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VALENCIA *ET AL.* (PETITIONER)

v.

THE STATE OF LIBERTÉ (RESPONDENT)

MEMORIAL FOR THE STATE

TEAM NO. 647

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**TABLE OF CONTENTS**

- I. Index of Authorities
- II. Statement of Facts
- III. Legal Analysis
  - I. Article 27—Right to Suspend Guarantees.
  - II. Article 27(2) — Essential Judicial Guarantees.
  - III. Articles 7, 8 and 25—Right to Judicial Proceedings.
  - IV. Article 5—Right to Humane Treatment.
  - V. Article 19—Rights of the Child.
  - VI. Article 23—Right to Participate in Government.
  - VII. Article 16 and 8 of the Protocol of San Salvador—Right to Associate.
- IV. Request for Relief

## I. INDEX OF AUTHORITIES

### CASES:

#### **Inter-American Court on Human Rights**

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#### **The European Court on Human Rights**

Eur. Court H.R., *Brannigan and McBride v. U. K.* (1993) 17 E.H.R.R. 539

Eur. Court H.R., *Edwards v. United Kingdom* (1986) 8 E.H.R.R. CD 96

Eur. Court H.R., *Gitonas v. Greece* (1998) 26 E.H.R.R. 691

Eur. Court H.R., *Ireland v. United Kingdom* (1978) 2 E.H.R.R. 25

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Eur. Court H.R., *Mathiew-Mohin and Clerfayt v. Belgium* (1988) 10 E.H.R.R. 1

Eur. Court H.R., *The Sunday Times Case*, (1979) 2 E.H.R.R. 245

## **Commission Reports**

Case 11.166, 1999 IACHR 1200, Report No. 48/00, Peru (2000)

Cases 11.505, 1997 IACHR 512, Report No. 25/98, Chile (1998)

## **Miscellaneous Cases**

*A. v. Secretary of State for the Home Department* (2002) H.R.L.R. 45

*A, X and Y v. Secretary of State for the Home Department* (2002) H.R.L.R. 3

## **TREATIES:**

Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador)

American Convention on Human Rights

American Declaration of Rights & Duties of Man

Charter of the Organization of American States

Convention 87 of the International Labor Organization

Convention 98 of the International Labor Organization

European Convention for the Protection of Human Rights and Fundamental Freedoms

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Rules of Procedure of the Inter-American Commission on Human Rights

## **II. STATEMENT OF FACTS**

1. For the 10 years prior to the national election of President Reina and her administration in 1997, Liberté was in a state of constant internal conflict during which systematic and gross human rights violations were committed by the Armed Forces, National Police and the insurgency that discredited the political parties and figures who had previously held power. The signing of the Peace accords, under the auspices of the United Nations, led to the integration of non-traditional political actors into the new administration, which marked an upward turning point for the status of human rights in Liberté. Also contributing to the system of human rights protections was the establishment of a friendly settlement group and the ratification of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).
2. President Reina was the leader of the Liberté United Party, whose aim it was to minimize rebellion in accordance with the citizen consensus and to eliminate repression through utilizing conservative fiscal approaches and a progressive

approach to social issues, ultimately revitalizing democratic institutions and implementing the peace accords.

3. In implementing the peace accords, the Constitutional Assembly approved of a Constitutional amendment, which was later ratified by a national referendum. Three modifications were aimed at preventing the types of human rights abuses perpetrated during the conflict. The modifications: i) guaranteed the protection of human rights recognized in the treaties ratified by Liberté with such treaties accorded juridical status equivalent to the Constitution itself, ii) defined the role of the Armed Forces as pertaining to external security, with the National Police responsible for internal citizen security and iii) further defined and limited the emergency powers vested in the executive as follows:

“The President may declare a state of emergency in all or part of the national territory in the event of imminent external aggression, war, serious internal disturbances, or natural disaster. Any individual rights affected must be expressly indicated in the decree. The President must notify the Congress of this declaration within 48 hours of its issuance. The state of emergency may last no longer than the exigencies for which it is required; if the state of emergency is not lifted within 90 days of issuance, it shall lapse automatically at the end of that period. The Congress may, if the circumstances justify it, revoke the decree at any time by majority vote.”

4. Shortly after the integration of the new administration and its implementation of the peace accords, Liberté saw an unusually large expansion of economic growth. Consequently, the State was able to aid rural development initiatives, infrastructure and education and health care spending, reversing the economic and social consequences of the internal conflict era.
5. By the time President Reina launched her reelection campaign in January 2001, political figures from the period of internal conflict began to regroup in an attempt to regain influence. At the same time, Liberté’s economic situation took a drastic downturn after a nearly year long draught produced the worst harvest season in 50 years. This seriously impacted the fishing industry’s primary source. As a result, exports declined sharply. There were negative effects on foreign trade and payment balances, which required spending cuts in the public sector. Many agricultural and fishing employees had to be laid off, raising unemployment numbers in the industrial sector across the entire country.
6. Various unions organized, thereafter, to challenge the benefit and salary cuts through protest. These protests escalated into work slowdowns in the transport industry by the dockworkers unions whose members anticipated the breach of their contract terms. Also protesting were the unemployed, students, teachers who had experienced the effects of the pay cuts, and members of the middle class concerned over their ability to look after their families.

7. Although the protests typically reflected real concerns, they increasingly broke out in violence as members from the far left or right became more aggressive. By late September, over 50 protesters and more than 24 police officers had sustained serious injuries. Numerous media sources reported that forces from the far left and right were responsible for inciting the aggressive dissent and violence. Those far left and right forces also warned listeners that accounts from the internal conflict era were still unresolved and that deeper spending cuts were imminent.
8. On October 1, the State increased its security measures and police presence at all protests. A few weeks later, the violent conditions continued to worsen. A shot was fired on one occasion and on the next, another five people were killed, including one police officer. None of the bullets came from the security force's weapons. As it became evident that the shootings were not isolated or coincidental, the State again ordered the National Police to enlarge its security forces by one hundred percent, investigate the shootings and apprehend those responsible. The State complied, directing the majority of its resources to that responsibility.
9. Meanwhile the dockworkers had allowed import and export goods to pile up at the docks. This gravely impacted the economy throughout the month of October. The Dockworkers Union declared a strike on October 28. This brought any remaining movement of goods to a halt. Simultaneously, those hit hardest by the draught were depending on the imported foods that were rotting because they were not getting unloaded.
10. By November, people around the country were protesting every day, making it very difficult for security forces to be present to control violent occurrences. The violence became so common that it was merely a subject for the media to recap at the end of the day in the daily injury report. Dozens of incidents of violence occurred by the middle of November.
11. Within the first few weeks of November, four more protesters and three more officers were killed in violent confrontations. Three protesters and two passer-bys were killed incident to a gunfire shot in the midst of one protest. The economy at this point had suffered hundreds of thousands of US dollars in damage.
12. The situation had escalated into a climate of fear and unrest among all Liberté citizens. By November 7, 2001, the State was so concerned about how the situation would affect the election process that President Reina declared a state of national emergency. It entered into effect immediately and continued through March 15, 2002. The State ordered the immediate mobilization of the armed forces to serve in joint patrols with the National Police. Article 22 was suspended in order to enable members of the security forces to carry out necessary arrests. The elections were postponed for one month. Collective work actions were ordered to be halted, and any contract disputes were to be resolved via binding arbitration facilitated by the National Board of Arbitration.

13. On the same day that President Reina declared the state of emergency she notified the OAS Secretary General and the following day she notified the Permanent Council of the OAS that she was invoking Article 17 of the Inter-American Democratic Charter. She reported about the crisis, indicated that she considered Liberté's democratic political institutional process to be under threat, and requested assistance in strengthening and preserving it, and requested the OAS send an electoral observer mission, as soon as possible to monitor the upcoming national elections.
14. The Permanent Council of the OAS met and issued a resolution which took note of the gravity of Liberté's situation and affirmed the fundamental principles of the OAS in favor of a representative democracy, including as set forth by the Inter-American Democratic Charter. The council resolved to support Liberté and its legal institutions and called on all public institutions to ensure the conditions necessary for a valid electoral process. The Council then agreed to send an electoral observation mission to Liberté as soon as possible.
15. It became clear that the National Police, even after its size had been doubled, could not handle the extent and severity of the protests. The President ordered the Armed Forces to begin joint patrols in accordance with her declaration.
16. On November 17, 2001, a protest in a rural area grew to over 500 people by 9:00 a.m. Scuffles between protesters threatened to become violent. In response, the Armed Forces, consisting of twenty recent military recruits, made over 150 arrests of men, women and some children, including Joel Valencia and 10 of his classmates. They were sent by bus to the nearest military base.
17. At 3:00 that afternoon, Joel's parents and those of his friends filed a petition for writ of habeas corpus on behalf of Joel and his friends, seeking their release. Although the judge quickly located their whereabouts and confirmed by phone that they were at the base, the judge rejected the release request, pursuant to the declaration, which suspended Article 22 of the Constitution.
18. At the base, the detainees were able to eat and drink in the auditorium where they were kept under guard while two recruits recorded and reviewed their basic information. As can be expected, some verbal and physical confrontation went on while the detainees were being identified. But other than being intimidated by this, Joel and his classmates were not involved in any direct confrontation and were able to keep to themselves in a corner of the room until they were allowed to leave at 7:30 p.m. the next day.
19. On December 1, 2001, the Democratic Forum, an organization that had been criticizing the Liberté government and, in particular, President Reina's declaration, used the November 17 arrests as an opportunity challenge the constitutionality of the declaration. The Democratic Forum criticized the declaration for being overbroad and a reestablishment of the repressive controls

exercised by the administration from the internal conflict era. The Democratic Forum challenged the legality of: (a) the arrest of the children, (b) the duration of the detention and (c) the suspension of the constitutional protection of prompt access to habeas corpus.

20. Joel's father, Abraham, had previously worked for the Democratic Forum before he was elected as a candidate for the center-left Justice Party of the National Congress. Abraham was currently campaigning for reelection in 2001. The Democratic Forum, on behalf of Abraham and two other Justice Party members, asserted that the postponement was an undue interference with their right to stand for election as well as to cast their votes and claimed that the underlying motive of the postponement was self-serving on the part of the administration.
21. On behalf of the unions, the Democratic Forum alleged that the executive action to break the strike violated the unions' right to participate in collective bargaining and represent the interests of their members.
22. On January 6, 2002, the Constitutional Court found: i) that a certain amount of deference should be given to the Executive as it is the organ responsible for enforcing the law and ensuring public order and, accordingly, upheld the validity of the measures concerning the arrest and detention; ii) that valid elections depended on the insurance of public order and iii) that the Executive could initiate and facilitate non-binding arbitration between the parties as a means to negotiate. Accordingly, the Court upheld the order to lift the strike with the exception that the arbitration could not be binding if not provided for in the collective bargaining agreements.
23. The Democratic Forum persisted with its case, on behalf of the same individuals, by filing a petition before the Inter-American Commission on Human Rights on January 30, 2002. The petition alleged that the State had violated the following:

Articles 27 and 1(1) of the American Convention with respect to the declaration of emergency in general;

Articles 1(1), 5, 7, 8, 19 and 25 of the American Convention with respect to the arrest, detention and denial of judicial protection for Joel Valencia and his ten classmates;

Articles 1(1) and 23 of the Convention with respect to Abraham Valencia and the other two candidates for Congress respectively; and

Articles 1(1) and 16 of the Convention and Article 8 of the Protocol of San Salvador with respect to the dockworkers

Additionally, the petition asserted that the declaration and related measures threatened principles of the regional system including respect for human rights,

the rule of law and the separation of powers, as articulated in the Inter-American Democratic Charter.

24. On June 30, 2002, the Commission declared the case admissible and offered assistance to reach a friendly settlement, which the parties declined.
25. On November 25, 2002, upon finding in its report, pursuant to Article 50, that violations of those Articles had occurred, the Commission recommended that Liberté reinstate and ensure the enjoyment of the rights concerned to the extent possible and provide reparation where such reinstatement was not possible or sufficient. The Commission's findings were based on those complaints that the Democratic Forum had listed in its petition filed before the Court on January 30.
26. On January 5, 2003, Liberté submitted a response to the report that indicated that the recommendations had not been implemented.
27. On January 30, 2003, upon referral from the Commission on January 25, the Court notified Liberté of the challenge. On February 5, 2003, Liberté responded to the notification by waiving any preliminary objections on the grounds that the measures were adopted precisely to uphold respect for basic rights and the rule of law and to ensure the effective exercise of the popular vote. The Inter-American Court scheduled a hearing, thereafter, for oral arguments on the merits of the case.
28. Liberté is a member of the following arrangements:
  - The Organization of American States (member since 1948),
  - American Convention on Human Rights (ratified in 1978 without reservation),
  - Inter-American Court of Human Rights (accepted jurisdiction in 1978)
  - Protocol of San Salvador (ratified in 1999)
  - Inter-American Democratic Charter (adopted in 2001 as an OAS member)
  - International Covenant on Civil and Political Rights (ratified without reservation in 1980)
  - International Covenant on Economic and Social Rights (ratified without reservation in 1980)
  - Rules of Procedure of the Inter-American Commission (entered into force on May 1, 2001)
  - Rules of the Inter-American Court of Human Rights (entered into force on June 1, 2001)



### III. LEGAL ANALYSIS

#### **I. The declaration of a state of emergency made by Liberté conformed to Article 27 (1) of the American Convention on Human Rights because it only called for measures that were consistent with that Article.**

Article 27 of the American Convention on Human Rights (Convention) states:

In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provide that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion or social origin.

#### **A. Liberté’s declaration was conducted pursuant to the procedural requirements of Article 27(3).**

Article 27(3) states, “Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which is suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.” President Reina notified the Secretary General of the OAS of the declaration of a state of emergency the same day it was made and reported on the situation of crisis the following day to the Permanent Council of the OAS. The declaration sets forth the time line of the suspension. Thus, the Council was informed of the date set for termination.

#### **B. Liberté’s invocation of its Article 27 right was warranted because the ongoing strikes and protests, on the heels of the unforeseen economic downturn, threatened the survival of its political structure.**

Article 27(1) authorized Liberté to declare a state of emergency and to alter certain rights accordingly because an exceptional situation of crisis and emergency existed which affected the whole population and constituted a threat to the organized life

of the community of which the Liberté is composed.<sup>1</sup> The European Court on Human Rights (ECHR) affords the states a broad margin of appreciation, because it believes that they are in the best position to decide whether such derogation is warranted as they see the events leading up to the state of emergency first hand. Recognizing the long-term damaging effects of states of emergencies, it lends this deference to the States so that they may stamp out threats of emergency before they transpire into an actual one.<sup>2</sup>

It is clearly established in the record that an emergency situation existed in Liberté at the time President Reina declared a state of emergency. Specifically, it became clear that the growing incidence of injury and deaths at the riots that had occurred over a course of many months were not necessarily isolated or spontaneous.<sup>3</sup> The need for stricter measures became manifest as Liberté could not be expected to wait until the individuals organizing the extreme violence struck again.<sup>4</sup> Additionally, the workers' refusals to unload food, causing it to rot while the entire economy was already suffering, contributed to further losses that the State could not sustain, as it was already nearing an economic breaking point.

Considering those exigent circumstances and the rate at which conditions were worsening, vis-à-vis Liberté's obligations under Article 1(1) and the wide margin of appreciation afforded to pursue those obligations during a state of emergency, the

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<sup>1</sup> *Lawless v Ireland*, (1961) 1 E.H.R.R. 15, P 28

<sup>2</sup> *Brannigan and McBride v. United Kingdom*, (1993) 17 E.H.R.R. 539, P.43

<sup>3</sup> See Hypothetical Case, paragraph 15

<sup>4</sup> *A. v. Secretary of State for the Home Department* (2002) P. 24, citing a decision of the ECHR for treatment of suspected terrorists.

declaration was crucial to its survival as a democratic state and proper according to its responsibilities as an OAS Member State.

**C. The declaration was within the scope of Article 27 authorization because it called for measures that were only of the extent and for the period of time strictly required by the situation of emergency.**

The absolute right to decide what would be the most prudent or expedient policy to combat the threat to national security resides with the State of Liberté.<sup>5</sup> Viewing the circumstances that existed when the measures were originally taken and subsequently applied by the State, as it is proper for this Court to do so,<sup>6</sup> Liberté's measures were lawful because they corresponded proportionately and reasonably to the character, intensity, pervasiveness, and particular context of the emergency.<sup>7</sup>

The Commission has stated that suspensions are more serious in this regard when the state of emergency is decreed for an indefinite or prolonged period of time.<sup>8</sup> The period of time affected by President Reina's declaration was reasonable because it was not indefinite or prolonged. Rather, the declaration had only temporary effects as the election was only postponed for one month and the entire Declaration only applied for four months.<sup>9</sup> Considering the intensity and pervasiveness of the circumstances, which threatened the right of Liberté citizens to a free and fair election,<sup>10</sup> a mere one month postponement was entirely reasonable.

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<sup>5</sup> *Brannigan and McBride v. United Kingdom* (1993) 17 E.H.R.R. 539, P. 43

<sup>6</sup> *Ireland v. United Kingdom* (1978) 2.E.H.R.R. 25, P. 214

<sup>7</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987), P.22

<sup>8</sup> Case 11.166, Ann. Rpt. Inter-Am. C.H.R. 1200, Report N 48/00, Peru, April 13, 2000, P. 35

<sup>9</sup> See Hypothetical Case, P. 18

<sup>10</sup> See Hypothetical Case, P. 8 and 12, stating that political leaders from the internal conflict period were attempting to regaining influence and speeches about accounts from that era still needing to be resolved.

The temporal reasonableness is further reinforced by Article 101 of the Liberté constitution.<sup>11</sup>

The declaration was within the scope of Article 27 authorization because it tailored measures specifically to the problems it addressed. Specifically, those areas affected by the emergency situation<sup>12</sup> were the ability to provide free and uninhibited elections and the need to prevent the economy from experiencing further devastation.

In view of the narrow and precise manner in which the suspension was applied to the grave situation that existed in Liberté at the time it was made, and considering that the ultimate right to determine which method would best further its obligation to address the emergency situation belongs to Liberté to determine what measures are necessary, the time and extent of the suspension were authorized by Article 27.

**D. The declaration of a state of emergency was consistent with Liberté's obligations under other international laws.**

The common thread of each law governing Liberté, as a member of the OAS, is the principle that State must ensure the effective exercise of a representative democracy, especially when suspending guarantees due to a state of emergency.<sup>13</sup> Hence, when the purpose behind the States' suspension of guarantees is to undermine the democratic system, it lacks all legitimacy.<sup>14</sup> Further, Liberté was obligated to respect the rights

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<sup>11</sup> Hypothetical Case, P. 5: Article 101 provides that the suspension should last no longer than the exigencies require and, in the event that the state of emergency did not lift within 90 days, the suspension would lapse.

<sup>12</sup> Case 11.166, Ann. Rpt. Inter-Am. C.H.R. 1200, Report N 48/00, Peru, April 13, 2000, P. 35

<sup>13</sup> See footnote iii

<sup>14</sup> Rodriguez-Velasquez, P. 166 and 167.

contained in the other international arrangements in which it participates, according to Article 29 of the Convention.<sup>15</sup>

**1. The controls that the State used in response to the National emergency ensured the survival of its democratic structure.**

Article 1(1) of the Convention confers a duty on the state to organize the government and its public power exercising structures so that the State is able to ensure the free and full enjoyment of human rights recognized in the Convention. The mere existence of a national legal system is inadequate to guarantee these rights. Unless the government conducts itself so as to effectively ensure the free and full exercise of those rights then its obligation of 1(1) is not met.<sup>16</sup> To that end, Liberté acted according to its affirmative duty when it declared a state of emergency. The suspension and restriction of some rights was necessary for Liberté to preserve the organization and structure of its democratic society. It is recognized throughout myriad legal instruments Liberté has ratified that only upon such a foundation may all other human rights stand.

Accordingly, Liberté protected the limits of those components of a democracy that cannot be transgressed if the State is to be able to ensure the fundamental human rights permanently protected.<sup>17</sup> Specifically, Liberté: i) assured the Rule of Law via separation of powers and judicial review of the legality of acts of the government;<sup>18</sup>

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<sup>15</sup> Article 29 states that none of the provisions in the Convention can be used to avoid obligations under other international agreements with jurisdiction over the member state.

<sup>16</sup> Article 3 of the OAS charter states, “The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.”

<sup>17</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987).

<sup>18</sup> Liberté provided a judiciary that, in this case, was able to ascertain the lawfulness of the individuals’ detentions, and ensure habeas corpus guarantees and it gave Congress the power to revoke the declaration of state of emergency by a majority vote. Hypothetical Case, Paragraph 5.

ii)protected the right to free elections for government;<sup>19</sup> enforced determinate periods of power;<sup>20</sup> provided regimes of individual freedoms and social justice founded on respect for the fundamental rights of individuals, judicial protection of human rights;<sup>21</sup> ensured freedoms of the press, radio and television and freedom of expression and information in general;<sup>22</sup> and cooperated among states in an effort to consolidate and develop their economic structure and to provide just and humane living conditions for their peoples.<sup>23</sup> All of these measures that Liberté took were in accordance with those that a diligent State would take to ensure the survival of its democratic structure.<sup>24</sup>

## **2. Liberté's control measures were consistent with the other relevant international legal instruments.**

Liberté fulfilled its obligation under the International Covenant on Civil and Political Rights, the Convention on Rights of the Child and the American Declaration of the Rights and Duties of Man while conducting the arrest and detention of the protesters.

Liberté complied with the demands of the International Covenant on Economic and Social Rights and the Protocol of San Salvador because both of those instruments

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<sup>19</sup> The State postponed the elections for a month to ensure that Liberté citizens were able to vote in an atmosphere free of fear and influence of those political figures from the internal conflict era. Hypothetical Case, paragraphs 8 and 12.

<sup>20</sup> The State launched re-elections four years after the Reina administration took office. Hypothetical Case, paragraphs 3 and 8.

<sup>21</sup> Judicial guarantees essential to the recognition of all fundamental rights were protected at all times. See discussion on essential judicial guarantees.

<sup>22</sup> The State never limited press coverage of the protests, even when they were voicing their disapproval of the working and economic conditions of the Liberté and only increased monitoring when violence became increasingly prevalent only interfered when violence was imminent. Hypothetical Case, paragraphs 15, 17 and 22.

<sup>23</sup> President Reina requested from the OAS Permanent Council assistance in the strengthening and preserving its democratic political process and monitoring of the national elections. Hypothetical Case, paragraph 12.

entitle the State to limit the right to form unions and strike. The Protocol of San Salvador protects the right to form unions and strike. However, Article 16.2 states that those rights are subject to restrictions as may be necessary in the interest of public health or safety and to protect the rights and freedoms of others. The International Covenant on Economic and Social Rights guarantees freedom from hunger.<sup>25</sup> Liberté's controls on the strikes of the dockworkers were essential to its protection of the right to freedom from hunger. Accordingly, Liberté acted under its obligation imposed by those arrangements in limiting the dockworkers right to form unions and strike.

Finally, Liberté's postponement of elections was required by the State's duties under the Declaration of Rights and Duties of Man, which provides that every person is entitled to an honest and free election.<sup>26</sup> Thus, gaining control over the activities that were creating an environment of fear was crucial in order for the State to provide free elections.

**E. The declaration of emergency was applied in a non-discriminatory manner because it treated individuals of all social conditions equally and its only purpose and effect was to regulate activities that threatened the democratic structure.**

Under Articles 27(2) and 1(1), Liberté had a duty to ensure the free and full exercise of all rights defined in the Convention without discriminating based on any social condition. This Court has held that discriminatory treatment consists only of those differences in treatment offensive to human dignity, having no objective or reasonable justification, whereas, non-discriminatory treatment consists of classifications based on

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<sup>24</sup> 1999 IACHR 1200, paragraph 27, referring to an attempt by the Fifth Consultative Meeting of Ministers of Foreign Affairs of the OAS member states to set forth the characteristics of democratic society.

<sup>25</sup> ICESCR, Article 11.2

substantial factual differences.<sup>27</sup> Further, when proportionality exists between the different treatment targeted at the class and the aims of the legal rule under review, and it is not “arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind,” the measure is non-discriminatory.<sup>28</sup>

Liberté provided equal treatment in enforcing the declaration of emergency because its measures drew no distinctions between individuals based on arbitrary characteristics of social conditions such as race or social origin. Any difference in treatment was justified by substantial factual differences not arbitrary characteristics. This distinguishes the treatment from unreasonable and unjustified discrimination. Because the duty to ensure equal treatment attaches to each free standing right, the analysis of each right contained below will describe how Liberté administered equal treatment.

## **II. Liberté guaranteed the full exercise of those rights that must remain in force even during time of emergency, consistent with Article 27(2).**

In exercising its Article 27 right, Liberté protected all of the rights listed in Article 27(2) that cannot be suspended even during time of emergency and thus refutes the Commission’s Article 5, 19, 23 claims. Liberté provided equal protection of the rights recognized in those Articles and the judicial guarantees essential to all of the rights in the Convention.

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<sup>26</sup> American Declaration of Rights and Duties of Man, Article XX

<sup>27</sup> Advisory Opinion, No.5, I/A Court H.R., Series A, (1984), P.56-57, stating: “‘The European Court of Human Rights,’ following the principles which may be extracted from the legal practice of a large number of democratic States, ‘ has held that a difference in treatment is only discriminatory when it ‘ has no objective and reasonable justification.’ . . . . There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate principles of justice. They may in fact be instrumental in achieving justice or in protecting those who find themselves in a weak legal position.”



**A. At all times during the state of emergency, Liberté ensured those judicial guarantees essential for the protection of Articles 5, 19, and 23.**

The “guarantees” contained in Article 27(2) read with Article 1(1), which attaches to all free standing rights of the Convention, impose an affirmative duty on the State Parties to protect and ensure the free and full exercise of the rights and freedoms contained therein.<sup>29</sup> In its advisory opinion on habeas corpus in emergency situations, the Court determined that certain components of Articles 7, 8 and 25 cannot be suspended even though they are not stated in 27(2). Liberté ensured that those components of Articles 7, 8 and 25, which amount to habeas corpus and amparo guarantees, were protected.<sup>30</sup>

**1. Liberté provided habeas corpus rights at all time during its state of emergency, thus ensuring those non-derogable components of Articles 7 and 8 as required by Article 27(2).**

“In its classical form, the writ of habeas corpus, as it is incorporated in various legal systems of the Americas, is a judicial remedy designed to protect personal freedom or physical integrity against arbitrary detentions by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the release of the detainee be ordered.”<sup>31</sup>

The denial of writs of habeas corpus constitutes a failure to provide an effective remedy only when the Court fails to protect the right to freedom from arbitrary detention

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<sup>28</sup> Advisory Opinion, No.5 *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, I/A Court H.R., Series A (1984), P.56-57

<sup>29</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987),P. 25

<sup>30</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987), P.27.

<sup>31</sup> *Id.* at P.33

and invasion of physical integrity. The State court's refusal to issue a writ for Joel's release was different in character from those cases where the denial amounted to a failure to ensure against arbitrary detentions and invasion of physical integrity. The Commission conceded in *Valasquez Rodriguez*, "Exhaustion should not be understood to require mechanical attempts at formal procedures; but rather to require a case-by-case analysis of the reasonable possibility of obtaining a remedy." In this case, the Court could only provide the parents with information of their sons' whereabouts due to the suspension of Article 22. To that end, the Court acted quickly upon the parents' requests.<sup>32</sup> It does not follow, though, that the Court was required to provide the parents the remedy of their choice in order for it to be effective. Indeed, the supervising court had no authority to substitute its view as to what measures were most appropriate or expedient at the relevant time in dealing with an emergency situation for that of the Government.

Here, the Court's remedy guarantees the purpose of habeas corpus, which is to prevent arbitrary arrest and invasion of physical integrity, without ordering the release of those arrested. Habeas corpus only requires release if it is appropriate.<sup>33</sup> The release of the arrestees was inappropriate at the time Joel's parents requested the release because the officials had not finished gathering information regarding the arrests. In the past, the Court has held the States responsible for not gathering complete information regarding those arrested and then later not being able to refute claims of disappearances. Here, it was reasonable for Liberté to take the extra time to document the arrests.

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<sup>32</sup> See Hypothetical Case, paragraph 24

<sup>33</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987), P.33

Measures are more likely to violate habeas corpus when they are preventive in nature rather than correctional in this case. *The Rosero Court*, where the detainee was kept for 36 hours based on “preventative reasons,” found that his rights of habeas corpus were violated. Accordingly, the detention was arbitrary.<sup>34</sup> Here, Liberté officials arrested protesters that were already involved in a protest that was becoming confrontational and violent.<sup>35</sup> Thus, the detention lacked arbitrariness in that it was not preventative based on speculation.

**2. Liberté provided the right to amparo at all time during the state of emergency, in accordance with Article 27(2) obligation to ensure essential judicial guarantees.**

The right to amparo comprises a whole series of remedies; habeas corpus is only one of its components.<sup>36</sup> In *Chanfeau Orayce and Others v. Chile* the Commission found that Chile’s application of an Amnesty law violated the right to simple and prompt remedy, amparo, because it denied its citizens the right to ascertain the truth. Read in tandem with the right of habeas corpus, it can be inferred that the determination of the law’s incompatibility with the Convention’s right to amparo hinged on its interference with the right to the truth of the facts. Because transparency into government conduct is essential to the discovery of human rights that have been violated, and the prevention of future violations, this Court has concluded that protection of amparo depends upon the protection of the right to the truth.<sup>37</sup> Thus, just as the Court’s interpretation of what constitutes an effective protection of habeas corpus tends to focus on the right to effective

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<sup>34</sup> *Suarez Rosero Case* (1997) paragraph 43-45

<sup>35</sup> See Hypothetical Case, paragraphs 22-23.

<sup>36</sup> Advisory Opinion No.8, *Habeas Corpus in Emergency Situations*, I/A Court H.R. Series A (1987), P. 34

<sup>37</sup> *Chanfeau Orayce and Others v. Chile*, IACHR Cases 11.505 et al., P 85-89

remedy, free from arbitrariness and physical invasion, its interpretation of what constitutes effective protection of amparo tends to focus broadly on whether the parties received an ascertainment of the truth.

Liberté quickly provided access to and knowledge of the truth concerning the conditions of the detention, in accordance with its amparo obligation under Article 25. Upon receiving the writ, the Court quickly located the whereabouts of Mr. Velencia and his friends and contacted the base to confirm that they were there not even six hours after they had been taken into custody. The timeliness of the detention here is distinguished from *Rosero*, where the Court found that the State did not offer simple and prompt recourse under the circumstances. Here, the arrestees were not detained and held unnecessarily. The two recruits were identifying the detainees until they were released 34 hours later. In *Rosero*, the detainee was kept for 36 days, which was clearly excessive.

### **III. Liberté protected the rights laid out in Articles 7, 8 and 25**

#### **A. Liberté was entitled to limit its protection of Articles 7, 8 and 25 to those components that are essential to judicial guarantees.**

Article 30 of the Convention authorizes Liberté to restrict Articles 7, 8 and 25 to the extent that it is authorized by the Convention, established by law and applied pursuant to them. Further, the restriction must be in accordance with the general interest and in accordance with the purpose for which restrictions were established.<sup>38</sup>

#### **1. The restriction of Articles 7, 8 and 25 was authorized by the Convention and applied pursuant to thereto.**

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<sup>38</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986), P.18

Any restrictions on Article 7, 8 and 25, which embody individuals' judiciary rights, was expressly authorized by the Convention because the Court has interpreted the Convention to mean that in times of a state of emergency, only those components essential to judicial guarantees of the other rights listed in 27(2) may not be suspended.

**2. The restriction adopted by the legitimate will of the people because it established by a law adopted by Congress.**

The Liberté law that established the restriction was President Reina's declaration. Although the restriction was essentially voiced by President Reina, Congress delegated that authority to her through Article 101 of the Liberté Constitution.<sup>39</sup> The Convention approves of such a delegation power because it is backed by a checking mechanism on that power.<sup>40</sup> Thus the law was established according to the legitimate will of the people.<sup>41</sup>

**3. Liberté restricted protection of Articles 7, 8 and 25 was in the interest of the general welfare.**

Acknowledging that it is difficult to define the "general welfare", the Court has stated that limiting rights in furtherance of the general interest should be strictly limited to the "just demands" of "a democratic society," focusing on the need to balance the competing interests involved and the need to preserve the object and purpose of the

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<sup>39</sup> See Hypothetical Case, paragraph 5

<sup>40</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986), P.36, stating "The above does not necessarily negate the possibility of delegations of authority in this area, provided that such delegations are authorized by the Constitution, are exercised within the limits imposed by the Constitution and the delegating law, and that the exercise of the power delegated is subject to effective controls, so that it does not impair nor can it be used to impair the fundamental nature of the rights and freedoms protected by the Convention."

<sup>41</sup> See Hypothetical Case, paragraph 5

Convention.<sup>42</sup> Article 101 of the Liberté Constitution allows for strengthening capabilities and affords flexibility to the courts whose caseload was undoubtedly increased due to the extreme number of violent protests. Liberté's interest in maintaining the effectiveness of those institutions crucial to its democratic structure, such as the police force and the judiciary, must tip the scale in Liberté's favor. Further, Liberté limited its restriction to the just demands of a democratic society because the declaration only increased the amount of time for judicial review to 48 hours, a reasonable time. There were so many protests that the Armed Forces were forced to use military recruits, even after the National Police had recently doubled its size and had joined with the Armed Forces. On November 17, 2001, it only took 34 hours for the detainees to be processed and released.

Accordingly, because any restrictions on Articles 7, 8 and 25 were pursuant to a legislatively established law and with the general interest in mind, they were warranted according to Article 30 of the Convention.

**B. Liberté protected Article 7, 8 and 25 in a manner that ensured equal treatment.**

The ECHR recognized that whereas an acute risk of arbitrary and thus discriminatory treatment is present during a state of emergency, it is minimized when the State keeps the remedy of habeas corpus in place. Liberté guarded against discriminatory treatment because it provided habeas corpus at all times during the state of emergency.<sup>43</sup> Any differences in treatment were based on specific factual distinctions such as the limited availability of police officials and time.

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<sup>42</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986), P.31

**IV. Applicants' Article 5 rights were protected. Their rights to physical, mental and moral integrity and their inherent dignity as human persons were protected during the reasonable and necessary arrest.**

Whereas the Court has found prolonged isolation and incommunicado detention to violate Article 5(1) and 5(2) right to humane treatment in the past, those decisions are distinguished from this case. In the *Suarez Rosero* case, where the Court found that incommunicado detention for 36 days amounted to amount to cruel, inhuman or degrading treatment. The outcome of that case turned on the fact that the detention was arbitrary and carried out in violation of the State's domestic laws.<sup>44</sup> There, the detained person had to sleep on newspapers in a damp underground cell measuring 15 square meters with 16 other prisoners and during his detention he was subjected to several beatings and threats. Here, however, during the comparatively brief detention of 34 hours, the applicants were given food and water and were able to find peace in a corner of the auditorium.<sup>45</sup>

Furthermore, in *Rodriguez*, the Court stressed that Article 5 requires States Parties to take reasonable steps to prevent situations which are *truly* harmful to the rights protected. In that case, the Court found that prolonged isolation interfered with the mental and psychological integrity of those detained. The conditions of that detention were entirely distinguishable from the very brief detention of Joel and his friends. Mr. Velasquez had been missing for 7 years by the time the claim was filed. Because the Honduras government failed to refute the claim that the detainees in that case were subjected to methods of torture, the Court deferred to the individuals and found that their

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<sup>43</sup> *Brannigan and McBride v. United Kingdom*, Series A, No. 258 B. (1993), P.63

<sup>44</sup> *Suarez Rosero Case (1997)*, P 84-92.

physical integrity was probably violated. Liberté's officials did not subject those lawfully arrested to any amount of torture, whatever, removing any need for presumption of a violation. Accordingly, those cases where the court has found a violation of Article 5 involve conditions of a nature much graver than those which Joel and his friends underwent.

**V. Liberte ensured the protection of the rights of those detained under Article 19 of the Convention and the Convention on the Rights of the Child.**

**A. The State's treatment of Joel Valencia and his friends was reasonable based on a fair consideration of their age, awareness and experiences.**

Article 19 states "every minor child has the right to the measures of protection required by his condition as a minor...." The measures necessary to protect a minor will vary depending on the condition of that minor. Joel Valencia was familiar with the adversarial environment of a protest because his parents helped found the non-governmental Democratic Forum, whose aim was protecting civil liberties. Mr. Valencia's strong interest in public affairs should be taken into account when considering his condition under Article 19.

**B. The State was obligated to arrest the individuals because it has an affirmative duty to apply equal treatment.**

Articles 27 and 1(1) require the State to provide equal treatment. The controls employed by the police force responded to the conduct of Joel Valencia and his friends that threatened violence. Liberté officials have a duty to respond to misconduct; yet, they also must refrain from discriminatory treatment. The recruits that responded to the November 17 protest complied with their duty to apply equal treatment when they made the necessary arrests.

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<sup>45</sup> Id. at 84-92



**C. The State treated the individuals in a manner consistent with its obligation under the Convention on the Rights of the Child.**

Although Article 19 is listed in Article 27(2) as exempt from suspension under any circumstances, it may still be restricted according to Article 30, as the Court has distinguished between restrictions and suspensions. Liberté, then, could restrict its protection of Article 19 to the extent that the restricted protection is authorized by the American Convention, established by a legislative law and is in the general interest. Accordingly, Liberté's Article 30 right must have been exercised in a manner consistent with the terms of the Convention on the Rights of the Child.<sup>46</sup>

Article 9(4) of the Convention on the Rights of the Child provides that parents shall be provided with the essential information concerning the whereabouts of the absent member(s) when their children have been detained by the State. Article 12 entitles detainees to the right to be heard. The arrest and detention of the individuals was consistent with both of those articles because the State quickly provided information concerning the individuals' whereabouts. Specifically, the Court responded promptly and effectively to the parents' writ of habeas corpus by determining the lawfulness of the arrest and detention and ascertained the whereabouts of the individuals. The Court's measures provided habeas corpus and amparo. Because the Liberté Court guaranteed habeas corpus in carrying out the arrest and detention, it ensured the protection of those articles contained in the Convention on the Rights of the Child that pertain to judicial procedure.

Articles 13(2) (b), 4(3), and 15(2) of the Convention on the Rights of the Child limit the right to freedom of expression and speech when such limitation is necessary to

protect the national security, public order, public health and democratic structure. In Liberté, the national security, public order, public health and the democratic structure were all threatened by the atmosphere of violence and fear created by the protests. Accordingly, it was necessary for Liberté to gain control over the protests by arresting people who were creating violence.

**D. The arrest and detention of Joel and his friends was consistent with Article 27 because Liberté did not suspend the Article 19.**

The limited protection of rights is distinguished from the suspension of rights. Whereas Liberté was at no time entitled to suspend Article 19 rights of the child, it was permitted to limit its protection accordance with the terms of Article 30.<sup>47</sup> Liberté only limited its protection of the rights of Mr. Valencia and his friends to the extent required by the terms of the Convention on the Rights of the Child. Accordingly, Liberté provided adequate protection of Article 19 of the Convention on the Rights of the Child.

**VI. The State of Liberté did not violate Article 23 of the American Convention when it postponed the national election for one month.**

The State did not violate Article 23 of the American Convention.<sup>48</sup> The political system in Liberté during the last few months of 2002 was in such a state of turmoil, that it was impossible to hold a fair and impartial election. There were numerous protests occurring on a daily basis, many of which ended in violence and resulted in the deaths of both police officers and civilians. In addition, there were rumors that opposing political

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<sup>46</sup> See Hypothetical Questions and Responses, Question 7.

<sup>47</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986)

<sup>48</sup> Article 23 states, "Every citizen shall enjoy the [right and opportunity] to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guaranteed the free expression of the will of the voters."

parties planned to block access to the polls, thereby limiting the rights of the citizens to vote.<sup>49</sup>

The State postponed the national election for only one month in an effort to regain control and eliminate some of the political unrest and violence that was occurring in many areas of the country. However, the State did not deprive citizens of their right to vote in the election. The State postponed the election so that all citizens who wished to participate would have an equal opportunity to do so without fear of reprisal from opposing political parties. The State was within its rights to postpone the election.

**A. The State has the right to place conditions on the terms of voting and elections under the Declaration of Rights and Duties of Man.**

The postponement of the election for one month was necessary to ensure the rights of all the citizens of Liberté to vote. The State is entitled to impose restrictions which are not arbitrary and do not interfere with the free expression of the people's opinion.<sup>50</sup> The restriction implemented by the State was merely a postponement of the election date for one month to ensure that national security was restored. The State's only intent was to create an atmosphere in which all citizens would be free to cast their votes in the election.

The State's actions complied with Article 20 of the American Declaration of Rights and Duties of Man which provides that "every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and

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<sup>49</sup> Hypothetical Case, paragraph 14.

<sup>50</sup> *Edwards v. United Kingdom* (1986) 8 E.H.R.R. CD 96.

shall be honest, periodic and free.”<sup>51</sup> The State postponed the election in part to ensure that it would be fair. If the election were held on December 10, 2002 as originally scheduled, the violent protests and planned disruptions at the polls would call in to question the validity of the results. Many voters may have chosen not to participate in the election rather than face the potential violence.

Article 20 states that *every* person having legal capacity is entitled to participate.<sup>52</sup> The State interprets this to mean the every person is entitled to participate in the election without fear of reprisal or interference from opposing political parties. The postponement of the election was an effort to preserve the integrity of the election process and to ensure that all citizens of Liberté would be guaranteed the opportunity to participate in the election.

**B. The measures taken by the State did not violate the Convention because they were intended to preserve the values of a democratic society and were applied in a non-discriminatory manner.**

This Court has declared that “under some circumstances the suspension of guarantees may be the only way to deal with emergency situations and, thereby, to preserve the highest values of a democratic society.”<sup>53</sup> The postponement of the election was not a suspension of the rights guaranteed in Article 23 of the American Convention. The election was postponed to preserve the values of a democratic society by ensuring a free election.

The “essential elements of representative democracy include... the holding of periodic, free, and fair elections based on secret balloting... [and] the pluralistic system

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<sup>51</sup> American Declaration on the Rights and Duties of Man, Article 20

<sup>52</sup> American Declaration on the Rights and Duties of Man, Article 20, emphasis added.

of political parties and organizations.”<sup>54</sup> The people of Liberté were entitled to participate in a fair election that included all political parties. The State had an obligation to prevent any one political party from unfairly affecting the voting through intimidation of voters or blocking access to polling booths.

A democratic society cannot survive when the people are not free to express their will in regards to their government. The ability of all citizens to participate in their own government is one of the core concepts of democracy. For the State to allow the election to be held during a time when there was such political unrest that many citizens would be unable to vote, would go against the idea that all citizens have an equal voice in the government.

Democracies traditionally value truth, fairness and honesty. An election in which opposing political factions interfere with the voting process promotes neither fairness nor honesty. The election was held on January 10, 2002, one month after it was originally scheduled. The State’s goal was to ensure that the fairness and honesty of the election were upheld in accordance with Article 20 of the American Declaration. By postponing the election, the state was able to protect the rights of the citizens to participate in a fair and honest election.

Additionally, the measures taken by the State were non-discriminatory in that they were applied to all citizens who were eligible to participate in the election. In *Gitonas v. Greece*, the European Court held that “this aim [of excluding specific classes of civil servants from standing for election] does not appear reconcilable with the interest

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<sup>53</sup> 1999 IACHR 1200.

<sup>54</sup> Inter-American Democratic Charter, Article 3.

referred to in Article 3 of Protocol No. 1, that is, the holding of elections under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”<sup>55</sup> But the aim of the State in this case is completely reconcilable with the intent of Article 23. The intent of Article 23 is that all citizens should have a fair and equal opportunity to participate in government, both by voting for their representatives and by having the opportunity to run for office.<sup>56</sup> The State’s intent in postponing the election was to ensure that all citizens would be able to vote without fear of retaliation from opposing political parties.

**C. The measures taken by the State did not violate Article 23 of the American Convention because the citizens were not denied the right to vote or participate in the election.**

Unlike the circumstances of *Miyagawa v. Peru*, in which the Peruvian government denied an entire political party the right to run in the election, the State has denied neither any individuals nor political parties the right to vote or to participate in the election.<sup>57</sup> The State has instead taken steps to ensure that all citizens who wish to participate in the election in any manner will have the opportunity to do so without interference.

The State postponed the election by one month to create an atmosphere in which all citizens would feel safe in exercising their right to vote. The State did not remove any individual from the election or attempt to prevent anyone from running for office. All citizens who were running for office in the originally scheduled election were eligible to

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<sup>55</sup> *Gitonas v. Greece* (1998) 26 E.H.R.R. 691

<sup>56</sup> American Convention on Human Rights, Article 23.

<sup>57</sup> 1999 IACHR 1262

run for office on the newly scheduled date. No one was denied the right to vote or to participate in the election.

The electoral observers the State requested to oversee the election reported that the election was carried out in an orderly fashion, implying that the measures implemented by the state were successful. All citizens were able to vote in the election without interference. The protests were brought under control and the elections were held in a fair and impartial manner.

**D. The measures taken by the State were imposed in an effort to protect the rights guaranteed under Article 23 of the American Convention and were permissible under Article 27 of the Convention due to the declaration of the state of emergency.**

The controls that Liberté has placed on the election were implemented to ensure that the rights guaranteed under Article 23 of the American Convention were not violated. It is apparent that the conditions imposed were not intended to deprive the rights guaranteed in Article 23 of their effectiveness, but rather to ensure their effectiveness. The postponement of the election served the legitimate aim of preserving the integrity of the election.

Although Article 27 prohibits the suspension of Article 23 at all times, the right may be restricted according to Article 30. Article 30 allows the restricted application of rights when authorized by the Convention, established by law through legislative procedure, and in the general interest.<sup>58</sup> The postponement was supported by a legislative law because Congress adopted Article 101 of the Constitution of Liberté which authorized President Reina to declare a state of emergency and to restrict certain rights

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<sup>58</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986),

pursuant thereto.<sup>59</sup> Further, the postponement was in the general interest because furthered “the just demands of a democratic society.”<sup>60</sup> A free election is an essential element of a successful democratic government. The election was not cancelled, but merely postponed for a short period of time to enable the State to maintain public order during the weeks prior to the election. The State was then able to restore an atmosphere of peace in which the citizens could vote without fear of reprisal. The controls imposed upon the timing of the election were in accordance with Article 27 of the American Convention.

The State has not violated the rights of the citizens of Liberté to vote and participate in the election. The measures taken by the State were done to ensure the free expression of the people in the election of their government. The restrictions were successful in ensuring a fair and impartial election.

**VII. The actions taken by the State to end the dockworkers strike did not violate Article 16 of the American Convention or Article 8 of the Additional Protocol to the American Convention.**

**A. The State did not deny the dockworkers the right to join trade unions or the right to strike.**

The State did not violate Article 16 of the American Convention, which guarantees the right to freedom of association for the purpose of protecting labor interests.<sup>61</sup> The State has not denied the dockworkers the right to join a union or participate in collective bargaining. The State allowed the strike to continue until the lives and health of the citizens of Liberté were threatened. In ordering binding arbitration to put an end to the

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<sup>59</sup> See Hypothetical Case, paragraph 5

<sup>60</sup> Advisory Opinion No. 6, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, I/A Court H.R. Series A (1986),



strike, Liberté continues to allow the dockworkers to engage in collective bargaining to protect their interest.

Further, Article 16.2 provides that the exercise of the right to join trade unions and participate in collective bargaining is subject to such restrictions as may be necessary in the interest of public health, public safety and to protect the rights and freedoms of others.<sup>62</sup> The dockworkers strike was limiting the food supply to the agricultural district of Liberté. By calling an end to the strike, the State was protecting the health and safety of citizens living in the agricultural district.

Under Article 8 of the Additional Protocol to the American Convention on Human Rights workers are guaranteed the:

1. right to organize trade unions and to join the trade union of their choice for the purpose of protecting and promoting their interests, and
2. right to strike.<sup>63</sup>

The State has not denied the workers their right either to join trade unions or their right to strike. The dockworkers had initiated a work slowdown in July 2001 and began a formal strike in October 2001.<sup>64</sup> The State did not interfere with the work slowdown during the period from July 2001 – October 2001, nor has the State attempted to deter the dockworkers from joining the trade unions. The State did not take action until after the dockworkers declared an official strike on October 28, 2001.

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<sup>61</sup> American Convention on Human Rights, Article 16.

<sup>62</sup> American Convention on Human Rights, Article 16.2.

<sup>63</sup> Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Article 8.

<sup>64</sup> See Hypothetical Case, paragraphs 11 and 16

The strike occurred in conjunction with a severe drought, which had a serious negative impact on the agricultural sector of Liberté. As a result of the drought, many of Liberté’s citizens were dependent upon imports for their food. When the dockworkers went on strike, the imported food remained on ships in the harbor, leaving millions of citizens with no food. The State had no choice other than to intervene. The State ordered the dockworkers to enter binding arbitration in an effort to protect the interests of its other citizens.

**B. Under Article 27 of the American Convention, the State is allowed to suspend the rights guaranteed in Article 16 of the American Convention and Article 8 of the Protocol of San Salvador during a national emergency.**

Under Article 27 of the American Convention, the State is entitled to suspend the rights guaranteed in Article 16 of the American Convention and Article 8 of the Protocol of San Salvador during a national emergency.<sup>65</sup> Article 16 of the American Convention guarantees workers the right to associate for the labor purposes and also allows for the restriction of those rights “as may be necessary in the interest of public safety or public order.”<sup>66</sup> Article 8 of the Protocol of San Salvador guarantees the rights of workers to form trade associations and the right to strike.<sup>67</sup> However, Article 8.2 allows for the suspension of these rights “provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health.”<sup>68</sup>

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<sup>65</sup> American Convention on Human Rights, Article 27.

<sup>66</sup> American Convention on Human Rights, Article 16.

<sup>67</sup> Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Article 8.

<sup>68</sup> Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Article 8.2.

The suspension of these rights complied with the requirements of Article 27 in that they were for a limited time period of 90 days and were not inconsistent with the State's other obligations under international law.<sup>69</sup> Rather, the suspension of rights was in direct support of the State's other obligations. The State was attempting to protect the rights of its citizens to proper food and nutrition.

**C. Under Article 11.2 of the International Covenant on Economic, Social and Cultural Rights, the State has an obligation to protect the right of its citizens to be free from hunger.**

Most importantly, the State was protecting the right guaranteed in Article 11.2 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to be free from hunger.<sup>70</sup> By ratifying the ICESCR, the State agreed to take specific measures to improve methods of production, conservation and distribution of food. With the slowdown and strike of the dockworkers, the food being imported to Liberté is sitting in the harbor rotting because there is no one to unload it.<sup>71</sup> As a result of the strike, there is currently no distribution system for the food and the people in the agricultural regions of Liberté do not have enough food to support their families.

The State has an obligation to ensure that its citizens have enough food to eat.<sup>72</sup> The State would be in violation of its obligations were it to allow the food to rot in the harbor while the citizens of Liberté starved. Still, rather than simply ordering the striking dockworkers back to work, the State has ordered binding arbitration in an effort to

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<sup>69</sup> American Convention on Human Rights, Article 27

<sup>70</sup> International Convention on Economic, Social and Cultural Rights, Article 11.2.

<sup>71</sup> See Hypothetical Case, paragraph 16.

<sup>72</sup> International Convention on Economic, Social and Cultural Rights, Article 11.2.

support the rights of the dockworkers trade union. The State is attempting to balance the rights of the workers with the rights of the other citizens; however in a situation such as this, the rights of the citizens not to go hungry must take priority.

**D. The State's order to end the strike was done in an effort to balance the rights of the dockworkers with the rights of the other citizens of Liberté and complied with the restrictions allowed under Article 5 of the Protocol of San Salvador.**

The Charter of the OAS Article 34 lists as one of its basic goals the right to proper nutrition.<sup>73</sup> The State must try to balance this right with those guaranteed in Article 45: the rights to collective association and to strike.<sup>74</sup>

However, the workers right to strike is limited by the rights of other citizens. The State balanced the rights and decided it had a greater obligation to protect the right of its citizens to have proper food and nutrition. There had been a drought lasting almost a year in the agricultural center of the country. It impacted not only the harvests of the farmers, but also seriously impacted the inland water fishing industry of Liberté. As a result, the citizens living in the southwest agricultural areas became dependent on imported foods to survive. The dockworkers strike left these imports rotting on ships instead of being transported to the citizens who needed them. If the State had allowed the dockworkers to continue the strike, people in the southwest would have suffered from malnutrition.

In addition, Article 12 of the Protocol of San Salvador, The Right to Food, also guarantees the right to proper nutrition and requires the States Parties “to undertake to

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<sup>73</sup> Charter of the Organization of American States, Article 34.

<sup>74</sup> Charter of the Organization of American States, Article 45.

improve methods of production, supply and distribution of food...”<sup>75</sup> The dockworkers strike was infringing upon these rights. Further, Article 5 of the Protocol of San Salvador provides that “States Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare of a democratic society...”<sup>76</sup>

The State’s restriction on the dockworkers right to strike was not incompatible with the purpose of preserving the general welfare. Rather, it was specifically for the purpose of preserving the welfare of all the citizens that the State ordered an end to the strike through binding arbitration.

Liberté has an obligation to protect the rights guaranteed to all its citizens. On this occasion, to protect the rights of the citizens in the drought-stricken areas of the country, it was necessary for Liberté to infringe upon the rights of the dockworkers. The State ordered binding arbitration in an effort to allow the dockworkers and the employers to reach an agreement that would both end the strike and satisfy some of the workers demands. The State’s order was an attempt to satisfy the rights guaranteed to both the dockworkers and the remaining citizens.

#### **IV. REQUEST FOR RELIEF**

The State of Liberté respectfully requests that this Honorable Court find that there was no violation of Articles 1(1), 5, 7, 8, 19, 16, 23, 25 or 27 of the American Convention or Article 8 of the Protocol to the American Convention.

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<sup>75</sup> Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Article 12.

<sup>76</sup> Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), Article 5.

**WORD COUNT: 7,467**