Inter-American System

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During the period covered by this report, the Inter-American Court on Human Rights (hereinafter ‘Inter-American Court’ or ‘Court’) issued four decisions, namely: Sánchez vs Honduras, Bulacio vs Argentina, Mack Chang vs Guatemala, and Urrutia vs Guatemala. In addition, the Court also issued Advisory Opinion 18, which addresses the legal conditions and rights of undocumented workers (Condición Jurídica y Derechos de los Migrantes Indocumentados).\(^1\)

The present report will analyse the most important legal issues raised by the Sánchez and Bulacio cases and Advisory Opinion 18. In future submissions we will consider the issues raised by the other cases decided by the Court in 2003, if necessary.

The full text of the reported decisions can be found at the website of the Inter-American Court at www.corteidh.or.cr.

\textit{Juan Humberto Sánchez vs Honduras, Judgment of 7 June 2003}

The Inter-American Commission on Human Rights (hereinafter ‘Inter-American Commission’ or ‘Commission’) submitted this case against Honduras on 8 September 2001. Petitioners and the Commission alleged violations of Articles 4 (right to life), 5 (right not to be tortured), 7 (right to liberty), 8 (due process rights), and 25 (right to an effective remedy), all in connection with Article 1(1) (duty to respect and ensure) of the American Convention on Human Rights (hereinafter ‘American Convention’ or ‘Convention’).

Juan Humberto Sánchez, a Honduran national, worked as a technician in Radio Venceremos, a radio operated by the Farabundo Martí National Liberation Front (\textit{Frente de Liberación Farabundo Martí}), a Salvadoran guerrilla movement. For that purpose, Mr. Sánchez resided in Departamento de la Libertad in El Salvador.

On 9 July 1992, Sánchez came to Santo Domingo, a small town located in Colomoncagua, Honduras to visit his family and to obtain his national identification card (\textit{documento nacional}). Next evening, he was arrested in his parent’s house by members of the military belonging to the Décimo Batallón de Infantería de Marcala, La Paz and released the following morning. Later on the night of 11 July 1992, a group of military personnel broke into the house of Mr. Sánchez parents, threatened his family and arrested him without providing any reasons to support the detention. His

\(^1\) At the time of this writing, the text of Advisory Opinion 18 was not yet available in English.
body, with a shot in his head and visibly signs of torture, was found decomposed on 21 July 1992.

After his stepfather reported the second arrest to the authorities of the Décimo Batallón, the victim's family was the object of several acts of intimidation from members of the military as well as from the civil authorities in the region. In particular, on 28 July his stepfather was transported to a military barrack in Tegucigalpa, the capital of Honduras, for interrogations related to the victim's death. He was requested to deny the involvement of the armed forces in the disappearance of Mr. Sánchez and to blame instead a group of members of their community for the crime.

Neither the habeas corpus submitted on behalf of the victim at the time of his arrest nor the subsequent criminal investigations initiated as a result of his death were conducive to the identification of the perpetrators of his murder or the application of the appropriate criminal sanctions.

Initially, Honduras filed a preliminary objection arguing lack of exhaustion of domestic remedies and requested the Court to reject the petition without consideration. Petitioners and the Commission argued that the State was foreclosed to raise this objection because it should have been raised in the first stages of the proceedings before the Commission. Also, they argued that an exception to the rule of exhaustion applied in this case because of the existence of undue delay in the investigations initiated as a result of the death of Mr. Sánchez. Furthermore, the Petitioners alleged that Honduras failed to indicate the remedies that should have been used by the petitioner and the effectiveness of those remedies. Finally, the Commission argued that the petition of the State seeking review of its decision of admissibility by the Court was contrary to Articles 46 and 47 of the American Convention, which provided for the Commission's exclusive jurisdiction to decide the admissibility of a petition.

The Court rejected the Commission's arguments and ruled that it has an 'inherent jurisdiction' to review all the aspects of the petition, including the requirements of admissibility established in Articles 46 and 47 of the American Convention. Next, the Court concluded that the exception of undue delay was applicable in this case and rejected the preliminary objection submitted by Honduras.

With respect to the merits of the case, the Court first analysed the application of Article 7 of the American Convention to the facts of this case. Petitioners and the Commission argued that Juan Sánchez was illegally and arbitrarily deprived of his physical liberty when detained twice by members of the armed forces. In both occasions the arrests were not based on the existence of a warrant issued by the proper authorities; moreover, in the second arrest, the perpetrators used forced to break into the home of the victim's parents and threatened the family with guns. The intention of his captors, Petitioners and the Commission adduced, was to detain Mr. Sánchez in order to keep him in isolation, interrogate him under torture, and finally murder him. In addition, the State failed to bring the victim to a
court that could decide on the legality of his detention. Finally, they argued that the victim’s stepfather was also the object of a violation of his right to liberty and personal security when he was transported to Tegucigalpa and interrogated for two days in a military barrack in regard to the activities of Mr. Sánchez. Honduras accepted responsibility for the first arrest but denied that State agents were involved in the second detention and in the subsequent death of the victim.

The Court ruled that Honduras violated paragraphs 2 and 3 of Article 7 of the American Convention, which prohibit illegal and arbitrary deprivations of liberty. Mr. Sánchez was deprived of his liberty without a warrant issued by the competent authorities and was not apprehended in flagrant delecto, as required by the Honduran Constitution. In addition, he was not informed of his legal rights and the charges of which he was accused and he was detained at night in direct contravention of the rules stated in that Constitution. Moreover, the arrest of Mr. Sánchez can be linked to a pattern of gross violations of human rights in which State agents arrested their victims with the intention of interrogating, torturing and murdering them. Therefore, the Court concluded that the detention of Mr. Sánchez was illegal and arbitrary.

The Court also found a violation of Article 7(4) of the Convention since Juan Sánchez was not informed of the reasons for his detention in the two occasions in which he was arrested. The Court appears to suggest that the requirement stated in Article 7(4) must be guaranteed from the same moment of the deprivation of liberty, in light of the American Convention and the Constitution of Honduras. Furthermore, the Court ruled that the victim was never brought to a judge or other authority to exercise judicial review as to the legality of his detention, as required both by the American Convention and the Constitution of Honduras. The Court provided that the obligation to bring a person ‘immediately’ before a court or other judicial authority must be interpreted in light of the special circumstances of each case and that there is no situation, no matter its gravity, that would allow a State to unduly extend the period of detention without affecting the rights enshrined in the American Convention. Thus, the Court found a violation of Article 7(5).

In regard to the right to habeas corpus, the Court found that the pattern of extrajudicial executions to which the arbitrary detention of Juan Sánchez was linked, prevented him from exercising his right to an effective remedy seeking review of the legality of his deprivation of his liberty. Therefore, there is a violation of Article 7(6) of the Convention.

Finally, the Court concluded that the deprivation of liberty of the victim’s stepfather when he was transported to a military barrack and interrogated for two days constituted an illegal and arbitrary detention and therefore an additional violation of Article 7.

Next, the Court considered the alleged violation of Article 5 of the American Convention which protects the right not to be tortured or subject
to other forms of cruel, inhuman or degrading treatment. Petitioners and the Commission argued that Juan Sánchez rights under Article 5 were violated in two ways. First, the illegal and arbitrary arrests to which the victim was subjected, as well as the use of violence and the lack of a proper judicial warrant to support his detention must have caused Sánchez great psychological suffering, particularly given the pattern of disappearances and extrajudicial executions that prevailed in Honduras at that time. Second, the body of the victim was found with visible signs of torture. The State, which was responsible for the integrity of Mr. Sánchez while in custody, was unable to discharge the burden of proving that it did not subject the victim to torture while in detention.

Additionally, Petitioners argued that the immediate members of Juan Sánchez family, particularly his stepfather, mother, siblings, partners and children were also victims of a violation to their right not to be subject to cruel, inhuman and degrading treatment. First, the illegal and arbitrary arrests of Mr. Sánchez caused his parents and siblings suffering, anguish and fear since they were both carried out in their home and, in the second occasion, with the use force. Second, they were subjected to several acts of intimidation to prevent them from involving the armed forces in the disappearance of the victim. The stepfather was transported to a military barrack in Tegucigalpa and interrogated for two days with regard to the activities carried out by his stepson. Third, they suffered additional pain when they discovered the fate of the victim and were unable to bury him according to their customs and traditions. Finally, the impunity tolerated by the State and the conduct of the judicial authorities impeding that a proper investigation be carried out in the case of Mr. Sánchez caused his next of kin a deep sense of pain, fear, frustration and powerlessness for more than nine years.

The Court found a violation of Mr. Sánchez right not to be tortured on two bases. First, the Court found that the illegal and arbitrary detention of Mr. Sánchez was linked to a pattern of gross violations perpetrated by the armed forces of Honduras during the 1980s and 1990s, during which those considered ‘suspects’ of having ties to guerrilla movements were detained at night, interrogated under torture, murdered and buried in clandestine cemeteries. The Court concluded that the facts proven in this case permitted it to infer that Mr. Sánchez’s fate was similar to that followed by other victims of the same practice. Second, the Court ruled that the State was responsible for the personal integrity of those under the custody of its agents. Since the State could not discharge the burden of proving that it did not bear responsibility for the visible signs of torture found on the body of the victim, the Court inferred that the victim was tortured under interrogation while in State custody. In addition, the Court determined that the illegality of the deprivation of liberty, even in the case of short periods of time, permits the Court to infer that the treatment received by the victim during his incommunicado detention was ‘inhuman, degrading, and
aggressive in extreme'. Thus, there is a violation of Article 5 of the American Convention in relation to Juan Sánchez.

The Court found that the next of kin of Mr. Sánchez could also be considered victims of a violation of Article 5 in their own right. The illegal and arbitrary detention of Juan Sánchez in the family home in the presence of his parents and his minor siblings; the unknown fate of the victim for more than a week; the illegal detention of the stepfather and the acts of intimidation suffered by the family to prevent them from disclosing the involvement of State agents in the disappearance of Sánchez; the visible marks of torture and the violence found in the body of the victim, as well as the lack of proper investigation that followed the death of Sánchez caused pain and suffering to his next of kin, which constituted cruel, inhuman and degrading treatment prohibited by paragraphs 1 and 2 of Article 5. Moreover, the treatment of the body of the victim, found decomposed on a bank of a river and buried without the consent of his family, caused his next of kin additional pain, thereby constituting cruel and inhuman treatment.

Third, the Court considered the alleged violation of Article 4 of the American Convention that ensures the right not to be arbitrarily deprived of life. Petitioners and the Commission argued that it is reasonable to infer that State agents participated in the kidnapping, torture and murder of Juan Sánchez. His death is linked to a practice of disappearances and murders carried out by the Honduras armed forces against perceived guerrilla members during the 1980s and the first years of the 1990s. In addition, and as part of this practice, domestic courts failed to investigate the murders of the victims and the cases that were open to establish the circumstances of their death were processed very slowly and with a total lack of interest to reach a final outcome. In fact, many of these cases finally were closed without establishing the fate of the victims or the identity of the perpetrators of these crimes.

Also, Petitioners alleged that Article 4, in relation to Article 1(1) of the American Convention, establishes a positive duty for States to adopt all necessary measures to protect, prevent, investigate and punish those responsible for the violations of the right to life. In the case of Juan Sánchez, the State violated this positive duty when it failed to carry out an impartial and thorough investigation and adopt the necessary measures to stop the practice of forced disappearances and extrajudicial executions. The State denied the participation of State agents in the death of the victim and argued that his death could not be attributable to Honduras under international law.

The Court ruled that it attaches a high evidentiary weight to testimonies, circumstantial evidence and logical inferences when it is possible to establish the existence of a practice of extrajudicial executions coordinated or tolerated by the State and the case under review can be linked to that practice. In those circumstances, it is reasonable to presume and conclude
that there is State responsibility. The Court next found a violation of Article 4 on three bases.

First, the Court found that there are sufficient elements to conclude that the death of the victim was perpetrated by State agents and that his murder was linked to an existing practice of gross violations of human rights that took place around the time of the arrest of Juan Sánchez. Second, Article 4 in relation to Article 1(1) establishes the duty of States to adopt all necessary measures to ensure the right to life of all persons under the States’ jurisdiction. When Honduras failed to adopt the necessary measures to prevent the violations of the right to life by permitting the existence of a practice of disappearances and extrajudicial executions, it violated Article 4, in connection with Article 1(1) of the American Convention. Finally, the Court reiterated its jurisprudence stating that States are responsible for the observance and respect of the right to life of all persons under State custody. In this regard, the Court concluded that whenever a person is arrested in good health and later dies, the State bears the burden of providing a satisfactory and convincing account of the facts that transpired, in order to disprove any allegations of State responsibility in the death of the victim. Also, the protection of the right to life requires an effective official investigation of any death caused by the use of force of State agents. In the case under review, the State was unable to provide sufficient information regarding what happened to Juan Sánchez after his second detention; therefore, the Court concluded that the State violated Article 4 of the American Convention, in connection with Article 1(1) of that treaty.

Fourth, the Court reviewed the alleged violations of Articles 8 and 25 of the American Convention, which respectively protect the right to due process and the right to an effective remedy, in relation to Article 1(1) of the same treaty. Petitioners and the Commission argued that the victim was not brought promptly before a court after being detained and, as a consequence, he did not have access to an effective remedy to protect his rights to liberty, due process and not to be tortured. In addition, Sánchez’s family did not have access to an effective remedy to investigate the death of the victim. The criminal investigation initiated by the State was not prosecuted within a reasonable time and was plagued by mistakes and other irregularities. The State, on the other hand, refuted those allegations and alleged that it had provided an effective remedy to the victim and his family members.

The Court found a violation of the victim’s rights to due process protected by Article 8 of the American Convention because he was unable to file a habeas corpus seeking judicial review of the legality of his detention, or to defend himself against any existing criminal charges. Moreover, the criminal proceedings initiated to investigate the murder of the victim and punish its perpetrators were ineffective and suffer from severe procedural shortcomings, particularly the inexistence of an investigation in the crime scene and the failure to perform an autopsy of the body before it was buried.
In this respect, the Court concluded that in cases of extrajudicial executions, the State must carry out a thorough, impartial and effective investigation of the case; for this investigation it was appropriate to follow the guidelines provided by the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions or 'Protocol of Minnesota'. The State failed to carry out such an investigation, and therefore, it failed to ensure the right to an effective remedy. Moreover, the investigation was not prosecuted within a reasonable time. Thus, the State violated the rights the victim and his next of kin protected in Articles 8 and 25, in connection to Article 1(1) of the Convention.

Fifth, Petitioners and the Commission argued an independent violation of Article 1(1) of the American Convention because the State failed to respect and ensure the rights protected in Articles 4, 5, 7, 8 and 25. The Court accepted this argument and concluded that such violation occurred not only in relation to the rights of the victim, but also in regard to the rights violated of his next of kin. Thus, the Court found a violation of the duty to respect enshrined in Article 1(1), in relation to Articles 4, 5, 7, 8 and 25 in the case of Juan Sánchez. It also found a violation of Article 1(1) in relation to Articles 5, 7, 8 and 25 in the case of the victim's stepfather. Finally, it concluded that there was a violation of Article 1(1) in connection with Articles 5, 8 and 25 in the case of the victim's mother, siblings, partners and daughters.

After concluding its analysis on the merits of the case, the Court proceeded to establish the reparations that the State should make to redress the violations against Juan Sánchez and his family on the basis of Article 63(1) of the American Convention. In that respect, it ruled that the victim, his mother, stepfather, eight siblings, two partners and two children would be considered beneficiaries of the reparations. The Court awarded a total of USD 284,700 in damages to those beneficiaries. In addition, the Court decided that the damages awarded to the victim would be transmitted to his heirs as follows: 50 per cent to his children; 25 per cent to his partners; and 25 per cent to his parents.

As per the request of the Petitioners and the Commission, the Court also ordered the State to implement other measures of reparation, in addition to the monetary compensation. In particular, the Court ordered the State to comply with its duty to provide the victim’s family with a thorough investigation in which the perpetrators of his murder be identified and punished according to Honduran law. The next of kin of Mr. Sánchez must have full access and participation in the criminal proceedings initiated to investigate his murder, with the results of that investigation made available to the public opinion so that the Honduran society knows the truth about the victim’s fate. Furthermore, the State must establish the place where the body of Mr. Sánchez was buried, return the body to his family and cover the cost of his burial in a place decided by his family.
Second, the State must recognize its international responsibility for the death of Juan Sánchez in a public event and for once publish the conclusions and the section of the established facts of the Court's decision in the State official publication (Diario Oficial) and in another newspaper of national outreach.

Third, on the basis of the duty provided by Article 2 of the American Convention, Honduras must create a national registration system of detained persons to control the legality of the arrests carried out by State agents. The registration system must include information regarding the name of the person arrested, the reasons for his or her detention, the authority that ordered the detention, the day and time in which the person was detained and released, as well as information regarding the applicable warrant.

Finally, the Court awarded USD 16,000 to the legal representatives of the victims to cover costs incurred in the litigation of this case both domestically and internationally. Also, it awarded USD 3,000 to the members of Sánchez family to compensate them in advance for any expenses which they may incur to participate in the domestic criminal proceedings that the State must prosecute to identify and punish the perpetrators of the victim’s murder.

The Court will supervise the implementation of this decision and order the closing of this case once it can verify full compliance with all the aspects of its ruling.

Walter David Bulacio vs Argentina, Judgment of 18 September 2003

The case was submitted to the Inter-American Court by the Inter-American Commission on 24 January 2001. Petitioners and the Commission alleged violations of Walter David Bulacio’s right to life (Article 4), right to personal liberty (Article 7), right not to be tortured (Article 5) and rights of the child (Article 19). Additionally, Argentina allegedly violated Walter David Bulacio and his family’s rights under Article 8 (due process) and 25 (judicial protection) of the American Convention. These claims arose in relation to the obligation to respect and ensure the American Convention’s rights, as outlined in Article 1(1) (obligation to respect the rights).

On 19 April 1991, the Federal Police of Argentina made a massive detention, or a ‘razzia’, of more than 80 people in Buenos Aires. The detention took place at a venue where a rock concert was scheduled. Among the detainees was the 17-year-old Walter David Bulacio. The police took Walter David Bulacio to a local police station, where he remained in a ‘room for minors’. While in this room, police agents allegedly struck him. Throughout this detention, the officers failed to charge Bulacio and other detainees with a crime or notify them of the reason for the detention. Additionally, the police failed to notify a juvenile court of the detention of Walter David Bulacio or other minors, as was required by law. At no time did the police notify Walter David Bulacio’s family of his detention.
The next morning, 20 April, Walter David Bulacio vomited and was admitted to the Municipal Hospital Pirovano, still without notification of his detention to a judge or his parents. When admitted, a doctor noticed wounds on Walter and diagnosed him with head trauma. He also told the doctor that he had been hit by the police while in detention. The doctor sent Walter to a nearby hospital for radiological tests, after which he was returned to the Pirovano hospital. That evening, a neighbour friend of Walter told his parents that his son had been detained. The parents, Victor David Bulacio and Rosa Graciela Scavone, located Walter and visited him in the hospital.

On 21 April 1991, Walter was transferred to another hospital, where the attending doctor notified the police that a minor with injuries had been admitted, which initiated a police investigation into the cause of those injuries.

Two days later, on 23 April 1991, Walter David Bulacio died. Since his death, the family, including Victor David Bulacio, Rosa Graciela Scavone, Lorena Beatriz Bulacio (sister) and Maria Ramona Armas de Bulacio (paternal grandmother) have experienced serious depression, physical and psychological problems stemming from the loss of Walter David. After Walter’s death, the father became depressed. He lost his job, began to use drugs and have affairs, which produced two children. After attempting suicide three times, he died of a heart attack. Walter’s sister, Lorena Beatriz Bulacio, 14 when her brother died, has experienced depression since that time. Throughout her teenage years, she attempted suicide two times and developed anorexia/bulimia. She is now 27 years old and does not leave the house or engage in relationships, studies or work. Walter’s grandmother, Maria Ramona Armas de Bulacio, has been active in demanding justice and truth surrounding her grandson’s death. She experienced physical effects of this fight by way of fighting cancer and having seven operations since 1996.

The criminal investigation into the death of Walter David Bulacio has continued for more than 12 years. The investigating judge charged the chief of the police station – Miguel Angel Espósito – who ordered the detentions of several minors, including Walter Bulacio, with illegal deprivation of liberty, abuse of office and breach of duties of a government official. Throughout this criminal litigation, the case was delayed as a result of numerous evidentiary appeals and other delaying motions. Through the criminal suit, the parties discovered an internal memorandum (Memorandum 40) that granted the police the authority to arbitrarily detain minors without notification to judges. The criminal case, started in 1991, remains unsettled. Most recently, the defense of Espósito has raised the running out of the statute of limitation in the criminal case.

After two years of litigation before the Court, the representatives of the victim’s family, the Commission and the State reached a friendly settlement of this case on 26 February 2003. In the agreement, the State recognised its international responsibility in violating Walter David Bulacio’s human rights, in particular his rights not to be tortured, to life, to judicial protection.
and due process and the right to have special measures of protection afforded to children. In addition, the State accepted international responsibility for the violation of the rights to due process and judicial protection of Walter Bulacio’s family for its failure to provide an effective remedy. The State finally accepted responsibility for its failure to respect and ensure the rights of Bulacio and his next of kin, in violation of the general duties contained in Articles 1(1) and 2 of the American Convention. The parties in the settlement and the Commission agreed that the Court would determine the reparations resulting from the State’s violation of its international responsibilities.

The Court first established that there was agreement among the parties and the Commission that the beneficiaries of the damages awarded by the Court would be Walter David Bulacio and his next of kin, namely: Victor David Bulacio, Rosa Graciela Scavone, Lorena Beatriz Bulacio and Maria Ramona Armas de Bulacio, who suffered injuries as a result of the State’s violations against Walter David Bulacio.

The Court awarded material damages in the amount of USD 124,000. It also ordered the payment of USD 3,000 to Rosa Graciela Scavone for burial costs. Addressing the suffering caused to the victim and his next of kin, the Court ordered immaterial damages in the amount of USD 210,000. Finally, it awarded USD 10,000 to be distributed in equal portions among the mother, sister and grandmother of the victim to cover future medical expenses for the physical and psychological suffering incurred as a result of the State’s violations. The damages awarded to the victim were transmitted in its totality to his mother since Walter Bulacio’s father passed away before the decision of the Court was adopted. The damages awarded to the father of the victim for the violation of his own rights must be distributed in equal portions among his mother, his wife, and his three children.

As per the request of the representatives of the family’s victim and the Commission, the Court also established other forms of reparation which addressed the harmful effects that were not economic or patrimonial in nature, but that were intended to vindicate the memory of the victim in this case. In particular, the Court considered the duty to investigate into the death of the victim and to identify and punish his perpetrators; the duty to ensure the non-repetition of similar acts in the future; and the duty of the State to adopt the necessary domestic legislation to guarantee the protection of the rights enshrined in the American Convention.

First, the Court noted that since 1996, the defense for Chief Espósito, charged with ordering the detention and subsequent mistreatment of Walter Bulacio, has extensively used motions and other procedural remedies in order to prevent the advancement of the criminal case. In this respect, the Court underscored the duty of domestic courts to avoid undue delays or other procedural obstacles that result in the violation of the victims’ right to an effective judicial protection. In regard to the investigation initiated into Walter Bulacio’s death, the Court found that the State
cannot argue the running out of the statute of limitation to prevent the criminal proceedings to continue. According to the obligations assumed by Argentina when ratifying the American Convention, the State cannot raise the application of domestic laws, such as a statute of limitation, to oppose compliance with the rulings of the Inter-American Court. Recognising the rights consecrated in Article 25 and the general duties established in Articles 1(1) and 2 of the American Convention, the Court found that in spite of the many judicial proceedings, after 12 years, the State has failed to sanction someone for the death of Walter David Bulacio. The Court therefore ordered that the State continue and conclude the investigation and publicly disclose the results to the Argentinean society.

Second, the Court addressed the duty of Argentina to ensure the non-repetition of the harmful acts that violated Walter Bulacio’s rights. In this regard, the Court referred to the friendly settlement reached by the parties and the Commission, which specifically requested that the Court, as part of the reparations, establish the scope of the right to liberty protected in Article 7 of the American Convention as applied to children. The Court stated that the State is the guarantor of the rights of a person deprived of his or her liberty; therefore, it bears the burden of providing a satisfactory account of what transpired during the period in which that person remained in custody. Treatment of a person deprived of his or her liberty must be subject to strict scrutiny, taking into account special vulnerabilities of the person in detention, particularly when he or she is a minor. Moreover, the Court reiterated its well-established case law according to which incommunicado detention must be used only in exceptional circumstances because it causes physical and psychological suffering to the detainee, increasing the risk for additional violations of his or her rights.

Also, the Court indicated that detainees have certain rights under Article 7 of the American Convention, including:

1. The right to be informed of the reason for their detention upon arrest. This procedure constitutes a mechanism to avoid illegal or arbitrary detentions as well as guarantee the right to defense of the individual and mitigate the detention of a minor;

2. The right to be presented to a judge to seek judicial review of the legality of the detention;

3. The right to notify a third party, such as a relative, a lawyer or a consul of the detention upon arrest. This right is even more critical in the case of minors; therefore, the authority that detains a minor or who is in charge of the place of detention where the minor is transported must immediately contact the family of the child or his or her representative. Moreover, the State must adopt measures to ensure that the notification in the case of minors is effectively complied with; and

4. The right to receive medical attention from a doctor selected by the detainee or his or her legal representative or guardian. The result of any medical exam performed by the detaining authorities must be released to
the intervening court, the detainee, and the detainee's legal representative or guardian. Lack of or deficient medical assistance has been ruled as a violation of the right to personal integrity guaranteed in Article 5 of the American Convention.

The Court also mentioned that the State needs to establish minimum standard procedures that will assure the observance of rights and guarantees of detainees. This includes the use of a registry that identifies the detainee, the reason for detention, notification of the proper authorities and the detainees representatives or relatives of the detention, tracking of visitations, information regarding the day and time of detention and release, schedule of meals and information to the minor detainee and other people about the rights and guarantees of the detainee, as well as indication of signs of blows or mental illness. The detainee must also sign the registry or indicate the reasons for his or her denial to sign.

In addition, the Court underlined that in the case of children, the protection of their rights and the adoption of the necessary measures to ensure such protection must be guided by the principle of the best interest of the child. In this regard, there are several additional considerations that must be taken into account in the case of children, in addition to those already identified as applicable to every detainee. First, the detention of children must be exceptional and for the shortest period of time possible. Second, to safeguard the rights of detained minors, particularly their right to personal integrity, they must be separated from adult detainees. Third, the right of the minor detainee to contact a third person corresponds to the State's obligation to communicate immediately with the minor's relative, even if the detainee did not request it.

In light of these considerations, the Court held that the practice of massive detentions, or 'razzias', as the one carried out in the case of Walter Bulacio was inconsistent with the fundamental right to be presumed innocent, and with the State's obligation to issue a warrant and notify the guardians of minors of the minor's detention.

Lastly, the Court considered the duty of the State to adopt the necessary domestic legislation to guarantee the protection of the rights enshrined in the American Convention. In this regard, it praised the efforts of the State to improve the domestic legislation regarding detentions, after the facts of this case took place. Also, the Court accepted the proposal agreed by the parties and the Commission in the friendly settlement according to which a consultation group would be created to discuss existing needs to amend the domestic legislation regarding the applicable rules for the detention of minors. This group will be made up of experts in this field of law and representatives of civil society organisations.

The Court ordered as a measure of satisfaction that the State publish, for once, the terms of the friendly settlement reached by the parties and the Commission and the conclusions of the Court's decision in the State official publication ('Diario Oficial').
In regard to the costs incurred by the representatives of the victims in litigating this case in domestic courts and the Inter-American System, the Court awarded a total of USD 40,000 to compensate those expenses. Moreover, it awarded USD 5,000 to the victim’s mother to cover future costs related to her participation in the criminal proceedings that must be continued and completed by the State to investigate the death of Walter Bulacio.

The Court will supervise the implementation of this decision and order the closing of this case once it can verify full compliance with all the aspects of its ruling.

Advisory Opinion 18 on the legal conditions and rights of undocumented workers (Condición Jurídica y Derechos de los Migrantes Indocumentados), adopted on 17 September 2003

On 10 May 2002, under Article 64(1) of the American Convention on Human Rights, Mexico requested that the Inter-American Court of Human Rights issue an Advisory Opinion establishing whether the deprivation of certain labour rights to undocumented migrant workers is consistent with the obligation of American States to ensure the principles of equal protection of the law and non-discrimination protected under international and inter-American human rights law. Also, Mexico requested the Court to determine whether compliance with the obligations imposed by international human rights law, including those considered erga omnes could be subordinated by an American State to the prosecution of domestic immigration policies. Finally, Mexico requested the Court to define whether the principle of equal protection of the law and non-discrimination has attained the status of jus cogens in international law. To respond to these questions, Mexico requested the Court to interpret Articles 3(1) and 17 of the Charter of the Organization of American States (hereinafter ‘OAS Charter’), Articles II of the American Declaration on the Rights and Duties of Man (hereinafter ‘American Declaration’), Articles 1(1), 2 and 24 of the American Convention on Human Rights, Articles 1, 2(1) and 7 of the Universal Declaration on Human Rights (hereinafter ‘Universal Declaration’), and Articles 2(1), 2(2), 5(2) and 26 of the International Covenant on Civil and Political Rights (hereinafter ‘Covenant on Civil and Political Rights’ or ‘Covenant’).

First, the Court stated that it has jurisdiction to interpret the provisions of the American Declaration, the American Convention, the Universal Declaration and the Covenant included in the request submitted by Mexico because they are all treaties and declarations, ‘concerning the protection of human rights in the American States’, as established in Article 64(1) of the American Convention. In relation to the OAS Charter, the Court found that it has jurisdiction to interpret the requested provisions of this treaty within the framework of the American Declaration, the American Convention and other treaties concerning the protection of human rights in the American

States. Next, the Court concluded that there were no other procedural considerations to reject the request and asserted jurisdiction to proceed with the advisory opinion submitted by Mexico.

The Court stated that it has an inherent authority to structure its opinion in a manner that it deems more appropriate for the interest of justice and for an advisory opinion. In that respect, after providing a set of definitions establishing the scope of the terms utilised in the opinion, it proceeded to analyse the questions submitted by Mexico. In doing so, it proceeded in the order that the Court deemed most adequate, taking into consideration the need to have a coherent approach in the drafting of the opinion.

Thus, the Court responded to issues raised by Mexico as follows:

1. Duty to respect and ensure human rights and the fundamental nature of the principle of equality before the law and non-discrimination

The Court initially indicated that Articles 1(1) of the American Convention and 2(2) of the Covenant on Civil and Political Rights were invoked by the advisory opinion request in relation to the duty to respect and ensure human rights. In addition, Mexico requested the Court to interpret the scope of Articles 3(1) and 17 of the Charter of the OAS, 24 of the American Convention, II of the American Declaration and 26 of the Covenant in regard to the principle of equality before the law and non-discrimination.

In regard to the duty to respect and ensure, the Court concluded that existing international instruments and case law clearly establish that States are bound by this obligation. Moreover, there is a close relationship between this duty and the principle of equality and non-discrimination because States must respect and ensure human rights without discrimination. States that violate the duty to respect and ensure human rights by supporting or tolerating discriminatory practices must be found internationally responsible.

The principle of equality and non-discrimination is fundamental for the protection of human rights in the domestic and international jurisdiction. Therefore, States have an obligation not to incorporate in their domestic law discriminatory rules and eliminate those already existing, as well as to combat any discriminatory practices. The principle of equality, however, is not violated if the distinction has a reasonable and objective justification.

Furthermore, the Court concluded that the principle of equality and non-discrimination has attained the status of *jus cogens* because it is a fundamental principle that permeates all the international legal system. This principle, therefore, is applicable to every State, independently of whether or not a particular State is a party in a treaty. In addition to applying directly to the State, this principle also has legal effects in the relationship between private parties.

There are certain specific obligations that stem from the general duty to respect and ensure human rights without discrimination, in particular: 1)
States must abstain from actions that have the purpose of creating a situation of discrimination, either *de jure* or *de facto*; 2) States must adopt positive measures to reverse a discriminatory situation against a particular group of persons; and 3) States may only set distinctions that are reasonable and objective, as well as respectful of human rights and the *pro homine* principle.

Lack of compliance with these principles generates the international responsibility of States, particularly taking into account that this failure to comply violates a *jus cogens* norm. In this regard, the general duty to respect and ensure human rights, which has an *erga omnes* nature and applies in relation to all the rights protected by the American Convention and the Covenant on Civil and Political Rights, is binding upon States independently of the immigration status of a person.

Lastly, the issues decided previously in this section are applicable to States that are only party to the Charter of the Organization of American States because the principle of equality and non-discrimination, as a *jus cogens* norm, is binding upon all States. In addition, the obligatory nature of this principle generates legal effects even with respect to third parties, including private persons.

2. **Application of the principle of equality before the law and non-discrimination to migrants**

The Court first concluded that in light of the situation of vulnerability that affects migrants, the international community has recognised the need to adopt special measures of protection to ensure the respect of the human rights of the members of this group. For that reason, States cannot argue that the immigration status of a person justifies a discriminatory treatment against the individual. Though States may provide a different treatment between documented and undocumented migrant workers, or between nationals and migrants, the distinction must be reasonable, objective and proportional to respect the principle of equality and non-discrimination.

Moreover, the Court considered that the rights to due process must be recognised among the rights that must be ensured to everybody within the jurisdiction of a State, despite the immigration status of an individual. These due process rights must be respected not only in judicial proceedings, but also in administrative proceedings when the decision arising out of it may affect the human rights of a litigant.

Lastly, the Court concluded that the right to due process and judicial protection may be violated as a result of the risk run by an undocumented migrant of being deported or deprived of his liberty when trying to defend his or her labour rights in judicial or administrative courts, as well as when the State in which the undocumented worker resides denies him or her free legal services. The rights arising out of a labour relation subsist even in the case of an undocumented migrant worker who cannot defend himself or herself.
3. Rights of undocumented migrant workers

The Court first defined ‘undocumented migrant workers’ as those that do not have authorisation to enter a particular State of which they are not nationals, reside in it and pursue a remunerated activity.

Next, the Court stated that once a person enters into a State of which he or she is not a national and is hired to carry out a remunerated activity, he or she must have recognised similar labour as any other worker, independently of his or her immigration status, since these rights must be enjoyed without discrimination. The Court accepted that States are not bound under international law to offer jobs to undocumented workers; however, once they are hired to perform a remunerated activity, immediately they become entitled to similar labour rights as those enjoyed by other workers. The irregular status of an undocumented worker is not an objective or reasonable justification to discriminate against him or her in the recognition of labour rights.

Lastly, the Court concluded that, under the general duty to respect and ensure human rights without discrimination, the State must ensure that labour rights of undocumented migrant workers are respected even when hired by private persons.

4. Duties under international human rights law that States must take into account when designing immigration policies

Initially the Court indicated that immigration policies must be designed and carried out in compliance with international human rights law. States have the discretion to design their own immigration policies, in particular through the adoption of measures to regulate the entrance of non-nationals to their territories to work in particular sectors of the national economy. In those cases, States may decide to provide general or specific authorisation permits to carry out a particular activity. In those situations, however, States must establish objective mechanisms to ensure that the extension of these employment authorisations is carried out without discrimination.

States, however, cannot protect their national economy by advocating or tolerating the hiring of undocumented migrant workers with the intention of exploiting them. In particular, States cannot permit these workers to receive a lower salary than that received by other workers, to be denied other labour rights or to be impeded from seeking a legal remedy to complain of a violation to their rights. These practices, the Court appears to suggest, would violate the principle of equality and non-discrimination.

In sum, the Court concluded that respect for the principle of equality and non-discrimination cannot be subordinated by States’ pursuit of immigration policies. This fundamental principle must always be respected and ensured; any act or omission contrary to this principle is inconsistent with international human rights law in general.