

Case of Gonzalo Belano and 807 Other Wairan Persons

Victims

v.

Republic of Arcadia

Respondent

Representatives for the Victims

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STATEMENT OF FACTS

1. The Republic of Puerto Waira

The Republic of Puerto Waira (“Puerto Waira”) is a democratic republic with a presidential system of government and a total population of 6.4 million people¹ Puerto Waira borders the United States of Tlaxochitlan (to the North), the Republic of Jankokoida (to the South), the Republic of Maya and the islands of San Hugo in the Caribbean Sea (to the East), and the Republic of Ipanema (to the West).²

Puerto Waira experienced a coup d’état in 1954, and the democratically elected president was overthrown by soldiers displeased with the president’s promotion of land redistribution policies.³ Thereafter, Puerto Waira experienced four decades of military government control in which the country experienced repeated conflict between the military and insurgent groups.⁴

In 1991, a peace process began, leading to a signing of peace accords in 1996 and a return to democratic elections since the year 1954.⁵ However, despite a return to democratic elections, Puerto Waira began facing problems of insecurity and violence from criminal acts committed by gangs.⁶ The Ministry of Interior and Police of Waira estimate the gangs to have between 45,000 to 60,000 members, while only 14,700 National Police officers are available to ensure safety and order.⁷ Murder rates in Puerto Waira began rising from the 6,592 murders that occurred in the year 2014 as two main gang rivalries failed to enter into a truce.⁸

¹ Hypothetical, paras.1, 2.

² Hypothetical, para. 1.

³ Hypothetical, para. 2.

⁴ *Id.*

⁵ *Id.*

⁶ Hypothetical, para. 4.

⁷ *Id.*

⁸ *Id.*

In order to address the ongoing gang violence, plague the poorer and marginalized communities specifically, the government of Puerto Waira implemented a hardline policy that seeks to end criminal activities of gangs by eliminating them⁹. However, rouge “clean up” groups emerged, killing gang members anonymously hoping to rid the country with gang members.¹⁰ According to independent media investigations, “social cleansing” groups tend to consist of police officers and members of the army.¹¹

However, Puerto Waira faces an issue of holding gang members accountable for their crimes as reports indicate that up to 90% of violent crimes go unpunished.¹² Thus, citizens of Puerto Waira are forced to relocate within the country when they have been victims of gang violence; however, gangs are in control of just about every part of the country that citizens have no were else to run.¹³ In recent years, those looking for a safe place to turn to have chosen to emigrate from Puerto Waira to the country of Arcadia (located North of United States of Tlaxochitlan).¹⁴

2. The Republic of Arcadia

The Republic of Arcadia (“Respondent State”) is a sound democracy with a strong economy and political system since its independence in 1825.¹⁵ Throughout the years, it has ratified all of the treaties of the universal system in the area of human rights.¹⁶ Additionally, Respondent State

⁹ Hypothetical, para. 5, 6

¹⁰ Hypothetical, para. 6

¹¹ *Id.*

¹² Hypothetical, para.7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Hypothetical, para.9.

¹⁶ *Id.*

has ratified most of the system of the Inter-American Human Rights System, including, the American Convention on Human Rights in 1969, ratified in 1971, and the Inter-American Convention to Prevent and Punish Torture in 1988, ratified in 1989.¹⁷

Due to an 800% increase in asylum seekers from Puerto Waira between the years 2013 and 2015, Respondent State responded by increasing the number of people it recognized as refugees by 20%.¹⁸ Respondent State's action are in line with its constitution, upon which Article 48 of the constitution provides that:

“the right to seek and receive asylum is recognized in accordance with the law and international human rights instruments. Refugees shall enjoy special protection guaranteeing the full exercise of their rights. The State shall respect and guarantee the principle of non-refoulement, in addition to emergency humanitarian and legal assistance. Asylum seekers shall not be subject to criminal penalties for their unlawful entry or stay. The State shall, on an exceptional basis and when circumstances so warrant, grant refugee status to a group in accordance with the law.”¹⁹

Additionally, Article 12 of the Law of Refugee and Complementary Protection provides that Refugee status ought to be granted to those who either 1) have a well-founded fear of being persecuted for reasons of race, religion, nationality and is unable to avail himself to the protection of that country or is unwilling to return to that country due to fear; 2) has fled his country because life, safety, or freedom have been threatened by violence, internal conflicts, massive violation of human rights, etc; and 3) has a well-founded fear of being persecuted due to

¹⁷ *Id.*

¹⁸ Hypothetical, para. 10.

¹⁹ Hypothetical, para. 11.

circumstances arising in the country of origin or as a result of activities carried out during his stay in the country.²⁰

Moreover, Law on Refugee and Complementary Protections establishes the procedure for recognition of refugee status (determined on a case by case basis).²¹ Article 40 provides that refugee status shall not be granted to any person who: 1) has committed a crime against peace, genocide etc to which Arcadia is a party; 2) has committed a serious non-political crime; or 3) has committed acts contrary to the purposes and principles of the United Nations.²²

3. Migration from Puerto Waira to Respondent State

A caravan made up for 7,000 citizens from Puerto Waira organized in an effort to migrate to Arcadia.²³ The main purpose of the caravan was to prevent human right violations in the United States of Tlaxochitlan – which had a history of violating the human rights of migrants attempting to reach Arcadia.²⁴

The first group of citizens arrived to Arcadia on August 15, 2014.²⁵ The second group of 7,000 citizens arrived a few days later, after 5 weeks of travel, and waited at the Arcadia-Tlaxochitlan border seeking asylum.²⁶ However, alarmed by the group of 7,000 Wairans, the Arcadian government sent National Police officers to the border to aid the officials from the National Migration Institute (“NMI”), which is responsible for immigration and border management.²⁷

²⁰ Hypothetical, para. 12.

²¹ Hypothetical, para. 13.

²² *Id.*

²³ Hypothetical, para. 14.

²⁴ *Id.*

²⁵ Hypothetical, para. 15.

²⁶ *Id.*

²⁷ Hypothetical, para. 16.

While at the border, the condition of many of travelers led to them having to have to sleep in the streets, beg for money from local residents, and even turn to local public health services of the nearby communities.²⁸

However, due to the number of Wairans wishing to enter the country, the government of Arcadia held a meeting with multiple government institutions to explore a response to the massive influx of migrants.²⁹ A few days later, on August 20, 2014, the president of Arcadia, Javier Valverde, announced measures the State would take to address the current situation.³⁰ These measures included 1) opening Arcadia's borders for orderly and safe entry, and 2) recognizing all of the migrants as *prima facie* refugees.³¹ The only exceptions to these measures would be those failing within any of the circumstances covered by Article 40.³²

As a result of the massive influx of Wairans, Arcadia faced challenges to guaranteeing economic, social, and cultural rights of the Wairans.³³ Thus, as a result, the government called for a shared responsibility of the international community to provide humanitarian assistance and meet the Wairan's basic human needs.³⁴

Therefore, this change in policy by Arcadia resulted in a new procedure for obtaining *prima facie* refugee status.³⁵ Now, the Wairans would have to visit the officers of the National

²⁸ *Id.*; Hypothetical, para. 17.

²⁹ Hypothetical, para. 17.

³⁰ Hypothetical, para. 18.

³¹ *Id.*

³² *Id.*

³³ Hypothetical, para. 19.

³⁴ *Id.*

³⁵ Hypothetical, para. 20.

Commission for Refugees (CONARE), submit an application for recognition of refugee status, undergo an interview, and obtain a refugee document and work permit about 24 hours later.³⁶

However, if the individual had a criminal record, the person would be held in custody pending a decision on his or her immigration status.³⁷ Arcadia identified 808 individuals with criminal records – 490 of which were placed in immigration detention centers (with a total capacity of 400) and the remaining 318 in a separate penitentiary unit in the border town of Pima.³⁸

In examining the asylum claims of each of the 808 detainees, Arcadia determined that in 729 of the 808 cases, the individuals would face a “high risk” of torture and that their lives would be in danger if they were returned or deported to Puerto Waira.³⁹ The remaining 79 cases had a “reasonable likelihood” of the same.⁴⁰ Thus, despite a determination that these individuals had a well-founded fear of persecution, they were excluded from protection.⁴¹

Meanwhile, presidential and congressional candidates from nationalist-oriented parties began accused the Wairans of taking jobs away from Arcadian citizens and causing crime rate to increase.⁴² Wairans were referred to some as “gang members,” “criminals,” “illegals,” and even as “cockroaches,” or “scum.”⁴³ Further, marches in Arcadia took place demanding that the 808 Wairans be deported.⁴⁴ Thus, in response to these series of events, President Valverde’s

³⁶ *Id.*

³⁷ Hypothetical, para. 21.

³⁸ Hypothetical, para. 23

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Hypothetical, para. 24.

⁴³ *Id.*

⁴⁴ Hypothetical, para. 25.

administration concluded that the country did not have the capacity to take any of 808 Wairans in and on January 21, 2015, Arcadia published an Executive Degree ordering the mass deportation of the Wairans with a criminal record.⁴⁵

On March 2, 2015, a meeting was held between authorities from Arcadia's Ministry of Foreign Affairs and Ministry of the Interior and counterparts from the United States of Tlaxochitlan.⁴⁶ The meeting resulted in an agreement being forged to allow Arcadian authorities to return to the United States of Tlaxochitlan, persons who attempted to enter the country illegally.⁴⁷ In return, Arcadia pledge to increase its support for migration control activities.⁴⁸ Two weeks later, 591 out of the 808 Wairans were returned to Tlaxochitlan for having a criminal record and not filing a juridical appeal.⁴⁹ The remaining 217 Wairans, however, filed a petition of a constitutional remedy to stop the deportation on grounds that their lives were in danger if they were returned to Puerto Waira.⁵⁰ Nonetheless, following a court's denial of protection orders, the government of Arcadia proceeding to return the remaining 217 Wairans to Tlaxochitlan.⁵¹

Tlaxochitlan then proceeded to deport the Wairans to Puerto Waira following a more than month long detainment at the Ocampo Immigration Facility.⁵²

⁴⁵ Hypothetical, para. 26.

⁴⁶ Hypothetical, para. 27.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Hypothetical, para. 28, 29

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Hypothetical, para. 29, 30.

4. Case of Gonzalo Belano and 807 Other Wairans

Gonzalo Belano, like many others, was forcibly recruited by a neighborhood gang at a young age.⁵³ For Gonzalo, he was only 14 years old.⁵⁴ Gonzalo proceeded to serve prison time from ages 18 to 21 following an extortion charge.⁵⁵ It was after his release from prison that Gonzalo decided that he could not return to the gang, and proceeded to migrate to Arcadia with the caravan in hopes of seeking safety.⁵⁶ However, after being denied refugee status by the Arcadian government, Gonzalo, along with 807 other Wairans, as return back Puerto Waira. On June 28, 2015, Gonzalo was murdered outside of his family home.⁵⁷

Along with Gonzalo, 29 other deportees were also reported murdered within two months of their return to Puerto Waira.⁵⁸ Furthermore, there were 7 cases of disappeared person.⁵⁹

5. Procedural Posture

The Legal Clinic for Displaced Persons, Migrants, and Refugees (“Legal Clinic”) brought legal action against Arcadia alleging violations of the principle of non-refoulment and the rights to life, a fair trial, and judicial protections, to the detriment of Gonzalo and 36 other victims, as well as 771 other Wairans who were returned to Puerto Waira.⁶⁰

⁵³ Hypothetical, para. 30.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*; Hypothetical, para. 31

⁵⁹ Hypothetical, para. 31.

⁶⁰ Hypothetical, para. 32, 33.

The complaint was filed with the Arcadian consulate on November 15, 2015, and on December 15, 2015, the Legal Clinic received notice that the complaint had been dismissed because the lawsuit was not filed with the court of competent jurisdiction.⁶¹

Thus, on January 20, 2016, the Legal Clinic filed a petition with Inter-American Commission on Human Rights (IACHR) on behalf of the 808 deportees.⁶² On August 2, 2018, the IACHR issued Report on the Merits No. 24/18, attributing international responsibility to the State of Arcadia and finding violations of Articles 4, 7, 8, 22.7, 22.8, 17, 19, 24, and 25, all in relation to Article 1(10) of the American Convention on Human Rights (“ACHR”).⁶³ The IAHRC submitted the case to the Court on November 5, 2018.⁶⁴

⁶¹ Hypothetical, para. 33.

⁶² Hypothetical, para. 34.

⁶³ Hypothetical, para. 35.

⁶⁴ Hypothetical, para. 37.

LEGAL ANALYSIS

I. Admissibility

A. Statement of Jurisdiction

The Inter-American Court (“Court”) has jurisdiction to hear this case because in 1971 Arcadia ratified the American Convention on Human Rights without restrictions or reservations and simultaneously accepted the jurisdiction of the Court.⁶⁵ Thus, under Article 62(1) of the American Convention, a State party may not withdraw their declaration of recognition of the Court’s binding jurisdiction.⁶⁶ In that same breath, Arcadia recognizing the binding jurisdiction of the Inter-American Court under Article 62(1) of the Convention is therefore bound by the Convention as a whole.⁶⁷

Furthermore, in 1989, Arcadia ratified the Inter-American Convention to Prevent and Punish Torture (“Convention to Prevent and Punish Torture”) also without any restrictions or reservations.⁶⁸ Under Article 8 of the Convention to Prevent and Punish Torture, “any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.”⁶⁹ Furthermore, in addition to the American Convention, the Court often applies over conventions and their procedural posture on State Parties – such as the Convention to Prevent and Punish Torture.⁷⁰

⁶⁵ Hypothetical, para. 9; Clarifications, para. 65.

⁶⁶ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art 62(1)

⁶⁷ *Id.*

⁶⁸ Hypothetical, para. 9.

⁶⁹ OAS, INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE, art. 8, 9 Dec. 1985, O.A.T.S. No. 67. [“Convention to Prevent and Punish Torture”].

⁷⁰ *Vélez Lóor v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment 23 Nov. 2010, Inter-Am.Ct.H.R., (Ser. C) No. 132, para. 33.

B. Exhaustion of All Remedies

The current Court should find that the 808 Waira citizens have fully satisfied the requirement to exhaust all domestic remedies pursuant to Article 46(1)(a) because the State (via the Arcadian consulate) was responsible for denying the victims domestic remedies.⁷¹ Nonetheless, despite raising a failure to exhaust all domestic remedies defense, the claim fails because the limited domestic remedies provided to the Wairans were unavailable and ineffective.

Article 8 of the American Convention promotes “due process of law.”⁷² Furthermore, Article 46(2) of the American Convention adopts the same expression to establish that a victim’s duty to pursue and fully exhaust all domestic remedies is not applicable when the laws of the State do not afford due process of law for the rights that have been violated.⁷³ Violations to due process of law include victims being denied access to remedies or when there has been unwarranted delay in rendering a final judgement.⁷⁴

While the State is the principal grantor of human rights and thus is in the best position to provide victims with a remedy for possible violations, if the State lacks effective domestic remedies, the need to turn to international protection is warranted.⁷⁵ Here, the State lacked such effective domestic remedies because the 808 deported Wairans were not provided with proper consular assistance.⁷⁶

⁷¹ Hypothetical, para. 33.

⁷² INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 8

⁷³ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 46(2)

⁷⁴ C. Medina Quiroga, *La Convencion Americana: teoria y jurisprudencia. Vida, integridad personal, libertad personal, debido proceso u recurso judicial*, University of Chile, Faculty of Law, centro de Derechos Humanos, San Jose, Costa Rica, 2003, p.267.

⁷⁵ *Velásquez-Rodríguez v. Honduras*, Judgment 29 July 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4, para. 61.

⁷⁶ Clarifications, para. 9.

To bypass the allegation that domestic remedies were not effective, the State must demonstrate that its country possessed remedies that are both appropriate and effective to remedy the violation.⁷⁷ However, despite informing the Wairans that they could have access to the country's consolation assistance, the civil society organization and legal clinics did not have the capacity to provide assistance to all of the Wairans – rendering any attempt to take advantage of domestic remedies useless and not feasible.⁷⁸ Furthermore, the Court has interpreted the statutorily recognized exception to apply when the victim is indigent or unable to find a lawyer.⁷⁹

While Arcadia did possess possible avenues for the Wairans to turn to, it is not enough that such avenues exist.⁸⁰ Rather, these avenues must be “effective” and provide “results or responses to the violations of rights established” in the American Convention.”⁸¹

In the present matter, the Legal Clinic, stricken with limited resources, had only one option – present the claim for reparation for direct harm with the Arcadian consultant on November 15, 2015.⁸² It was not until a month later that notice was received dismissing the complaint for failure to file the complaint with the court of competent jurisdiction. This response left the Legal Clinic with only one choice, to file a petition with the IACHR.⁸³ Thus, the 808 Wairans exhausted all domestic remedies.

⁷⁷ *Usón Ramírez v. Venezuela*, Judgment 20 Nov. 2009, Inter-Am.Ct.H.R., (Ser.) C, No. 207, para. 22.

⁷⁸ Clarifications, para. 9.

⁷⁹ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Arts. 46(1), 46(2)(a) and 46(2)(b); Advisory opinion OC – 11.90 of 10 August 1990, Ser. A, No. 11, Paras. 30 and 35.

⁸⁰ Clarifications, para. 24.

⁸¹ *Las Palmeras v. Colombia*, Judgment 6 Dec. 2001, (Merits) Inter-Am.Ct.H.R., (Ser. C) No. 90, para. 58.

⁸² Hypothetical, para. 32.

⁸³ Hypothetical, para. 34.

C. Timeliness of Submission

This Court should find that the submission of the petition was done timely following Arcadia's lack of effective domestic remedies and unwarranted one month delay until it was notified that the complaint was dismissed.⁸⁴ Under Article 32(2) of the American Convention, when an exception to the requirement of prior exhaustion is warranted, the petition need not follow the six-month period procedural requirement under Article 46(1)(b) of the American Convention. Rather, the petition need simply be lodged "within a reasonable period of time."⁸⁵

Therefore, the Court should find that the 808 Wairans detainees have filed their petition before this Court within a reasonable period of time given the undue delay the detainees faced at the hands of the Arcadian Government.

II. Argument on the Merits

A. Respondent Arcadia violated Article 8 and 25 of the American Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan Persons.

When Arcadia ratified the ACHR in 1979, it assumed the obligation to respect Gonzalo Belano and the 807 other Wairan's right to a fair trial (Article 8) and right to judicial protection (Article 25). Pursuant to the American Convention, State Parties have an obligation to provide effective judicial remedies to victims of human rights violations under Article 25, as well as a right to a fair trial substantiated in accordance with the rules of due process of law.⁸⁶ Furthermore, both of these provisions must be in keeping with the obligation of each States Party

⁸⁴ Hypothetical, para. 33.

⁸⁵ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 32(2).

⁸⁶ *Velásquez-Rodríguez*, (Preliminary Objections), para. 91.

in guaranteeing a free exercise of the rights encompassed by the American Convention to all persons subject to their jurisdiction pursuant to Article 1(1).⁸⁷

1. Arcadia violated Article 8 (Right to a Fair Trial), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan Persons.

Article 8 of the American Convention contains a procedural guarantee that should be religiously observed to allow the effective judicial guarantees of the Convention take course.⁸⁸ Article 8(1) of the American Convention provides that “every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal.”⁸⁹ By failing to guarantee a right to a fair and impartial trial, Arcadia has bypassed the guarantees entrusted in Article 8(1).

Under Article 8(1), the victims were entitled to a fair hearing before a court; however, the victims’ writ of *ampara* [petition for a constitutional remedy] went before a Pima Immigration Court who was compromised at best and heavily biased at worst.⁹⁰ The city of Pima was the location where 318 detainees were held in separate penitentiary units.⁹¹ In fact, the detainees considered most dangerous were the ones sent to Pima, while the remaining 490 were placed in immigration detention centers.⁹² Therefore, not only did the town of Pima have a direct interest in the outcome of these proceedings but coupled with the frequent marches and pressure

⁸⁷ *Id.*

⁸⁸ IACHR, February 1, 2006, Merits, Reparations and Costs, *Lopez Alvarez v. Honduras*, Series C No. 141, Separate Opinion, para. 4.

⁸⁹ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 8(1).

⁹⁰ Hypothetical, para. 28.

⁹¹ Hypothetical, para. 29.

⁹² *Id.*

bestowed on Arcadia's President Valverde, the outcome of these judicial proceedings was all but determined from the start. While the Pima Immigration Court stayed the suspension of the migrants until the case was adjudicated, all this procedure did was grant the migrants an additional few weeks before they were deported. Therefore, the Pima Immigration Court was not the proper court to oversee the 217 Wairans' petition.

2. *Respondent Arcadia violated Article 25 (Right to Judicial Protection), read in conjunction with Article 1(1) to the detriment of Gonzalo Belano and 807 Other Wairan Persons.*

Article 25(1) of the American Convention provides all individuals with the "right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights."⁹³ In *Rio Negro Massacres and Guerriha do Araguaia*, this Court made frequent mention of the vital nature of a State's obligation to fully and fairly investigate allegations of human rights violations.⁹⁴ According to the Court, this investigation is to be properly followed by the implementation of judicial remedies and reprimands against the perpetrators.⁹⁵ The importance of this mechanism is highlighted given that violators will not be deterred from their actions if they are not fearful of repercussions for violating one's fundamental human rights. Under the American Convention, the State Party has failed in its obligations to ensure the free exercise of rights when it fails to punish violators.⁹⁶

⁹³ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 25(1).

⁹⁴ *Río Negro Massacres v. Guatemala*, Judgment 4 Sept. 2012, Inter-Am.Ct.H.R., (Ser. C) No. 250;

⁹⁵ *Id.*

⁹⁶ *Velásquez-Rodríguez*, para. 196.

Additionally, in the landmark case, *Rio Negro Massacres* and *Velasquez-Rodriguez v. Honduras*, this Court determined that a State's main obligation as a signatory to the American Convention is not ignoring human rights violations.⁹⁷

Therefore, the Government of Arcadia has first, failed in its duty under the American Convention to investigation human rights violation, under Article 25, that occurred in Puerto Waira since the early 2000s following a massive increase in violence from criminal acts conducted at the hands of gang members.⁹⁸ Furthermore, in the same breath, Arcadia has empowered and validated the violence conducted by the gang members by failing to holding them accountable for their egregious actions. Secondly, the Government of Arcadia has denied Gonzalo Belano and 807 other Wairans a right to a fair trial to investigate the merits of the allegations given the inherent interests of the proceeding court.

⁹⁷ *Río Negro Massacres*, para. 190, 195.

⁹⁸ Hypothetical, para. 4.

B. Respondent Arcadia violated Article 4 and 22.8 of the American Convention in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 other Wairan Persons.

1. Respondent Arcadia violated Article 4 (Right to Life), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan Persons.

Respondent Arcadia violated Article 4 of the American Convention when it failed to take into account, Gonzalo Belano and 807 Other Wairan Persons' right to life. In addition to Article 4 of the American Convention protecting one's right to life, Article 1(1) of the American Convention requires all State Parties to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."⁹⁹ This positive duty entrusted to all States requires that States subsequently forbid and outlaw all things that could be a threat to life.¹⁰⁰

These positive obligations were fully considered by the Court in *Velasquez Rodriguez* and *Godinez Cruz* cases in which the Court found that a State's willful failure to act preventatively violated the victims' full and free of one's human rights under Article 4 of the American Convention.¹⁰¹ In both cases, the Court determined that the State refrained from protecting the victims – which ultimately led to the disappearance of the victim.¹⁰²

⁹⁹ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 4.

¹⁰⁰ *Id.*

¹⁰¹ THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS (David J. Harris & Stephen Livingstone eds., Clarendon Press, Oxford 1998), p. 215.

¹⁰² *Velásquez-Rodríguez*, paras. 182, 188.

Similarly in this case, Gonzalo Belano and the other Wairan detainees were denied protection from Respondent Arcadia. Following a series of interviews and procedural steps required to obtain *prima facie* refugee status, the Government of Arcadia determined that out of 808 total Wairans, 729 of them would face a “high risk” of torture and danger to their lives if they were returned or deported to Puerto Waira.¹⁰³ Furthermore, the remaining 70 cases had a “reasonably likelihood of the same circumstances.”¹⁰⁴ Despite these findings, the Government of Arcadia proceeded to strike a deal with its neighbor to the South in Tlaxcochitlan and send the victims (including Gonzalo Belano) to Tlaxcochitlan in return for a pledge by Arcadia to increase its support for migration control activities and a contribution to development cooperation for Tlaxcochitlan.¹⁰⁵ However, Tlaxcochitlan did not keep the victims safe; rather Tlaxcochitlan detained the victims in an immigration facility for a few months only to later deport them back to Puerto Waira.¹⁰⁶ This act by Tlaxochitlan did not come as a surprise, it was common for the people of Tlaxcochitlan to heckle and violate the rights of the migrants traveling through Tlaxochitlan to Arcadia.¹⁰⁷

Furthermore, Arcadia was well aware of Tlaxochitlan deportation of the victims that it even stopped its contribution payment.¹⁰⁸ However, despite knowing that the victims were being sent back to Puerto Waira where they faced, at a minimum, a reasonable likelihood of torture or a danger to their lives, the Arcadian Government failed to act – violating Article 4(1) of the American Convention. It was a result of this failure to act by the Government that Gonzalo Belano and 29 other deportees were killed within two months of returning from Tlaxcochitlan. Furthermore, this failure to act also led to 7 cases of disappearances.

2. *Respondent Arcadia violated Article 22.8 (non-refoulement), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan Persons.*

Article 22(8) of the American Convention includes a universal guarantee of non-refoulement by providing that an “alien may not be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinion.”¹⁰⁹ Party States are obligated not to return the asylum seeker to the frontier of a territory where his or her life or freedom would be threatened on account of persecution.¹¹⁰ This is known internationally as a States obligation of *non-refoulement* and is applicable regardless of lawful or unlawful entry into the territory of the State.¹¹¹ This stance follows that the human right principle of non-refoulement coincide with refugee law. The principle of non-refoulement is applied as a component of the prohibition on torture or cruel, inhuman or degrading treatment or punishment and the right to life.¹¹²

In the Case before the International Court of Justice in the *Nicaragua* case, the ICJ noted that “the Court does not consider that, for a new rule to be established . . . the practice must be in rigorous conformity with the rule. It should simply non be inconsistent with a given rule and

¹⁰³ Hypothetical, para. 23.

¹⁰⁴ *Id.*

¹⁰⁵ Hypothetical, para. 25.

¹⁰⁶ Hypothetical, para. 29.

¹⁰⁷ Hypothetical, para. 5.

¹⁰⁸ Clarifications, Para. 66.

¹⁰⁹ INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 22(8)

¹¹⁰ INTERNATIONAL LAW AND REPARATIONS: THE INTER-AMERICAN SYSTEM, Claudio Grossman (2018).

¹¹¹ *Id.*

¹¹² The Inter-American System of Human Rights, David J. Harris, Stephen Livingstone (2008).

should generally treat it as breached of that rule, not as indications of the recognition of a new rule.”¹¹³

Similarly, in this case, the Government of Arcadia violated its positive duty to guarantee the victims a right to life under Article 4 and non-refoulement under Article 22.8 despite knowing very well about the circumstances and conditions of Puerto Waira.

C. Respondent Republic of Arcadia violated Article 7, 22(7), and 24 in the Convention, read in conjunction with Article 1(1) to the detriment of Gonzalo Belano and 807 other Wairan persons

1) Respondent State violated Article 7 (Right to Personal Liberty), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 other Wairan Persons.

Article 7(1) of the ACHR grants the right to personal liberty and security, with exceptions under Article 7(2), to “every person.” In addition, Article 7(2) reiterates the above due process rights, including freedom from arbitrary detention. Moreover, Article 7(3) guarantees the right against arbitrary arrest or imprisonment. Article 7(4), 7(5), and 7(6) list rights of suspects during their detention. First, detained persons must be informed of the charges against them and the reasons of their detention under Article 7(4). Second, they must be brought promptly before a judge or officer exercising judicial power under Article 7(5). Third, they must be entitled to “recourse to a competent court” to determine the lawfulness of the detention without delay.

¹¹³ *Military and Paramilitary Activities in and Against Nicaragua*, ICJ Reports, 1986.

i. Freedom from Deprivation of Liberty

As mentioned above, Article 7(1) establishes the right to personal liberty and security for all persons, and Article 7(3) clarifies that persons' arrests must not be arbitrary. The Commission explained that under Article 7 arbitrariness must be analyzed under the State's constitution and/or domestic laws enacted pursuant thereto, which prescribe the procedures and rationale for depriving persons of their freedom.¹¹⁴ The Committee also explained that if preventive detention is used for public security reasons it cannot be arbitrary and "information of the reasons must be given" based on "grounds and procedures established by law."¹¹⁵ When a woman was arrested without a written arrest warrant stating the reasons for the arrest as required by the Peruvian Constitution, the Commission ruled that her arrest was arbitrary and thus in violation of Article 7.¹¹⁶

The arbitrary detention of the Wairan persons similarly violated Article 7 because State actors did not detain them with correct reference to Arcadia's constitution or domestic laws. The State detained 591 persons for over four months and 217 persons for over five months.¹¹⁷ They were detained merely because they had previous criminal records.¹¹⁸ The State of Arcadia makes no mention of a constitutional provision or domestic law wherein the State may detain persons only on the basis on the existence of a criminal record. Although the State gave the rationale that it would detain such persons "in order to guarantee national security and preserve public

¹¹⁴ *Alan Garcia v. Peru*, Case 11.006, Report No. 1/95, Inter-Am.C.H.R., Annual Report 1995, para. 166.

¹¹⁵ U.N. Human Rights Committee, General Comment No. 8: Right to Liberty and Security of Persons, para 4, U.N. Doc. HRI/GEN/I/Rev.7 (June 30, 1982)

¹¹⁶ *Id.*

¹¹⁷ Hypothetical, para. 27-28.

¹¹⁸ Hypothetical, para. 22.

order,”¹¹⁹ Article 48 of the Constitution of the Republic of Arcadia specifically recognizes the right to seek and receive asylum in the State in accordance to “the law and international human rights instruments.”¹²⁰

Moreover, although Article 40 of the Law on Refugees and Complementary Protection states grounds for which persons may not be granted refugee status based on specific crimes they have committed,¹²¹ the State detained the 808 persons not on the basis on the specific crimes listed in Article 40. Rather, the State detained them on the general, arbitrary status of the existence of their criminal records.¹²² A person could have a criminal record without having committed a “serious non-political crime” or a crime “against peace, genocide, crimes against humanity, or war crimes.” Although the detained Wairans were all convicted of “serious non-political crimes” under Arcadian domestic law,¹²³ the State’s assessment of detaining certain individuals was only “because they had criminal records.”¹²⁴ This is different than an assessment of whether they committed specific crimes as outlined in Article 40 of the Law on Refugees and Complementary Protection. The Commission recognizes that persons’ deprivation of liberty outside the criminal justice context may only be justified “where measures of this nature are strictly necessary.”¹²⁵ The instant case is outside the criminal justice context, and the State has not reasoned that each specific detention was “strictly necessary.”

¹¹⁹ Hypothetical, para. 21.

¹²⁰ Hypothetical, para. 11.

¹²¹ Hypothetical, para. 13.

¹²² Hypothetical, para. 22.

¹²³ Clarifications, para. 2.

¹²⁴ Clarifications, para. 15, 50.

¹²⁵ Report on Terrorism and Human Rights, OEA/Ser.L/VNII.116, doc. 5, rev. 1, corr. 22, 124 (2002), available at <http://cidh.org/Terrorism/Eng/part.d.htm>.

Moreover, Arcadia did not fulfill the requirements outlined in its domestic law of section 111 of the General Immigration Act that provided a basis for the 808 persons' detainment, which is in violation of Article 7(1). The Act provides that the National Migration Institute (NMI) "may decide to impose custodial measures against foreigners" and that "[d]etention will only occur after the administrative authority has examined its appropriateness and proportionality."¹²⁶ The president of Arcadia announced the State's measures and policies that included the exception of granting refugee status to certain Wairan persons under Article 40.¹²⁷ The NMI did not impose the policy of detainment of those 808 persons, and it further did not examine the appropriate or proportionality of the policy. The President and the State just announced the policy without the proper considerations required under Arcadia domestic law.¹²⁸ This constitutes a violation of Article 7(1).

ii. Right to be Brought Promptly Before a Judge

Article 7(5) of the ACHR grants detained persons the right to be promptly brought before a judge within a reasonable time. The reasonableness must be assessed using certain factors: 1. the duration of imprisonment; 2. the nature of acts which led to the proceedings; and 3. the difficulties or judicial problems encountered when conducting hearings.¹²⁹ In *Castillo Petruzzi v. Peru*, the Court ruled that the detainment of a person for 36 days before the State brought him before a judge was "excessive and contrary to the provisions of the Convention."¹³⁰ Similarly, in *Maritza Urrutia v. Guatemala*, when State agents abducted a woman and took her to a detention

¹²⁶ Clarifications, para. 11.

¹²⁷ Hypothetical, para. 18.

¹²⁸ Hypothetical, para. 18-21.

¹²⁹ Scott Davidson *The Inter-American Human Rights System* Brookfield: Dartmouth, 1995, p. 288.

¹³⁰ Inter-Am. Ct. H.R. Judgment of May 30 1999, para 111.

center, where she was held for eight days without being brought before a competent authority, the State's actions violated Article 7.¹³¹ The Commission has recognized the need for "prompt and effective judicial oversight of instances of detention, in order to protect the well-being of detainees at a time when they are wholly within the control of the state and therefore particularly vulnerable to abuses of authority."¹³²

The 808 Wairan persons were not heard by a competent judge in violation of Article 7(5).¹³³ Although a "case-by-case assessment" was made by Arcadian authorities,¹³⁴ the Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior simply ascertained whether a person had a criminal record before detaining them.¹³⁵ Then, the State determined in 45 business days whether the State would protect them.¹³⁶ The State's determination did not include a hearing for each individual detainee before a judge. After two more months, the State issued a decree establishing that the detainees would likely be returned to their home country.¹³⁷ Within that two-month span, State still did not give the detainees the opportunity to speak in front of a competent judge. Although 217 persons filed writs of *amparo*,¹³⁸ which were referred to a competent *Amparo* judge, the Pima Immigration Court did not deny protection until March 22, 2015, which was approximately seven months after the President first announced the State's policy of not granting refugee status to certain Wairan persons on August 20, 2014.¹³⁹ Moreover,

¹³¹ Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, §VIII (Nov. 27, 2003).

¹³² Report on Terrorism and Human Rights, Inter-American Commission on Human Rights, 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005) 1 § III(H)(4), at para. 121.

¹³³ Clarifications, para. 15.

¹³⁴ Clarifications, para. 15.

¹³⁵ Hypothetical, para. 21.

¹³⁶ Hypothetical, para. 23.

¹³⁷ Hypothetical, para. 26.

¹³⁸ Hypothetical, para. 28.

¹³⁹ Hypothetical, para. 18, 28; Clarifications, para. 10.

Article 7(5) grants the right of all detained persons to be promptly brought before a judge within a reasonable time, and at least 591 detained Wairan persons were never even brought before a judge. Therefore, the State's lack of due process rights guaranteed to the Wairan persons violated Article 7(5).

2) Respondent State violated Article 22(7) (Right to Seek and Be Granted Asylum), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 other Wairan Persons.

Article 22(7) of the ACHR grants every person the “right to seek and be granted asylum in a foreign territory.” Under Article 22(7), the Court considers that States must grant asylum seekers “the necessary facilities . . . to submit their request to the authorities,”¹⁴⁰ which includes giving “necessary guidance concerning the procedure to be followed.”¹⁴¹ Arcadia is also a party to Convention Relating to the Status of Refugees and its 1967 Protocol, which reiterates persons’ protections when they seek asylum, which include the right to an appeal before deportation and to a hearing.¹⁴² According to the Convention, a person who meets the criteria for a refugee is declared to be a refugee.¹⁴³ The Court emphasized the importance of parties to the Convention

¹⁴⁰ Cabrera García and Montiel Flores v. Mexico, Preliminary objection, Merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220, Para. 154; López Mendoza v. Venezuela. Merits, reparations and costs. Judgment of September 1, 2011. Series C No. 233, para. 117. See also: United Nations High Commissioner for Refugees, Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards, 2 September 2005, p. 3.

¹⁴¹ Pacheco Tineo Family v. Plurinational State of Bolivia, inter-American court of human rights, judgment of November 25, 2013 Para 159.

¹⁴² 48 Convention Relating to the Status of Refugees, *entered into force* April 22, 1954, art. 32(1), 189 U.N.T.S. 150.

¹⁴³ United Nations High Commissioner for Refugees. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (reedited, Geneva, 1992). HCR/1P/4/ENG/REV.3. Available at: <http://www.unhcr.org/3d58e13b4.html>, para. 28.

recognizing the determination of refugee status “based on the respective fair and competent proceedings.”¹⁴⁴

The Convention to Prevent and Punish Torture, of which Arcadia is a party, also preserves the “right of asylum” and prohibits refoulement in Articles 13 and 15. When persons are in danger of refoulement, the Commission has held that the State must provide legal aid to further guarantee the right to judicial protection.¹⁴⁵ Arcadia is a party to the Convention Relating to the Status of Refugees as well, in which Article 32(2) compels States to give refugees due process rights when expelling them. The exceptions to non-refoulement in the Refugee Convention as well as Article 40 of the Law on Refugees and Complementary Protection only involve very few, exceptional cases.¹⁴⁶ For example, the exception for those who commit serious crimes include murder and rape, which “should at least have to be a capital crime or a very grave punishable act.”¹⁴⁷ The Commission criticized a Canadian law that excluded persons from asylum if they had committed a crime with a term of imprisonment of ten years or more because the asylum-seekers who committed such crimes did not have an individualized hearing.¹⁴⁸ Additionally, in regards to a similar policy of refusing refugee protections to criminals by the United Kingdom, the UN Refugee Agency reasoned that “judgment on the potential danger to

¹⁴⁴ Pacheco Tineo Family v. Bolivia, Judgement of November 25, 2013 I/A Court H.R., Series C No. 272 (2013).

¹⁴⁵ Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L./V/II.106, Feb. 28, 2000, paras. 127, 174.

¹⁴⁶ Sir Elihu Lauterpacht & Daniel Bethlehem, The Scope and Content of the Principle of Non-Refoulement, UNHCR (Jun. 20, 2001), at para. 186.

¹⁴⁷ See UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Jan. 1992), para. 55.

¹⁴⁸ Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L./V/II.106, Feb. 28, 2000 paras. 60-70. (“Where the claimant demonstrates fear of persecution placing his or her life or personal integrity at risk, the crime would have to be “very grave” indeed to justify exclusion. Moreover, in evaluating the nature of the crime, all relevant factors, including mitigating and aggravating factors, are to be taken into account.”).

the community necessarily requires an examination of the circumstances of the refugee as well as the particulars of the specific offence.”¹⁴⁹

First, The State violated Article 22(7) because it did not give the Wairans the “necessary guidance” to seek asylum and appeal a deportation order. Second, the State did not provide legal aid to those Wairans who were in danger of refoulement. The Arcadian authorities told detainees that they could request legal assistance and gave them a list of civil society organizations and legal clinics, however, they did not provide detainees with any actual guidance or legal assistance.¹⁵⁰ Furthermore, the clinics and organizations could not assist all the detained Wairans.¹⁵¹

Third, the State did not determine Wairans refugee status based on “respective fair and competent proceedings.”¹⁵² Rather, the tension within the State led the President to conclude that the State could not take in the 808 Wairans, and the tension started because of their criminal records.¹⁵³ Even though the administration used a “case-by-case assessment” to determine if the 808 Wairans would be detained,¹⁵⁴ the proceeding was not fair because it only took into account each person’s criminal record rather than the specifics of their circumstance. Lastly, the State violated Article 22(7) because in refusing refugee protections to the 808 Wairan persons it did

¹⁴⁹ UNHCR, UNHCR Comments Relating to Serious Criminals and Statutory Review (2002) para 4; *see also* UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Jan. 1992), para. 156 (“it is . . . necessary to strike a balance between the nature of the offence presumed to have been committed by the applicant and the degree of persecution feared”); Guy Goodwin-Gill & Jane McAdam, *The Refugee in International Law* 241 (3d ed. 2007) (“From a due process perspective, whether a refugee is a danger to the community . . . is a matter to be determined on the basis of the evidenced relating to that individual, considered against an understanding of the concept of security.”).

¹⁵⁰ Clarifications, para. 24.

¹⁵¹ Clarifications, para. 27.

¹⁵² *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013 I/A Court H.R., Series C No. 272 (2013).

¹⁵³ Hypothetical, para. 24-26.

¹⁵⁴ Clarifications, para. 15.

not consider the particular circumstances of the refugee and the specific offense. For example, Mr. Belano was “forcibly recruited by a neighborhood gang” wat 14 years old, and it was from that circumstance that Mr. Belano committed the crime of extortion for which the State detained and deported him.¹⁵⁵ The 808 deported Wairan persons committed crimes in circumstances similar to those of Mr. Belano,¹⁵⁶ and yet the State did not consider those circumstances when choosing not the grant them refugee status.¹⁵⁷

3) Respondent State violated Article 24 (Right to Equal Protection), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 other Wairan Persons.

Article 24 of the ACHR mandates that States cannot discriminate against persons as they are entitled to “equal protection of the law.” Article 1(1) specifies that the prohibited discrimination includes distinctions based on race, national or social origin, sex, religion, political or other opinion, and any other social conditions.¹⁵⁸ The Commission analyses the legality laws that discriminate based on the above categories using heightened scrutiny based on whether the state has an “overriding or urgent’ objective, among other factors.¹⁵⁹ The Court emphasized that Article 24 “prohibits any type of discrimination . . . also with regards to all laws that the State adopts.”¹⁶⁰ Policies and laws discriminate when they make distinctions as

¹⁵⁵ Hypothetical, para. 30.

¹⁵⁶ Clarifications, para. 26.

¹⁵⁷ Hypothetical, para. 21.

¹⁵⁸ Organization of the American States, American Convention on Human Rights, Art. 1(1), Nov. 22, 1969, O.A.S.T.S. No. 36.

¹⁵⁹ IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 80.

¹⁶⁰ IACtHR, Case of YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, June 23 2005, para. 186.

explained above and lack “objective and reasonable justification.”¹⁶¹ The Court evaluates reasonableness based on the availability of less restrictive means, the existence of a legitimate objective, and the proportionality of the objective and the means employed.¹⁶² Additionally, a law that seems neutral may nonetheless cause discrimination when it disproportionately affects or disadvantages certain groups.¹⁶³

Arcadia violated Article 24 because it discriminated against the Wairans persons who were to be detained on the basis of sex.¹⁶⁴ As explained above, Article 1(1) explicitly forbids distinguishing persons on the basis of sex. The State’s determination of each Wairans’ place of detention was based on their sex, with women remaining at the immigration detention center and most men detained in prisons.¹⁶⁵ The only basis for the transfer of men to prisons with separate housing units was “so that they were not in contact with persons detained on criminal charges.”¹⁶⁶ The State did not identify a legitimate objective for this distinction. It did not give any reasonable explanation for the separation of men and women or from men with other men who were detained on criminal charges. Also, because the discrimination was on the basis of an Article 1(1) category, the State needed to have an “overriding or urgent objective,” which it did not have.

¹⁶¹ I-A Court HR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984, Series A, No. 4, p. 104, para. 56.

¹⁶² IACtHR, *Escher et al v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 6, 2009. Series C No. 199, para. 129; IACtHR, *Tristan-Donoso v. Panama*, Preliminary Objection, Merits, Reparations and Costs, Judgment of January 27, 2009, Series C No. 193, para. 76.

¹⁶³ United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009; IACtHR, *Case of the Girls Yean and Bosico*, Series C No. 130, Judgment of September 8, 2005, para. 141.

¹⁶⁴ Clarifications, para. 3.

¹⁶⁵ Clarifications, para. 3.

¹⁶⁶ Clarifications, para. 3.

Also, the State discriminated against Wairans who had criminal records as those were the only Wairans who the State detained.¹⁶⁷ The State detained the 808 Wairans based on section 111 of the General Immigration Act, which seems neutral but had the effect of disadvantaging a certain group of Wairans: those with a criminal record.¹⁶⁸ This discrimination violates Article 24 because, again, the State did not provide an objective and reasonable justification for this disadvantage. The State's only justification was "in order to guarantee national security and preserve public order,"¹⁶⁹ but it did not take into account how the means employed of detention in violation of Article 7(1) were too extreme for the stated justification or objective.

The State could have used less restrictive means to preserve public order in Arcadia. Therefore, the discrimination within the policy and law cannot be justified to overcome the guarantee of equal protection under Article 24. Although Wairans who arrived at the border of Arcadia created "disturbances" in towns because "many people slept in the streets and begged for money,"¹⁷⁰ the state could have used a less restrictive means of giving those people housing rather than detaining those with criminal records in order to "preserve public order."

Moreover, just because candidates from nationalist-oriented parties said that Wairans caused "crimes rates to spike" and took "jobs away from Arcadian citizens," does not mean that 808 Wairans needed to be detained.¹⁷¹ The news from those candidates was false.¹⁷² Media outlets referred to Wairans as "cockroaches," or "scum," which contributed to tension in the

¹⁶⁷ Hypothetical, para. 21.

¹⁶⁸ Clarifications, para. 11; Hypothetical, para. 21-22.

¹⁶⁹ Hypothetical, para. 21.

¹⁷⁰ Hypothetical, para. 16.

¹⁷¹ Hypothetical, para. 24.

¹⁷² Hypothetical, para. 24.

State.¹⁷³ Organized marches and discourse surrounding the deportation of the 808 persons also contributed to the “atmosphere of widespread tension” in Arcadia.¹⁷⁴ However, it was not the detained Wairans themselves who were causing this tension or disorder, it was the new media and general public of Arcadia who did.¹⁷⁵ Furthermore, Arcadia itself acknowledged that less restrictive means than detaining those 808 persons and deporting them could be used as the State itself launched “awareness-raising campaigns” to mitigate the negative impacts of the tension within the State.¹⁷⁶ Again, the State provided no evidence that the detained Wairans were in fact threatening national security. In fact, the tension and false news about Wairans, led President Javier Valverde’s administration to decide that the State “did not have the capacity to take these people.”¹⁷⁷ Therefore, the State violated Article 24 as it discriminated against those 808 persons who had criminal records.

D. Respondent Republic of Arcadia violated Article 17 and 19 in the Convention, read in conjunction with Article 1(1) to the detriment of Gonzalo Belano and 807 other Wairan Persons

1) Respondent State violated Article 17 (Family Unit) and 19 (Best Interest of the Child) because detainment and deportation of 808 Wairan persons destroyed family units

Article 17 of the ACHR protects the right to live in a family as “the natural and fundamental group unit of society.” The family unit may include minor children who Article 19 requires to

¹⁷³ Hypothetical, para. 24-25.

¹⁷⁴ Hypothetical, para. 25.

¹⁷⁵ Hypothetical, para. 25.

¹⁷⁶ Hypothetical, para. 25.

¹⁷⁷ Hypothetical, para. 26.

have “the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” In an important decision regarding the execution of Guatemalan street children, the Court emphasized the comprehensive international *corpus juris*, including the Convention of the Rights of the Child, that establishes “the content and scope” of obligations States must undertake in Article 19.¹⁷⁸ The CRC, to which Arcadia is a party, specifies that said protection requires children to never be separated from their family without judicial review.¹⁷⁹ The Court also specified that children should not be separated from their family, unless it is in their best interests and is thus an exceptional circumstance.¹⁸⁰ The Court further stated that a lack of “material resources cannot be the only basis” for the separation of children from their families.¹⁸¹ The Commission established that States may interfere with family life only “where necessary to meet a pressing need to protect public order, and where the means are proportional to that end.”¹⁸²

Arcadia is also a party to the International Covenant on Civil and Political rights (ICCPR), and the U.N. Human Rights Committee recognized that deportation can also interfere with the family unit in violation of the ICCPR.¹⁸³ For example, in *Madafferi v. Australia*, the Committee found the deportation of an Italian national unlawfully present in Australia violated ICCPR as it interfered with his family unit, including a wife and four children.¹⁸⁴ Similarly, in *Maria v.*

¹⁷⁸ Villagrán Morales Case, Inter-American Court of Human Rights, Series C, No. 63 (1999), at para. 194.

¹⁷⁹ Convention of the Rights of the Child, Art. 9(1).

¹⁸⁰ Advisory opinion OC-17/2002 IACtHR Series A 17 (2002) Para 77 28 August 2002.

¹⁸¹ *Id.* at para 90.

¹⁸² Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Feb. 28, 2000, para 166.

¹⁸³ Aumeeruddy-Cziffra v. Mauritius, U.N. GAOR, Hum Rts. Comm., 36th Sess., Supp. No. 40, Annex 13, at 134, U.N. Doc. A/36/40 (1981).

¹⁸⁴ *Madafferi v. Australia*, Judgment of July 26, 2004, Communication No. 1011/2001, U.N. Doc. CCPR/C/81/D/1011/2001 (2004).

McElroy, the Eastern District of New York overturned the deportation of a citizen of the Dominican Republic from the United States based on interventional law grounds regarding the family unit.¹⁸⁵ The court cited decisions by the Committee and Article 17 of the ICCPR to hold that the deportation of the mother only based upon her conviction of attempted unarmed robbery did not take family separation into account.¹⁸⁶ The European Court, in *Lamguindaz v. United Kingdom*, also held that the deportation of a non-citizen based upon his criminal convictions constituted a hardship to family life out of proportion to states' interests.¹⁸⁷

The State mandatorily deported 808 Wairan persons without consideration of the family unit, which is impermissible under Article 17 and 19. Moreover, this mandatory deportation without a hearing for each Wairan person in which the State could consider the effect of said deportation on minor children and the family unit precisely violates minors' substantive right to a family unit. The Wairan persons who entered the State included "hundreds of families, children, adolescents, pregnant women."¹⁸⁸ The detention and deportation of the 808 Wairan persons from Arcadia thus resulted in the separation of some families as parents and relatives responsible for the care of children were detained and deported.¹⁸⁹ This separation was in clear violation of Article 17 and 19. Just like in *Maria v. McElroy*, the State only separated family based upon Wairan's criminal convictions and did not take family separation into account, which impermissibly interferes with family life in violation of Article 17 and 19.¹⁹⁰

¹⁸⁵ 68 F. Supp. 2d 206, 219-20 (1999).

¹⁸⁶ *Id.* at 231-34.

¹⁸⁷ *Lamguindaz v. The United Kingdom*, Judgment of June 28, 1993, No. 16152/90, paras. 45-46.

¹⁸⁸ Hypothetical, para. 15.

¹⁸⁹ Clarifications, para. 21.

¹⁹⁰ Hypothetical, para. 21.

2) Respondent State violated Article 19 (Best Interest of the Child) because they did not adopt special measures of protection for minor children

The Court has further stated that under Article 19, “special measures of protection” are necessary to protect the rights of minors.¹⁹¹ Therefore, States need to adopt measures that consider “the specific situation of children, taking into account their weakness, immaturity or inexperience.”¹⁹² Article 3 of the CRC further articulates that the best interest of children should be “a primary consideration” in any action involving minors.

The deportation of Wairan persons failed to consider the special interest of children whose parents may have been deported, which is in violation of Article 19. The State’s decision to separate children from their parents through the deportation of parents only based upon their past criminal convictions failed to consider the child whatsoever. Not only did the State not make individualized decisions based on the best interest of children, as required by Article 19, but it did not consider the deportations’ or detentions’ impact on children at all.¹⁹³ The factors considered by the State regarding detentions only involved their criminal records and the fact that they “were slated to be deported.”¹⁹⁴ Not only did the State not use the best interest of children as the “primary consideration,” but it did not consider the children at all. Additionally, the situation of the children in this case should constitute a specific concern because they grew up in a county where up to 90% of violent crimes go unpunished.¹⁹⁵ The high rates of poverty, inequality, and gangs who recruit children should have been of additional, particular concern to

¹⁹¹ Advisory opinion OC-17/2002 IACtHR Series A 17 (2002) Para 18 28 August 2002 paras. 60-61.

¹⁹² *Id.*

¹⁹³ Hypothetical, para. 21.

¹⁹⁴ Clarifications, para. 15.

¹⁹⁵ Hypothetical, para. 7.

the State.¹⁹⁶ Therefore, a policy of allowing children to remain with their families would have been even more important. For the children to be reunited with their detained parents they would have to return to Puerto Waira, where they would likely be recruited into a gang.¹⁹⁷ The State thus violated Article 19 because it did not take special measures to protect the vulnerable, Wairan children.

¹⁹⁶ Hypothetical, para. 5, 7.

¹⁹⁷ Hypothetical, para. 5.

REQUEST FOR RELIEF

Wherefore, based on the foregoing submissions, the Representatives for the Victims respectfully request this Honorable Court declare the instant case admissible and:

- (1) Adjudge and declare that the Republic of Arcadia violated Article 8 and 25 of the American Convention in relation to Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairans.
- (2) Adjudge and declare that the Republic of Arcadia violated Article 4 and 22.8 of the American Convention in relation to Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairans.
- (3) Adjudge and declare that the Republic of Arcadia violated Article 7, 22(7) and 24 of the American Convention in relation to Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairans.
- (4) Adjudge and declare that the Republic of Arcadia violated Article 17 and 19 of the American Convention in relation to Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan.

