

RE: Panama - Universal Periodic Review, Thirty-sixth session, Third Cycle on Tuesday, November 3, 2020.

To the respected Head of Delegations to the United Nations,

On behalf of the Center for Justice and International Law (CEJIL) I have the pleasure of bringing to your attention the provisional measures granted by the Inter-American Court of Human Rights in the case *Vélez Loor v. Panama* on July 29, 2020,¹ and respectfully request that you include the questions below in your review of the State of Panama, within the framework of the Universal Periodic Review, Thirty-sixth session, Third Cycle on Tuesday, November 3, 2020.

I. About CEJIL

The Center for Justice and International Law (CEJIL) is a non-governmental, non-profit organization that protects and promotes human rights in the Americas through the strategic use of the tools offered by international human rights law. CEJIL offers advice and free legal representation to victims of human rights abuses—and to organizations that defend their causes—when justice proves impossible to achieve in their own countries. In this effort, CEJIL prioritizes the hemisphere's most persecuted and excluded populations. Central to CEJIL's work is the role of the victims and our collaboration with human rights defenders and partner organizations, with whom we litigate, coordinate our efforts and share our achievements. Currently, CEJIL represents more than 10,000 victims and beneficiaries of protective measures in more than 200 cases before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Moreover, we work together with more than 400 partner organizations with the purpose of restoring the rights of victims and changing the on-the-ground realities that allowed their rights to be violated.

II. Brief History of the Inter-American Human Rights Court

In November 1969 the Inter-American Specialized Conference on Human Rights was held in San Jose, Costa Rica in which the delegates of the member States of the Organization of the American States adopted the American Convention on Human Rights, which entered into force on July 18, 1978, when a member State deposited the eleventh ratified document. In order to safeguard the essential rights of man in the American continent, the Convention created two authorities with competence to observe human rights violations: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Hence, the Inter-American Court is one of three regional human rights tribunals, together with the European Court of Human Rights and the African Court of Human and Peoples' Rights. It is an autonomous legal institution whose objective is to interpret and apply the American Convention. The Inter-American Court exercises a contentious function, in which it resolves contentious cases

¹ *Case of Vélez Loor Vs. Panama*, Resolution of the Inter-American Court of Human Rights of July 29, 2020, Adoption of Provisional Measures. Available at: <https://summa.cejil.org/en/entity/v3t6ammsqvn>.

and supervises judgments; an advisory function; and a function wherein it can order provisional measures.

III. *Vélez Loor Vs. Panama* and the Inter-American Human Rights Court

One of the cases CEJIL has represented is *Vélez Loor Vs. Panama*, the first case in which the Inter-American Court -the maximum human rights tribunal in the Americas- referred to the rights of migrants. The case concerns the detention and criminalization of Mr. Jesus Tranquilino Velez Loor for immigration reasons and the failure to investigate his allegations of torture while in detention.

In its judgement, issued in 2010 the Inter-American Court of Human Rights (“IACHR”) declared the international responsibility of the Republic of Panama for the violation of the rights to personal liberty, judicial guarantees, access to justice , and personal integrity of Jesús Tranquilino Vélez Loor.² Moreover, through this ruling the IACHR specifically ordered that “the State **shall, within a reasonable period of time, adopt the necessary measures to create establishments with sufficient capacity to hold persons whose detention is necessary and reasonable for migratory reasons, specifically adapted for such purposes, which offer appropriate physical conditions and a regimen suitable for migrants and which are staffed by properly qualified and trained civilians.”³**

a. Provisional measures under the COVID-19 sanitary emergency

Over the years the Panamanian State has maintained a policy of automatic detention of irregular migrants in its territory. At the beginning of April this year approximately 1991 migrant people were detained in the Detention Center of La Peñita in Darien-close to the Colombian frontier-, which had capacity for 200 people. At that time approximately 20 cases of COVID-19 had been reported the before mentioned center.

Due to this situation and the lack of possibility for the persons detained to adopt measures of social distancing to prevent the spread of COVID-19, because of the grave conditions of overcrowding, CEJIL asked the Inter American Court to adopt provisional measures to protect their rights to life, personal integrity and health.

On July 29, 2020 the IACHR granted provisional measures to protect migrants in the detention centers at La Peñita and Lajas Blancas (another detention center were people that tested positive for Covid-19 were being transferred). The bases of the measures were (1) the gravity of the situation in relation to the overcrowding,⁴ and lack of ventilation, showers and access to food and

² *Vélez Loor Vs. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 94 (Nov. 23, 2010).

³ *Ibidem*.

⁴ *Case of Vélez Loor Vs. Panama*, *supra* note 1, Considering 25.

potable water;⁵ (2) the irreparability of harm due to the risks to health and life;⁶ and, (3) the urgency of the situation in relation to the increase of positive cases of COVID-19.⁷

In light of these concerns, the IACHR issued a series of guidelines of the measures that the Panamanian State should adopt to protect the rights of the people detained in these centers, including: (1) requiring the reduction of the overcrowding of the detention centers to the minimum;⁸ (2) adopting measures to reduce the risk of gender-based violence and violence against children;⁹ (3) ensuring free access to health care, particularly for women and children;¹⁰ and (4) establishing protocols to prevent the propagation of COVID-19,¹¹ including adequate medical care,¹² ensuring proper ventilation,¹³ and providing free masks and hygiene products.¹⁴

As the regional human rights tribunal for the Americas, both the judgements and protective measures of the IACHR are binding to states parties to the American Convention on Human Rights, such as Panama.

However, the Panamanian State has not complied with the order of the Court. According to the information available by October 15 there were 1652 people in La Peñita, 131 in Lajas Blancas, and 138 in San Vicente (a recently established center to help reduce the overcrowding in La Peñita).¹⁵

According to public information, in October, two migrants who tested positive for COVID-19 died in the Province of Darién.¹⁶ Also in October, the government reported that approximately 300 migrants entered the Province of Darien, some of whom have tested positive for COVID-19.¹⁷ However is not clear if they were in any of the migrants detention centers, in which case the rights of others persons detained to live, personal integrity and health could be a great risk. It is also not clear if the Panamanian State is providing adequate health attention to persons detained or if they have access to sufficient water, alcohol, face mask or other measures to prevent the spread of COVID-19.

⁵ *Case of Vélez Llor Vs. Panama*, *supra* note 1, Considering 26.

⁶ *Case of Vélez Llor Vs. Panama*, *supra* note 1, Considering 32.

⁷ *Case of Vélez Llor Vs. Panama*, *supra* note 1, Considering 30.

⁸ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(b).

⁹ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(d).

¹⁰ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(g).

¹¹ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(e).

¹² *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(f).

¹³ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(i).

¹⁴ *Case of Vélez Llor Vs. Panama*, *supra* note 1, para. 35(j).

¹⁵ La Prensa, Cientos de migrantes entran al país pese a que frontera con Colombia sigue cerrada, October 18, 2020. Available at: <https://www.prensa.com/judiciales/cientos-de-migrantes-entran-al-pais-pese-a-que-frontera-con-colombia-sigue-cerrada/>.

¹⁶ La Prensa, Ministerio de Seguridad confirma muerte de dos migrantes en Darién, estaban contagiados de la Covid-19, October 15, 2020. Available at: <https://www.prensa.com/judiciales/ministerio-de-seguridad-confirma-muerte-de-dos-migrantes-en-darien-estaban-contagiados-de-la-covid-19/>; TVN, Dos migrantes murieron por COVID atravesando la selva de Darién, October 15, 2020. Available at: https://www.tvn-2.com/videos/noticias/migrantes-murieron-COVID-atravesando-Darien_2_5694200554.html.

¹⁷ La Prensa, *supra* note 16.

IV. Questions for the State of Panama

Due to the previous concerns, we kindly request that your delegation, to present the following question to Panama during its Universal Periodic Review:

- (1) What measures have the Panamanian State taken to comply with the Provisional Measures ordered by the Inter/American Court regarding the situation of migrants detained in the detention centers of La Peñita and Las Lajas in the Province of El Darien?
- (2) What alternatives to detention are being considered, particularly for children and their families, in the migrant’s detention centers at Darién Province to prevent the spread of COVID-19?
- (2) What efforts are being made to reduce overcrowding in the migrant detention centers to prevent the spread of COVID-19?
- (4) What measures are being instituted to ensure sufficient access to health care for migrants in the migrant’s detention centers of Darién, particularly for women and children?
- (6) What steps are being taken to prevent the propagation of COVID-19 in these detention centers?

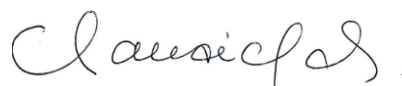
V. Recommendations for the State of Panama

Due to the gravity of the situation explained, we would like to kindly request that your delegation, present the following recommendations to Panama during its Universal Periodic Review:

- a. We would like to note that detained individuals face grave risks if exposed to COVID-19 in immigration detention facilities, specially where there is a substandard medical care, inadequate basic hygiene, and overcrowding. Many detained people are at heightened risk to COVID-19 due to their age or serious medical needs, and rapid spread of COVID-19 is already occurring. Hence, we would like to recommend the State to comply with the orders of the Inter-American Court of Human Rights regarding the Provisional Measures adopted in favor of persons detained in the Detention Centers of La Peñita and Lajas Blancas, in the context of the Velez Llor v. Panama Case, specially:
 - i. adopting all the necessary measures for the reduction of the overcrowding of the detention centers to the minimum, while ensuring proper ventilation, and providing free masks and hygiene products.
 - ii. ensuring free access to health care, particularly for women and children.
 - iii. establishing protocols to prevent the propagation of COVID-19, including adequate medical care.

Thank you for considering this request. We would be happy to address any questions or concerns you may have at goviedo@cejil.org and mmartino@cejil.org.

Sincerely,



Claudia Paz y Paz
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CEJIL