

Pacheco Tineo Family v. Bolivia

ABSTRACT¹

This case is about the mishandling by Bolivia of a family of Peruvians who had sought refugee status. Mr. Pacheco and Ms. Tineo had been detained in Peru, in the infamous Miguel Castro Castro Prison, under suspicion of being members of the terrorist organization Sendero Luminoso. After the Inter-American Court issued its ruling in the case on the treatment of detainees in the prison, they were released, only to have a new arrest warrant issued against them shortly thereafter. Together with their children, they sought refugee status in Bolivia, first, and then in Chile. However, upon returning to Bolivia, they were arrested and expelled to Peru. The case is significant as it is one of the few where the Court has dwelled upon the question of refugee rights and the corresponding obligations of States. Eventually, the Court found Bolivia in violation of the Convention.

I. FACTS

A. Chronology of Events

Early 1990s: Peru detains and prosecutes Mr. Rumaldo Juan Pacheco Osco (“Mr. Pacheco”) and his wife, Ms. Fredesvinda Tineo Godos (“Ms. Tineo”)² for alleged crimes of terrorism.³

May 1992: Mr. Pacheco and Ms. Tineo are victims of inhumane treatment in Miguel Castro Castro Prison.⁴ The situation in the prison is the object of a case decided by the Inter-American Court of Human Rights: the *Miguel Castro Castro Prison v. Peru* case.⁵

1. Karen Cody, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶ 66 (Nov 25, 2013).

3. *Id.*

4. *Id.*

5. *Id.*; Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 160 (Nov. 25, 2006).

1994: Mr. Pacheco and Ms. Tineo are acquitted and they are subsequently released.⁶ However, the Peruvian Supreme Court of Justice later annuls Mr. Pacheco's and Ms. Tineo's acquittals, and they receive notice that a warrant has been issued for their arrest in Peru.⁷

October 13, 1995: Mr. Pacheco, Ms. Tineo, and their two daughters, Frida Edith Pacheco Tineo ("Frida Edith") and Juana Guadalupe Pacheco Tineo ("Juana Guadalupe"),⁸ enter Bolivia at the La Paz airport.⁹

October 16, 1995: Mr. Pacheco applies for refugee status to the National Refugee Commission ("CONARE") with the assistance of the United Nations High Commissioner for Refugees ("UNHCR") and the Center for Migrant Studies and Services (*Centro de Estudios y Servicios Especializados sobre Migraciones Involuntarias*; "CESEM").¹⁰

October 20, 1995: The Peruvian Consulate in La Paz issues the Pacheco Tineo family Peruvian passports.¹¹

November 22, 1996: CONARE grants the Pacheco Tineo family refugee status under Supreme Decree No. 19640 of July 4, 1983.¹²

March 4, 1998: Mr. Pacheco signs a sworn statement "of voluntary repatriation" before CESEM stating that he, Ms. Tineo, and Juana Guadalupe will repatriate to Peru.¹³

March 20, 1998: The Directorate of the National Immigration Service issues decision No. 156/98, granting the Pacheco Tineo family voluntary repatriation to Peru.¹⁴

March 21, 1998: The Pacheco Tineo family leaves Bolivia and arrives

6. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 66.

7. *Id.* ¶ 67.

8. *Id.* ¶ 1.

9. Pacheco Tineo Family v. Bolivia, Provisional Measures, Order of the President of the Court, ¶ 67 (Feb. 19, 2013).

10. *Id.* ¶ 68.

11. *Id.* ¶ 67.

12. *Id.* ¶ 68.

13. *Id.* ¶ 69.

14. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 70, n.57.

in Chile overland, via the Tambo Quemado pass.¹⁵

August 24, 1998: The UNHCR agency in Chile sends certifications to the Pacheco Tineo family confirming their receipt of the family's application for refugee status to the Government of Chile and recognizing them as refugee applicants at the UNHCR Regional Office for Southern Latin America.¹⁶

December 29, 1998: Chile grants the Pacheco Tineo family refugee status.¹⁷

February 3, 2001: The Pacheco Tineo family returns to Peru to negotiate their possible permanent return to the country.¹⁸ They leave Chile at the Chacalluta Border Complex and enter Peru.¹⁹

February 3, 2001 – February 19, 2001: While in Peru, the family updates professional documents, checks on investments, and takes steps to find employment.²⁰ In a statement before the Chilean Consulate in La Paz, Mr. Pacheco explains that, while in Peru, his family consulted a Peruvian human rights agency about their situation.²¹ The agency explained that a warrant was issued for Mr. Pacheco's arrest due to his participation in subversive groups and because he was guilty of unlawful association since 1991.²² While in Peru, Mr. Pacheco and Ms. Tineo also contact the lawyer who obtained their release in 1994; the lawyer deems their legal situation risky because their case is still active, as is the warrant for their arrest.²³

February 19, 2001: The Pacheco Tineo family leaves Peru and enters Bolivia to obtain documents confirming their university education in Bolivia in 1995 and 1998.²⁴ Upon leaving Peru, the family hands over their identity cards and passports; their entry into Bolivia is not formalized by a stamp in their passports, and they did not pass through Bolivi-

15. *Id.* ¶ 72.

16. *Id.*

17. *Id.*

18. *Id.* ¶ 73.

19. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 73.

20. *Id.*

21. *Id.* ¶ 73, n.66.

22. *Id.*

23. *Id.* ¶ 73.

24. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 75.

an immigration control.²⁵

February 20, 2001: Mr. Pacheco and Ms. Tineo go to the office of the National Immigration Service (“SENAMIG”) in La Paz, Bolivia, to legalize their documents and request formal entry into Bolivia so that they may cross into Chile.²⁶ The Consulate General of Chile in La Paz sends a message notifying the Chilean Consular Directorate General that Mr. Pacheco and Ms. Tineo were being detained in Bolivia due to their illegal entry into Bolivia.²⁷ The message details the family’s expired permanent resident status in Chile, their refugee status in Bolivia, and their illegal entries into Peru and Bolivia.²⁸ Further, the message notes that Mr. Pacheco and Ms. Tineo wish to be deported to Chile, but that the decision is up to the discretion of the consulate.²⁹ SENAMIG retains the passports of Mr. Pacheco and Ms. Tineo, and it is not clear whether they retain additional documentation from the couple.³⁰

February 21, 2001: Ms. Tineo files a *habeas corpus* petition against the Director of the Inspectorate and Residence Permit Directorate of SENAMIG based on her refugee status, and she also alleges violations of her human and constitutional rights.³¹ While his wife is detained, Mr. Pacheco visits the Episcopal Conference of La Paz (*Pastoral de Movilidad Humana*; “CEB”), in charge of the Bolivian branch of the UNCHR at the time, to try to secure refugee status for himself and his wife.³² Mr. Pacheco and Ms. Tineo request that the CEB grant them asylum and, in the alternative, that they be sent to Chile since they feared possible persecution in Peru.³³ The CEB communicates the wishes of the couple to the Bolivian government.³⁴ Officials from the Ministry of Foreign Affairs, Ministry of the Interior, and Ministry of Justice hold a CONARE meeting denying Mr. Pacheco’s and Ms. Tineo’s requests for asylum based on their statements of voluntary repatriation to Peru.³⁵ Neither the Pacheco Tineo family nor their representatives are

25. *Id.* ¶¶ 74, 75.

26. *Id.* ¶¶ 76, 77.

27. *Id.* ¶ 78.

28. *Id.*

29. *Id.*

30. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 79.

31. *Id.* ¶ 82.

32. *Id.* ¶ 83.

33. *Id.* ¶ 84.

34. *Id.*

35. *Id.* ¶ 86.

informed of this hearing or given a chance to plead their case.³⁶

February 22, 2001: The SENAMIG receives notice of Ms. Tineo's detention, and the Inspectorate immediately orders her release.³⁷ The Ninth District Criminal Court hears Ms. Tineo's petition for *habeas corpus* after her release; the Court rules in her favor and awards damages in ruling No. 22/2001.³⁸ The Court reasons that, despite her release, the Director of the Inspectorate and Residence Permit Directorate and the Director of the Judicial Technical Police failed to comply with Articles 225 to 228 of the Bolivian Code of Criminal Procedure, thus violating Articles 9 and 11 of the Bolivian Constitution.³⁹

February 23, 2001: The Special Prosecutor of the La Paz District Prosecutor's Office orders the Director of SENAMIG to deport Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, and son Juan Ricardo Pacheco Tineo ("Juan Ricardo") based on their illegal entry into Bolivia and the denial of their asylum applications.⁴⁰ In Decision No. 136/2001, SENAMIG orders the deportation of the Pacheco Tineo family to be carried out by the Inspectorate and Residence Permit Directorate.⁴¹ There is no record confirming that the family received any notice of the removal order.⁴² Chilean Consulate officers meet with Bolivian immigration authorities regarding the situation of the Pacheco Tineo family.⁴³ The Consul General of Chile in La Paz sends letter No. 168/10 to the Advisor of the Immigration Directorate granting the Pacheco Tineo family's request to enter into Chile and requesting that their passports be returned to them since they could travel to Chile as early as the next day.⁴⁴ The Chilean Consulate General in La Paz also issues a document for the Pacheco Tineo family indicating that they are authorized to enter Chilean territory.⁴⁵ The Chilean Consulate General notifies Mr. Pacheco of the authorization; Mr. Pacheco confirms receipt of this communication and of the authorization document with his signature.⁴⁶

36. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 86.

37. *Id.* ¶ 85.

38. *Id.* ¶ 89.

39. *Id.*

40. *Id.* ¶ 93.

41. *Id.* ¶ 94.

42. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 94.

43. *Id.* ¶ 96.

44. *Id.* ¶ 98.

45. *Id.* ¶ 99.

46. *Id.*

February 24, 2001: The Bolivian immigration services detain the Pacheco Tineo family while they are heading to the bus station, and then deport them from Bolivia to Peru.⁴⁷

February 25, 2001: The Chilean Consulate General in La Paz sends a message to its Consular General Directorate in Santiago, Chile, detailing how the Pacheco Tineo family was deported to the Peruvian border at Desaguadero, put into the custody of Peruvian immigration authorities, and then transferred to the Peruvian police.⁴⁸ In the letter, the Chilean Consulate General expresses the need to inform Bolivia of the delicate situation upon learning that Mr. Pacheco was charged with terrorism based on “subversive materials and propaganda” found in his suitcase tying him to *Sendero Luminoso*.⁴⁹

March 5, 2001: The Secretariat for Migrants and Refugees in Bolivia (“SEMIRE”) issues a complaint to the Bolivian Ombudsman that the Pacheco Tineo family was arbitrarily detained in Bolivia and subsequently transferred into Peruvian Police custody.⁵⁰

March 13, 2001: The Bolivian Ombudsman Office issues a thorough Record of Reception and Registration of Complaint verifying Mr. Pacheco’s and Ms. Tineo’s complaint regarding their detention in Bolivia and eventual deportation to Peru.⁵¹

March 19, 2001: The Ombudsman Office replies to the letter from SEMIRE by directing the Pacheco Tineo family’s defense counsel to plead the situation before Chile, since that is where they received refugee status.⁵²

March 23, 2001: The Constitutional Court of Bolivia reviews ruling No. 22/2001, partially affirming and partially overturning the decision.⁵³ The Constitutional Court affirms the admissibility of the petition for *habeas corpus* based on the National Director of Inspection and Immigration’s violation of Articles 9 and 11 of the Constitution, but does not

47. *Id.* ¶ 102.

48. *Id.* ¶ 105.

49. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 105; *see sect. I.B: Other Relevant Facts.*

50. *Id.* ¶ 108.

51. *Id.* ¶ 109.

52. *Id.* ¶ 108.

53. *Id.* ¶ 90.

agree that the Director of the Judicial Technical Police has any fault based on a lack of evidence.⁵⁴

March 30, 2001: The Humans Rights Committee of the Bolivian Chamber of Representatives contacts the Vice Ministry of the Internal Regime and Police of Bolivia requesting a report on the Pacheco Tineo family's experience in Bolivia.⁵⁵ The head of the Human Rights Unit of Bolivia sends a report to the Vice Minister of Human Rights stating that the Pacheco Tineo family entered Chile and obtained refugee status upon exiting Bolivia in 1998.⁵⁶ The report from the head of the Human Rights Unit suggests that they want to implicate Chile.⁵⁷

April 9, 2001: The Director of SENAMIG issues a report to the Ministry of the Interior of Bolivia verifying the account of the Pacheco Tineo family's time in Bolivia offered by the Head of the Human Rights Unit.⁵⁸

April 10, 2001: The Director of SENAMIG receives a request for a report from the Bolivian Prosecutor General's Office, who requires the report as part of their investigation *ex officio* of the arbitrary and unwarranted detention of the Pacheco Tineo family at the request of the Human Rights Committee of the Chamber of Representatives.⁵⁹

August 1, 2001: Mr. Pacheco enters Chile through the immigration control post at Arturo Merino Benítez airport.⁶⁰

August 7, 2001: Ms. Tineo enters Chile through the Arturo Merino Benítez airport immigration control post.⁶¹

April 25, 2002: Mr. Pacheco and Ms. Tineo submit Petition No. 301/02 before the Inter-American Commission on Human Rights ("the Commission").⁶²

54. *Id.* ¶¶ 89, 90.

55. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 110.

56. *Id.*

57. *See id.*

58. *Id.* ¶ 111.

59. *Id.* ¶ 112.

60. *Id.* ¶ 113.

61. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 113.

62. Pacheco Tineo Family v. Bolivia, Admissibility Report, Report No. 53/04, Inter-Am. Comm'n H.R., Case 12.474, ¶ 1 (Oct. 13, 2004).

May 13, 2002: The Pacheco Tineo family obtains permanent resident status in Chile.⁶³

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 20, 2002: The Commission acknowledges receipt of Mr. Pacheco's and Ms. Tineo's Petition No. 301/02.⁶⁴

October 13, 2004: The Commission adopts Admissibility Report No. 53/04, wherein the Commission concludes the case is admissible.⁶⁵

October 31, 2011: The Commission approves Merits Report No. 136/11, in which it decides that the State violated the rights to judicial guarantees and asylum, and the guarantee of "non-refoulement" in Articles 8, 22(7), and 22(8) of the American Convention in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of the Pacheco Tineo family.⁶⁶ The Commission concludes the State also violated the right to judicial protection recognized in Article 25, the right to mental and moral integrity recognized in Article 5(1), and the obligation to provide special protection for children recognized in Article 19 of the American Convention all in relation to Article 1(1) to the detriment of the Pacheco Tineo family.⁶⁷

The Commission recommends that the State provide reparations to the Pacheco Tineo family, take administrative and disciplinary actions against State officials who took part in the human rights violations suffered by the family, and adopt measures of "non-repetition," including training immigration officials and ensuring that the practices of their internal authorities comply with the American Convention.⁶⁸

63. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 113.

64. Pacheco Tineo Family v. Bolivia, Admissibility Report, ¶ 5.

65. *Id.* ¶ 27.

66. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(c)(i).

67. *Id.* ¶¶ 2(c)(i), (ii).

68. *Id.* ¶ 2(c)(ii)(3).

B. Before the Court

February 21, 2012: The Commission submits the case to the Court in light of the State's failure to comply with the Commission's recommendations.⁶⁹

1. Violations Alleged by the Commission⁷⁰

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8 (Right to a Fair Trial)

Article 19 (Rights of the Child)

Article 22(7) (Right of Asylum)

Article 22(8) (*Non-refoulement*)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by the Representatives of the Victims⁷¹

Same Violations Alleged by Commission, plus:

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment)

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 17 (Rights of the Family)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

October 27, 2012: The State submits its brief to the Court, which includes five preliminary objections.⁷²

III. MERITS

69. *Id.* ¶ 2(f).

70. *Id.* ¶ 2(c)(i).

71. *Id.* ¶ 6. Inter-American public defenders Mr. Roberto Tadeu Vaz Curvo and Mr. Gustavo Zapata Baez serve as representatives of the victims. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 4.

72. *Id.* ¶ 7.

A. Composition of the Court

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
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 25, 2013: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁷³

The Court unanimously rejected the State's preliminary objections.⁷⁴

The Court considered the State's first preliminary objection: that new facts and violations alleged by the representatives of the victims should be excluded.⁷⁵ The State argued that the Court should not be able to consider the facts introduced by the representatives outside of the Merits report, the facts the Commission considered unproven, and the facts that the Commission decided were not violations of any Articles of the Convention.⁷⁶ The Court determined that "the possibility of varying the legal classification of the facts" is permissible under the Inter-American system, that it has the authority to analyze the factual framework of the case regardless of whether it was included in the Commission's Merits report, and despite the Commission's ruling on the matter.⁷⁷ The Court considered the State's first preliminary objection inadmissible.⁷⁸

The State's second preliminary objection was that the Court lacked competence to hear the case because domestic remedies had not been

73. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs.

74. *Id.* "Operative Paragraphs" ¶ 1.

75. *Id.* ¶ 14.

76. *Id.* ¶ 18.

77. *Id.* ¶¶ 22-23.

78. *Id.* ¶ 25.

exhausted.⁷⁹ The State argued that because the Pacheco Tineo family representatives alleged new violations not considered by the Commission, the Court could not consider these new violations without first giving the Commission a chance to consider them.⁸⁰ The Court determined that this was not an appropriate consideration for a preliminary objection, and thus inadmissible because the Court is able to consider new alleged violations as part of case's factual framework.⁸¹

In its third preliminary objection, the State argued that the Court lacked competence *ratione loci*⁸² and thus, should not be held accountable or liable to the Pacheco Tineo family because the facts took place outside of its jurisdiction.⁸³ The Court found this preliminary objection inadmissible because it is appropriate to consider whether a human rights violation occurred in a third state or if it can be attributed to the State in the merits.⁸⁴

The fourth preliminary objection offered by the State was that the Court lacked competence *ratione materiae*.⁸⁵ The State objected to citations to UNHCR documents by the Commission and the representatives because the UNHCR documents are soft law, not binding to the States.⁸⁶ The Court determined this preliminary objection was inadmissible because the UNHCR documents were cited for reference purposes, and the weight of the documents is determined only in the merits.⁸⁷

The fifth and final preliminary objection of the State was that the Commission violated an Article of the Convention by admitting the Pacheco

79. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 14.

80. *Id.* ¶ 26.

81. *Id.* ¶ 29.

82. *Ratione loci* is Latin for “by reason of the place” and may be used in law to assert that a court has or lacks competence because events occurred outside of its jurisdiction. *Oxford Reference*, *Ratione loci* (2017),

[http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-](http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1790)

[9780195369380-e-1790](http://www.duhaime.org/LegalDictionary/R/Rationeloci.aspx); *Duhaime's Law Dictionary*, *Ratione Loci* Definition,

<http://www.duhaime.org/LegalDictionary/R/Rationeloci.aspx>.

83. *Id.* ¶¶ 14, 30.

84. *Id.* “Preliminary Objections” ¶ 33.

85. Pacheco Tineo Family v. Bolivia Preliminary Objections, Merits, Reparations and Costs, ¶ 14. *Ratione material* is a Latin term that means “by reason of the matter” and may be used to

assert that a court lacks subject matter jurisdiction. *Oxford Reference*, *Ratione material* (2017),

[http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-](http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1791)

[9780195369380-e-1791](http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1791); Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 14.

86. *Id.* ¶ 34.

87. *Id.* ¶¶ 37, 39.

Tineo petition past the six-month time limit.⁸⁸ The Court deemed this preliminary objection inadmissible because the Court is not required to rule on matters already processed and decided by the Commission; other issues related to this will be examined in the merits.⁸⁹

The Court found unanimously that the State had violated:

Article 22(7) (Right of Asylum), in relation to Article 1(1) of the Convention, to the detriment of Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, and Juan Ricardo,⁹⁰ because:

The Pacheco Tineo family's request for asylum was improperly handled by CONARE.⁹¹ In order to properly consider a request for asylum, the State must verify the facts of the case and apply the applicable law, in this case the 1951 Convention and 1967 Protocol to which the State is a party.⁹² Under these laws, a state cannot remove refugees to a territory where their life or freedom would be threatened on account of race, religion, nationality, political opinion, or membership in a particular social group.⁹³ CONARE failed to undertake any analysis at all of the Pacheco Tineo family's application for asylum, and failed to record the reasons for their decision.⁹⁴ CONARE violated Article 27(7) (Right of Asylum) of the Convention because they made a summary decision without giving the Pacheco Tineo family a chance to have an interview or hearing, to provide evidence supporting their case, or even to appeal the denial of their request for asylum because the family had no notice of CONARE's decision.⁹⁵

Article 22(8) (*Non-refoulement*), in relation to Article 1(1) of the Convention, to the detriment of Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, and Juan Ricardo,⁹⁶ because:

The State deported the family to a country from which they were seeking asylum despite receiving notice that the family had received refugee sta-

88. *Id.* ¶ 40.

89. *Id.* ¶ 41.

90. *Id.* "Operative Paragraphs" ¶ 2.

91. See *Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs* ¶ 170.

92. *Id.* ¶ 171.

93. *Id.* ¶ 152.

94. *Id.* ¶ 172.

95. *Id.* ¶ 174.

96. *Id.* "Operative Paragraphs" ¶ 2.

*tus in Chile.*⁹⁷ Non-refoulement, or the prohibition against refoulement, is a cornerstone of the international protection for asylum seekers, which the State failed to comply with.⁹⁸ The State decided the Pacheco Tineo family's request for asylum in an unreasonably short amount of time and failed to determine if the family would face danger if they were sent back to Peru.⁹⁹ It was especially important for the State to determine whether it was safe to send the Pacheco Tineo family back to Peru in light of the international arrest warrant waiting for them in their country of origin.¹⁰⁰ The State's deportation of the Pacheco Tineo family to Peru violated Article 22(8) (Non-Refoulement) of the Convention.¹⁰¹

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, and Juan Ricardo,¹⁰² because:

*There was essentially no domestic remedy available to the Pacheco Tineo family.*¹⁰³ The family had no remedy because they had no notice: they were deported on the same morning that the State issued their removal order.¹⁰⁴ Indeed, the State's failure to notify the Pacheco Tineo family of their decision was itself a violation of Article 8 (Right to a Fair Trial) of the Convention.¹⁰⁵ The family "did not have the real possibility of filing any remedy" in the State.¹⁰⁶ Thus, the family had no genuine access to the right of appeal, and this violated their Right to Judicial Protection protected by Article 25 of the Convention.¹⁰⁷

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, and Juan Ricardo,¹⁰⁸ because:

97. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 187.

98. *Id.* ¶ 151.

99. *Id.* ¶ 187.

100. *See id.* ¶ 188.

101. *Id.* ¶ 189.

102. *Id.* "Operative Paragraphs" ¶ 2.

103. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 192.

104. *Id.*

105. *Id.* ¶ 194.

106. *Id.*

107. *Id.* ¶ 195.

108. *Id.* "Operative Paragraphs" ¶ 3.

*The State caused the family anguish and fear due to a lack of adequate protection.*¹⁰⁹ *The Pacheco Tineo family was provided with no notice, they were detained unexpectedly, and were in a precarious situation.*¹¹⁰ *The Court particularly felt that Ms. Tineo's detainment and the State's retention of the Pacheco Tineo family's passports gave rise to anxiety, anguish, and frustration.*¹¹¹ *The Court determined that the fear, insecurity, and worry that the Pacheco Tineo family experienced at the hands of the State was a violation of both their mental and moral integrity under Article 5(1) of the Convention.*¹¹²

Article 19 (Rights of the Child) and Article 17 (Rights of the Family), in relation to Articles 8(1), 22(7), 22(8), 25, and 1(1) of the Convention, to the detriment of Frida Edith, Juana Guadalupe, and Juan Ricardo,¹¹³ because:

*The children were not given an opportunity to be heard in regard to their parents' asylum request,*¹¹⁴ *and there was no record of the children's interests being taken into account.*¹¹⁵ *The Court determined that the State had an obligation to consider the best interests of the children, but instead damaged their status as "subjects of law."*¹¹⁶ *The State had a special obligation to the children to exhaust all available channels to determine their migratory situation and make a decision that was in their best interest.*¹¹⁷ *However, the State treated the children as if they were limited to the rights of their parents,*¹¹⁸ *which violated the rights to the protection of the children and the family under Article 19 and Article 17 of the Convention.*¹¹⁹

The Court found unanimously that the Court did not have sufficient evidence to prove a violation of Article 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment), in relation to Arti-

109. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 207.

110. *Id.*

111. *Id.* ¶ 206.

112. *Id.* ¶ 207.

113. *Id.* "Operative Paragraphs" ¶ 4.

114. *Id.* ¶ 225.

115. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 228.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* ¶ 229.

cle 1(1), to the detriment of Mr. Pacheco, Ms. Tineo, Frida Edith, Juana Guadalupe, or Juan Ricardo,¹²⁰ because:

The Court did not have sufficient evidence that the Pacheco Tineo family was subjected to torture or cruel and inhumane treatment.¹²¹ The Pacheco Tineo family alleged that the State violated Article 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment) during the events of February 20 and 24 of 2001, but the Court did not have enough evidence to diverge from the Commission's earlier decision.¹²²

The Court did not rule on:

Article 9 (Freedom from *Ex Post Facto* Laws) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) because:

The facts were analyzed sufficiently and the violations were considered with regard to Articles 22 (Freedom of Movement and Residence), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation of Non-Discrimination).¹²³

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court unanimously ruled that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Publish the Judgment

The State must publish the Court's official summary of the Judgment.

120. *Id.* ¶ 208.

121. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 206.

122. *Id.* ¶ 205.

123. *Id.* ¶ 237.

ment in the gazette and in a national newspaper of wide circulation.¹²⁴ The State must also publish the full text of the decision on its official website.¹²⁵

2. Implement Permanent Training Programs

The State must execute permanent training programs and classes on human rights, as well as the rights of migrants and refugees for public officials.¹²⁶ The relevant public officials, including those at CONARE and the National Immigration Directorate, will be subject to the training programs and classes.¹²⁷ The substance of the training must incorporate the international standards of human rights for migrants, due process of law, international refugee law, and must make specific reference to this Judgment.¹²⁸

3. Judgment as a Form of Reparation

The Court specified that the Judgment itself should be considered a *per se* reparation.¹²⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages

The Court ordered the State to pay a total of \$35,000 for pecuniary and non-pecuniary damages.¹³⁰ Out of this amount, \$10,000 should be given to Ms. Tineo and Mr. Pacheco, respectively, and \$5,000 to each of the Pacheco Tineo children.¹³¹

2. Costs and Expenses

The Court required the State to reimburse the Legal Assistance

124. *Id.* ¶ 262.

125. *Id.*

126. *Id.* ¶ 270.

127. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 270.

128. *Id.*

129. *Id.* ¶ 257.

130. *Id.* ¶ 285.

131. *Id.*

Fund of the Inter-American human rights system¹³² a total of \$9,564.63 for the expenses they incurred.¹³³

3. Total Compensation (including Costs and Expenses ordered):

\$44,564.63

C. Deadlines

The State is required to publish the Judgment summary in a national newspaper, the official gazette, and on the official website within six months.¹³⁴

The Judgment must be kept on the State's official website for one year.¹³⁵

The State is required to reimburse the victims' assistance fund within 90 days of the Judgment.¹³⁶

The State must disburse the pecuniary and non-pecuniary damages to the Pacheco Tineo family within one year of the Judgment.¹³⁷

The State must give the Court a report on compliance measures that they have adopted within one year of the Judgment.¹³⁸

V. INTERPRETATION AND REVISION OF THE JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

April 17, 2015: The Court referred to an earlier order, in which the Court had found that the State had complied with its requirement to reimburse the victims' assistance fund.¹³⁹ The Court determined that the State complied with its requirements to publish the Judgment in a national newspaper, the official gazette, and on the State's official website

132. *Id.* ¶ 286.

133. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 293.

134. *Id.* ¶ 262.

135. *Id.*

136. *Id.* ¶ 293.

137. *Id.* ¶ 294.

138. *Id.* "Operative Paragraphs" ¶ 12.

139. Pacheco Tineo Family v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Visto" ¶ 2 (Apr. 17. 2015) (Available only in Spanish).

as of May 2014.¹⁴⁰ The Court determined that, thus far, the State had implemented appropriate training programs¹⁴¹ in satisfaction of the Court's order, but that it must continue to do this on a permanent basis.¹⁴² The Court deemed the State to have complied with this measure.¹⁴³ The Court also found that as of December 12, 2014, the State had complied with its order to compensate the Pacheco Tineo family and the State did so within one year of the Judgment.¹⁴⁴ Thus, the Court concluded the case as a result of the State's compliance with all of its court-ordered obligations.¹⁴⁵

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 272 \(Nov. 25, 2013\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Pacheco Tineo Family v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 17, 2015\) \(Available only in Spanish\).](#)

140. *Id.* ¶ A (9).

141. *Id.* ¶ B (15).

142. *Id.* ¶ B (17).

143. *Id.* ¶ B (19).

144. *Id.* ¶ C (24).

145. Pacheco Tineo Family v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, "Resuelve" ¶ 2.

5. Review and Interpretation of the Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Pacheco Tineo Family v. Bolivia, Admissibility Report, Report No. 53/04, Inter-Am. Comm'n H.R., Case No. 12.474 \(Oct. 13, 2004\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

[Case Watch: Inter-American Court to Consider Refugee Status Determinations, Open Society Foundations \(Mar. 21, 2012\), <https://www.opensocietyfoundations.org/voices/case-watch-inter-american-court-to-consider-refugee-status-determinations>.](#)