159] According to expert witness Murillo, even countries such as Mexico, Argentina, Costa Rica and Nicaragua, in order to give a precise normative content to Article 22(8), have adopted domestic laws that recognize complementary protection to aliens who are not refugees, but who also need protection because they cannot be returned to their country of origin or to a third country without this involving a risk to their life or their security based on any of the conditions protected in the American Convention. *Cf.* Expert opinion provided by Juan Carlos Murillo before the Inter-American Court at the public hearing held on June 20, 2012.

[160] The Human Rights Committee has considered that no one can be extradited, deported, expelled or otherwise removed from the territory of a State where there are substantial grounds for believing that there is a real risk of irreparable harm to his or her rights, and without first taking into consideration their allegation on the existing risk. *Cf. Jonny Rubin Byahuranga v. Denmark*, CCPR/C/82/D/1222/2003, United Nations Human Rights Committee, eighty-second session, 18 October to 5 November 2004, para. 11.3; *Jama Warsame v. Canada*, CCPR/C/102/D/1959/2010, United Nations Human Rights Committee, 102nd session, 11 to 29 July 2011, para. 8.3.

[161] Which prohibited extradition based on political offenses and established the right of States to grant asylum on their diplomatic premises abroad. *Cf. Treaty on International Penal Law* signed in Montevideo on January 23, 1889, at the First Congress on International Private Law, article 16.

[162] Up until the *Convention on Territorial Asylum* and the *Convention on Diplomatic Asylum*, both of 1954, the word "asylum" was used exclusively to refer to the specific mechanism of "political" or "diplomatic" asylum (in diplomatic legations abroad), while the expression "refugee status" referred to the protection granted in the territory of the State; this partly explains the dichotomy "asylees-refugees" and its implications for the protection of refugees.

grounds led to what has usually been defined as "the Latin American asylum tradition."[163] In the region, the traditional concept of asylum evolved with the normative development of the inter-American human rights system. Thus, Article XXVII of the 1948 American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration") included the right of asylum,[164] which entails the recognition of an individual right to seek and receive asylum in the Americas. This evolution was followed at the universal level by the adoption, in 1948, of the Universal Declaration of Human Rights in Article 14 of which "the right to seek and to enjoy in other countries asylum" was explicitly recognized. As of that time, asylum began to be codified in human rights instruments and not only in inter-State treaties.

138. The 1951 Convention relating to the Status of Refugees (hereinafter "the 1951 Convention") was subsequently approved to deal with situations involving refugees resulting from the Second World War and, therefore, places great emphasis on the prohibition of refoulement and the right to assimilation.[165] Its 1967 Protocol expanded the applicability of the 1951 Convention by eliminating the geographical and temporal limitations that had restricted its application to those displaced in the said context. Bolivia acceded to these treaties as of February 9, 1982, and, by Law 2071 of April 14, 2000, "approved the said Convention as a law of the Republic."

139. The crucial importance of both treaties stems from the fact that they are the first international instruments that specifically regulate the treatment that should be given to those who are forced to abandon their homes owing to a rupture with their country of origin. Even if the 1951 Convention does not explicitly establish the right to asylum as a right, it is considered to be implicitly incorporated into its text, which mentions the definition of refugee, the protection against the principle of non-refoulement, and a list of rights to which refugees have access. In other words, these treaties establish the basic principles on which the international protection of refugees is based,[166] their legal status, and their rights and duties in the country that grants them asylum, as well as matters relating to the implementation of the respective instruments.[167] With the protection provided by the 1951 Convention and its 1967 Protocol,[168] the institution of asylum assumed a specific form and mechanism at the global level: that of refugee status.[169] Thus, "the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14(1) of the 1948 Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees."[170]

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[163] Written version of the expert opinion of Juan Carlos Murillo presented on March 29, 2013 (evidence file, folio 1376).

[164] "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements."

[165] *Cf.* Convention relating to the Status of Refugees, adopted on July 28, 1951, by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons.

[166] Written version of the expert opinion of Juan Carlos Murillo presented on March 29, 2013 (evidence file, folio 1367).

[167] *Cf.* Office of the UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (reedited, Geneva, 1992).

[168] In the Americas, 28 States are parties to the 1951 Convention and 29 States are parties to its Protocol. All the States of Latin America, except Cuba, are parties.

[169] This is evident from the Preamble to the 1951 Convention, which indicates the importance of international cooperation to ensure the granting of asylum by means of the treaty, and has been reiterated by the UNHCR Executive Committee.

[170] UNHCR Executive Committee. *Conclusions on safeguarding asylum.* 1997 (forth-eighth session of the Executive Committee). No. 82 (XLVIII). The Executive Committee, in its Conclusion No. 5 of 1977 had already appealed to the States parties to the 1951 Convention and the 1967 Protocol to follow liberal practices in granting permanent or at least temporal, asylum to refugees who had come directly to their territory. *Cf.* UNHCR Executive Committee. *Asylum*. 1977 (twenty-eighth session of the Executive Committee) No. 5 (XXVIII).

140. Thereafter, in 1969, the right of everyone to seek and be granted asylum was recognized in Article 22(7) of the American Convention.[171] As indicated, Bolivia has been a party to the American Convention since July 19, 1979.

141. Subsequently, the Cartagena Declaration on Refugees was adopted in a colloquium organized by UNHCR and other institutions held in November 1984 in Cartagena de Indias, Colombia. Among others, it was attended by experts from the six Central American countries (Belize, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and from the member countries of the Contadora Group (Colombia, Mexico, Panama and Venezuela). The Declaration expanded the definition of refugee to include as refugees, in addition to the elements of the 1951 Convention and the 1967 Protocol, persons who have fled their countries because their life, safety or freedom had been threatened by generalized violence, foreign aggression, internal conflicts, mass human rights violations, or other circumstances that may have seriously disturbed public order. The Declaration ratified the "peaceful, apolitical and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee."[172] The expanded definition of refugee contained in this Declaration has been adopted by 14 different national legislatures in Latin America[173] and, in the case of Bolivia, was included in Supreme Decree 19640 of July 4, 1983,[174] which was applied in the events of this case.

142. The said Article 22(7) of the Convention indicates two criteria of an accumulative nature for the existence or exercise of this right: (a) "…in accordance with the legislation of the State …," in other words, of the State in which asylum is requested, and (b) "… in accordance with […] international conventions."[175] This concept, included in the text of Article 22(7) of the Convention, understood in conjunction with the recognition of the right to non-refoulement in Article 22(8), supports the interrelationship between the scope and content of these rights and international refugee law.

143. Under Article 29(b) of the Convention, in order to interpret and apply the provisions of the Convention more specifically to determine the scope of the State's obligations in relation to the facts of this case,[176] the Court takes into account the significant evolution of the principles and regulation of international refugee law, based also on the directives, criteria and other

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[171] Article 22(7) of the American Convention: "Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes."

[172] Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems," held in Cartagena, Colombia, from November 19 to 22, 1984, at http:// ww.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf

[173] This is the case of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

[174] "Article 2: Anyone who has been forced to flee their country owing to internal armed conflicts; foreign aggression, occupation or domination, and massive human rights violations, or owing to events of a political nature that have seriously affected public order in the country of origin or provenance, shall also be considered a refugee for humanitarian reasons."

[175] IACHR. Report No. 51/96. Decision of the Commission as to the merits of Case No. 10,675. *Haitian Interdiction – Haitian Boat People.* United States. March 13, 1997, para. 151. Although the Commission ruled in this case on the scope of the right to seek and to receive asylum in light of the American Declaration, this understanding is applicable to Article 22(7) of the Convention, because the relevant wording is substantially the same. In paragraph 152 of this report, the Commission analyzed the *travaux préparatoires* of this article, indicating that: "the *travaux préparatoires* show that the first draft of the article did not have the phrase 'in accordance with the laws of each country.' That phrase was added during the sixth session of the Sixth Commission of the Inter-American Juridical Committee at the Ninth International Conference of American States in Bogota in 1948, and discussed at the seventh session of the Sixth Commission, to preserve the States sovereignty in matters of asylum."

[176] *Cf., mutatis mutandi*, *Case of the Santo Domingo Massacres v. Colombia*, para. 255, and *mutatis mutandi, Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*, para. 83.

authorized rulings of agencies such as UNHCR.[177] Thus, even though the obligations contained in Articles 1(1) and 2 of the Convention ultimately constitute the grounds for determining the international responsibility of a State for violations of this instrument,[178] the Convention itself makes explicit reference to the norms of international law for its interpretation and application.[179] Thus, when determining the compatibility of the acts and omissions of the State, or of its norms, with the Convention or other treaties over which it has competence, the Court may interpret the obligations and rights contained in them in light of other pertinent treaties and norms. Thus, by using the sources, principles and criteria of international refugee law as a special normative[180] applicable to situations concerning the determination of the refugee status of a person and their corresponding rights in a way that is complementary to the provisions of the Convention, the Court is not assuming a ranking between norms.

B.2.a) Determination of refugee status

144. Under article 1 of the 1951 Convention, modified by the 1967 Protocol, a refugee is a person who:

- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,
- is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;
- or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

145. According to the 1951 Convention, a person is a refugee as soon as he meets the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a

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[177] The States parties to the 1951 Convention and its 1967 Protocol conferred on UNHCR the responsibility for supervising these instruments, included in the Preamble to the Convention (para. 6), in order to promote the main international instruments for the protection of refugees and to supervise their application. *Cf.* Executive Committee of the High Commissioner's Programme, *Note on International Protection*, fifty-first session, 7 July 5 2000, A/AC.96/930, available at: http://www.unhcr.org/3ae68d6c4.html, para. 20. This function coexists with the corresponding obligation of the States to cooperate with the UNHCR in the exercise of this function, according to article 35 of the 1951 Convention, article II of the 1967 Protocol, and paragraph 8 of the Statute of the Office of the UNHCR. Also, in relation to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, expert witness Juan Carlos Murillo stated that "in 1978 when the Handbook was adopted […] this was done because, in 1977, the UNHCR Executive Committee asked the Office to help the States interpret the provisions of the 1951 Convention. As such, it is a non-binding guide to interpretation. However, in the history of the UNHCR, after more than 60 years supervising the application of the Convention and the Protocol relating to the Status of Refugees, many countries, including many of the countries of Latin America, have included a specific reference to the Handbook as a guide to interpretation; in other words, it has sufficient authority to serve as a guide to interpretation for the States. Consequently, even though it is not binding, many countries have incorporated it fully into their domestic laws, whenever they have to determine refugee status." *Cf.* Expert opinion provided by Juan Carlos Murillo before the Inter-American Court at the public hearing held on June 20, 2012.

[178] *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs,* para. 107.

[179] Thus, the preamble to the American Convention makes express reference to the principles reaffirmed and refined in other international instruments, "worldwide as well as regional in scope" (para. 3) and Article 29 makes it obligatory to interpret it in keeping with the American Declaration "and other international acts of the same nature." Other articles refer to obligations imposed by international law in relation to the suspension of guarantees (Article 27), as well as to the "generally recognized principles of international law" in the definition of the exhaustion of domestic remedies (Article 46(1)(a)).

[180] In this regard, *mutatis mutandi*, the words of the *Case of the Mapiripán Massacre v. Colombia* are applicable, that, "when proceeding to determine the international responsibility of the State in this case, the Court cannot ignore the existence of the State's general and special obligations of protection for the civilian population arising from international humanitarian law, in particular Article 3 common to the Geneva Conventions of 12 August 1949, and the provisions of the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II)." Case of the *Mapiripán Massacre v. Colombia,* para. 114.

refugee, but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.[181]

146. Paragraphs D,[182] E[183] and F[184] of this article 1 of the 1951 Convention establish a series of "exclusion clauses" that permit the non-application of the protection of the Convention, even when the person complies with the definition of a refugee.

147. Given the declarative nature of the determination of refugee status, and even the important role granted to the UNHCR in the context of international protection, it is, above all, the States parties to the 1951 Convention, that must recognize this status, based on the respective fair and competent proceedings.[185]

148. Once a person's status as a refugee has been determined, "it is maintained, unless he comes within the terms of one of the cessation clauses."[186] These clauses are contained in paragraphs (1) to (6) of section C of Article 1 of the 1951 Convention.

149. In addition to requiring a rigorous proceeding for their application, "these cessation clauses are negative in character and are exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status."[187]

150. The Court considers that the above provisions and regulations reveal that, once a State has declared refugee status, this protects the person to whom this has been recognized beyond the borders of that State, so that other States that the said person enters must take into account this status when adopting any measure of a migratory character in his regard and, consequently, guarantee a duty of special care in the verification of this status and in the measures that it may adopt.

B.2.b) The principle of non-refoulement of refugees and asylees and applicants for this status

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181 United Nations High Commissioner for Refugees. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (reedited, Geneva, 1992). HCR/1P/4/ENG/REV.3. Available at: http://www.unhcr.org/3d58e13b4.html, para. 28.

182 "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance."

183 "This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."

184 "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

185 Nevertheless, "in some cases, exceptionally, the UNHCR may determine that a person should have refugee status, but this is a practice that has only been used in those countries that have not signed any international refugee instrument, where the national authorities have asked the UNHCR to perform this role. In Latin America, for example, only in the case of Cuba has the UNHCR substituted the State's function in the determination of the refugee status of those who have requested this, because it is the only State in the region that is not a party to the 1951 Convention or its 1967 Protocol." *Cf.* Written version of the expert opinion of Juan Carlos Murillo provided on March 29, 2013 (evidence file, folio 1368 and 1369).

186 United Nations High Commissioner for Refugees. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* para. 112.

187 United Nations High Commissioner for Refugees. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* para. 116.

151. When recalling that, under the inter-American system, the principle of non-refoulement is broader in meaning and scope and, owing to the complementarity that exists in the application of international refugee law and international human rights law, the prohibition of refoulement constitutes the cornerstone of the international protection of refugees or asylees and of those requesting asylum.[188] This principle is also a customary norm of international law,[189] and is enhanced in the inter-American system by the recognition of the right to seek and to receive asylum.

152. In this way, such persons are protected from refoulement as a specific means of asylum under Article 22(8) of the Convention, regardless of their legal status or migratory situation in the State in question and, as an integral component of the international protection of refugees, under the 1951 Convention and its 1967 Protocol, Article 33(1) of which establishes that "no contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[190]

153. This necessarily means that such persons cannot be turned back at the border or expelled without an adequate and individualized analysis of their application.[191] Before returning anyone, States must ensure that the person who requests asylum is able to access appropriate international protection by means of fair and efficient asylum proceedings in the country to which they would be expelling him. States also have the obligation not to return or deport a person who requests asylum where there is a possibility that he may risk persecution, or to a country from which he may be returned to the country where he suffered this risk (the so-called "indirect refoulement").[192]

B.2.c) The minimum guarantees of due process in proceedings to determine refugee status

154. The right to seek and to receive asylum established in Article 22(7) of the American Convention, read in conjunction with Articles 8 and 25 of this instrument, ensures that the person applying for refugee status must be heard by the State to which he applies, with due guarantees and in the corresponding proceeding.

155. Consequently, given the special regulation of the right to seek and to receive asylum, and in relation to the minimum guarantees of due process that must safeguard migratory proceedings (*supra* paras. 132 to 136), in proceedings relating to a request for recognition of refugee status or, if appropriate, in proceedings that may lead to the expulsion or deportation of an applicant for this status or of a refugee, the States' obligations to respect and ensure the rights recognized in Article 22(7) and 22(8) of the American Convention must be analyzed in

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188 *Cf.* Executive Committee of the United Nations High Commissioner for Refugees. *Conclusions on the international protection of refugees approved by the Executive Committee*. 1991 (forty-second session of the Executive Committee) No. 65 (XLII) General conclusions, para. c.

189 *Cf.* Paragraph 4 of the *Declaration of the States parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees* indicates: "Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law."

190 Article 33(2) of the 1951 Convention establishes that this benefit "may not be claimed by a refugee who there are reasonable grounds for regarding as a danger to the security of the country in which his is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

191 *Cf.* IACHR. Report on the situation of the human rights of applicants for asylum under the Canadian system for the determination of refugee status. OEA/Ser.L/V/II.106. Doc. 40. Rev. 1. February 28, 2000, para. 111.

192 *Cf.* United Nations High Commissioner for Refugees, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy,* March 2010, available at: http://www.unhcr.org/refworld/docid/4b97778d2.html, para..4.3.4.

relation to the guarantees established in Articles 8 and 25 of this instrument, as appropriate to the administrative or judicial nature of the relevant proceeding in each case.

156. The 1951 Convention does not refer explicitly to the procedure to be followed to determine refugee status, or the procedural guarantees. The UNHCR Executive Committee has indicated "the importance of establishing and ensuring access consistent with the 1951 Convention and the 1967 Protocol for all asylum-seekers to fair and efficient procedures for the determination of refugee status in order to ensure that refugees and other persons eligible for protection under international or national law are identified and granted protection."[193] The same standard was followed by the States parties to the 1951 Convention in their Declaration of December 2001.[194] In different resolutions, the General Assembly of the United Nations has considered that applicants for asylum have the right to fair proceedings.[195] Meanwhile, the European Court of Human Rights, in the case of *Gebremedhin v. France* defined the right to asylum as a fundamental freedom, the corollary of which is precisely a person's right to request refugee status,[196] which involves the right of applicants to be ensured a proper evaluation by the domestic authorities of their applications, and of the danger they could face in case of return to their country of origin.[197]

157. Hence, owing to the nature of the rights that could be affected by an erroneous determination of the danger or an unfavorable answer, the guarantees of due process are applicable, as appropriate, to this type of proceeding, which is usually of an administrative character. Thus, any proceeding relating to the determination of the refugee status of a person entails an assessment and decision on the possible risk of affecting his most basic rights, such as life, and personal integrity and liberty. In this way, even if States may determine the proceedings and authorities to implement that right, in application of the principles of non-discrimination and due process they must ensure predictable proceedings, as well as coherence and objectivity in decision-making at each stage of the proceedings to avoid arbitrary decisions.

158. Indeed, several Member States of the Organization of American States have incorporated into their domestic law standards on refugees that are recognized in the 1951 Convention and its 1967 Protocol, even based on guidelines established by UNHCR. Thus, the domestic laws of

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193 *Cf.* Executive Committee of the United Nations High Commissioner for Refugees. Conclusions adopted by the Executive Committee for the international protection of refugees. No. 71 (XLIV) (1993), para. i.

194 *Cf. Declaration of the States parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, adopted on 13 December 2001 in Geneva at the Ministerial Meeting of the States parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, operative paragraph 6.

195 *Cf.* United Nations, General Assembly resolution 52/132 Human rights and mass exoduses, 27 February 1998, A/RES/52/132; United Nations, General Assembly resolution 49/169 Office of the United Nations High Commissioner for Refugees, 24 February 1995, A/RES/49/169; United Nations, General Assembly resolution 45/140 Office of the United Nations High Commissioner for Refugees 14 December 1990. The Committee against Torture has indicated the importance of "regulat[ing] procedures for dealing with and deciding on applications for asylum and refugee status, which envisage the opportunity for the applicant to attend a formal hearing and to make such submissions as may be relevant to the right which he invokes, including pertinent evidence, with protection of the characteristics of due process of law." *Concluding observations of the Committee against Torture: Venezuela, 05/05/1999.* A/54/44, (*Concluding Observations*), para. 147.

196 *Cf.* E.C.H.R., *Case of Gebremedhin v. France* (No. 25389/05), Judgment of 26 April 2007. Section II, para. 65.

197 "In the Court's opinion, given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3 [of the European Convention], the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned. *Cf.* E.C.H.R., *Case of Jabari v. Turkey* (No. 40035/98), Judgment of 11 July 2000. Final, 10 November 2000, paras 50. The Commissioner for Human Rights of the European Council has indicated: "States should ensure that all foreign nationals seeking asylum in their countries are in fact able to access asylum procedures and benefit from a thorough, fair, individual examination of their claim." *Position Paper from the Council of Europe Commissioner for Human Rights. Positions on the right to seek and enjoy asylum. Strasbourg, 24 June* 2010. Available at https://wcd.coe.int/ViewDoc.jsp?id=1640757.

Argentina,[198] Belize,[199] Brazil,[200] Bolivia,[201] Chile,[202] Colombia,[203] Costa Rica,[204] Ecuador,[205] El Salvador[206] Guatemala,[207] Mexico,[208] Nicaragua,[209] Panama,[210] Paraguay,[211] Peru,[212] Dominican

[198] Article 1 of the *General Law on Recognition and protection of the refugee* promulgated on November 28, 2006, establishes that: "The protection of refugees shall be governed by the provisions of international human rights law applicable in the Argentine Republic, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as any other international instrument on refugees subsequently ratified, and by the provisions of this law." See also, judgment of the Supreme Court of Justice of Argentina, 2008. XX et al. ref/ extradition. Judgment A. 2112. XLII.

[199] Article 3 of the *Refugees Act*, amended on December 31, 2000, establishes that: "subject to the provisions of this Act, the Convention [relating to the Status of Refugees, 1951], and the Protocol shall have the force of law in Belize."

[200] Article 4 of *Law No. 9,474 of July 22, 1997,* which defines mechanisms for the implementation of the 1951 Convention on Refugees and determines other provisions, establishes that: "The recognition of refugee status, in the terms of the preceding definitions, shall subject the beneficiary to the provisions of this law, without prejudice to the provisions of international instruments to which the Brazilian Government is a party, ratifies or accedes to." In addition, Article 5 establishes that: "The refugee shall enjoy rights and shall be subject to the obligations of the alien in Brazil, to the provisions of this law, to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, and shall be obliged to obey the laws, regulations and provisions designed to maintain public order."

[201] Bolivia has been a party to the 1951 Convention and its 1967 Protocol since February 9, 1982; by Law 2071 of April 14, 2000, it adopted this Convention and its Protocol as a law of the Republic and, article 28 of Law 251 of June 20, 2012, established that the Bolivian authorities, in the proceedings to determine refugee status could consider the recommendations of the UNHCR Handbook on the Procedures and Criteria for Determining Refugee Status and other related guidelines. See also: Supreme Decree No. 1440 of 2012.

[202] Article 10 of *Law No. 20,430* of April 15, 2010, which establishes provisions concerning refugees, establishes that: "The scope and provisions of this law and its regulations shall be interpreted in accordance with international human rights law, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol." Article 11 stipulates that: "Efforts shall be made to grant applicants for refugee status and refugees the most favorable treatment possible and in no case less than the treatment generally granted to aliens in the same circumstances." Meanwhile, Article 12 states that: "No provisions of this law may be interpreted in the sense of impairing any other right, freedom or benefit recognized to refugees." Article 13 establishes that: "Those applying for refugee status and refugees shall enjoy the rights and freedoms recognized to everyone under the Constitution of the Republic, its laws and regulations, as well as in the international instruments on human rights and refugees to which Chile is a party, in particular the rights recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol […]"

[203] The considering paragraphs of *Decree No. 4503* of November 19, 2009, establish that: "Colombia has been a State party to the Convention relating to the Status of Refugees, adopted in Geneva in 1951, and ratified on October 10, 1961, and the Protocol relating to the Status of Refugees, adopted in New York on January 31, 1967, and to which Colombia acceded on March 4, 1980, and is a State signatory of the Cartagena Declaration on Refugees, signed on November 22, 1984; That, pursuant to the provisions of the said Convention and the respective Protocol, States parties must establish mechanisms that allow the application of these instruments to be guaranteed; in particular, as regards the recognition of refugee status; That Colombia, as a member of the international community, must make an effort to keep the peace and prevent the undesired effects of armed conflicts and intolerance in the world, by full legal adaptation of domestic law to the international instruments that regulate the rights and obligations of refugees, establishing basic norms in this regard; That the safeguard and protection of human rights is a duty of the Colombian State incorporated into the Constitution and ratified in international legal instruments that establish international solidarity and reciprocity, as essential elements to guarantee the full exercise of the fundamental rights and freedoms." See also, Constitutional Court of Colombia, Judgment T-704/03 of August 14, 2003, Action for protection against an administrative decision denying refugee status – admissibility, at: http://www.corteconstitucional.gov.co/relatoria/2003/t-704-03.htm.

[204] Article 41 of the *General Law on Immigration and Aliens' Affairs* of September 1, 2009, establishes that: "The regulations on entry, exit and permanence for aliens who request asylum or refugee status shall be governed by the Constitution, the conventions ratified and in force in Costa Rica, and other laws in force." Article 106 establishes that: "Recognition of refugee status shall be subject to the relevant provisions stipulated in the international instruments, approved and ratified by the Government of Costa Rica and in force […]," and Article 110 stipulates that: "The declaration, the rights and the obligations of the asylee and the stateless person shall be government by the provisions of the relevant international conventions, duly ratified by Costa Rica, that are in force." See also, Decree No. 32.195-G of 2004, establishing the procedure to determine refugee status.

[205] *Decree No. 1,182 – Regulations for the application of the right to asylum,* of May 30, 2012, establishes the following in the preamble: "It is decreed: To issue the following regulations for the application in Ecuador of the right to asylum established in article 41 of the Constitution, the provisions of the 1951 United Nations Convention, and the provisions of these regulations. See also, Judgment of the Third Chamber of the Constitutional Court of Ecuador, No. 0236-2005-RA, of May 15, 2006.

[206] The preambular paragraphs of *Decree Law No. 918*, of August 14, 2002, establish: "I. That the Republic of El Salvador has ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the

Republic,[213] Uruguay[214] and Venezuela[215] reflect a growing consensus in the region that the protection of refugees and applicants for this status must be regulated at the domestic level in keeping with the provisions of international refugee law, so that this must be provided by competent and previously established authorities, under specific proceedings that respect guarantees of due process of law.[216]

Status of Refugees, by Legislative Decree No. 167 of February 22, 1983, published in Official Gazette No. 46, Volume 278, of March 7, 1983; (II) That, pursuant to the provisions of art. 12(1) of the said Convention and III of the Protocol, the principles contained in the American Convention on Human Rights and in the Cartagena Declaration on Refugees, it is necessary to establish domestic legislation that guarantees the application of the said international instruments, and (III) That, in order to comply with the international obligations a special law must be enacted that determines the status of refugees."

207 The preambular paragraphs of *Government Decision 383-2001*, of September 14, 2001, establish: "That the Constitution of the Republic recognizes the right to asylum and grants this in accordance with international norms, principles and practices; That Guatemala is a party to the Convention relating to the Status of Refugees adopted in Geneva on July 28, 1951, and the Protocol relating to the Status of Refugees signed in New York on January 31, 1967, to the 1969 American Convention on Human Rights, to the 1989 Convention on the Rights of the Child, to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and to the Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem Do Para). That it is desirable to issue legal provisions that regulate and guarantee the application of the principles and norms contained in these international instruments in order to regulate the criteria and the administrative procedure to determine refugee status on the territory of the State of Guatemala."

208 *Cf. Law on Refugees and Complementary Protection* of January 27, 2011, Articles 25, 59 and 60; See also: *Regulations to the Law on Refugees and Complementary Protection* of February 21, 2012.

209 Article 26 of *Law 130 on the Protection of Refugees,* of June 3, 2008, establishes that: "(A) In order to take decisions, CONAR shall base itself on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Conclusions of the UNHCR Executive Committee, the UNHCR Handbook, and all the international treaties and conventions to which Nicaragua is a State party and that relate to the matter."

210 *Cf. Executive Decree No. 23* of February 10, 1998, expanding Law No. 5 of October 26, 1977, which approved the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, repeals Decree No. 100 of July 6, 1981, and Executive Decision No. 461 of October 9, 1984, and issued new provisions regarding temporary protection for humanitarian reasons (considering paragraphs).

211 *Cf. General Law No. 1938 on Refugees* of June 9, 2002.

212 Article 1 of *Law No. 27,891 – Refugee Law* of December 20, 2002, establishes that: "The purpose of this law is to regulate the entry, recognition and legal relations of the Peruvian State with the refugee, in keeping with the international instruments to which Peru is a party and the relevant domestic laws." Article 2 establishes that: "The State recognizes the rights and obligations inherent in refugee status to those who are granted this status, in accordance with the international instruments that it has ratified, and maintains a humanitarian position towards those who enjoy the protection of the United Nations High Commissioner for Refugees."

213 The preambular paragraphs of *Decree No. 1569* of November 15, 1983, which creates the National Refugee Commission, establish: "That the Dominican Republic is a signatory of the 1951 Convention relating to the Status of Refugees and of the 1967 Protocol relating to the Status of Refugees; That, in order to implement these international agreements, it is necessary to create an institutional mechanism that will allow interested parties to apply for the protection established in them." Article 47 of *Law 285* of August 15, 2004, on Immigration, establishes that: "The entry and permanence of aliens admitted in the category of temporary residents, in the sub-category of political asylees or refugees, shall be regulated by the provisions of the agreements and treaties signed by, and in force in, the Dominican Republic."

214 Article 47 of *Law No. 18,076 – Right to asylum and refugees* of January 5, 2007, establishes that: "Regarding the matter regulated by this law, international law shall be applied directly, especially the international human rights law, international humanitarian law, and international refugee law contained in norms, treaties and conventions ratified by Uruguay (Article 168(20) and Article 85(7) of the Constitution of the Republic), or declarations of international organizations to which the country is a party and to which it has adhered."

215 Article 1 of *Law No. 34* of September 13, 2001 – *Organic Law on Refugees and Asylees,* of October 3, 2001, establishes that: "The purpose of this law is to regulate refugee status and asylum, in keeping with the terms of the Constitution of the Bolivarian Republic of Venezuela and in the international instruments on refugee status, asylum and human rights ratified by the Republic, as well as to determine the procedure to be followed by the organs and officials of the national public powers responsible for complying with them." See also, Decree No. 2,419 of 2003; Regulations to the Organic Law on Refugees and Asylees.

216 *Cf. General Law on Recognition and Protection of the Refugee*, promulgated on November 28, 2006, article 36 (Argentina); *Law No 20,430* of April 15, 2010, establishing provisions for refugees, articles 19, 20, 25 and 30 (Chile); *Law No. 18,076 – Right to asylum and refugees* of January 5, 2007, article 31 (Uruguay); *Supreme Decree No. 1440* of 2012, articles 27, 29, and 32 (Bolivia); *Law No. 9,474,* of July 22, 1997, article 9 (Brazil); *Law 130 on Protection of*

159. The Court considers that, in accordance with the guarantees established in Articles 8, 22(7), 22(8) and 25 of the Convention, and taking into account the UNHCR guidelines and criteria, asylum seeks must have access to proceedings to determine this status that permit a proper examination of their request in keeping with the guarantees contained in the American Convention[217] and in other applicable international instruments, which, in cases such as this one, entail the following obligations for the States:

a) They must guarantee the applicant the necessary facilities,[218] including the services of a competent interpreter,[219] as well as, if appropriate, access to legal assistance and representation,[220] in order to submit their request to the authorities. Thus, the applicant must receive the necessary guidance concerning the procedure to be followed,[221] in words and in a way that he can understand and, if appropriate, he should be given the opportunity to contact a UNHCR representative;[222]

b) The request must be examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority,[223] and requires a personal interview;[224]

Refugees of June 3, 2008, article 24 (Nicaragua); *Executive Decree No. 23* of February 10, 1998, article 31 (Panama); *Decree Law No. 918*, of August 14, 2002, article 15 (El Salvador); *Decree No. 1,182 – Regulations for implementation of the right to asylum* of May 30, 2012, article 36 (Ecuador); *Government Decision 383-2001*, of September 14, 2001, article 28 (Guatemala); *Decree No. 4503* of November 19, 2009, articles 3 and 4 (Colombia); *Law No. 18,076 – Right to asylum and refugees* of January 5, 2007, article 38 (Uruguay); *Regulations to the Law on refugees and complementary protection* of February 21, 2012, article 27 (Mexico); and *Decree No. 2,491 of 2003.* Regulations to the Organic Law on refugees and asylees, article 10. (Venezuela).

[217] *Cf., mutatis mutandi Case of Baena Ricardo et al. v. Panama*. *Merits, reparations and costs,* paras. 126 and 127, and *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 175.

[218] *Cf. mutatis mutandi, Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, Merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, Para. 154; and *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 117. See also: United Nations High Commissioner for Refugees, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards,* 2 September 2005, p. 3.

[219] *Cf., mutatis mutandi, Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215, para. 195. See also: United Nations High Commissioner for Refugees, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards,* 2 September 2005, p. 3.

[220] *Cf., mutatis mutandi, Case of Barreto Leiva v. Venezuela. Merits, reparations and costs. Judgment of November 17, 2009*. Series C No. 206, para. 62, and *Case of Cabrera García and Montiel Flores v. Mexico*, Para. 155. See also: United Nations High Commissioner for Refugees, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, p. 3.

[221] *Cf.* Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status,* No. 8 (XXVIII) (1977), para. e.ii

[222] *Cf.* Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.iv.

[223] *Cf., mutatis mutandi, Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 77, and *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, Para. 130. See also: Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.iii. In this regard, the comment of expert witness Ceriani is relevant that "asylum seekers may be subject simultaneously to proceedings relating to both their application for refugee status and their migratory situation. On numerous occasions, the rights of […] asylum seekers and, consequently, their adequate protection, are determined by immigration procedures and decisions. In addition, the categorization of a person as a migrant, asylum seeker, or refugee, may depend, on the one hand, on the scope and interpretation of the international norms under the laws and practice of each country and, on the other, the circumstances of each case may make the formal distinctions between one or other category both blurred and inadequate. Similarly, in the practice, immigration and asylum procedures may be closely related […], which may lead […] to the increase of the dangers resulting from rejection at the border or a deportation measure. But also because, on many occasions, the denial of a request for asylum is based on an irregular migratory situation, which leads to an immigration proceeding (for residence or, according to the law and practice of each country, for deportation). In any case, the application of the criteria that provides the greatest protection to the

c) The decisions adopted by the competent organs must be duly and expressly founded;[225]

d) In order to protect the rights of applicants who may be in danger, all stages of the asylum procedure must respect the protection of the applicant's personal information and the application, and the principle of confidentiality;[226]

e) If the applicant is denied refugee status, he should be provided with information on how to file an appeal under the prevailing system and granted a reasonable period for this, so that the decision adopted can be formally adopted,[227] and

f) The appeal for review must have suspensive effects and must allow the applicant to remain in the country until the competent authority has adopted the required decision, and even while the decision is being appealed, unless it can be shown that the request is manifestly unfounded.[228]

160. In addition, regardless of a possible review, in the context of the right to judicial protection recognized in Article 25 of the American Convention, and according to regulations included in the laws of each State, certain judicial actions or remedies may exist, for example, *amparo* or *habeas corpus,* that are rapid, adequate and effective to question the possible violation of the rights recognized in Article 22(7) and 22(8) of the Convention, or in the Constitution and laws of each State. Moreover, such remedies may, in certain circumstances, be effective to partially or totally remedy the situation that violates such rights and, perhaps, to allow a reassessment of the administrative procedures, and this will have to be evaluated in each case.

B.3. Legal classification of the facts of this case

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migrant should prevail, in keeping with the *pro persona* principle." Expert opinion provided on March 12, 2013, by Pablo Ceriani (evidence file, folios 1275 and 1276).

224 *Cf.* United Nations High Commissioner for Refugees, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, para. 4, and *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* re-edition, Geneva, December 2011, paras. 196 to 199 and 205.b.i.

225 *Cf., mutatis mutandi*, *Case of Chocrón Chocrón v. Venezuela*, para. 118, and *Case of López Mendoza v. Venezuela*, Para. 141. See also: *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* re-edition, Geneva, December 2011, paras. 29, 203 and 204; United Nations High Commissioner for Refugees, *Improving asylum procedures: Comparative Analysis and Recommendations for Law and Practice – main conclusions and recommendations. A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States*, March 2010, p. 18, para. 30; and United Nations High Commissioner for Refugees, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, paras. 8 and 9

226 *Cf.,* UNHCR. Asylum Processes (Fair and efficient asylum procedures). Global consultations on international protection. EC/GC/01/12. 31 May 2001, para. 50.M. See also, *Guidelines on international protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, para. 5.*

227 *Cf. Case of Vélez Loor v. Panama*, para. 179, and *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 23, 2012 Series C No. 255, para. 98**.** See also: Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.vi: "If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system." Similarly: United Nations High Commissioner for Refugees, *Improving asylum procedures: Comparative Analysis and Recommendations for Law and Practice – main conclusions and recommendations. A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States*, March 2010, p. 89.

228 *Cf.* Executive Committee of the United Nations High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) (1977), para. e.vii.

161. Owing to the different arguments adduced by the State, before beginning its analysis, the Court considers it desirable to clarify that it does not have to determine the formal or material admissibility of the request for asylum presented by the Pacheco Tineo family, which was subject to the jurisdiction of the domestic authorities. The analysis that the organs of the inter-American system must make is to determine whether the actions of the domestic authorities called on to make that analysis or determination were compatible with the American Convention.

B.3.1. Irregular entry and initial actions of the immigration authorities

162. The Court notes that, from the moment the presumed victims presented themselves to SENAMIG, this organ began taking measures to deport them. There is no record that they were granted the possibility of providing a detailed explanation as to why they should not be deported in relation to their migratory situation; whether they were informed of their rights in this regard, or whether they were expressly and formally informed of the charges against them. In other words, the presumed victims were not notified officially of the opening of an administrative proceeding against them, and they were not given official notice of the administrative charges that they were accused of under the Immigration Regime.

B.3.2. Request for asylum and actions of CONARE

163. The Court notes that on February 21, 2001, CONARE made a summary decision that it would not consider the request for refugee status presented by Mr. Pacheco Osco, without interviewing or granting a hearing to the applicants.

164. Regarding this request, in its answering brief, the State acknowledged that, indeed, it had "at least been asserted" before the Bolivian immigration authorities that the members of the family had refugee status in Chile, and that the child Juan Ricardo was a Chilean national, but it argued that, at no time, were documents presented that proved they were refugees and that the administrative proceeding followed was in keeping with the Immigration Regime.

165. However, in its oral arguments, the State indicated that the Pacheco Tineo family had not really applied for refugee status in 2001, nor had the State received any information that could have complemented the supposed request, other than the said statement on repatriation, so that the opening of a formal proceeding to evaluate an eventual request was not admissible. It argued that the supposed request "did not contain basic elements that a request for asylum filed before a State should have according to the UNHCR Handbook."[229] It argued that UNHCR was able to carry out its own procedure to determine refugee status and that, if it had done so, UNHCR could have advised the State of the refugee status of the Pacheco Tineo couple during their time in Bolivia. It argued that, in any case, it had been proved by the statements of the couple before the Court that it was not their intention to request a new asylum in Bolivia, but merely to be taken to Chile, or that they used the presumed request as "a defense mechanism."[230] The State insisted that CONARE had not admitted a request for asylum and that these facts explain the way in which it had proceeded.

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[229] The State argued that, "according to UNHCR, in the case of first requests, the applicant must communicate the pertinent facts of the case. However, in the case of second requests for asylum, in other words, when refugee status has ended, which occurred in this case, UNHCR indicates that in his request 'the applicant will have to explain why he has changed his opinion, and prove that there has been no essential change in the situation that originally led to his becoming a refugee.' In this case, the document that has been considered the request for asylum did not provide information on the pertinent facts of the case, or even prove, in the slightest, that there had been no essential change in the circumstances that had led to the first asylum." In addition, it indicated that the State had not received any further communication from UNHCR to complement its first communication and to request asylum formally, and it had not received any document from the couple's lawyer, or directly from the members of the family that could have complemented the supposed request.

[230] The State also argued that, "as applicants for asylum in several countries, presumably with refugee status in Chile and applicants for a second time for asylum in Bolivia, it can reasonably be inferred that the Pacheco Tineo couple

166. The Court finds that, in addition to being time-barred and contrary to the principle of estoppel, the State's argument is inconsistent with what it affirmed during the processing of the case before the Commission and in its answering brief before the Court: that CONARE received, processed and decided the "asylum request" presented by Mr. Pacheco Osco through CEB-UNHCR. The State itself provided the said "minutes of the meeting" of CONARE as evidence of this,[231] which show that the State had acknowledged that it had received and processed this request in which, incidentally, CEB-UNHCR had noted that they already had refugee status in Chile. In other words, even if it was possible "to infer reasonably" the State's hypothesis that this communication "was a request for asylum before the UNHCR and not really before Bolivia" and that "the State had merely been informed," the fact that is recorded in the minutes is that, "the meeting having been called to order," CONARE "then made an analysis of t*he cases of applicants for asylum* as well as of other issues" and indicated that, "by fax, the CEB-UNHCR project [had] sent *the request for asylum* of the Peruvian citizens Rumualdo Juan Pacheco Osco and his wife Fredesvinda Tineo Godos." When sending a "certified copy" of the minutes as an annex to its answering brief, the State indicated that this "establishes that CONARE discussed other cases and other issues, *in addition to the request for asylum of* Rumaldo Juan Pacheco Osco; in other words, this meeting already had an agenda before the *request for asylum filed* by this family. That is to say, the evidence is clear as regards the fact that CONARE took note of and processed, in a meeting, the communication of CEB-UNHCR as a "request for asylum" without granting a hearing to the members of the Pacheco Tineo family. Furthermore, there is no record that they received due notification of this decision.

167. In addition, contrary to the State's arguments, the said request was not rejected because it failed to comply with certain formal requirements indicated in the UNHCR manual, but because CONARE affirmed that "the circumstances that justified their asylum in Bolivia had ceased," because they had made a statement on voluntary repatriation in March 1998. In the opinion of this organ, this constituted "a tacit renunciation of their refugee status" in Bolivia, and it considered that, "since the applicants had returned to Peru, evidently the circumstances that justified their asylum in Bolivia had ceased." In other words, CONARE was aware of the request, and decided that it would not be "considered."

168. In any case, it is not incumbent on the Court to evaluate whether or not the request for refugee status complied with certain formal requirements, in accordance with national or international normative or procedural standards, because it was the responsibility of the domestic authorities, in this case CONARE, to have made this evaluation at the appropriate time. In addition, even in that hypothesis, when presented with a request for asylum, the authorities had the obligation to provide guidance, and should have indicated the procedure to be followed, based on the specific difficulties or needs of the applicant (*supra* para. 159).

169. The State argued that the presumed victims failed to prove that their life or personal liberty was in danger of being violated, because that same year, 2001, they had returned to Peru of their own free will before entering Bolivia, which revealed their intention of availing themselves of the protection of their country of origin and that this danger did not exist, so that it was not in order to grant them refugee status. The State also argued that there were sufficient reasons to apply exclusion clause "1.F.b)" of the 1951 Convention against Mr. Pacheco and Mrs. Tineo because "they were being prosecuted for terrorism and sought by Interpol."[232]

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were well aware of the national and international norms on the rights and obligations of refugees, so that, if they had wanted to make a formal request for asylum to CONARE, it can be inferred that they would have been capable of doing so adequately and appropriately," especially if they were assisted by UNHCR.

[231] Moreover, with its answering brief, the State sent a "certified copy" of the minutes of the CONARE meeting, with a "true copy of the original filed in the Secretariat's archives," which is more extensive, but identical in content to the document that was provided by the Commission and admitted by this Court (evidence file, folio 1001 and 1002).

[232] The State argued that the Court "should analyze specifically, and give emphasis to the fact that, during the period when these events occurred, acts of terrorism were being carried out in Peru, and it is normal under these

Thus, it argued that the Pacheco Tineo family had abused the mechanism of asylum and argued that, under refugee law, it was permissible to make a summary decision on requests that were manifestly unfounded.

170. It is not for the Court to consider whether the Pacheco Tineo family was, indeed, at risk of the violation of the rights to life and personal liberty in the Peruvian State owing to their race, nationality, religion, social situation or political opinions, in the terms of article 1.A of the 1951 Convention. This assessment corresponded to CONARE and there is no record that this organ made it, or that it provided the grounds for its decision.

171. In any case, it must be recalled that the determination of a person's refugee status by the competent authorities is a two-stage procedure: verification of the facts of the case and application of the definitions of the 1951 Convention and the 1967 Protocol to the proven facts. Once all the accessible probative elements have been obtained and verified, and the entity making the assessment is convinced of the overall credibility of the applicant, the competent authority will take the decision on whether or not to recognize this status to the applicant, which must be duly and explicitly reasoned (*supra* para. 159). Nevertheless, for the purposes of the principle of non refoulement, the evidence of danger that has been gathered should necessarily be taken into account in relation to the migratory decision adopted subsequently concerning the State to which that person should be sent.

172. However, States may establish "accelerated procedures"[233] to decide requests that are "manifestly unfounded and abusive,"[234] regarding which there is no need for international protection. Nevertheless, given the serious consequences for the applicant that an erroneous decision may have, even in such procedures the minimum guarantees of a hearing, and determination of the unfounded or abusive nature of the request by the competent authority, and the possibility of a review of the negative decision should be respected before expulsion.[235] In the instant case, CONARE did not take its decision because the request was "manifestly unfounded," and did not record, as appropriate, the reasons why it had reached its conclusions, so that the State's defense is unsubstantiated, because, when taking its decision, CONARE did not make the above-mentioned determination.

173. Thus, irrespective of whether the request for asylum had been used by the Pacheco Tineo family as "a defense mechanism," or even if the stated objective was to pass through Bolivia to reach Chile without risking an arrest at the border immigration post with this country or that of Peru, the relevant point is that the CONARE authorities did not accord the family the opportunity to state the reasons for their irregular entry into Bolivia; the reasons why they had signed a statement on "voluntary repatriation" in 1998; their reasons for again requesting asylum and, consequently, whether the same reasons existed or new facts that endangered their life or

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circumstances that other countries take precautions; in addition, they are free to take the necessary measure to safeguard the human rights of their people, because the general interest should prevail over the special interest. These actions have been taken into account by the European countries and the United States of America among others" (folio 250).

233 *Cf.* United Nations High Commissioner for Refugees. *Asylum Processes (Fair and efficient asylum procedures*). Global consultations on international protection, 31 May 2001, para. 30.

234 Defined as "those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum" Executive Committee of the United Nations High Commissioner for Refugees, *The problem of manifestly unfounded or abusive applications for refugee status or asylum*, No. 30 (XXXIV) (1983) para. d.

235 According to UNHCR: (a) the applicant should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status; (b) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status, and (c) the possibility of having a negative decision reviewed, even by a more simplified procedure, before rejection at the frontier or forcible removal from the territory. Executive Committee of the United Nations High Commissioner for Refugees, *The problem of manifestly unfounded or abusive applications for refugee status or asylum*, No. 30 (XXXIV) (1983) para. e.

personal liberty in Peru. In other words, CONARE did not consider or assess the possibility that the circumstances might have changed or that supervening facts had occurred in the lapse of three years from the moment of the statement on voluntary repatriation and up until the new request, so that it did not make a serious evaluation of all the circumstances of the applicants at the time of the request and of the potential danger they could face.

174. The relevant point in this case is that CONARE took a summary decision on the request, without hearing the applicants by an interview, hearing or other mechanism, without receiving evidence, without assessing the circumstances of the applicants in February 2001, without granting them the possibility of contesting, if appropriate, the possible arguments against their request, and without providing further grounds or reasoning than assuming a "tacit renunciation" of the refugee status that Bolivia had granted them in 1996. There is also no record that this decision was duly notified to them, which prevented them from knowing its contents and, if appropriate, filing an appeal for reconsideration or any other appropriate judicial remedy to contest the possible violation of due process or the right to seek and to receive asylum or the principle of non refoulement.

175. Regarding the above, the State argued that "the case reflected the cessation of refugee status based on the personal decision of the Pacheco Tineo couple"; that the repatriation was not "induced" and that the decision of CONARE was not a decision on the request for asylum, but merely a "declaration of cessation"; in other words, on a cause of cessation, for having voluntarily decided to return to the country of origin, which, it alleged, was subsequently confirmed by the Constitutional Court.

176. The Court considers that it is not incumbent on it to determine the voluntary nature of the statement on voluntary repatriation or the elements that constitute a so-called "forced repatriation,"[236] or whether this occurred, because it is not determining the State's responsibility based on whether or not it granted certain rights or benefits to the Pacheco Tineo family during this period.

177. In addition, the Court considers that the State's arguments are not pertinent, inasmuch as they are not included in the said minutes of CONARE of February 21, 2001. Moreover, it cannot be affirmed that it can be presumed that this organ took into account other elements when deciding the request for refugee status, as the State suggests,[237] because it only corresponds to the Court to rule on the State's responsibility for the actual acts or omissions of its authorities and agents, based on the evidence provided. In any case in which a State argues the application of individual or collective reasons for cessation, due process of law must be respected. Thus, the foregoing analysis confirms the absence of grounds in the decision of CONARE, which failed to implement an appropriate proceeding that respected the guarantees of

[236] Expert witness Murillo explained that "the concept of forced repatriation in hypothetical cases relates precisely to the fact that, under some circumstances, a refugee may be compelled or may feel obliged to opt for voluntary repatriation to the extent that he is unable to satisfy his basic needs [in the host country]. This means, for example, that even though it is true that voluntary repatriation is an individual right arising from Article 13 of the Universal Declaration of Human Rights, which must not only be voluntary and take place under safe and dignified conditions. If a country cannot offer the necessary conditions for a refugee to satisfy his basic needs, for example, for subsistence, a refugee may feel the need to return to his country of origin. This does not mean that the decision is completely voluntary, but that the circumstances could influence this decision, and this is what legal doctrine calls a forced repatriation." Statement made by expert witness Juan Carlos Murillo before the Inter-American Court during the public hearing held on March 20, 2013.

[237] The State itself accepted that "the international case file does not include other elements reviewed by CONARE on February 21, 2001," so that it cannot be "presume[d] that […] it had additional elements that could have influenced" its decision. Accordingly Court need not evaluate whether the circumstances "had changed substantially" in Peru, because "the President at the time of the persecution against the couple was no longer in power," as the State suggested. Again, CONARE did not refer to these significant elements and, in any case, it was not for the presumed victims to prove "that their circumstances were different from those of thousands of Peruvians who returned once Fujimori's mandate ended."

due process to handle the request for refugee status submitted by members of the Pacheco Tineo family in February 2001.

178. The Court also considers that the State's affirmation that "the administrative decision of CONARE was supported by a ruling of the Constitutional Court, in effect complying with a judicial review" has not been proved. First, the object of the ruling of the Constitutional Court of March 23, 2001, was the review of the decision of a court of February 22, that year, declaring admissible the application for *habeas corpus* filed in favor of Mrs. Tineo Godos. Hence, by partially confirming the admissibility of this remedy, what that Court was deciding was whether the immigration authority had competence to detain people and, consequently, it was not making an assessment of the CONARE decision. Thus, the only reason that the Constitutional Court cited to affirm that the appellant had "systematically violated the immigration norms of Bolivia, without respecting the laws of three countries and [had] made a mockery of the norms in force for refugees," was the sworn statement on voluntary repatriation of March 5, 1998. Furthermore, there is no evidence that Mrs. Godos was heard during the review proceeding by the said Court. Consequently, it cannot be considered that the Constitutional Court endorsed, confirmed or "supported" the CONARE decision, or that the judicial review was aimed at reviewing the appropriate nature of those proceedings.

179. Thus, faced with a new request for asylum, the State had a special obligation of caution, diligence and care in processing this; particularly, if it had information that the applicants had already been granted refugee status or residence in a third State, in this case Chile. In other words, Bolivia should have been a safe State for the presumed victims and, as such, should have made an adequate determination of what was required in this case; particularly because contact was made with the consular authorities of this third State and, owing to their status as refugees or residents of that State, the members of the Pacheco Tineo family could have the right not to be returned to their country of origin. In addition, since children were involved, the best interests of the child should have prevailed when taking decisions that could affect them directly or indirectly (*infra* paras. 220 to 232), especially since one of them was a national of the said third State. However, the applicants were not given the opportunity to explain their situation of protection in Chile to CONARE, which did not assess their situation and decided not to consider the new request in a manner that was both summary and arbitrary in the terms of the minimum guarantees that should have been respected.

180. Consequently, the State violated the guarantees of due process and the right to seek and to receive asylum, in addition to failing to comply with the procedural obligations imposed by the right to non refoulement, by expelling the Pacheco Tineo family from its territory without considering their asylum request in an appropriate manner.

B.3.3. Expulsion of the presumed victims from Bolivia

181. The State argued that it had been unable to discover, within a reasonable time, despite the steps it took, either from the Pacheco Tineo couple, or from the UNHCR, or from the Chilean Consulate, or from the Permanent Human Rights Assembly, that the couple had refugee status in Chile, so that it was unable to proceed, in any circumstance, to return them to the State of Chile, but rather to Peru which was their country of origin and from which they had come.

182. In addition, regarding the documentation relating to the internal and external communications of the Chilean Consulate in La Paz, the State argued that the content of these documents reveals "that the real reason why Chile would have accepted the return of the family to Chile was the nationality of the child, Juan Ricardo Pacheco Tineo, and not owing to the alleged and supposed refugee status of the presumed victims"; that none of the documents forwarded by the State of Chile had established or expressly indicated that the Pacheco Tineo couple had refugee status in Chile and, to the contrary, indicated that their residence permits

had expired on January 6 and 8, 2001; in other words, they were never considered to be refugees in Chile and reference was only made to their status of residents in that country.

183. Based on the above, the Court considers that, regardless of the unfavorable decision on the asylum request in Bolivia, the immigration authority that decided to expel the family and, in the circumstances of this case, also the prosecutor who issued the injunction addressed to the Director of SENAMIG, had the obligation to provide a reasoned decision on the admissibility of the cause for expulsion, and on the country to which the family should be transferred, in keeping with the special characteristics of the case.

184. In this regard, in addition to the fact that, in its answering brief, the State acknowledged that, in fact, the immigration authorities "had, at the very least, been informed" that they were refugees in Chile, it has been proved that the Government of Bolivia, as well as CONARE and the Ministry of Justice, Human Rights and Immigration, received the CEB-UNHCR communication advising that Mr. Pacheco and Mrs. Tineo were requesting refugee status, asking that they should not be returned to Peru owing to fear of persecution, and indicating their preference to go to Chile, where they had refugee status. In addition, the numerous measures taken by the Chilean Consulate in La Paz to try and ensure the transfer of the Pacheco Tineo family to Chile, including, on February 23, 2001, informing SENAMIG that the family's entry into that country had been authorized and that the family had been provided with financial assistance for their transfer (payment of hotel and bus tickets). In other words, it is evident that the presumed victims were authorized to enter Chile, and that its Consulate had taken steps and incurred expenses to this end. This reveals that the State of Bolivia had numerous opportunities to confirm directly with official consular sources of this third State and from other sources, whether members of the Pacheco Tineo family had refugee status in Chile. In any case, the Consulate advised the Chief Adviser on Migratory Affairs that they had residence in Chile. Hence, as revealed by the documents issued by the Chilean Consulate, the Bolivian immigration authorities could have transferred the family to Chile and not to Peru, which had been agreed or, at least, considered by the said authorities, without it being relevant whether or not these Bolivian authorities were legally authorized to this end.[238]

185. Despite the foregoing, on February 23, 2001, SENAMIG decided to expel the members of the family from Bolivian territory, but failed to provide them with notification of this decision. The expulsion took place the following day, by detention, forced transfer, and the handing over of the Pacheco Tineo family on the border with the State of Peru to the immigration authorities and police of that country, specifically in the place known as El Desaguadero.

186. Also, on February 20, 2001, the Chief Adviser on Migratory Affairs had expressed the intention of expelling them from Bolivia and on the following day, February 21 – the same day as the CONARE decision – the Director of Immigration Services had advised the Chilean Consul 'that this family would not be granted asylum and that it would be given a prudential period to determine its place of residence." After the application for *habeas corpus* had been declared admissible, the Chief Adviser on Migratory Affairs expressed his discontent in this regard to the Chilean Consul, and advised him that the Government "would determine the procedure to follow and that what had occurred complicate[d] Mr. Pacheco's situation (*supra* para. 92). The Chilean Consul then asked him to avoid taking drastic measures and, the following day, informed his Ministry of Foreign Affairs that, "following arduous negotiations with the Immigration Services," it had been possible to prevent the deportation of the family that day and a verbal agreement

[238] The State indicated, as regards the Immigration Directorate not respecting commitments to allow the departure of Mr. Pacheco and his family to Chile, that the 1963 Vienna Convention and the legal doctrine of international public law expressly establish that the only authorities who can make international commitments are the Ambassadors Plenipotentiaries and not officials of the former SENAMIG, who depended in hierarchy on the Ministry of the Interior. The Court considers this determination irrelevant, because even considered in these terms, the only point it would prove is that the immigration authorities had exceeded their legal competence, which in this case is irrelevant for the purposes of international law.

had been reached for their transfer to Chile. Indeed, the Chilean Consul advised SENAMIG at around midday on February 23 that the family had been authorized to enter Chile; in other words, the same day on which the injunction was issued and also deportation decision 136/2001.

187. It has been proved that the decision on the admissibility of the expulsion under article 48 of the Immigration Regime was taken in a summary manner, without granting a hearing to the presumed victims, and it was carried out within an unreasonably short period of time. No assessment was made regarding the country to which they should be transferred and the potential danger they might face in their country of origin, Peru, which is more serious, because the Bolivian immigration authorities were aware that the child Juan Ricardo Pacheco Tineo was a Chilean national, and that it had, at least, been indicated that the other members of the Pacheco Tineo family had been granted refugee status by Chile or were residents of that country. Following the issue of Decision 136/2001, this was notified to the presumed victims, so that they would be informed of the grounds for their expulsion and, if appropriate, could file the applicable administrative and/or judicial remedies. Although this decision was subsequent to the decision by CONARE, it was issued, as was the injunction, only two days after that decision and merely reproduced the same reasons: that the members of the Pacheco family had entered the country illegally; that they had lost their refugee status, and that they had violated the existing immigration provisions contained in article 48 of Supreme Decree 24423.

188. Furthermore, although it may be true that an arrest warrant is not, *per se*, a reason to grant refugee status, the Court notes that the existence of an arrest warrant is a reason, in case of taking action, to respect the official deportation or extradition procedures established in domestic law and the relevant international treaties. In this case, the Pacheco Tineo family was handed over to Peruvian immigration and police authorities, as recorded in a report of the Director General of INTERPOL of Bolivia provided by the State with its answering brief, and as indicated by the Chief Adviser on Migratory Affairs to the Chilean Consul on the day following the expulsion (*supra* para. 105). In other words, the State of Bolivia did not only expel them owing to their irregular migratory situation, but also due to the existence of an international arrest warrant, without this reason being noted as grounds for the expulsion decision of the prosecutor or of SENAMIG.

189. Consequently, in the terms in which it was decided and carried out, the deportation to the country of origin of the members of the Pacheco Tineo family was incompatible with the right to seek and to receive asylum, and with the principle of non-refoulement, recognized in Article 22(7) and 22(8) of the American Convention, as well as with the right to be heard with due guarantees in an administrative proceeding that could culminate in their expulsion, in the terms of Article 8 of the American Convention.

B.3.4. Alleged effectiveness of other judicial remedies

190. In its final arguments, the State indicated that two available, adequate and effective remedies existed that the presumed victims could have used to overcome any eventual violation of due process according to the Convention. First, the remedy of *amparo* that, according to the case law of the Constitutional Court could have served to protect, promptly and within a reasonable time, acts such as the absence of a remedy of appeal or, in general, the acts by the public administration, failure to notify, right of defense and due process of law.[239] Second, the remedy of *habeas corpus* which, in Bolivia, protects not only the freedom of the individual, but also due process, even in the event of presumed illegal proceedings and persecution. The State referred to judgments handed down by the Constitutional Court in other cases and on dates

[239] It also argued that, at the time of the facts, Bolivian law established the possibility of filing a preventive measure to suspend any act of the Administration that could violate rights, which could have been used to suspend any decision on a supposed request for asylum or the expulsion procedure.

close to those on which the facts occurred in order to substantiate this. It argued that these remedies are in keeping with the standards of reasonable time established in Article 25 of the Convention; that the respective decisions are executable immediately, and that they could have been used by the presumed victims, who were assisted by a lawyer who had already filed an application for *habeas corpus* to obtain the release of Mrs. Tineo, without there being any explanation why they were unable to exhaust these remedies. Consequently, the State argued that it had respected the judicial protection recognized in Article 25 of the Convention and, therefore, the Court should not rule on an eventual violation of due process, based on the principle of subsidiarity.

191. Before examining the appropriateness and effectiveness of a domestic administrative or judicial remedy in relation to an alleged violation of a right, it is necessary to observe whether the remedy existed and whether it was really possible to exercise it in the context of the situation of the country, the facts of the case, or the specific situation of the presumed victims.

192. The Court notes that, as is clear from its arguments, the State proposed an abstract analysis of the effectiveness of the said remedies, citing case law of the Bolivian Constitutional Court, to argue that, at the time of the events, those remedies would have been appropriate and effective to have halted the expulsion of the Pacheco Tineo family or to have questioned violations of due process in the denial of their request for refugee status, and even to eventually request damages. However, in this case the presumed victims did not have the least possibility of knowing the decisions that had been taken in relation to their request and their migratory status, because it has been proved that they were expelled from Bolivia on the morning following the issue of the expulsion decision, which had been issued in an excessively short period; had not been notified to them, and was executed immediately. This situation made any domestic remedy that existed in Bolivia nugatory and impracticable to have provided protection or remedied the decisions taken against them. Consequently, it is not incumbent on the Court to examine *in abstracto* the appropriateness and effectiveness of these remedies to rectify the violations of the rights analyzed above.

193. Furthermore, it is irrelevant to analyze whether, under domestic law, administrative remedies of reconsideration or appeal[240] could have been filed, or whether those remedies could be used, because the fact is that there had been a verbal agreement between the Bolivian and Chilean authorities to make the transfer to Chile, as well as measures taken by the latter to that end, which made it reasonably improbable or unforeseeable that, at the same time, a deportation decision would be issued against them or that this could be executed so rapidly.

194. Thus, even if, hypothetically, these remedies could have been appropriate, effective and adequate to this end, the fact is that, in the practice, their existence was illusory and the right of the members of the Pacheco Tineo family to use them was nugatory to contest both their expulsion and the denial of their request for asylum. The failure to notify them was, in itself, a violation of Article 8 of the Convention, because it placed the presumed victims in a situation of uncertainty concerning their legal situation and made the exercise of the right to appeal the decisions impracticable.[241] In other words, the presumed victims did not have the real possibility of filing any remedy while on Bolivian territory.

195. Given this situation, it was not possible for the members of the family to use these remedies; in other words, they could not be required to do so. Consequently, the Court

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[240] At the domestic level, the possibility of reconsideration was established in Supreme Decree 19640, within the 30 days following the denial of refugee status and its notification to the parties and to UNHCR; as well as in article 26(h) of Supreme Decree 24423, which established the possibility of appealing against an expulsion within 48 hours. *Cf.* Supreme Decree 24423 establishing the Immigration Regime, of November 29, 1996.

[241] *Cf. Case of Vélez Loor v. Panama*, para. 180. See also, *mutatis mutandi, Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 25, 2005. Series C No. 137, para. 155

considers that the events of this case occurred in a situation of factual impediment to ensure the presumed victims real access to the right to appeal, in violation of the right to judicial protection, recognized in Article 25 of the Convention, so that it is not pertinent to analyze the scope of the remedies mentioned by the State.

B.4. Time-barred allegation of violation of Article 22(9) of the Convention

196. Lastly, on this point it is pertinent to note that, in their final oral and written arguments, the representatives alleged that the State had violated Article 22(9) of the Convention by having expelled the Pacheco Tineo family "en masse." Since this allegation was not made opportunely – in other words, in their motions and arguments brief – in order to allow the other party and the Court to make an adequate assessment,[242] and since there is no supervening fact that supports it, the Court finds it unnecessary to analyze this allegation of the representatives.

B.5. Conclusion

197. The Court reiterates that the right to seek and to be granted asylum established in Article 22(7) of the American Convention does not ensure that refugee status must be granted to the applicant, but does mean that his application must be processed with the due guarantees.

198. In this case, in relation to the denial of the asylum request, the State violated the rights to judicial guarantees, to seek and to be granted asylum, the principle of non-refoulement, and the right to judicial protection, recognized in Articles 8, 22(7), 22(8) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, Frida Edith, Juana Guadalupe and Juan Ricardo, all three with the surnames Pacheco Tineo.

199. In addition, in this case, the deportation of the members of the family to their country of origin in violation of the minimum guarantees of due process, and in the knowledge that they were able to have protection as refugees in a third country, is incompatible with the right to seek and to be granted asylum and with the principle of non-refoulement, recognized in Article 22(7) and 22(8) of the American Convention. Furthermore, the State is responsible for the violation of the right to be heard with due guarantees in an administrative proceeding that culminated with the family's expulsion, as well as the right to judicial protection, pursuant to Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, Frida Edith, Juana Guadalupe and Juan Ricardo, all three with the surnames Pacheco Tineo.

VII-2.
RIGHT TO PERSONAL INTEGRITY
(ARTICLE 5 OF THE AMERICAN CONVENTION)

A. Arguments of the Commission and of the parties

200. The Commission indicated that it did not have sufficient information to conclude that the State had violated the right to physical integrity of the members of the Pacheco Tineo family during their transfer from La Paz to the border at El Desaguadero on February 24, 2001. Nevertheless, it considered that the members of the Pacheco Tineo family had been expelled in

[242] The logical and adequate functioning of the inter-American human rights system means that, as a "system," the parties must present their positions and information on the facts coherently and in accordance with the principles of good faith and legal certainty, in order to allow the other parties and the inter-American organs to make an adequate analysis of the case. Thus, once a contentious case has been submitted to the Court by the Commission, the legal claims of the parties and their positions with regard to the facts must be provided on the first opportunity they have of exercising their right of defense. *Cf.*, *mutatis mutandi*, *Case of the Santo Domingo Massacre v. Colombia*, paras. 144, 146 and 148.

a situation of complete uncertainty with regard to the result of their second request for recognition of refugee status and with regard to the possibility of filing an appeal, so that it is reasonable to infer that they suffered "anxiety and fear" concerning the deprivation of liberty that would await them in their country of origin and the consequent separation from their children. Similarly, given the same circumstances and the very young age of their children, the latter suffered "fear and lack of protection" during the transfer and the expulsion. It considered that the State was responsible for the violation of Article 5(1) of the Convention.

201. The representatives considered that the members of the Pacheco Tineo family had been victims of mental, moral and physical abuse in violation of Article 5(1) and 5(2) of the Convention. According to the representatives, these violations occurred on two occasions: on February 20, 2001, in the offices of the Immigration Service in La Paz when Juan Carlos Molina, then Chief Adviser on Migratory Affairs, verbally insulted Romualdo Juan Pacheco Osco and Fredesvinda Tineo Godos, took all the family's documents, ordered the doors to his office to be closed, and ordered the detention of Fredesvinda Tineo Godos. The second occasion was on February 24, 2001, at 6.30 a.m., when the Pacheco family was intercepted and detained by a group of six individuals in civilian clothing, two armed police agents, and Mr. Molina, who was inebriated. Following the family's detention, according to the representatives, Romualdo Juan Pacheco Osco and Fredesvinda Tineo Godos had "guns pointed at them, and were insulted, humiliated, handcuffed behind their back, and had their heads covered with their coats," in front of their minor children, from whom they were separated, and all of them were forced to get into two vehicles. During the transfer, the State agents answered the constant requests for an explanation by the presumed victims with "insults, slaps, and death threats, pointing their guns at them"; the presumed victims were in the vehicle for more than two hours without knowing in which direction they were being taken, without being able to raise their head, and handcuffed with their arms twisted, which caused pain and bruising. Moreover, they alleged that, when they reached their destination, they were shut up in a room, their belongings were removed, and then they were taken to the border with only a few cases out of all the luggage they originally had,[243] and handed over to the Peruvian authorities. Lastly, the representatives argued that the State did not comply with its obligations under Article 5 because it failed to investigate the alleged cruel, inhuman and degrading treatment to which the members of the Pacheco Tineo family were subjected, after this treatment had been denounced before the Commission.

202. For its part, the State argued that the Commission had established explicitly that no specific evidence had been provided for the supposed events of February 20 and February 24. It also argued that the representatives had provided no evidence to prove that the presumed victims were abused between February 20 and 24, 2001, and that their belongings were removed by State officials. Regarding the incidents that presumably occurred on February 20, the State affirmed that the Pacheco family could have filed a complaint before the Bolivian agents of justice, and regarding the incidents that occurred on February 24, the Pacheco Tineo family could have complained to the Peruvian authorities. Consequently, they cannot request the Court to convict the State of these incidents, without any supporting evidence. In addition, the State indicated, based on the principle of subsidiarity, that it is the presumed victims of human rights violations who must exhaust the domestic remedies, and cannot complain that the State did not open an investigation *ex officio*.

B. Considerations of the Court

203. The Court notes that, at all times, the National Immigration Service considered the presumed victims to be illegal immigrants who were in a "completely irregular" situation, and that they were not refugees, even though the said authorities had several ways and

[243] The representatives indicated that "on both occasions, the documents of the Pacheco Tineo family were taken; these included their thesis files, references and back-up copies, certificates and original diplomas […], together with the refugee certification provided by UNHCR, apart from electronic equipment and their personal objects, even money.

opportunities of confirming that they had this status in Chile. On this basis, the immigration authorities retained the documents of the Pacheco Tineo family on February 20, 2001, and arrested Mrs. Tineo Godos, who was taken to police cells to be expelled. As a result of this, Mr. Pacheco Osco took steps to obtain his wife's release and presented a new request for refugee status in Bolivia. Then, on February 24, 2001, they were expelled from Bolivia by the immigration and police authorities. The representatives argue that the two incidents resulted in the violation of the right physical integrity of the presumed victims. The State argued that neither incident fell within the factual framework.

204. Regarding the first incident alleged by the representatives, relating to the "supposed mental, moral and physical violence of which they had been victims" on February 20, 2001, in the office of the then Chief Adviser on Migratory Affairs, the Court notes that this situation was connected, according to the representatives, to the fact that, on that day, the presumed victims had visited the SENAMIG offices, where they were attended by the said official. Notwithstanding whether that fact is in keeping with the purpose of this case, and even if it is, the Court finds that there is insufficient evidence to establish that Mr. Pacheco Osco and Mrs. Tineo Godos really were insulted or treated abusively in any way in the office of Juan Carlos Molina in SENAMIG.

205. Similarly, with regard to the events relating to the way in which the presumed victims were transported to Peru, as regards the supposed "mental, moral and physical violence inflicted by Bolivian State agents of which they had supposedly been victims" on February 24, 2001, the Court notes that, regardless of whether this fact is in keeping with the purpose of this case, or even it is was, and whether the presumed victims declared that they had suffered these actions inflicted by State agents, the Court does not have sufficient evidence to differ from the Commission's conclusion in its Merits Report.[244]

206. In the instant case, it has not been proved that members of the Pacheco Tineo family were subjected to cruel, inhuman or degrading treatment or acts on February 20, 2001, or when they were detained and transported to the border between Bolivia and Peru on February 24 that year. However, in the circumstances in which they had not been provided with the support they sought from the Bolivian authorities, it is logical that the retention of their documentation, as well as the illegal and arbitrary detention of Mrs. Tineo Godos, gave rise to feelings of anxiety, frustration and anguish among the members of the family, in particular for Mr. Pacheco Osco, who were in a situation of extreme uncertainty and concern about what might happen to them. In addition, as established in the previous chapter, the presumed victims did not receive any information from the authorities regarding their proceeding, so that they had to suffer all the violations of due process of law in relation to the expulsion proceeding opened against them and the denial of their asylum request.

207. Furthermore, with the full knowledge of the Bolivian immigration authorities, the Chilean Government had authorized the entry of the Pacheco Tineo family into Chile and had provided them with logistic assistance to ensure their transport to that country, which would have taken place on the morning of February 24, 2001. Despite this, as has been established, that same morning an expulsion decision was executed against them, which had been issued the previous day and had not been notified to them, which rendered illusory any possibility of appealing against this decision. The family was detained unexpectedly and taken to Peru, where its members were handed over to that country's immigration and police authorities. In other words,

[244] In the Merits Report, the Commission concluded that "insufficient information has been provided to allow [it] to make factual decisions on the circumstances of how, where and when the transfer of the Pacheco Tineo family was carried out in order to expel them. No official document exists recording the details of the procedure for the transport and expulsion of the family. Furthermore, the petitioners did not provide any complementary documentation to substantiate the alleged ill-treatment, such as the filing of a complaint. In these circumstances, the Commission considers that it does not have sufficient information to conclude that the State violated the right to physical integrity of the members of the Pacheco Tineo family during their transfer from La Paz to the border at El Desaguadero on February 24, 2001."

they were expelled in a situation of complete uncertainty about the result of their new request for asylum, without the possibility of filing any judicial remedy in that regard, and having lost the opportunity to return to Chile. In addition, Mr. Pacheco Osco and Mrs. Tineo Godos were afraid of the potential consequences that their handing over to the Peruvian authorities would have for them and their children who, for their part, have testified on the effects that the events had on them.[245] Consequently, the Court considers that the anguish, fear and lack of protection caused by the facts described above constituted a violation of the mental and moral integrity of the members of the Pacheco Tineo family.

208. Based on the above, the Court declares that the State is responsible for the violation of the right to mental and moral integrity recognized in Article 5(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, the girls Frida Edith and Juana Guadalupe, and the boy Juan Ricardo, the last three with the surnames Pacheco Tineo. However, the Court considers that the State is not responsible for the alleged violation of Article 5(2) of the Convention.

VII-3.
THE SPECIAL OBLIGATION OF PROTECTION FOR CHILDREN IN RELATION TO THE RIGHTS TO THE PROTECTION OF THE FAMILY, TO JUDICIAL GUARANTEES, AND TO JUDICIAL PROTECTION

A. Arguments of the Commission and of the parties

209. The Commission indicated that the special situation of Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo, who were young children at the time of the events, was not considered in the context of the decisions in the proceedings on expulsion and the request for refugee status. Thus, the actions of SENAMIG and CONARE constituted non-compliance with the special obligation of protection in favor of the three children under Article 19 of the American Convention.

210. In addition, the Commission considered that, based on the analysis made on the right to mental and moral integrity of the whole family, it was not necessary to rule separately on the possible violation of the right recognized in Article 17 of the American Convention.

211. The representatives argued that the State had violated the rights recognized in Articles 8(1), 8(2), 25, 5(1) and 17(1) of the Convention, in relation to Articles 19, 1(1) and 2 of this instrument, to the detriment of the children, Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo. They emphasized that the children and their best interests were never taken into consideration in the proceedings held by the Bolivian authorities. Thus, they recalled that, although they were very young, the children were never heard during the proceeding on recognition of refugee status, nor were their parents, who as legal representatives of the children, could have described their situation and needs. Consequently, they considered that the guarantees of due process had been violated, because the children's requests were not weighed individually, which would have allowed the "best interests of the child" to be taken into account as a basis for the decision.[246]

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[245] Frida Edith Pacheco testified that the expulsion had personal, family, social and financial consequences, among which the most important were mental and physical problems, financial hardships, destruction of family ties, and restriction of social ties (evidence file, folios 1215 and 1216). Similarly, Juana Guadalupe Pacheco testified that she had suffered psychological effects and the relationship with her parents was affected following their detention in Peru (evidence file, folio 1227). Lastly, although to a far lesser extent, Juan Ricardo Pacheco testified that he suffered the psychological effects of the facts for years (Evidence file, folio 1250).

[246] The representatives also observed that the Bolivian immigration laws that were applied lack a differentiated proceeding for child migrants. They added that if the State had taken this best interests of the child into consideration, it would not have adopted the decision to expel them because the State authorities were aware of an arrest warrant for the children's parents in Peru; thus the expulsion of their parents and the handing over to the Peruvian authorities,

212. In addition, they argued that, even in the hypothesis that the expulsion was in order, the Peruvian State was not the most favorable option for the children's interests, because the Bolivian State was also fully aware that the Pacheco Tineo family had refugee status in Chile and that the youngest child was a Chilean national, so that Chile should have been the country to which they were returned. The fact that the expulsion directly affected the parents does not exempt the State from its unavoidable obligation to respect and ensure the autonomous rights of the children. When the State decided to expel both parents, knowing that they would be deprived of their liberty in the country to which they were returned, it was clearly foreseeable that the consequence would be the forced and involuntary separation of the parents and their children and the consequent lack of family protection of the latter. Thus, by opting directly to expel them to their country of origin, the State violated the right to the protection of the family, recognized in Article 17 of the Convention.[247]

213. Meanwhile, the State argued, with regard to Article 17, that it had been established that the family separation took place on Peruvian territory as a result of a judicial decision in Peru, in the context of charges of terrorism against the Pacheco Tineo couple and that, therefore, this supposed violation should have been alleged against the State where these violations had taken place. It therefore asked the Court to reject this alleged violation.

214. In relation to Article 19, the State argued that: (a) initially, when the Pacheco Tineo couple came to the offices of the Immigration Service, the children did not observe the supposed violations, because they had been left at a friends' house; (b) during the expulsion, no kind of physical or psychological violence was used; the Pacheco Tineo couple were not handcuffed, and the police participated simply to support the immigration inspectors; (c) while they were being transported, at the request of Juan Carlos Molina, the immigration inspectors bought nappies and also food for the children and the other members of the Pacheco Tineo family; (d) there is no evidence that the inspectors responsible for the expulsion of the Pacheco Tineo family separated the children from their parents during the drive between La Paz and Desaguadero; (e) there is no evidence that the children were expelled or that their passports were stamps with the word "expelled," and (f) the Pacheco Tineo couple, legal representatives of the children, Frida Edith, Juana Guadalupe and Juan Ricardo, never requested asylum on behalf of their children. Lastly, the State added that "the Pacheco Tineo couple, irresponsibly violated the right to protection and care of their children, because it is not reasonable that a family that is said to be sought for acts of terrorism, whose life and liberty are in danger, that entered Bolivia illegally, cause their loved ones to run these unrealistic risks, ignoring the care and protection that they owed to their children."

215. In its final arguments, the State indicated that, although asylum is a very personal benefit, the Pacheco Tineo couple never requested asylum on behalf of their children, even if it was not possible to extend the benefits of the mechanism of asylum, of restrictive application, to individuals who, at that time, were not the object of measures by the Peruvian State that would allow affirming the existence of a slight well-founded fear or minimal persecution against them. Thus, the children did not have to be an active or passive participant in the immigration procedure or the one to define refugee status. The State argued that, based on the principle of

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unequivocally implied the detention of their parents and, consequently, the lack of protection and the abandonment of the children, as in fact occurred.

[247] In addition, they argued that the measures of protection that should have been adopted included an assisted return of the children, accompanied by specialists in the matter and based on the best interests of the child; establishing the manner and terms of the transfer with the intervention of the consular or immigration officials of the recipient country, and prior communication with the relatives of the parents so that children could be handed over in a way that ensured family unification. Thus, they stated that the children were left abandoned with the detention of their parents as soon as they entered Peruvian territory, so that the State of Bolivia violated the right to physical, mental and moral integrity of the children and, at the same time, the right to protection of the family owing to arbitrary interference in family life.

family unification established in international conventions, and specifically in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, they should have requested on their own behalf or through their legal representative, in this case their parents, refugee status in order to have the right to be heard in this immigration proceeding, a situation which never happened. In addition, regardless of whether or not they were refugees, children cannot be separated from their parents when they are expelled, because this would violate the child's right to a family. In other words, it argued that the State had taken special measures of protection based on the principle of family unification in favor of Frida, Juana and Juan Ricardo Pacheco Tineo.

B. Considerations of the Court

216. The Court will now analyze the presumed violations of the right to special protection of children, and the rights of the family of Frida, Juana and Juan Ricardo Pacheco Tineo, all of whom were minors when the facts of this case occurred, in light of the international *corpus juris* for the protection of children.[248]

217. As this Court has stated on other occasions, this *corpus juris* should serve to define the meaning and scope of the obligations that the State has assumed when analyzing the rights of the child.[249] In this regard, children possess the rights established in the American Convention, in addition to the special measures of protection recognized in its Article 19, which must be defined according to the particular circumstances in each specific case.[250] The adoption of special measures for the protection of children corresponds to the State, as well as to the family, the community and the society to which they belong.[251]

218. In addition, any decision taken by the State, society or the family that entails any limitation to the exercise of any right of a child must take into account the principle of the best interests of the child, and be rigorously adapted to the provisions that govern this matter.[252] Regarding the best interests of the child, the Court reiterates that this governing principle of the normative on the rights of the child is based on the dignity of the human being, on the inherent characteristics of children, and on the need to foster their development, expanding their potential to the full. In this regard, it is necessary to weigh not only the requirement of special measures, but also the particular characteristics of the situation in which the child finds himself or herself.[253]

219. Article 19 of the Convention, in addition to granting special protection to the rights recognized therein, establishes a State obligation to respect and ensure the rights recognized to children in other applicable international instruments. It is relevant to refer to Articles 12 and 22 of the Convention on the Rights of the Child, which recognize, respectively, the right of the child to be heard in any judicial and administrative proceedings affecting the child,[254] and the right

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248 *Cf. Case of Forneron and daughter v. Argentina. Merits, reparations and costs.* Judgment of April 27, 2012 Series C No. 242, para. 44, and *Case of Furlan and family members v. Argentina*, para. 125.

249 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Forneron and daughter v. Argentina*, para. 44.

250 *Cf. Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 121, and *Case of Forneron and daughter v. Argentina*, para. 44.

251 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*. Series A No. 17, para. 62, and *Case of Forneron and daughter v. Argentina*, para. 45.

252 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*, para. 65, and *Case of Forneron and daughter v. Argentina*, para. 48.

253 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*, para. 61, and *Case of Forneron and daughter v. Argentina*, para. 45.

254 "Article 12: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in

that States ensure that the child who is seeking refugee status, or who is considered a refugee in accordance with applicable international or domestic law and procedures, receives appropriate protection and humanitarian assistance to safeguard his or her rights.

220. Thus, the special protection derived from Article 19 should be extended to the judicial or administrative proceedings in which a decision is taken on a child's rights, which entails a more rigorous protection of Article 8 and 25 of the Convention.[255] Furthermore, the Court has already established in other cases that there is a relationship between the right to be heard and the best interests of the child, and it is this relationship that governs the essential role of children in all decisions that affect their life.[256]

221. First, the Court finds it necessary to affirm that it has not been proved that a supposed "error" was rectified in the second version of the above-mentioned SENAMIG decision No. 136/2001, as alleged by the State. To the contrary, this difference could suggest that the initial intention of that organ was to expel the children also, and this was amended in the second version, from which their names were excluded. In addition, the second document is not signed by the same officials who signed the first document, which casts doubts on its authenticity. Even though the State argued that the children were not expelled, but that "they were not separated from [their parents]" in application of the principle of family unification, because it was established that decision No. 136/2001 also included them in the expulsion decision. In other words, it is clear that the children were indeed expelled from Bolivia by a decision implemented by the SENAMIG immigration authorities (*supra* paras. 94 and 95).

222. The Court notes that, in this case, there are two different situations in which it is necessary to define whether or not the children should have been heard in the above-mentioned terms. The first relates to the processing of the asylum request presented by their parents, while the second relates to the process to expel the Pacheco family as aliens in an irregular situation.

223. Regarding the former aspect, the right of children to express their opinions and to play a significant role is also important in the context of asylum proceedings,[257] the scope of which may depend on whether the child is an applicant, regardless of whether or not the child is accompanied[258] and/or separated[259] from his or her parents or the persons responsible for taking care of him or her.

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accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. Article 19: 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement." Convention on the Rights of the Child (hereinafter "CRC"), adopted and opened to signature and ratification by the General Assembly in its resolution 44/25 of 20 November 1989, entry into force: 2 September 1990.

255 *Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*, paras. 95 to 98.

256 *Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*, para. 99, and *Case of Furlan and family members v. Argentina*, para. 228.

257 Convention on the Rights of the Child, Art. 12. The CRC does not establish any lower limit of age for the right of the child to express his or her views freely, because it is evident that children can and do have opinions at a very early age.

258 "Unaccompanied children" are children who have been separated from both parents, and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. United Nations High Commissioner for Refugees. *Guidelines on international protection No. 8: Child asylum under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 September 2009, para. 6.

224. In addition, when the applicant for refugee status is a child, the principles contained in the Convention on the Rights of the Child must guide both the substantive and the procedural aspects of the decision on the child's request for refugee status.[260] Thus, when children are the applicants, they must enjoy specific procedural and probative guarantees to ensure that fair decisions are taken when deciding their requests for refugee status, which requires the establishment and implementation of proceedings that are appropriate and safe for children and of an environment that creates trust at all stage of the asylum procedure. Also, and under this same principle, if the main applicant is excluded from refugee status, the family members have the right to have their own requests evaluated independently.[261] However, such situations have not been described in this case.

225. In addition, if an applicant for refugee status receives protection, other members of the family, particularly the children, may receive the same treatment or benefit from that recognition, based on the principle of family unification.[262] In the proceeding to decide refugee status, the applicant's family members may eventually be heard, even if there are children among them. In each case, it is for the authorities to evaluate the need to hear them based on the contents of the application. In this case, although Juan Ricardo was only one year old, Frida Edith and Juana Guadalupe could have been heard by the authorities in relation to the request presented by their parents.

226. Regarding the second aspect, in relation to the proceeding on the expulsion of the Pacheco Tineo family based on their situation as irregular aliens, the Court recalls the intrinsic relationship that exists between the right to protection of the family and the rights of the child. In this regard, the Court has found that the right to protection of the family, and to live in a family, recognized in Article 17 of the Convention, means that the State is obliged not only to establish and execute directly measures of protection for children, but also to promote, as extensively as possible, the development and enhancement of the family unit.[263] Consequently, the separation of children from their family constitutes, under certain circumstances, a violation of the said right,[264] because even legal separations of the child from its family are only admissible if they are duly justified in the best interests of the child, exceptional and, insofar as possible, temporary.[265]

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259 "Separated children" are children separated from both their parents or from their previous legal or customary primary caregivers but not necessarily from other relatives. UNHCR. *Child asylum under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 September 2009, para. 6.

260 United Nations High Commissioner for Refugees. *Guidelines on international protection No. 8. Child asylum under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 September 2009, para. 5. The Committee on the Rights of the Child has identified the following four articles of the Convention on the Rights of the Child as general principles for its implementation: Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind; Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children; Article 6: the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child; and Article 12: the child's right to express his/her views freely regarding "all matters affecting the child", and that those views be given due weight. See also: Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and 44, para. 6*), CRC/GC/2003/5, 3 October 200, para. 12. These principles guide both the substantive and the procedural aspects of the determination of a request for refugee status for a child.

261 *Cf.* Expert opinion of Juan Carlos Murillo provided on March 29, 2013 (evidence file, folios 1423 and 1424)

262 See, in general, UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's mandate.* See also, UNHCR. *Guidelines on international protection No. 8: Child asylum under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*.

263 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002,* para. 66, and *Case of Forneron and daughter v. Argentina*, para. 116

264 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002,* paras. 71 and 72, and *Case of Forneron and daughter v. Argentina*, para. 116.,

265 *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002,* para. 77.

227. In addition, in certain circumstances the separation of children from their parents may endanger their development and survival, which must be ensured by the State as established in Article 19 of the Convention and in Article 6 of the Convention on the Rights of the Child, especially by the protection of the family and the absence of illegal and arbitrary interference in the family life of children, because the family plays an essential role in their development.[266] Also, the participation of children acquires special relevance in the case of proceedings that may be of a punitive nature, in relation to an infringement of the immigration regime, opened against migrant children or against their family, their parents, representatives, or those accompanying them, because this type of proceeding may lead to the separation of the family and the subsequent impairment of the child's well-being, regardless of whether the separation occurs in the State that expels them or in the State to which they are expelled.

228. Based on these criteria, the Court considers that, in this case, the children had the right to special protection of their guarantees of due process and to the protection of the family in the administrative proceedings that resulted in their expulsion and that of their parents. Thus, the Court notes that the authorities should have considered Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo to be an interested or active party in these proceedings, because it was evident that the conclusions or results could affect their rights or interests. Thus, irrespective of whether a specific request for asylum was presented on their behalf, owing to their migratory situation and their circumstances, the State had the obligation to ensure their best interests, based on the principle of non refoulement and on the principle of family unification, which required the State's immigration authorities to be especially diligent in exhausting all available means of obtaining information to determine their migratory situation and to adopt the best decision for them as regards the State to which it was appropriate to send them in case of expulsion. However, there is no record in the decisions of the prosecutor or of SENAMIG that the interests of the children were taken into account, even minimally. In other words, the State treated the children as subjects, conditioned by and limited to the rights of their parents, which harmed their status as subjects of law[267] and the meaning of Article 19 of the American Convention.

229. In conclusion, the Court considers that the State is responsible for the violation of the right to protection of children and of the family recognized in Articles 19 and 17 of the American Convention, in relation to Articles 8(1), 22(7), 22(8), 25 and 1(1) of this instrument to the detriment of Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo.

VII-4.
OBLIGATION TO ADOPT PROVISIONS OF DOMESTIC LAW AND PRINCIPLE OF LEGALITY AND NON-RETROACTIVITY (ARTICLES 2 AND 9 OF THE AMERICAN CONVENTION)

A. Arguments of the parties

[266] *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002*, paras. 66 and 71. Similarly, Article 16 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" establishes that "[e]very child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother."

[267] The consideration of children as real "subjects of law" is a new paradigm established by international human rights law and has been recognized by different international courts, as well as constitutional courts and supreme courts of the region. In this regard, see, in general, Court of Justice of the European Union, C-356/11 and C-357/11, Judgment of 6 December 2012, paras. 75 to 82; Constitutional Court of Colombia, Case of Raquel Estupiñon Enriquez, on her own behalf and in representation of her two minor children, files an application for *amparo v*./Decision 230 of the Administrative Department of Security, Judgment T-215/96, of May 15, 1996; and Supreme Court of Justice of Costa Rica, application for *amparo*, filed by Edwin Zumbado Duarte, in favor of Noemi Cruz Izaguirre, against Director General of Immigration and Aliens' Affairs, Judgment of December 5, 2008.

230. The representatives indicated that the Bolivian immigration laws applied to the Pacheco Tineo family violated Article 9 of the Convention, insofar as the reasons on which their expulsion was based were not established in a formal law, but rather in a supreme decree issued only by the Executive Branch of the State, which constituted a violation of the principle of legality, applicable to any punitive law. In addition, they argued that, under Article 22(6) of the Convention, States must legislate deportation responsibilities, and the decisions taken in this regard form part of the regulated activities of the public administration and not part of its discretional activities. Consequently, they argued that any limitation or restriction of a right in the latter sphere, must also be established by law, in the sense recognized in the Court's Advisory Opinion No. 06/86, and that the same conclusion is reached on examining article 7 of the Bolivian Constitution and the ruling of the Bolivian Constitutional Court on the unconstitutionality of several articles of this supreme decree.

231. The Commission did not argue non-compliance with or violation of Articles 2 and 9 of the Convention.

232. The State argued that the application of article 48 of Supreme Decree No. 24423 of November 29, 1996, in force at the time of the events, was preceded by a decision of the prosecutor in order to ensure legal certainty and to avoid any possible abuse or arbitrariness by the authorities. In addition, the State emphasized that the presumed victims had entered Bolivian territory illegally and that the expulsion was implemented after the corresponding injunction had been issued, which ordered that this should be carried out in accordance with the country's immigration laws. The State asked that the Court declare that it had not been proved that the principle of legality had been violated.

233. Regarding the alleged violation of Article 2, the State argued that "in order to adapt the law as required by Article 2 of the Convention" and, even though the State had not yet ratified this instrument, in July 1988 it "promulgated Supreme Decrees Nos. 19639 and 19640" creating CONARE and establishing the normative for refugees, respectively." Furthermore, under Supreme Decree No. 24423 of November 29, 1996, Bolivia established the legal framework for the functions of the immigration authorities and, on September 1, 2005, it issued Supreme Decree No. 28329 regulating CONARE and establishing its procedures, "always trying to improve the adaptation of domestic law to the principles of the Convention and of the refugee statute." It indicated that, in June 2012, it had promulgated Law No. 251, the Refugee Protection Act. The State asked the Court to declare that it had adapted its laws in accordance with Article 2 of the Convention.

234. In its oral arguments, the State alleged that the Constitutional Court's judgment cited by the representatives precisely applies control of conformity with the Convention, because it affirmed that Bolivia should have laws, rather than decrees, to regulate immigration. It indicated that the said judgment of January 2001 was prior to the facts of this case, which meant that the State, by means of its domestic remedies, had rectified a possible violation of Article 2 of the American Convention, but evidently in just one month – from January to February 2001 – it was unable to complete a democratic process to enact a law on immigration and asylum. Despite this, it argued that the State kept decision No. 25150 of 1998 in force, which had not been declared unconstitutional and that was applied in order to be able to implement the expulsion procedure; hence, no legal vacuum existed at the time of the facts."

B. Considerations of the Court

235. In relation to Article 9 of the American Convention, in other cases the Court has indicated that the principle of legality is one of the central elements of the prosecution of offenses in a democratic society when establishing that "no one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed."

Also, this principle governs the actions of all the organs of the State, in their respective spheres of competence, particularly when exercising punitive powers.[268]

236. In relation to Article 2 of the American Convention, the Court has indicated that this obliges States Parties to adopt, based on their constitutional procedures and the provisions of the Convention, the measures of a legislative or any other nature that may be required to make effective the rights and freedoms protected by the Convention.[269] In other words, States not only have the positive obligation to adopt the necessary legislative measures to ensure the exercise of the rights established in this instrument, but they must also avoid promulgating those laws that prevent the free exercise of these rights, and avoid the elimination or amendment of laws that protect them.[270] In short, "the State has the obligation to adopt the necessary measures to guarantee the effective exercise of the rights and freedoms recognized in the Convention."[271]

237. In this case, the Court notes that the representatives did not present any more specific allegations or arguments to substantiate a violation of the principle of legality in relation to restrictions of the rights to personal liberty, and to movement and residence contained in Articles 7 and 22 of the American Convention. Consequently, the Court will not rule on the alleged failure to comply with Articles 2 and 9 of the Convention, considering that the facts have been analyzed sufficiently, and the violations conceptualized in light of the rights to freedom of movement and residence, and to judicial guarantees and judicial protection, in keeping with Articles 22, 8 and 25 of the American Convention, in relation to Article 1(1) of this instrument.

VIII.
REPARATIONS
(Application of Article 63(1) of the American Convention)

238. Based on the provisions of Article 63(1) of the American Convention,[272] the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation,[273] and that this provision "reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility."[274]

239. In its final arguments, the State indicated that "it has every intention […] of recognizing the jurisdiction of this […] Court, but as an impoverished developing State with limited

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[268] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*, para. 107, and *Case of Mohamed v. Argentina*, para. 130.

[269] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 51, and *Case of the Santo Domingo Massacre v. Colombia*, para. 245

[270] *Cf.* Case of *Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, para. 335.

[271] *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 240, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, para. 335.

[272] Article 63(1) of the American Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[273] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 25, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 213.

[274] *Cf. Case of Velásquez Rodríguez, Reparations and costs*, para. 25, and *Case of Luna López v. Honduras*, para. 213.

resources and with urgent needs, it asks that the judgment delivered in this case should take into account the context of Bolivia."

240. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must take into account these factors in order to rule appropriately and in keeping with the law.[275]

241. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will decide measures to ensure the rights that have been violated and to make reparation for the consequences of the violations.[276] Consequently, the Court has found it necessary to award different measures of reparation in order to redress the harm integrally; thus, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.[277]

242. Based on the violations of the Convention declared in the preceding chapters, the Court will proceed to analyze the claims presented by the representatives and the Commission, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, in order to order measures aimed at repairing the harm caused to the victims.[278]

A. Injured party

243. The Court finds that, according to Article 63(1) of the Convention, the injured party is considered to be anyone declared a victim of the violation of any right recognized in the Convention. The State did not submit arguments regarding the beneficiaries of the reparations. The Court considers the members of the Pacheco Tineo family to be the "injured party," namely: Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos and their children Juana Guadalupe, Frida Edith and Juan Ricardo Pacheco Tineo, and, as victims of the violations declared in this Judgment, they will be considered beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate

Arguments of the Commission and of the parties

244. The Commission recommended that the State "implement administrative, disciplinary or other measures to deal with acts or omissions of the State officials who took part in the human rights violations that have been declared."

245. The representatives indicated that it was essential to establish the truth of the facts and the corresponding responsibilities in order to reinforce the prohibition of cruel, inhuman and degrading treatment, and that failure to observe this prohibition would have the real consequences that it merited. If appropriate, it asked the Court to order the State of Bolivia to "proceed to conduct effective investigations into the person responsible for the serious wrongful acts, as well as, in the same context, to identify the immigration and police agents involved in

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[275] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Luna López,* para. 214

[276] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 244

[277] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*, para. 294, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 244. See also, *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26.

[278] *Cf. Case of Velásquez Rodríguez, Reparations and costs.* paras. 25 to 27, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 191.

the wrongful acts that were reported, so that they would be subject to a criminal trial and punishment and, consequently, provide adequate reparation to the victims for the harm caused to them."

246. With regard to the request to investigate the supposed cruel, inhuman and degrading treatment, the State considered that it was not in order to require an investigation of facts about which the Bolivian authorities had not been informed, that had not been proved, and that did not constitute a violation of the Convention. Regarding the supposed shortcomings in the immigration procedures, the State recalled that, under Bolivian laws, offenses that could relate to these facts have already prescribed,[279] because they do not constitute gross human rights violations.[280] Lastly, the State observed that Bolivia's domestic law establishes the action for indemnity against public officials who commit acts or omissions in the exercise of their functions.[281] Based on all the foregoing, the State asked the Court to abstain from granting the reparation requested.

Considerations of the Court

247. In Chapter VII of this Judgment, the Court decided that the State had incurred international responsibility for the violation of the rights recognized in Articles 5(1), 17, 19, 22(7), 22(8), 8 and 25 of the Convention, owing to the acts and omissions of various SENAMIG and CONARE officials.

248. As regards the request to order an investigation into the presumed violations of the physical integrity of the members of the Pacheco Tineo family, the Court did not rule on these violations, so that it is not in order to require the State to conduct investigations in this regard, without prejudice to any investigations that may be appropriate at the domestic level in accordance with Bolivian laws.

249. In addition, the Court recalls that the State indicated that the facts of the case had prescribed, but made no specific reference to the criminal laws regarding which it was applying the statute of limitations, and only referred to time frames of prescription for administrative responsibility, without clarifying the time frame for other types of responsibility (administrative, executive, civil and criminal) to which the State itself had referred. Thus, although it is true that it is the Court's consistent case law that acts that do not constitute gross human rights violations may prescribe as established in the domestic law of the States,[282] it is also true that the State has not provided sufficiently precise factual and legal elements for the Court to determine whether the prescription of the criminal action in this specific case is in conformity with the Convention.

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[279] Specifically, the State indicated that the Law on Government Administration and Control of July 20, 1990, regulates the systems of administration and control of State resources ("SAFCO" Act), and establishes the types of responsibility of the public service, namely: administrative, executive, civil and criminal. It also indicated that the first part of article 29 of the SAFCO Act establishes that administrative responsibilities exist when the act or omission of the public servant infringes the legal-administrative law and the norms that regulate his official conduct. It also indicated that article 16 of Supreme Decree 23318-A of November 3, 1992, which regulates responsibilities in the public service, establishes that administrative responsibility prescribes two years after the date on which the violation was committed for both public servants in the exercise of their functions and for former public servants. It also considered that the supposed facts that originate this case date from 2001, so that more than the two years established by law have passed, and the administrative responsibility has prescribed.

[280] The State argued that the facts of this case do not constitute gross human rights violations, which are not subject to the statute of limitations and, consequently, the Court cannot order the investigation of facts in cases that have prescribed.

[281] In particular, the State alluded to article 113 of the Bolivian Constitution, without this being contested by the representatives, which establishes the action for indemnity against public officials found responsible by act or omission in the performance of their functions.

[282] *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 111, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 226, para. 117

250. Furthermore, the Court notes that the State itself, when commenting on the supervening evidence presented by the representatives on May 16, 2013, indicated that "if [it] had been aware of the existence of these documents […] it would have made every effort to open internal investigations […]" (*supra* para. 82). In other words, the State itself indicated the possibility that, if it had been aware of certain factual evidence previously, it would have taken the corresponding internal investigative measures. Likewise, the State referred in its arguments to internal norms on actions for indemnity against public officials responsible by act or omission in the performance of their functions, although it did not clarify whether these actions are included in those that the State indicated had prescribed. Consequently, the Court will not rule in relation to the State's argument on the prescription of the actions because it lacks sufficient information.

251. The Court also considers that insufficient evidence has been provided by the Commission and the representatives to determine which of the acts or omissions of the State authorities should be subject to criminal prosecution or the subsequent imposition of liability of an administrative, disciplinary or other nature, so that it is not appropriate to order the State to investigate the facts. This should not prevent, as indicated by the State itself and the applicable Bolivian domestic law, the Bolivian judicial or administrative authorities from taking any necessary investigative measures in relation to the facts of this case. The Court will not monitor any possible proceedings in the domestic sphere based on the facts of this case.

C. Measures of integral reparation: restitution, rehabilitation, satisfaction, and guarantees of non-repetition

252. The Commission requested, in general, that the Court order the State "to adopt measures of non-repetition that include training officials in charge of immigration proceedings that may lead to the deportation or expulsion of migrants, as well as proceedings to determine refugee status [and] other measures of non-repetition in order to ensure that the practices of the domestic authorities in these two spheres are compatible with the American Convention."

253. International case law and, in particular, that of the Court, has established repeatedly that a judgment may constitute *per se* a form of reparation.[283] Nevertheless, considering the circumstances of the case and the adverse effects on the victims arising from the violations of the American Convention declared to their detriment, the Court finds it pertinent to determine the following measures of satisfaction.

C.1. Restitution

Arguments of the parties

254. The representatives asked the Court to order the State: (a) to annul the decision ordering the expulsion of the Pacheco Tineo family and that, in addition, its legal effects should be abrogated, eliminating the word "expelled" from the State's records and notifying UNHCR, and (b) to return to the Pacheco Tineo family all the documentation and other belongings that it had retained at the time of the events of this case or, if this is materially impossible, to provide them with fair, equitable and reasonable financial compensation.

255. Regarding the annulment of the expulsion decision, the State advised that, in order to do this, under Bolivian law, this must be the result of a formal request within six months of the issue of the respective decision. Thus, the State considered that the action aimed at obtaining this annulment was already prescribed and that, in addition, "the State cannot be made

[283] *Cf. Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* paras. 244 and 250.

responsible for the negligence of a private individual." Therefore, it asked the Court to reject this measure of reparation.

256. Regarding the request to return the presumed victims' documentation, the State reiterated that it was unable to do this, because there was no authentic evidence that this documentation had been seized by the Bolivian authorities. In this regard, it added that, even though the belongings of the Pacheco Tineo family had been searched, the family had subsequently been handed over to the Peruvian immigration authorities together with all their belonging and luggage. Therefore, it indicated that the responsibility for the said belonging could not be attributed to the Bolivia State.

Considerations of the Court

257. Regarding the representatives' requests, the Court considers that the Judgment is *per se* a form of reparation and that no factual or legal decisions have been made on the alleged retention of documents, so that it was not in order to admit the request.

C.2. Rehabilitation

Arguments of the parties

258. The representatives indicated that, owing to the physical and psychological problems suffered by the victims, it was necessary to order measures of rehabilitation that took into account the expectations of the victims and their status as aliens. They added that the members of the Pacheco Tineo family, following their agreement, should receive medical and psychological care in their country of residence, Chile, in order to comply with the object and purpose of rehabilitation. To this end, they indicated that the State of Bolivia should provide each member of the Pacheco Tineo family with a sum of money to cover the costs of specialized medical and psychological care, and related expenses, in their place of residence. In this regard, the representatives estimated that the sum that should be paid, once, to each member of the family was US$20,000.00 for the items mentioned.

259. In this regard, the State recognized the need for the members of the Pacheco Tineo family to receive medical and psychological care. However, it recalled that the supposed non-pecuniary damage, as well as the psychological and emotional harm to the members of the Pacheco Tineo family, originated from the different arrests and imprisonment they had suffered in their country of origin (Peru) and that the Bolivian State could not be held responsible for those facts. Therefore, the State asked the Court not to order these measures of reparation.

Considerations of the Court

260. On this point, the Court considers that the psychological consequences of the facts on the Pacheco Tineo family that were mentioned by the representatives refer, to a great extent, to harm caused as a result of human rights violations suffered in Peru, and it is not clear which of them refer specifically to the facts for which the Bolivian State was declared responsible in this case. In this regard, the Court recalls that it is the consistent case law of the Court that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective harm (*supra* paras. 240 to 242). Therefore, the Court finds that it is not appropriate to order the reparation requested because, in this specific case, the existence of a causal nexus between this presumed harm to the members of the Pacheco Tineo family and the State's responsibility for the facts of this case has not been proved clearly.

C.3. Measure of satisfaction: publication and dissemination of the Judgment

Arguments of the parties

261. The representatives asked the Court to order the Bolivian State to publish the entire text of the judgment in the Bolivian Official Gazette. They asked that this publication be "preceded, to provide reparation to the victims, by an acknowledgement of responsibility and entitled a public apology." For its part, the State argued that, "if the Court decides that the State has any responsibility and orders the publication of the eventual judgment, the State, in the context of its international commitments in the area of human rights, will publish it in the Bolivian Official Gazette, as determined by the Court."

Considerations of the Court

262. The Court finds it pertinent to order, as it has in other cases,[284] that the State publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the official gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) the entire Judgment on an official website, available for one year.

C.4. Guarantees of non-repetition

a) Legislative reform

Arguments of the parties

263. The representatives indicated that it was necessary for the State to amend its laws to include, at least: (a) regulation of immigration procedures based on a formal law, emphasizing that the regulation of restrictions to the rights of migrants must be compatible with international treaties, particularly the American Convention on Human Rights; (b) regulation of special proceedings for cases involving migrant children, and (c) regulation of judicial remedies against decisions adopted by the immigration authorities.

264. On this point, the State of Bolivia indicated that, on June 20, 2012, it had promulgated Law 251, establishing a protection regime for refugees and those applying for this status, in conformity with the State's Constitution, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and other international instruments ratified by Bolivia.[285]

Considerations of the Court

265. The Court recalls that the State must prevent the repetition of human rights violations such as those that occurred and, to this end, adopt any necessary legal, administrative or other type of measures to avoid similar events happening again, in compliance with its obligation to prevent violations of, and to guarantee, the fundamental rights recognized by the American Convention.[286] In particular, and in accordance with Article 2 of the Convention, the State has

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[284] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Luna López v. Honduras,* para. 230.

[285] It added that, in this context, it can be observed that the Bolivian State, acting to promote the rights of refugees and migrants, has established normative provisions with extensive guarantees for the rights of those in this situation.

[286] *Cf. Case of Velásquez Rodríguez. Merits*, para. 166, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 221

the obligation to adopt the necessary measures to give effect to the rights and freedoms recognized in the Convention.[287]

266. In this case, the Court considered that it was not appropriate to analyze the facts under Articles 9 and 2 of the American Convention. Neither the parties nor the Commission provided the Court with information on the current existence or application of the normative questioned in Bolivia. In addition, in its report, the Commission mentioned the issue, on September 1, 2005, of Supreme Decree No. 28329[288] and, furthermore, the State referred to the promulgation of Law 251 on June 20, 2012, and the existence of bill 0208/2012-2013, which would regulate the immigration system in Bolivia. Since no evidence or arguments were presented as to whether the current legal regime for migrants or refugees in Bolivia is not in conformity with the relevant international standards, the Court finds that it is not appropriate to order the measures requested by the representatives. This does not mean that the Court is ruling either positively or negatively on the compatibility with the Convention of the legislation enacted following the facts.

b) Training for public officials

Arguments of the parties

267. The representatives asked the Court to order the State to implement an education and training program for the personnel of the National Immigration Service, as well as for other officials who, owing to their functions, come into contact with migrants. In particular, they indicated that this training should relate to the international standards concerning the human rights of migrants, the guarantees of due process of law, and the right to consular assistance. They added that the education and training program should also include standards relating to the rights of child migrants, whether or not they are accompanied.

268. Regarding the training measures, the State announced a series of measures taken in this regard by both the General Immigration Directorate[289] and by CONARE.[290]

Considerations of the Court

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[287] *Cf. Case of Gangaram Panday v. Suriname. Preliminary objections*. Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of García Lucero et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 267, para. 187

[288] The considering clauses of this decree indicates that its purpose was to implement a "coordinated action" of the State, using a "permanent mechanism to assess and consider these cases." In addition, it was indicated that this permanent mechanism to assess and consider cases of requests for recognition of refugee status must be authorized to determine the admissibility of accepting and/or denying the requests and their consequences, in keeping with the provisions of the 1951 Convention relating to the Status of Refugees. Indeed, article 1 of this decree indicates: "The purpose of this Supreme Decree is to establish the Bolivian National Refugee Commission, as a permanent mechanism to assess and consider cases of requests for asylum. In addition, it establishes the regulation and proceedings to be following by the Bolivian National Refugee Commission under the legal and international provisions in force." *Cf.* Supreme Decree 28329 of September 1, 2005. Bolivian National Refugee Commission. Regulations and proceedings.

[289] In particular, the State indicated that the following measures had been taken: (a) training for Inspectors at borders and airports, and police agents of the Police Unit providing Support to Immigration Control (UPACOM) on the issue of the Immigration Regime, People-trafficking and People-smuggling, Police Procedures concerning Immigration, Airport Security, and Passport and Documentation Security Measures, organized in Cochabamba, Potosí, Oruro, Tarija and Chuquisaca with experts on these issues, and (b) creation of the National Training Strategy on human rights, immigration procedures, and refugees.

[290] In particular, the State indicated that it had taken the following steps: (a) signature of the Framework Agreement on Reciprocal Cooperation on May 4, 2007, with the regional representative of UNHCR; (b) the 2008 agreement with UNHCR on the Reception and right of use of UNHCR property in favor of CONARE; (c) the 2008 agreement between UNHCR, the *Pastoral de Movilidad Humana*, and CONARE on an internship system to reinforce the CONARE Secretariat, and (d) the organization of several workshops on the rights of migrants and the granting of refugee status. In addition, it cited other measures of non-repetition taken by the General Immigration Directorate and CONARE.

269. The Court recalls that the State must prevent the recurrence of human rights violations such as those that occurred and, to this end, adopt any legal, administrative or other measures required to avoid a repetition of similar events in the future, in compliance with its obligations to prevent violations, and to guarantee the fundamental rights recognized by the American Convention.[291]

270. In this case, although the State mentioned a series of measures aimed at training the public officials of the General Immigration Directorate and of CONARE, the information provided does not reveal that these measures refer specifically to permanent education and training programs and courses on human rights and the rights of migrants and refugees (including the principle of non-refoulement). Consequently, the Court orders the State to implement permanent training programs for officials of the National Immigration Directorate and CONARE, as well as for other officials who, owing to their functions come into contact with migrants or persons requesting asylum,[292] which must refer to the international standards on the human rights of migrants, the guarantees of due process of law, and international refugee law. These training programs and courses should make special mention of this Judgment and the different precedents of the human rights *corpus iuris* on the issues described above.

D. Compensation

Arguments of the Commission and of the parties

271. The Commission indicated that the State should provide integral reparation for the members of the Pacheco Tineo family, which should include compensation for the pecuniary and non-pecuniary harm suffered. In this regard, it stressed that the presence of the family in another country should not be considered an obstacle for compliance with this recommendation, because it was for the Bolivian State to make the necessary diplomatic and consular efforts to comply with the reparation.

272. For its part, the State asked the Court, in general, to respect the prohibition of double reparation, taking into account that many of the adverse effects indicated by the presumed victims are the result of facts that occurred in the case of the *Miguel Castro Castro Prison*. It also asked the Court to take into account the special circumstances of the country and the numerous efforts that it had gradually been making in the context of the protection of human rights. Lastly, it asked the Court to take into consideration that the State of Bolivia had tried to approach the presumed victims in order to evaluate eventual compliance with the recommendations made by the Commission in its Merits Report.

D.1. Pecuniary damage

a) Loss of earnings

273. The representatives argued that, because they had been deprived of their professional diplomas by the Bolivian immigration authorities, the Pacheco Tineo couple were prevented from exercising their profession as psychologists. They added that the long process of regularization following the recovery of their diplomas as psychologists was made more difficult owing to the stigma that they had been expelled from Bolivia as "terrorists," which placed enormous and serious limitations on the exercise of their profession.[293] In particular, they indicated that, to

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[291] *Cf. Case of Velásquez Rodríguez. Merits*, para. 166, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 221.

[292] Similarly, see *Case of Atala Riffo and daughters v. Chile*, para. 271.

[293] They also argued that the Pacheco Tineo couple's impossibility of working and generating professional earnings began with the expulsion and handing over of these persons to the Peruvian authorities, which resulted in their immediate imprisonment, which lasted for six months until a judgment acquitting them was delivered.

date, this has prevented their incorporation as psychologists in an academic establishment or an institution providing psychology services, which has had an impact on their possibility of receiving adequate remuneration. Similarly, the representatives added that, owing to the circumstances of the case, they were unable to prepare their doctoral theses, thus preventing them from increasing their professional status. They added that the Referential Tariffs for the Professional Practice of Clinical Psychology drawn up by the Psychologists Professional Association of Chile provided objective parameters for quantifying the compensation in this area and, based on this, a fair, equitable and reasonable amount – for compensation and for purposes of integral reparation – would be payment of US$70,000.00 to each of them for loss of earnings.

274. For its part, the State indicated that all the members of the Pacheco Tineo family were alive, that none of them has been declared unable to work, and "that they are not disappeared." In any case, it indicated that the facts that originated the presumed violations occurred in Peru and that the Court should take this fact into account if it ordered the payment of pecuniary damages for this concept.

b) Consequential damage

275. The representatives indicated that, as a result of the violations of the American Convention, the Pacheco Tineo family had had to face successive disbursements, including: (a) the expenses they had to incur and continue incurring to recover and legalize their professional diplomas, their personal documentation, and doctoral thesis documents that had been seized by the Bolivian State's authorities and that involved expensive and reiterated visits to their country of origin, and (b) the medical expenses for the health care, treatments and transport of the children. They added that, in this case, the different circumstances described have required time, money and efforts that have affected the assets of the Pacheco Tineo family. Consequently, the representatives asked the Court to establish compensation of US$60,000.00 (sixty thousand United States dollars) for consequential damage for the Pacheco Tineo family.

276. The State asked the Court to reject the claim for supposed consequential damages arguing that the facts that supposedly originated the presumed violations occurred in Peru, and that the Court should take this fact into account if it ordered the payment of pecuniary damages under this heading.

D.2. Non-pecuniary damage

277. The representatives indicated that the compensation requested was "based on the emotional sufferings, manifested in the anxiety, anguish, uncertainty, expectations and frustration they underwent by not being recognized as refugees and the consequent expulsion from Bolivian territory." In particular, they indicated that "the […] State's actions increased the severe physical, psychological and emotional harm to the Pacheco Tineo couple and had a dramatic impact on their life project, stigmatized by the epithet "expelled" on their respective passports and in the records of the State of Bolivia." Similarly, they indicated that this harm had an even greater impact on their three children, particularly Frida Edith and Juana Guadalupe, who were "direct and defenseless witnesses" of the events of which their parents were victims at the time of the expulsion, to which is added the fact that they accompanied their parents for more than a week at the prison where they had been deprived of liberty. They added that the separation of the children from their parents "had caused them great anguish, because they thought that they were losing them." Thus, the representatives observed that "all this supposed immeasurable harm and unpredictable consequences in the course of the children's life cycle and, even today, affects them."

278. Based on the foregoing, they asked that, in view of the seriousness of the facts denounced and the intense suffering caused to those they represent, the Court order for

compensation and to make integral reparation, the payment of the following sums for non-pecuniary damage: (a) US$100,000.00 for Rumaldo Pacheco; (b) US$100,000.00 for Fredesvinda Tineo, and (c) US$70,000.00 each for Frida Edith, Juana Guadalupe and Juan Ricardo Pacheco Tineo.

279. They also indicated that the events experienced by the Pacheco Tineo family and the consequences of the facts that violated their human rights caused by the State of Bolivia curtailed their "legitimate expectations and hopes of exercising the profession of psychologist, for which they had prepared and projected their future family life and as a means of earning a decent life for themselves and for their children.[294] Consequently, the representatives asked the Court to order the payment of compensation for harm to the life project of Juan Rumaldo Pacheco and Fredesvinda Tineo, consisting in the sum of US$70,000.00 each.

280. Regarding the harm to the life project, the State indicated: (a) that Bolivia had no influence on the professional and labor market of Chile and Peru; (b) that it had not been proved that the Bolivian authorities took the professional diplomas, and doctoral thesis files, references and back-up copies of the presumed victims; (c) that the State had not interfered or curtailed the course of the life project of the presumed victims; (d) that the presumed victims had only presented evidence of Mr. Pacheco's unfinished master's degree, and (e) that the presumed victims had not mentioned the name of the university at which they had been studying for their doctorates. Therefore, the State concluded that the presumed victims' assertions had not been proved conclusively.

281. Furthermore, regarding non-pecuniary damage, the State indicated that the events that took place from February 20 to 24, 2001, could not have caused major emotional suffering to the presumed victims because they had entered Bolivia illegally and this denoted a prior anxiety, anguish and uncertainty owing to their irregular situation in that country. The State also argued that it was not possible to allege frustrations owing to the failure to grant them refugee status because, as indicated by the presumed victims, the request presented with the CEB-UNHCR project was a means of defense in relation to the detention of Fredesvinda. Also, the State affirmed that "the word 'expelled' does not constitute an epithet, but is a legal status established by national and international asylum law" and that the fact that the children had to accompany their parents at the prison in Peru could not be attributed to Bolivia, because those facts had taken place in Peru. In addition, the State indicated that it could not be held responsible for the psychological problems of the children of the Pacheco Tineo family because, in order to determine the cause of a problem of this type, a psychological diagnosis by professionals outside the family unit was required to ascertain the emotional problems of both the individual and the family group.

282. In addition, the State indicated: (a) regarding the cause of Frida Edith's physical problems, that these were not the result of an emotional trauma or crisis, but other sources of infection; (b) that the physical, emotional and psychological problems and traumas that Fredesvinda suffers are due to her experiences during her detention and imprisonment in Peru; (c) that the traumatic experiences and setbacks suffered by Rumaldo took place before the facts that occurred between February 20 and 24 in Bolivia, and (d) regarding the evaluation of Juan Ricardo and Juana Guadalupe, the State considered that this had not been made by a competent professional in mental health accredited to prepare psychological diagnoses and, therefore, it did not accept the corresponding medical/psychological certifications as valid evidence.

[294] The representatives clarified that this harm "creates prejudices in both social and spiritual outreach"; "its effects extend to the labor market, an area in which there is also resistance"; to which is added "the impossibility of completing their doctoral theses." They added that this had "crosscut the personal, employment, social, professional, family and financial spheres," as a result of facts that prevented the materialization of the "desire for self-fulfillment, the development of their vocations and aptitudes, of their aspirations and potential, in the different areas described."

Considerations of the Court

283. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes "the loss of, or detriment to, the income of the victims, the expenses incurred based on the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."[295]

284. The Court has also developed the concept of non-pecuniary damage in its case law and the assumptions in which it should be compensated. Non-pecuniary damage "may include both the sufferings and difficulties caused to the direct victim and his next of kin, the impairment of values that are very significant to the individual, and also the changes of a non-pecuniary character in the living conditions of the victim or of his or her family."[296]

285. Based on its case law, and considering the circumstances of this case, the violations committed, the harm caused and the change in the living conditions, the proven effects on the personal integrity of the next of kin of the victims, and the other consequences of a pecuniary and non-pecuniary nature that they suffered, the Court establishes, in equity, the following sums in favor of the victims, as compensation for pecuniary and non-pecuniary damage:

Name	Amount
Rumaldo Juan Pacheco Osco	US$ 10,000.00
Fredesvinda Tineo Godos	US$ 10,000.00
Frida Edith Pacheco Tineo	US$ 5,000.00
Juana Guadalupe Pacheco Tineo	US$ 5,000.00
Juan Ricardo Pacheco Tineo	US$ 5,000.00

E. Reimbursement of expenses to the Victims' Legal Assistance Fund

286. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the inter-American human rights system, "in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."[297] In the instant case, since two inter-American defenders were appointed to represent the victims (*supra* para. 4), an Order of the President of the Court of February 19, 2013, decided that access to the Legal Assistance Fund would be granted to cover the reasonable and necessary expenses arising from this representation.[298] These expenses consisted of: (i) the visit to Chile of the inter-American defenders (Roberto Tadeu Vaz Curvo and Gustavo Zapata Báez) to interview the presumed victims; (ii) the necessary travel and accommodation for the two inter-American defenders to attend the public hearing; (iii) the necessary travel expenses for Rumaldo Juan Pacheco Osco and Fredesvinda Tineo Godos to attend the public hearing, and iv) the expenses for preparing and sending the affidavit with the expert opinion of Mario Uribe Rivera.

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[295] *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 282

[296] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador,* para. 303.

[297] AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, *"Creation of the Legal Assistance Fund of the Inter-American Human Rights System,"* operative paragraph 2(b), operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, *"Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System,"* article 1(1).

[298] Both the Rules for the Operation of the Fund, and the regulations contained in the agreement signed by the Inter-American Court and AIDEF apply.

287. In its answering brief, the State indicated that the presumed victims had not asked the Court to appoint a public defender and that it was the Court itself that proposed this possibility to the presumed victims, who accepted this suggestion, after which the defenders were appointed. The State also indicated that it "did not question the appointment of actual defenders and recognizes that the Court is competent to proceed as indicated in the Rules for the Operation of the Fund and in the Memorandum of Understanding." Nevertheless, it indicated that "if the Court decided *motu proprio* to suggest to the presumed victims the possibility that they could be represented by public defenders, and if the Court then requests AIDEF to appoint these defenders and if, finally, the Court decides to accept the appointment of the said defenders, the State of Bolivia has not had any participation whatsoever in these decisions, and it would be unfair to then require the State to cover the expenses arising from this representation, because it has no legal obligation to do so."

288. The State continued by indicating that, "if the defenders do not live in the country of residence of the presumed victims, and incur in travel, communication and other similar expenses in order to contact and interview those they are representing, […] if a violation of the Convention is declared, the expenses in which these defenders incur should not be charged to the State," because if the Court and AIDEF did not foresee that the appointment would create greater expenses that the appointment of defenders in the country of residence of the presumed victims, this cannot be attributed to the State. It added that "it is logical to suppose that, in Chile, actual country of residence of the Pacheco Tineo family, there are numerous public defenders and lawyers, experts in human rights, who could have assumed [their] defense," and that, in this case, there was no incompatibility for a public defender of the defendant country to take on cases against his own country, "so that there was no incompatibility or urgent need to appoint lawyers who were not Chilean." Accordingly, the State argued that it "should not have to pay costs arising from decisions of the AIDEF and the Court that were entirely discretional," and therefore asked that it should not be asked to pay the expenses generated by the defenders of the presumed victims under the heading of costs and expenses or under any other heading.

289. Subsequently, in a note of the Secretariat of August 29, 2013, the State was given the procedural opportunity to present its observations on the report on the disbursements made in application of the Victims' Legal Assistance Fund. In its brief with observations, and prior to this, in its answering brief, the State indicated that: (a) it was not the presumed victims who asked to benefit from the application of the Legal Assistance Fund in the first place; (b) the Court and the AIDEF should have considered appointing defenders who resided in the country where the presumed victims live, an aspect that would have reduced the expenditure arising from the travel and accommodation of the inter-American defender; (c) the presumed victims did not indicate which aspects of their defense required access to this Fund, nor did they prove the lack of financial resources to hire private defense counsel; (d) apparently the Pacheco Tineo couple do not, in fact, lack financial resources; (e) the amounts included for accommodation and food are not in line with the amounts that the State provides to its public servants, which are very much lower than the amounts established by the Court, and (f) regarding the honoraria of expert witness Uribe, that several of the elements contained in the reports have the same wording as the statements of the presumed victims, so that the said reports of the expert witness lack professional objectivity and impartiality.

290. According to the information in the report on the disbursement made in this case, these amount to US$9,564.63 (nine thousand five hundred and sixty-four United States dollars and sixty three cents). It is for the Court, in application of article 5 of the Rules of the Fund, to assess the admissibility of ordering the defendant State to reimburse the Legal Assistance Fund the disbursements made.

291. In this regard, the Court reiterates the provisions of the Order of its President of February 19, 2013, indicating that the request to access the Assistance Fund was made at the appropriate time in the pleadings and motions brief, and that the inter-Americana defenders had

indicated precisely the assistance from this Fund required by the presumed victims.[299] Also, as stated in that Order, the Court reiterates the purpose of the application of the Assistance Fund is to cover the reasonable and necessary expenses that are accredited by the inter-American defenders in order to represent the presumed victims in the proceedings.[300]

292. With regard to the alleged lack of financial resources of the Pacheco Tineo couple, the evidence presented by the State is not pertinent, because it is merely an indication or an element of circumstantial information that, in the absence of complementary information, has no probative value. Regarding the other observations made by the State, the Court notes, first, that some were decided in the Order convening the public hearing and that the others are inadmissible or refer to aspects relating to the assessment of the evidence. Therefore, the Court will not rule on them.

293. Based on the State's responsibility declared in this Judgment, the Court orders the State to reimburse this Fund the sum of US$9,564.63 (nine thousand five hundred and sixty-four United States dollars and sixty three cents) for the above-mentioned expenses that were incurred. This sum must be reimbursed to the Court within 90 days of notification of this Judgment.

F. Method of complying with the payments ordered

294. The State must make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to Juan Rumaldo Pacheco Osco and Fredesvinda Tineo Godos, within one year of notification of this Judgment, in the terms of the following paragraphs. If one of the victims should die before the payment of the respective amounts, they shall be delivered to his or her heirs, in accordance with the applicable domestic law.

295. The State must comply with the monetary obligations by payment in United States dollars deposited in the account indicated by the victims.

296. If, for reasons that can be attributed to the beneficiary of the compensation or his or her heirs, it is not possible to pay the amounts established within the time frame indicated, the State must deposit the said amounts in their favor in an account or certificate of deposit in a solvent Chilean financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If, after 10 years, the amount allocated has not been claimed, it shall be returned to the State with the interest accrued.

297. The amounts allocated in this Judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, must be delivered to the person indicated integrally, as established in this Judgment, and may not be affected or conditioned by current or future taxes or charges.

298. If the State should incur arrears, it must pay interest on the amount owed corresponding to bank interest on arrears in Bolivia.

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[299] The Order added, in particular, that the request to access the Victims' Legal Assistance Fund was aimed at covering reasonable and necessary expenses related to the production of evidence before the Court; specifically for the presentation of the statements of the presumed victims and of the expert opinions, either at the hearing or by affidavit, as well as for the appearance of the inter-American defenders at the public hearing. *Cf.* Order of the President of February 19, 2013, considering paragraph 4, http://www.corteidh.or.cr/docs/asuntos/pacheco_19_02_13

[300] *Cf.* Order of the President of February 19, 2013, considering paragraph 16, http://www.corteidh.or.cr/docs/asuntos/pacheco_19_02_13

IX.
OPERATIVE PARAGRAPHS

299. Therefore,

THE COURT

DECIDES,

Unanimously that:

1. The preliminary objections filed by the Plurinational State of Bolivia are inadmissible, in accordance with paragraphs 15, 21 to 25, 29, 33, 38, 39 and 41 of this Judgment.

DECLARES,

unanimously that:

2. The Plurinational State of Bolivia is responsible for the violation of the right to seek and receive asylum, of the principle of non-refoulement (contained in the right to freedom of movement and residence) and of the rights to judicial guarantees and to judicial protection, recognized in Articles 22(7), 22(8), 8 and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, and Frida Edith, Juana Guadalupe and Juan Ricardo, all three with the last name Pacheco Tineo, in accordance with paragraphs 126 to 199 of this Judgment.

3. The Plurinational State of Bolivia is responsible for the violation of the right to mental and moral integrity, recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Rumaldo Juan Pacheco Osco, Fredesvinda Tineo Godos, and Frida Edith, Juana Guadalupe and Juan Ricardo, all three with the last name Pacheco Tineo, in accordance with paragraphs 206 to 208 of this Judgment.

4. The Plurinational State of Bolivia is responsible for the violation of the right to protection of children and the family, recognized in Articles 19 and 17 of the American Convention, in relation to Articles 8(1), 22(7), 22(8), 25 and 1(1) thereof, to the detriment of Frida Edith, Juana Guadalupe and Juan Ricardo, all with the last name Pacheco Tineo, in accordance with paragraphs 216 to 229 of this Judgment.

5. The Plurinational State of Bolivia is not responsible for the alleged violation of the right to physical integrity recognized in Article 5(2) of the American Convention, for the reasons indicated in paragraphs 204 to 206 and 208 of this Judgment.

6. It is not in order to analyze the facts under Articles 9 and 2 of the American Convention, for the reasons indicated in paragraph 237 of this Judgment.

AND ESTABLISHES,

unanimously that:

7. This Judgment constitutes *per se* a form of reparation.

8. The Plurinational State of Bolivia must make the publications of this Judgment as described in paragraph 262 hereof.

9. The Plurinational State of Bolivia must implement permanent training programs for officials of the National Immigration Directorate and the National Refugee Commission, as well as for other officials who, owing to their functions, are in contact with migrants or those requesting asylum, in accordance with paragraphs 269 and 270 of this Judgment.

10. The Plurinational State of Bolivia must pay the amounts established in paragraph 285 of this Judgment for pecuniary and non-pecuniary damage, in the terms of the said paragraphs and of paragraphs 294 to 298 hereof, as well as reimburse the amount established in paragraph 293 of this judgment to the Victims' Legal Assistance Fund.

11. In exercise of its attributes and in compliance with its obligations under the American Convention, the Court will monitor complete compliance with this Judgment, and will consider this case concluded when the Plurinational State of Bolivia has complied fully with its provisions.

12. The Plurinational State of Bolivia must provide the Court with a report on the measures adopted to comply with this Judgment within one year of its notification.

Done, at San José, Costa Rica, on November 25, 2013, in the Spanish language.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary