

2019 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

Case of Gonzalo Belano and 807 Other Wairan Persons

(PETITIONER)

v.

Republic of Arcadia

(RESPONDENT)

MEMORIAL FOR THE STATE

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STATEMENT OF FACTS

I.1 Waira

The Republic of Puerto Waira is a democratic republic with a presidential system of government. It is bordered on the north by the United States of Tlaxcohitlán (UST)¹.

During the period of 1954-1996, the country was governed by successive military governments with hardline policies and experienced bloody armed conflict between the military and insurgent groups. In 1996 it had the signing of peace accords and had their first democratic elections since 1954².

The monetary poverty rate was 46.7% in 2010 however, the government of Puerto Waira to date, has no real measurement of its socioeconomic and citizen security indices. Waira has been having problems dealing with criminal acts from gangs as the size of the National Police force is at least one-third the size of criminal gangs and is incapable of handling the criminal acts of extortion, rape, murder and recruitment of children perpetuated by them. Notwithstanding the government has implemented a hardline strategy to address the criminal activities of gangs that has strong support of the population³.

The general population of Puerto Waira has been catapulted into a parachute of refugees seeking relocation from the violence⁴ with the authorities unable

¹ Hypothetical ¶ 1

² Hypothetical ¶ 2

³ Hypothetical ¶ 6

⁴ ibid

to guarantee safety of the population with up to 90% of crimes going unpunished.

I.2 Arcadia

The Republic of Arcadia is a country north of UST with a developed economic, political and judicial system with an unemployment rate of around 5%. Arcadia has ratified all treaties of the universal system including but not limited to: International Covenant on Civil and Political Rights, ratified in 1969; 1951 Convention Relating to the Status of Refugees and its 1967 Protocol ratified in 1983; American Convention on Human Rights ratified in 1971⁵.

Arcadia has been and continued to be a preferred destination for migrants due in large part to its strong economy and integration policies developed for migrants and refugees. It has accepted a large number of migrants from Waira with an 800% increase between 2013 and 2015 and increase the number of refugees by 20% as it is recognized within the constitution of Arcadia to recognize the right to seek and grant asylum⁶. Arcadia has also given domestic legal effects to its Treaties with legislation such as the Law on Refugee and Complementary Protocol (LRCP) that established the procedure for the recognition of refugee status determined on an individual basis.

I.3 Mass Migration into Arcadia

⁵ Hypothetical ¶ 9

⁶ Hypothetical ¶ 11

In July 2014, a large caravan of more than 7000 people began their journey from Waira through UST to the southern borders of Arcadia, where the first group arrived on August 2014 and were joined by another 7000 persons some days later. Authorities of UST accommodated them with the support of civil society organization and international agencies, by setting up camps for shelter and rest near the border of Arcadia. The caravan was comprised of families, children, adolescents, pregnant women and older adults most of African descent.

I.2 National risks for Arcadia

Arcadia's own social and economic system is now challenged by the unusually high influx of asylum seekers and refugees who have arrived at its borders⁷. Many with medical conditions, pre-existing chronic illnesses and pregnant women are turning on the public health services.

The government of Arcadia held an extraordinary meeting with government institutions and agencies of the UN System – UNICEF, UNHCR, IOM –, on August 16, 2014, for a reasonable solution to the problem.

On August 20, 2014, the measures to be taken were announced publicly that were consistent with their constitution and the LRCP. Arcadia also called on the international community for assistance. Arcadia also outlined the procedure for obtaining prima facie refugee status including

⁷ Hypothetical ¶ 16

submission of an application, undergoing a brief interview. The applicant's criminal background would be checked in order to preserve public order and guarantee national security.

Arcadia identified 808 Wairans with criminal records and subsequently detained them according to procedure whilst assessing each individual's claim for asylum.

I.3 Public Pressure

There was growing discontent from the public in Arcadia over the massive influx of Wairans entering the country, which quickly began to spread causing xenophobia and general hostile comments against the Wairans. Upon learning of the criminal records of the 808 unnamed Wairans, there were several public marches and a general atmosphere of widespread tension. The government launched awareness campaigns to promote integration and prevent racism and xenophobia. These events led the President to conclude that the country did not have the capacity to take in the 808 unnamed Wairans with criminal records and called for assistance from other countries. After waiting two months with no reply to his call, he published an Executive Decree ordering their deportation⁸.

On March 2, 2015, a meeting was convened between Arcadia's Ministry of Foreign Affairs and their counterparts of UST, where an agreement was signed to allow the return of illegal migrants to UST in return for increase support to their migration control activities and the

⁸ Hypothetical ¶26

nations' development. On March 16, 2015, 591 persons who did not file any judicial appeal were returned to UST. The other 217 who filed in February 20, 2015, had their deportation suspended until the merits were adjudicated. On March 22, 2015, the decision was upheld by the courts and they were sent to UST.

I.4 Violation of the Agreement

The two groups of people returned to UST were detained at the Ocampo Immigration Facility until June 15 when they were deported to Waira. Thirty of the Wairans, including Gonzalo Belano were murdered upon their return to Waira. The legal representatives for the Wairans from the Legal Clinic decided to bring a legal action seeking comprehensive reparation of the harm in Arcadia, which they filed directly to the Arcadian consulate on November 15, 2015. A month later the Clinic received notice through the consulate that the complaint was dismissed for failure to comply with the requirements set forth in Arcadian law. On January 20, 2016 the Legal Clinic filed a petition with the Inter American Commission on Human Rights (IACHR) alleging the violations contained in the American Convention.

I.5 The Challenges

Proceedings before Inter-American Human Rights Systems were started by a filing by the Legal Clinic of a petition with the Inter-American Commission on Human Rights (IACHR) on behalf of the 808 deportees, alleging violations of various rights contained in the American Convention on Human Rights.

Once the complaint was filed with the IACHR, the individual petition procedure was triggered and the IACHR gave notice of the registration of the petition under number P-179-The IACHR opened the petition for processing. At the admissibility stage, the State of Arcadia alleged the failure to exhaust domestic remedies, in particular with respect to the 591 persons who did not file an appeal in Arcadia; as well as the failure to individually identify 771 of the alleged victims in the case before the IACHR. In addition, Arcadia alleged noncompliance with the domestic legal requirements, which consist of filing the administrative lawsuit directly with the competent court; if it were a criminal matter, it argued, free legal assistance would have been provided and another proceeding would have taken place, but the procedural requirements of Arcadia's laws are clear. The IACHR declared the petition admissible on November 30, 2017, and continued its processing at the merits stage under the procedural guidelines of the ACHR and the IACHR's Rules of Procedure.

1.6 The Charges

Subsequently, on August 1, 2018, the IACHR issued Report on the Merits No. 24/18, approved pursuant to Article 50 of the American Convention, notice of which was served on the parties on August 6, 2018. In its merits report, the IACHR attributed international responsibility to the State of Arcadia for the violation of the rights to life (Article 4), personal liberty (Article 7), a fair trial (Article 8), to seek and be granted asylum (Article 22.7), non-refoulement (Article 22.8), family unity (Article 17), the best interests of the child (Article 19), equal protection (Article 24), and

judicial protection (Article 25) of the American Convention on Human Rights, all in relation to Article 1.1 thereof, to the detriment of Gonzalo Belano and 807 other Wairans.

LEGAL ANALYSIS

I. PRELIMINARY OBJECTIONS

A. The State of Arcadia accepts the Jurisdiction of the Court

Arcadia had ratified the American Convention on Human Rights (hereinafter 'ACHR') in 1971⁹ in addition to all universal treaties in the human rights regime, so therefore accepted the contentious jurisdiction of the Court.

i) The Court should dismiss the case because its authority was improperly invoked

Therefore, pursuant to Article 62(1), 62(3) and Article 63(2) of the American Convention¹⁰ this court, the Inter-American Court of Human Rights (hereinafter 'IACtHR') has the necessary *rationae materiae* to exercise jurisdiction on matters concerning application and interpretation of the ACHR. However, the Court should dismiss this matter because its' authority was invoked by the Commission in violation of the established rules and procedures in the ACHR outlined in Article 47 of the American Convention.

The procedures under Art 47 states the Inter-American Commission on Human Rights (hereinafter 'Commission') should dismiss any petition that

⁹ Hypothetical Case, ¶ 9

¹⁰ Inter-American Convention of Human Rights Article 62

submitted under article 44 or 45 if any of the requirements in Art 46 has not been met. The petitioners filed a petition with the Commission on the individual petition procedure consistent with Art. 44 and hence is subjected to satisfy the requirements under Article 46. However, the requirements under Article 46(1)(a) and 46(1)(d) were not met.

The petition failed to identify 771 of the victims as required under Article 46 (1)(d), which requires full and complete identification of all victims. This is in contravention of the individual petition system, which was invoked by the Commission that requires, as a necessity, “*a communication or petition alleging a concrete violation of the human rights of a specific individual*”¹¹.

The Commission has previously asserted that the interpretation of Art. 26 of the Commission’s Rules of Procedure are to be construed that its competence under the individual petition system relates to facts involving the rights of a specific individual or individuals¹². The state would be at a disadvantage if it cannot respond to the allegations of the violations and apportion the appropriate remedy for individuals that are unidentifiable. Furthermore, the Commission deliberated that the petitions must

“allege concrete violations of the rights of specific individuals, whether separately or as part of a group, in order that the Commission can determine the nature and extent of the State’s responsibility for those violations as well

¹¹ International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. I and 2 of the American Convention of Human Rights, Inter-Am. C.H.R., Advisory Opinion OC-14/94, ser. A, no. 14(1994)), <<http://www.oas.org>> accessed March 04, 2019.

¹² I.A.C.H.R., Case of Emérita Montoya González, Report 48/96, Case 11.553 (Costa Rica), in Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 28, 31

*as the appropriate reparations to be afforded to that victim or his or her next of kin.”*¹³

Failure to identify the individuals in a petition has previously ruled inadmissible because of the lack of competence *rationae personae* by the Commission¹⁴.

The Commission should have also ruled the petition inadmissible for failure of the petitioners to follow domestic legal requirements in not filing their lawsuit with a competent Court¹⁵ and failed to exhaust all domestic remedies in accordance to Art. 46 (1)(a) and Art. 46(2).

Finally, should the Court determine that the petition is admissible and it does indeed have jurisdiction over the matter, then the State of Arcadia submits that it did not violate the provisions under the American Convention with respect to Article (4), Article (7), Article (8), Article (22.7), Article (22.8), Article 17, Article (19) and Article (24).

B. The Petitioners Failed to Exhaust all Domestic Remedies available

It is a recognized principle under **Article 46 (1) (a)** of the **ACHR** and the **Rules and Procedure of the Inter American Commission on Human Rights** under **Article 31** that before a petitioner can access the Inter American Court's jurisdiction, the commission must be satisfied that he have explored

¹³ IACHR, Report No. 104/05, Petition P-65-99, Inadmissibility, Víctor Nicolás Sánchez et al., United States (“Operation Gatekeeper”), October 27, 2005, para. 51.

¹⁴ IACHR, Report 100/14, Petition 11.082 Inadmissibility, International Abductions United States, November 7, 2014

¹⁵ Hypothetical ¶ 33

and exhausted all domestic remedies available to him. Based on the facts of the hypothetical case this court should find that the petitioners failed to exhaust all domestic remedies available to them because :

i) *There were remedies in Arcadia that were adequate and effective.*

There are remedies in Arcadia for the violations alleged by the petitioners that are "*adequate*" and "*effective*"¹⁶ because Arcadia has a strong democracy and strong system of public institutions.¹⁷ *A domestic remedy is deemed effective if it is capable of producing the anticipated result*¹⁸. The petitioners were able to file for a writ of *amparo* to stop their deportation¹⁹. Moreover, the 591 people that were excluded for having a criminal record had the opportunity to file a judicial or administrative appeal but failed to do so²⁰. Therefore, it was the petitioners who failed to exhaust these remedies that were not only readily available to them but could have achieved the anticipated result of preventing their deportation.

It was the decision of this court that ' *where the State makes the submission of non-exhaustion it has the burden of providing which domestic remedies still remain* ' ²¹. In light of the latter, it is important to note that the petitioners could have sought an administrative lawsuit with a competent court if they had not failed to comply with the domestic requirements. Moreover, if there is any criminal action to be brought against the State by the petitioners, free legal

¹⁶ *Case of Velasquez Rodriguez v. Honduras*, Series C No 4, Inter-Am. Ct HR, 29 July 1988, paras. 63-4

¹⁷ Hypothetical Case, para. 8.

¹⁸ *Juan Humberto Sánchez v. Honduras*. Series C No. 99, Inter-Am. Ct. H.R., 7 June 2003, para. 121

¹⁹ Hypothetical Case ¶. 28.

²⁰ Hypothetical Case, ¶. 27.

²¹ *Case of Cantoral Benavides v. Peru*, Series C No 69, Inter-Am. Ct. H.R., 18 August 2000, para. 31

assistance will be provided to them and another proceeding regarding their deportation can take place²². Therefore, there still remain remedies in Arcadia that the petitioners can exhaust that they failed to do.

ii) None of the exceptions to the general rule of exhaustion of domestic remedies are applicable.

The petitioners cannot satisfy the three situations/exceptions where the petitioner may argue that he was unable to exhaust the domestic remedies available to him under **Article 31(2) (a-c)** of the **American Convention on Human Rights**. Paragraph (a) provides for the first one which is where *there is an instance of the domestic legislation of the State concerned, does not afford due process of law for the protection of the rights that have allegedly have been violated*. Based on a thorough review of the hypothetical case no legislation was enacted which sought to affect the principle of due process or prejudice the petitioners' right to a fair trial.

Paragraph (b) provides for the exception where the petitioner has been denied access to domestic remedies or has been prevented from exhausting them. Based on the hypothetical case, Arcadia has done nothing to deny access to the available remedies or has Arcadia in any way prevented the petitioners from exhausting them instead its quite the contrary because the State has gone far as far as giving the petitioners the opportunity to file a writ,

²² Hypothetical Case ¶. 35.

make an appeal of the Pima Immigration Court decision in the form of a motion for re-consideration²³.

Finally, we submit that the petitioners cannot rely on paragraph(c) because there was no unwarranted delay in rendering a final judgment. This Court has held that there is an *unwarranted delay* when a period of five years has transpired from the initiation of proceedings to the time when the case is brought before the Commission as was seen the case of *Mangas v. Nicaragua*²⁴, where the Commission determined that a period of 5 years between the filing of charges and the rendering of a final judgment went “beyond the limits of reasonability’ and amounted to an unwarranted delay. In the hypothetical case the petitioners made an appeal to the decision to deport them as early as February 10, 2015 and a conclusive decision was made in April 30, 2015²⁵. Therefore, the petitioners cannot rely on this exception as a final judgment was made long before the 5-year stipulation.

iii) Arcadia did not waive its right to the objection of the non-exhaustion of local remedies by the petitioner.

Arcadia did not waive its objection to the non-exhaustion of local remedies by the petitioners, a matter of fact the State made mention that it did not from the admissibility /preliminary stage²⁶ in keeping with the principle from the *Castillo Páez* case²⁷.

²³ Hypothetical Case ¶ 35.

²⁴ Case 11.218, Report No 52/97, Inter-Am. C.H.R February 18, 1998 para. 124

²⁵ Hypothetical Case ¶. 28.

²⁶ Hypothetical Case ¶. 35.

²⁷ *Case of Castillo Páez v Peru, Castillo Páez v Peru, Reparations and Costs*, [1998] IACHR 8, IACHR Series C No 43, IHRL 1426 (IACHR 1998), 27th November 1998, Inter-American Court of Human Rights

II. The State of Arcadia did not violate the rights of the Petitioners to a fair trial

The State submits that it did not violate the petitioner's right to a fair trial under **Article 8** of the American Convention. Article 8 enshrines the general guidelines that all judicial or administrative proceedings that may affect a person's rights must *observe the minimum guarantees of due process one of the irrespective of his migratory status*²⁸ Additionally, the person must be the guarantee of due process extends to enabling the person to an adequate defense against any decision emanating from the States. Therefore, the decision of the State must not be arbitrary, and the case of the *Expelled Dominicans and Haitians v. Dominican Republic*, is instructive. In this case where there was the detention and summary expulsion of Haitians from the Dominican Republic without the State following the expulsion procedure established by domestic law. This Court ruled that this was arbitrary and was a breach of the principle of due process. We submit that Arcadia did not breach the followed these guidelines of due process as the state allowed the petitioners to file a writ of amparo to the effect that the decision of the Pima Immigration Court decision to deport them be suspended until the merits of the case were adjudicated. Moreover, on March 22, 2015, when the court denied protection and upheld the deportation orders the people were allowed to a

²⁸ I/A Court H.R., *Case of Vélez Looz v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010, Series C No. 218, para. 143.

filed a motion for the reconsideration of the decision. Therefore, the State of Arcadia did not act arbitrary in any way, the State observed the principle of due process and most important the petitioners were allowed to mount an adequate defense against the decision emanating from the State to deport them.

Additionally, Arcadia submits that it did not breach the petitioners right to a fair trial as it respected the requirement of setting up a independent, competent, and impartial tribunal which provided a hearing for the petitioners within a reasonable time as prescribed under **Article 8(1)**.

A tribunal is considered to be independent, impartial or competent when it does not engage in acts of *"incomplete analysis of the merits regarding the petitions of victims"*²⁹. Based on the hypothetical case, it is clear that the State of Arcadia made a complete analysis of the merits of the first petition (writ of Amparo) ,filed on February 10, 2015 by the petitioners, in fact , the Pima Immigration Court on February 20, 2015 ordered there deportation to be suspended until of the case was adjudicated on ³⁰ which would provide even more analysis of the case of the petitioners. Secondly, the term '*reasonable time*' mentioned under **Article 8 (1)** *is observed as no unwarranted delay of a tribunal in making its judgment*. According to the **Mangas Case** unwarranted delay would be

²⁹ Barbani et al. (Group of Depositors of the Banco de Montevideo), case No. 12.587 against Uruguay. (March 16, 2010) <http://www.cidh.oas.org/demandas/12.587%20Alicia%20Barbani%20y%20otros%20Uruguay%2016marzo10%20Eng.pdf> accessed March 22, 2019

³⁰ Hypothetical Case ¶.28.

*'up to a period of 5 years'*³¹. In the hypothetical case the petitioners made an appeal of the decision to deport them as early as February 10, 2015 and a conclusive decision was made on April 30, 2015,³² therefore there was no unwarranted delay in the rendering of a final judgment and the petitioner's right to a fair trial was not breached.

III. Arcadia did not violate the Petitioners' rights to Judicial Protection

Article 25(1) of the American Convention addresses the right of all persons to simple and prompt recourse to a competent Court for protection against acts that violate his rights recognized by the constitution of the State or the American Convention. **Article 25(2)** also imposes a positive obligation on the State to take such measures as necessary to ensure the enforcement of such remedies that are granted. In **Yatama v Nicaragua**³³, the Court found that Nicaragua had violated **Article 25(1)** because the State must be subjected to jurisdictional control in order to determine whether its actions have been adopted for the protection of the minimum rights and guarantees provided by the Court. The Court also noted that in order to comply with Article 25 it is not only sufficient to show the formal existence of these recourses but it is imperative that they be effective.

³¹ *Mangas v. Nicaragua* Case 11.218, Report No 52/97, Inter-Am. C.H.R February 18, 1998 para. 124

³² Hypothetical ¶ 28.

³³ *Case of Yatama v. Nicaragua*, Serie C No. 127, Inter-American Court of Human Rights (IACrHR), 23 June 2005,

i) *The Petitioners were afforded the right to simple and prompt recourse to a competent tribunal*

The right of non-refoulement is a right protected by Article 22(7) American Convention and is afforded to all asylum seekers. Though the State of Arcadia did not violate the Petitioner's right of non-refoulement, the Petitioners were afforded the right to simple and prompt recourse as provided in Article 25(1) of the American Convention to contest the decision.

A group of 217 Petitioners were able to file a writ of *amparo* with a competent Court in Arcadia, against their deportation on February 10, 2015, and were given an interim remedy in the form of an injunction against their deportation within 10 days³⁴. In **Acevedo Buendía et al. v. Peru**³⁵ the IACtHR determined that two writs of *amparo* which were filed for the same remedy two and a half years apart and which took another two years before they were determined by the Court, were not prompt according to Article 25(1). In the currently case, the writ of *amparo* was adjudicated within days and can be constituted a simple and prompt recourse for a remedy.

³⁴ Hypothetical ¶ 28

³⁵ Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Perú. Judgment of July 1, 2009. (Preliminary Objection, Merits ...

ii) *The measures to recourse offered by Arcadia was effective*

The State of Arcadia offered both administrative and constitutional remedies to challenge denial of refugee status decisions³⁶, which were accessible to the Petitioners. Administrative remedies may be filed with the same authority that rendered the decision. Hence the Petitioners could've requested a judicial review of the decision of Arcadia's National Migration Institute but 591 of them failed to do so.

The constitutional remedy of a writ of amparo, which was requested by the Petitioners on February 2015 was enforced when the PIMA Immigration Court ordered a suspension on their deportation within 10 days of receipt. All subsequent judgments issued by the Court were done in a timely manner and addressed the concerns of the Petitioners.

IV. The State of Arcadia did not violate the Petitioner's Right to Life

We submit that the State of Arcadia did not violate the petitioners' right to life under **Article 4** of the **ACHR**. Under **Article 4(1)** every person, from their conception, should not be arbitrarily deprived of life. We submit that this right however does not rest with the State of Arcadia but with the United States of Tlaxcochitlán where we sent the petitioners under the principle of shared responsibility³⁷ and under an agreement between the States where Arcadia pledged to increase its support and contributions for

³⁶ Clarification question 10

³⁷ Hypothetical Case ¶.26.

migration control activities³⁸. This increase in support and contribution means that Arcadia is making provisions for the petitioners to live a dignified life under the principle from the *Villagran Morales vs Guatemala case*³⁹, while in Tlaxcochitlán. *Because in Arcadia The State of the view that the petitioner's right to life may have been breached because of the* tension regarding the irregular entry of the petitioners in Arcadia and the various marches, condemnations of the Wairan people by Arcadian Citizens. Additionally, we also submit that by sending the petitioners to the State of Tlaxcochitlán Arcadia sought to ensure that they had the right to a life plan (*proyecto de vida*⁴⁰) something that could not be provided to them considering the tension in Arcadia and the risk of the deprivation of their lives.

V. Arcadia did not violate the Petitioner's Right to Personal Liberty

Article 7(1) of the ACHR grants the right for personal liberty and security however, Article 7(2) further states that “...except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto...” This denotes that the right to personal liability is not exhaustive and the State of Arcadia can limit this right in certain circumstances pertaining to detention. In the case of *Rafael Ferrer-Mazorra Et Al. v United States*⁴¹

³⁸ Hypothetical Case ¶.27.

³⁹ *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*, Inter-American Court of Human Rights (IACrHR), 19 November 1999

⁴⁰ Inter-American Court of Human Rights, *Loayza Tamayo v. Peru*, Decision on Reparations, November 27, 1998, paras. 144–154.

⁴¹ *Case of Rafael Ferrer-Mazorra Et Al. v United States IA Ct. H.R. (April 4, 2001) Report No. 51/01 Case 9903*

the commission found that in regards to non-citizens, administrative detention for security reasons must be based of law, not arbitrary and availability of judicial control.

i) The preventative detention must be based on the ground of public security and set forth in law.

In the case of *Gonzales Median and Family v Dominican Republic*⁴²

The court noted that under *Article 7*, a State may only restrict personal liberty in compliance with standards and procedures previously established in the State's domestic laws.

Arcadia had the authority under *Article 30* of the Law on Refugees and Complementary Protection Act to establish guidelines to meditate increased refugee applications which was previously established before the influx of Warian refugees.

ii) The preventative measures used to exclude the 808 Wairans with criminal record by Arcadia were not arbitrarily applied

According to Article 7(3) "No one shall be subject to arbitrary arrest or imprisonment. In the instance case Arcadia committed no such arbitrary acts. The case of *Chaparro Alvarez and Lapo Iniquez v Ecuador*⁴³ prohibit the deprivation of liberty through arbitrary arrests without adequate causes and circumstances established under domestic law. Therefore, it is seen that there is an exception to the general rule

⁴² *Gonzales Median and Family v Dominican Republic* (Preliminary objections, merits, reparations and costs) (27 February 2012)

⁴³ *Case of Chaparro Álvarez and Lapo Íñiguez v Ecuador, Chaparro Álvarez and Lapo Íñiguez v Ecuador*, Preliminary objections, merits, reparations and costs, IACHR Series C no 170, IHRL 3044 (IACHR 2007), 21st November 2007.

where there is the establishment of a necessary domestic law which is apparent in Arcadia's case under *Article 40(2)* of the Law on Refugees and Complimentary Protection Act.

VI. The State of Arcadia did not violate the Petitioner's rights to equality and Protection under Article 24 of the American Convention

In the case of *Gretel Artavia Murillo et al ("In Vitro Fertilization") v. Costa Rica*⁴⁴ Article 24 of the ACHR considered a measure discriminatory if they are arbitrary, lack justification, or that have a disproportionate impact on protected groups. However, no such instance arose in the case of Arcadia in regards to measures formulated by the Ministry of Interior in accordance with *Article 30 and 40* of the LRCP.⁴⁵

i) The actions of Arcadia are justifiable as they are legal.

The legality principle is recognized, in general terms, in Article 30⁴⁶ of the American Convention on Human Rights, which establishes an indispensable requirement that all interferences with human rights be authorized by law. The restrictions on rights were authorized by *Article 9* of the *Convention and Protocol Relating to the Status of Refugees*⁴⁷ and comply with the particular conditions in the aims of this restriction must be legitimate. That is to say, they must be ordered "for reasons of general interest" and may not deviate from "the purpose for which it has been

⁴⁴ The case of ("In Vitro Fertilization") Gretel Artavia Murillo et al v. Costa Rica Judgment of November 28, 2012 (Preliminary objections, merits, reparations and costs) Report No.. 85/10 Case 12.361

⁴⁵ Hypothetical Para 13

⁴⁶ American Convention, Article 30

⁴⁷ Refugee Convention

established”; and as seen in the case the sole purpose of the limitation was for a general interest that if not controlled would have created a situation of economic insecurity. Such restriction was provided for by the laws and applied in compliance with them.

ii) *The decision of Arcadia was not random but rather it was a necessity to achieve a legitimate aim.*

The I/A Court H.R., recognized the principle of necessity in *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007)⁴⁸. The purpose of the measures that restricted equality was compatible with the Convention as the state of Arcadia was allowed under *Article 40(1)* of the Law on Refugees and Complimentary Protection to refuse a certain class of individuals. Also the measures adopted were appropriate to achieve the purpose sought which was in this instance, economic stability and they were necessary, in the sense that they were absolutely essential to achieve the purpose sought and all possible measures had been exhausted by Arcadia as noted in para 18 and 20 of the hypothesis.

iii) *The restriction on a right recognized in the Convention must satisfy the “proportionality test” found in Kimel v. Argentina* (2008)⁴⁹.

The principle of proportionality required weighing the legal right that serves as the legitimate aim against the restriction of the affected right. In

⁴⁸ Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador IA. Ct. H.R. (Judgment of November 21, 2007) (Preliminary Objections, Merits, Reparations, and Costs) Series C 170.

⁴⁹ Case of Kimel v Argentina, Kimel v Argentina, (Merits, Reparations and Costs) IACHR Series C no 177, IHRL 3051 (IACHR 2008) “*In this last step of the examination, it is discussed whether the restriction is*

the present case, it is seen that the under *Article 24* of the ACHR the legal right is equal protection by the law without discrimination. However, such right has been restricted due to the influx of migrants from Wairan's to Arcadia. The state began to face "serious challenges to guaranteeing all the economic, social, and cultural rights of the people of Puerto Waira."⁵⁰ In application of the proportionality test, it is seen that the advantage Arcadia would gain in regards to an economic environment that is manageable within their capacity is not an exaggeration obtained from excluding 808 immigrants with "*serious non-political crimes*" from Asylum under Article 30 and 40(1) of the Law of Refugees and Complimentary Protection.

VII. The State of Arcadia did not violate the Petitioners' right to seek and be granted asylum

Under the provisions of Art 22(7) of the American Convention the state of Arcadia fulfilled its legal obligations with respect to the Petitioners right to seek and be granted asylum.⁵¹ It is stated that this right be granted in accordance with the domestic legislations and international conventions in the event that person is being pursued for political offenses or common crimes.

strictly proportionate, in a manner such that the sacrifice inherent therein is not exaggerated or disproportionate in relation to the advantages obtained from the adoption of such limitation.

⁵⁰ Hypothesis para 19

⁵¹ American Convention Article 22(7)

i) The State of Arcadia undertook adequate measures to afford the petitioners the right to seek asylum.

This Court in its advisory opinion⁵² advised that the right to seek asylum includes the right to request and apply either whilst on the territory of the State or when a person is under the jurisdiction of the State, without any form of discrimination. This right bestows certain positive obligations on the State including the allowance to file asylum applications and to ensure the minimum guarantees of due process for the assessment of the applications in an efficient and fair determination procedure⁵³ as well as to notify the Petitioners of the risk they face in the event their applications are unsuccessful and their eventual deportation.

Additionally, the Court stated in the **Pacheco Tineo Family v Bolivia**⁵⁴ that a request for asylum is properly considered by the State when there is a verification of the facts of the case and the application of the relevant law.⁵⁵

The State of Arcadia opened its borders to the Petitioners, accepted and processed their applications for refugee status⁵⁶ through their National Commission for Refugees (CONARE) offices, where each asylum claim

⁵² The institution of asylum and its recognition as a human right in the inter-American system of protection (interpretation and scope of articles 5, 22.7 and 22.8, in relation to article 1.1 of the American convention on human rights) Advisory Opinion OC-25/18 OF MAY 30, 2018

⁵³ *ibid*

⁵⁴ *Case of Pacheco Tineo Family v. Bolivia (Summary of the Judgment)*, 25 November 2013, UN High Commissioner for Refugees (UNHCR),

⁵⁵ Refugee Convention 1951 and its 1967 Protocol

⁵⁶ Hypothetical ¶ 20

of the 808 Wairans was granted due process by being individually examined and completed over the 45-day period established by law⁵⁷.

This is an illustration that the State of Arcadia had utilized the minimum guarantees established by its laws for an assessment of the Petitioners' applications where the 45 days taken was to ensure that proper verification of the facts of the 808 Wairans were done. The information was garnered using fair determination procedure to verify that 90% of the Petitioners faced a '*high risk*' of persecution upon deportation to Puerto Waira.

Arcadia also notified the Petitioners, both verbally and in writing, of the results and provided them with information on their rights and the options available to them with respect to the need for legal assistance and representation⁵⁸. However, despite this, the Petitioners chose not to access these services⁵⁹.

Hence, Arcadia having undertaken all the relevant measures required internationally by law to uphold the Petitioners' right to seek asylum have fulfilled their legal obligation under Art 22(7) of the American Convention.

⁵⁷ Hypothetical ¶ 23

⁵⁸ Clarification question 9

⁵⁹ *ibid*

ii) *The Petitioners did not meet the qualification standard for International protection with regards to non-political offenses and related crimes to be granted asylum.*

The American Convention does not provide any guidelines for State parties to determine refugee status; rather it relies on the individual States to establish their own asylum and determination proceedings⁶⁰. This is indicative in Art. 22(7) where the exercise of the "*right of asylum*" articulated in Art. 22(8) is limiting and must satisfy two cumulative criteria: i) '[...] *in accordance with the legislation of the state [...]*' and ii) '[...] ... in accordance with [...] international conventions'⁶¹. In the case of **Haitian Centre for Human Rights et al v US**⁶² it was determined that the right to seek asylum must be in accordance with the laws of the state and the absence of which means there is no right to seek or to be granted asylum. The granting of asylum is a discretionary act of the State in accordance with their domestic legislation rather than a right conferred on the individual to receive it.⁶³

Arcadia followed the provisions in Art 12 and Art 30 of the LRCP. This provision is consistent with the Refugee Convention's⁶⁴ criteria for the recognition of a refugee. However this criteria is nullified if the

⁶⁰ Article 22(7) ACHR

⁶¹ According to the IACHR this is to be interpreted as the 1951 Convention on the Status of Refugees and its 1967 Protocol

⁶² Inter-American Commission on Human Rights, *Haitian Centre for Human Rights et al v. US*, Decision on the Merits, Case 10,675, Report 51/96, 13 Mar. 1997, ¶¶. 151–153.

⁶³ A. Hurwitz, *The Collective Responsibility of States to Protect Refugees* (OUP 2009) 16.

⁶⁴ Refugee Convention Article 1 (A) ¶13

Petitioners falls within the ambits of provisions I, II and III of Art. 40 of the LRCP, which is also consistent with Article 1(F) of the Refugee Convention.

The petitioners, including Mr. Gonzalo Belano, were guilty of “serious non-political crimes’ under Article 40(2) under LRCP. These include extortion kidnapping and murder which places them in the exclusion clause of Article 40 of the LRCP as well as Article 1(F) of the Refugee Convention. This being the case, not considered refugees under international law and are thereby disqualified to the rights provisioned in Article 22(7) of the American Convention to the right of asylum..

Therefore, having not satisfied the criteria for the definition of a refugee, Arcadia has no legal obligation to admit the petitioners within their country as the right to seek asylum imposes no obligation to States to grant such a right to any individual or groups⁶⁵ who do not qualify under the Refugee Convention and the American Convention for such a right.

VIII. The State of Arcadia did not violate the right of non-refoulement

The state of Arcadia did not violate the alleged victims right to non-refoulement as provisioned under Article 22(8) of the ACHR and Article 33 of the Refugee Convention because the petitioners have no claim to this right. Alternatively, even if the Court ruled that the Petitioners’ do have a claim to this right, the State of Arcadia did not

⁶⁵ Atle Grahl-Madsen, *The Status of Refugees in International Law*, 79-107 (1972, Leyden : Sijthoff & Noordhoff).

return the victims to a country where their rights to life and personal freedom were in jeopardy on account of their race, religion, nationality, political opinion or membership to a particular social group.

i) The petitioners have no claim to a right of non-refoulement

The petitioners have no claim to a right of non-refoulement because this is a right that is granted to refugees under the ACHR and the ('Refugee Convention') and the petitioners do not meet the criteria for the allowance of the protection.

In the case of *Pacheco Tineo Family v Plurinational State of Bolivia*⁶⁶ this Court stated that even when the person complies with the definition of refugee status, the exclusion clauses provided under Art. 1(F) of the Refugee Convention permits the non-application of the protection of the Refugee Convention.

In accordance with the rules of the Vienna Convention on the Law of Treaties, the meaning of a provision in a treaty must be established by giving effect to the ordinary meaning of the terms of the treaty in their context and in the object and purpose of the treaty⁶⁷. The meaning of Article 33(2) of the Refugee Convention indicates that the right of non-refoulement in Article 33(1) is discretionary on the determination of the State. Arcadia therefore, had sufficient reason to apply the exclusion clause of Article 1(F)(b) of the Refugee Convention in accordance with its

⁶⁶ *Case of Pacheco Tineo Family v. Bolivia* n54.

⁶⁷ Article 31(1) Vienna Convention on the Law of Treaties

local legislation that states that the provisions of the Convention shall not apply to any persons where there are serious reasons for considering that they have committed a crime against humanity⁶⁸ or a serious non-political crime outside the country of refuge prior to admission to that country⁶⁹.

Gonzalo Belano, a gang member who was convicted and served time for extortion⁷⁰ and along with the additional 807 Wairans that were returned from Arcadia who all had criminal records for serious non-political crimes have no right to the provisions or claim for protection of the Refugee Convention.

ii) *The State of Arcadia has no legal duty to accept the petitioners within their country.*

In the eventuality that the Court does indeed grants refugee status to Gonzalo Belano and the other 807 unnamed Wairans it does not imply a legal obligation on Arcadia to grant them asylum within the State of Arcadia.

The Commission itself has established that in order for a State to not violate the right to non-refoulement the receiving State has to have ‘reasonable’ mechanisms and a set of minimum guarantees in place⁷¹ in the processing of asylum claims. The State also have a legal obligations to protect the economic, civil and political rights of their citizens and as such

⁶⁸ Refugee Convention Art.I(F)(a)

⁶⁹ Refugee Convention Art.I(F)(b)

⁷⁰ Hypothetical ¶ 30

⁷¹ Inter-American Commission of Human Rights, Decision on the Merits, *120 Cuban National and Haitian National Detained in the Bahamas*, Petition 12,071, Report 6/92, 27 Feb. 2002, ¶ 155; *Report on Canada*, 2000, ¶¶. 60–65.

have to consider and safeguard national security or the protection of the State from serious danger.

The State of Arcadia is aware that it has an obligation, if asylum is granted to the petitioners, to protect the petitioners right to freedom of movement and residence as well as the fear of persecution that the asylum seekers may face within its borders⁷². This imposes a positive right on the State to allow the petitioners to move within its territory without harassment or threats. In **Valle Jaramillo v. Colombia**⁷³, the court recognizes that a state may be held responsible if it fails to protect this right. The Court has also demonstrated this point in *Haitians and Dominicans of Haitian Origin in the Dominican Republic*,⁷⁴ that a State is responsible for the security and personal integrity of any refugee within its territorial jurisdiction.

Additionally, Article 32(1) and 31(2) of the Refugee Convention gives the State the right to expel refugees by stating that a state may expel refugees lawfully on the grounds of national security and public order as long as the State follows due process of law and impose no legal obligations on the State to accept refugee claims.

⁷² Inter-American Commission of Human Rights, Decision on the Merits, *120 Cuban National and Haitian National Detained in the Bahamas*, Petition 12,071, Report 6/92, 27 Feb. 2002, para. 155; *Report on Canada*, 2000, paras. 60–65

⁷³ *Case of Valle Jaramillo et al. v. Colombia*, Series C No. 192, Inter-American Court of Human Rights (IACrHR), 27 November 2008,

⁷⁴ See Art. 1.1 of the Convention, the case by the Inter-American Commission of Human Rights, *Attack to the Colomoncagua Refugee Camp in Honduras*, Report 5/87, case 9619, 28 Mar. 1987, and the Inter-American Court of Human Rights, *Provisional Measures on behalf of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, 18 Aug. 2000.

Following the announcement of the State that the petitioners 'lives would be at risk if returned'⁷⁵, there were increased actions of demonstrations, xenophobia and racism of the People of Arcadia generated towards the Wairans resulting in widespread tension generated by the public against the petitioners⁷⁶. The people of Arcadia felt their lives would be at risk if the 808 unnamed Wairans were granted asylum status. Hence, the State could no longer ensure the right of freedom of movement of the 808 Wairans without fear of harassment within its borders if they were to be granted refugee status. The State also having an obligation to its own citizens to maintain national security and public order had little choice but to employ protective measures for securing their own borders whilst upholding their obligations under Art 33(1) of the Refugee Convention.

This resulted in the denial of refugee status being granted and the non-admittance into the State of Arcadia in keeping with its international obligations under Article 32(1) and 32(2) of the Refugee Convention.

⁷⁵ Hypothetical ¶ 25

⁷⁶ Hypothetical ¶ 26

iii) The petitioners were returned to a country where their rights as provisioned under Article 22(8) ACHR and Art 33(1) Refugee Convention were not violated.

The principle of non-refoulement referred to in Art. 33(1) of the Refugee Convention not only doesn't guarantee a right to be granted refugee status within a particular State⁷⁷, it does not preclude the State to adopt an alternative course of action in engaging a third State⁷⁸, deemed safe where the individual is not in any danger of persecution on account of his race, religion, nationality, member of a particular social group or political opinion⁷⁹. Additionally in compliance with Article 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) on its non-refoulement obligations, Arcadia may only relocate migrants to a third country if that country is 'safe'.⁸⁰ This safety not only refers to freedom from the risk of being returned but the availability of "*effective protection*" must be in place. Effective protection must involve access to humanitarian assistance (physical and material), functioning judicial system and respect for asylum seekers' rights⁸¹.

If the sending State has actual/constructive knowledge of human rights violations of the third country, it can no longer guarantee in good faith the

⁷⁷ P. Weis, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary* by Dr. Paul Weis, Cambridge University Press, Cambridge (1995), at p. 341.

⁷⁸ Maria-Teresa Gil-Bazo, *The Safe Third Country Concept in International Agreements on Refugee Convention (Assessing State Practice)* Netherlands Quarterly of Human Rights, Vol. 33/1, 42–77, 2015.

⁷⁹ *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, Cambridge (2003), para. 76.

⁸⁰ Elihu Lauterpacht, Daniel Bethlehem, 'The scope and content of the principle of nonrefoulement: Opinion' in Erika Feller, Volker Tirk, Frances Nicholson (eds), *Refugee Protection in International Law, UNHCR's Global Consultations on International Protection* (CUP & UNHCR 2003) 122, para 116.

⁸¹ *ibid*

lawful transfer of the asylum seekers⁸² and should cease any further transfers to that State until it knows the mischief has ceased.

The State of Arcadia having acknowledged the plight of the petitioners after completing their investigation⁸³ and their well-founded fear of persecution if returned to their own country was able to identify a third country that was deemed safe for the Petitioners where there were no risk of persecution based on the criteria stated in Article 33(1) of the Refugee Convention. Arcadia in an effort to ensure that effective protection was in place entered into an agreement with UST⁸⁴, where UST will receive the Petitioners and specifically asked that these people not be deported because of the risk of persecution⁸⁵ and in good faith made payments to UST to ensure this. The understanding under the agreement was that the payments are to ensure protection for asylum seekers through the provision of various resources such as humanitarian assistance and provision of judicial services⁸⁶.

Irrespective of whether UST has ratified the Refugee Convention, it is the view of UNCHR that non-refoulement of refugees as provisioned in Article 33 of the Refugee Convention constitutes a rule of customary international law⁸⁷ because of its widespread consistent practice as evidenced in its

⁸² Michelle Foster, 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State,' (2008) 28 MICH. J. INTL L. 223, 284.

⁸³ Hypothetical ¶ 23

⁸⁴ Hypothetical ¶ 27

⁸⁵ Clarification question 66

⁸⁶ Hypothetical ¶ 27

⁸⁷ UNHCR, The Principle of Non-Refoulement as a Norm of Customary International Law, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93 (available at: <http://www.unhcr.org/home/RSDLEGAL/437b6db64.html>, last accessed on 30 October 2006)

incorporation in a number of human rights instruments and the understanding by states that the practice is obligatory. Therefore the provision of Art 33 is binding on all states including UST.

Moreover, Arcadia did not violate its International obligations for lawful transfer of asylum seeker, as it had no actual or constructive knowledge of any human rights violations of the Petitioners sent to UST and as soon as notification was received for the breach of non-refoulement, Arcadia suspended all aide to UST due to a breach of contract⁸⁸, with no further transfers of asylum seekers being done.

Therefore, the state of Arcadia having fulfilled its international legal obligations on the rights to non-refoulement has not violated such non-derogable rights of the Petitioners and neither can they be held to account for any such violations, if exist, by a third safe State.

IX. The State did not violate its obligations with respect to the rights of the family in accordance with Article 17 of the American Convention

The state of Arcadia fulfilled all its legal obligations in the protection of the family, “*a fundamental group unit in society*”, according to Article 17(1) of the ACHR and Art 23(1) of the ICCPR that is entitled to protection from the State. Additionally, Article 17 of the American Convention, speaks to the right of men and women of marriageable age to marry provided that they meet domestic requirements. The right of the State to take appropriate steps in case

⁸⁸ Clarification question 66

of dissolution of marriage by ensuring the necessary protection is made for the children in their own best interest.

There were no information in the hypothetical that inferred or stated that the State of Arcadia violated Article 17(3) and 17(5) of the American Convention.

i) The Petitioners did not satisfy the criteria of Article 17(2) of the American Convention and cannot claim this right

Article 17(2) states the rights of men and women to raise a family if they meet the conditions required under domestic law. This right is indicative that it is limiting to the satisfaction of the required criteria. The Petitioners belong to a group that is excluded from automatic recognition of refugee status because of their criminal convictions of serious crimes committed in their native country, which is a violation of the local LRCP law Article 40.

Hence, the application of Article 40 has prima facie denied the group refugee status and hence this is demonstrable that they are excluded from asserting a claim under Article 17(2) of the American Conventions.

ii) *Arcadia adopted timely measures to safeguard the Petitioners' and other refugees rights that were in their best interest*

In the case of **Velez Restrepo and Family v Colombia**⁸⁹, the Court determined the failure of the State to adopt timely measures of protection for Mr. Restrepo and family amidst the harassment and threats against them, constituted a failure of the State to comply with its legal obligations to protect against arbitrary and illegal interference with his family.

The State of Arcadia in keeping with the obligations under Article 17(1), amidst the massive unrest and tension against the Wairans, launched awareness-raising campaigns to promote integration and prevent xenophobia to protect the Wairans who were already granted refugee status.⁹⁰ Additionally, the State of Arcadia, also recognized that the granting of refugee status would not have been in the Petitioners' best interest as the widespread demonstrations against their admittance threatened the protection of their social, economic and political rights. Arcade sought a third safe country UST and made provisions for their welfare, under the principle of shared responsibility, to accommodate the Petitioners.

⁸⁹ Velez Restrepo and Family v Colombia (Preliminary Objections) IACtHR, 3 September 2012

⁹⁰ Hypothetical ¶ 25

X. The State of Arcadia did not violate Article 19 of the American Convention with regard to the rights of the child.

The State of Arcadia did not violate the rights of a child under Article 19 of the American Convention with respect to the Petitioners. Article 19 clearly states that every minor has the rights to protection.

i) Arcadia granted the required measures of protection to every Wairan minor that sought asylum

Article 19 covers the rights of the child and it is to be noted that both the ACHR⁹¹ and in the advisory opinion of this Court⁹² have accepted a definition for child as one that is based on the provisions in **Article I of the Convention on the Rights of the Child**. It was also established in the IACtHR that a “child” refers to any person who has not yet turned eighteen years of age.⁹³

The State of Arcadia upheld their obligations under international law as none of the 808 Wairans expelled from Arcadia, including Gonzalo Belano, were under eighteen (18) years of age⁹⁴ and all the deportees were of the age of majority⁹⁵.

⁹¹ Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, 2000, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, Doc. 40 rev. (2000), available at: <https://www.refworld.org/docid/50ceedc72.html> [accessed 26 March 2019]

⁹² I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, Chapter V.

⁹³ *ibid*

⁹⁴ clarification question 21

⁹⁵ clarification question 75

ii) *Arcadia upheld its international obligations by undertaking activities in the best interest of the child and did not violate Article 17 of the American Convention*

In **Pacheco Tineo Family v Bolivia**, it was found that the state had a special obligation to the children to exhaust all available channels to determine their migratory status and make a decision that was in their best interest.

This Court has also recognized in its advisory opinion, that migrant children may need to be separated from family members as long as necessary to resolve immigration issues where there is such a need to separate persons who have been convicted of criminal offenses then there must be specific centres intended for this purpose⁹⁶.

The State ensured that each child that was separated from their caregiver was placed in the care of their closest relative or was under the care of the State, in Child Protection centres and not detention centers, where they were given the attention and care with respect to health, food, education and recreation.⁹⁷ In addition, the State of Arcadia also granted access to the caregivers and family of the children to file a judicial appeal and gain access to a fair trial with respect to the decision for their deportation order.⁹⁸ The State of Arcadia gave the Petitioners adequate

⁹⁶ *Advisory Opinion OC-21/14, "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection"*, OC-21/14, Inter-American Court of Human Rights (IACrHR),

⁹⁷ Clarification question 21

⁹⁸ Hypothetical ¶ 27

notice of at least two months and access to an appeal and the filing of *amparo* against the State.⁹⁹

The children were given protection in the Children centres and the State of Arcadia launched integration awareness programs¹⁰⁰ to assist in their integration of the society. The State could not guarantee the same for any of their relatives who had criminal records due to the public tension and fear against them. The State of Arcadia believing the best interest of the child is to be granted asylum status rather in a safe environment under at least one of their caregivers or the State's protection.

Therefore the State of Arcadia in compliance with its international obligations, had incorporated non-custodial measures during immigration proceedings that promotes the best interest of the child by placing the children in non-detention centres with at least one family member or caregiver present.

REQUEST FOR RELIEF

The State of Arcadia respectfully requests:

- i) that the Court dismiss the case on the basis that the Petitioners' did not exhaust all available domestic remedies as required under Article 46 of the American Convention;
- ii) alternatively, on the Merits, that the State of Arcadia complied with the provisions of Article 4, Article 7, Article 8, Article 22(7), Article

⁹⁹ Hypothetical ¶ 27, 28

¹⁰⁰ Hypothetical ¶ 25

22(8), article 17, Article 19, Article 24 and Article 25 of the American Convention in conjunction with Article 1(1) with regards to Gonzalo Belano and the other 807 Wairans;

- iii) the removal the precautionary measures granted by the IACHR.