

**2011 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**Richardson, Unzué et al.**

**Applicants**

**v.**

**Juvenlandia**

**Respondent**

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**Statement of the Facts**

Maria Paz (“Maria”), an uneducated fourteen-year-old girl, was employed by a cotton plant in Pobrelandia.<sup>1</sup> Despite the long hours her job required, her wages were not enough to afford her basic needs. In March 2002, a Juvenandian woman, “Pirucha,” approached Maria and offered to take her to Juvenlandia where Maria would work as a domestic employee.<sup>2</sup> Juvenlandia is a country south of Pobrelandia that has turned into a popular destination for growing waves of immigrant populations.<sup>3</sup> In an effort to create a better life for herself, Maria decided to accept the woman’s proposal; however, she decided to tell her sixteen-year-old cousin, Felicitas Unzué (“Felicitas”) about her plan.<sup>4</sup> Felicitas agreed to accompany Maria to Juvenlandia after she told her parents and her boyfriend, Lucio, about the trip. Lucio promised to meet Felicitas in Juvenlandia as soon as he could.<sup>5</sup>

When the girls met “Pirucha” at the bus station to start their journey, they were handed off to another woman, “Porota,” who confiscated Felicitas’ cell phone.<sup>6</sup> As soon as the girls crossed the border of Juvenlandia, “Porota” took the girls’ documents and instructed them not to speak to the Customs and Immigration officers.<sup>7</sup> “Porota” talked to the officers and handed them an envelope.<sup>8</sup> When the girls arrived in Juvenlandia, they were taken to a dirty, crowded, apartment full of scantily clad women who looked as if they had been beaten.<sup>9</sup> Maria was scared and asked for her legal documents. As a

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<sup>1</sup>Hypothetical ¶ 6

<sup>2</sup> Hypothetical ¶ 5

<sup>3</sup> *Id.*

<sup>4</sup> Hypothetical ¶ 7

<sup>5</sup> Hypothetical ¶ 8

<sup>6</sup> Hypothetical ¶ 10

<sup>7</sup> Hypothetical ¶ 10

<sup>8</sup> Hypothetical ¶ 11

<sup>9</sup> Hypothetical ¶ 14

result of her protests, one of her captors beat her, raped her, and threatened her with more violence if she didn't behave.<sup>10</sup> In response to the violent rape of her cousin, Felicitas fainted. Not long afterwards, Felicitas learned that she was pregnant with Lucio's baby. Maria became pregnant as a result of the rape.<sup>11</sup>

For the next six months, the girls were forced to live and work as prostitutes in the apartment, which served as a brothel, without the ability to leave or communicate with anyone.<sup>12</sup> The girls were prevented from leaving the brothel unless they were accompanied by some very aggressive men they referred to as "the thugs." Frequently, the girls were given pills that caused them to lose consciousness. After taking the pills, the girls would wake up beaten on a blood-stained mattress.<sup>13</sup> Despite the injuries, the girls never received any medical attention and stopped complaining because any request was met with brutal violence.<sup>14</sup>

On one occasion, government officials visited the brothel, but "the thugs" were tipped off beforehand and had given the girls stories to tell the officials. However, the officials didn't talk to the girls and ignored the obvious condition of the brothel as well as the visible signs of abuse.<sup>15</sup> Additionally, after the visit, the officials went out with "the thugs" to the neighborhood bar.<sup>16</sup>

On August 10, 2002, after Maria had slept with ten customers, exhausted from the pain and desperate over her situation, Maria tried to terminate her pregnancy.<sup>17</sup> As a result, she suffered serious hemorrhaging and had to be taken to a medical facility. The

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<sup>10</sup> Hypothetical ¶ 15

<sup>11</sup> *Id.*

<sup>12</sup> Hypothetical ¶ 16

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Hypothetical ¶ 17

<sup>16</sup> *Id.*

<sup>17</sup> Hypothetical ¶ 18

doctor at the facility filed a complaint against Maria for the abortion. Maria was charged and immediately transferred to the Women's Prison.<sup>18</sup> In prison, Maria met a women's group, the "Women's Association," who quickly obtained an attorney for her. The attorney requested Maria's release, which was granted immediately. The women's association also provided Maria with a job, a place to sleep, and minimal finances.<sup>19</sup>

On February 5, 2004, Maria, who was then sixteen years old, returned to the brothel where she had been held captive and killed the man who had raped her.<sup>20</sup> On December 10, 2004, Maria plead guilty by way of a plea bargain in the regular criminal court in Juvenlandia.<sup>21</sup> The court charged Maria with first-degree murder and sentenced her to fifteen years in prison.<sup>22</sup> Maria's abortion case is still pending in the pretrial stage.<sup>23</sup>

During this time, Felicitas was still forced to work in the brothel. Eight months after her arrival in Juvenlandia, Felicitas had her child.<sup>24</sup> Immediately after giving birth, Felicitas was sent back to the brothel without her baby. When she asked for her child, her captors told her that her baby had to remain at the clinic in "intensive care."<sup>25</sup>

One week later, Felicitas was taken to an office where she was forced to sign adoption papers and say a final goodbye to her baby.<sup>26</sup> Felicitas' captors gave her baby to a man in exchange for a manila envelope, which the captors put in their pocket.<sup>27</sup> Felicitas' baby was adopted by a family in Juvenlandia based on her direct surrender of

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<sup>18</sup> Hypothetical ¶ 23

<sup>19</sup> Hypothetical ¶ 23

<sup>20</sup> Hypothetical ¶ 24

<sup>21</sup> Hypothetical ¶ 25

<sup>22</sup> Hypothetical ¶ 26

<sup>23</sup> Hypothetical ¶ 27

<sup>24</sup> Hypothetical ¶ 19

<sup>25</sup> *Id.*

<sup>26</sup> Hypothetical ¶ 20

<sup>27</sup> *Id.*



*de facto* custody of her child.<sup>28</sup> While the Civil Code of Juvenlandia allows for the direct surrender of a child, known as *de facto* custody, it is legally accepted as pre-adoptive custody when the parents affirm the surrender before a judge.<sup>29</sup> The adoption became final in July of 2004.<sup>30</sup>

In December 2004, Felicitas was able to contact Lucio on a phone that a customer accidentally left on the mattress.<sup>31</sup> After the call, Lucio decided to go to Juvenlandia immediately to reclaim his girlfriend and, mainly, his son.<sup>32</sup> After Felicitas' call, Lucio contacted Maria's mother and offered to help her find Maria. Both Mrs. Paz and Lucio traveled to the capital of Juvenlandia to find the girls.<sup>33</sup>

In Juvenlandia, Lucio found an attorney who filed a writ of habeas corpus on Felicitas' behalf.<sup>34</sup> The judge ordered several measures, but it was impossible to find Felicitas.<sup>35</sup> Regarding Lucio's son, Lucio's attorney located his child and filed a suit to recover the child in family court.<sup>36</sup> However, the court rejected Lucio's appeal on procedural grounds, claiming that the adoption was lawful and it was in the best interests of the child to remain with his adoptive family.<sup>37</sup>

On December 18, 2006, Lucio sought the assistance of the Inter-American Human Rights Commission (the "Commission") and requested the Commission issue a precautionary measure for Felicitas to Juvenlandia.<sup>38</sup> The Commission investigated the

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<sup>28</sup> Hypothetical ¶ 21

<sup>29</sup> Hypothetical ¶ 20; Clarification Questions and Answers 8

<sup>30</sup> Hypothetical ¶ 22

<sup>31</sup> Hypothetical ¶ 28

<sup>32</sup> Hypothetical ¶ 30

<sup>33</sup> Hypothetical ¶ 31

<sup>34</sup> Hypothetical ¶¶ 32, 35

<sup>35</sup> Hypothetical ¶ 35

<sup>36</sup> Hypothetical ¶ 36

<sup>37</sup> Hypothetical ¶ 37

<sup>38</sup> Hypothetical ¶ 45

issue and granted Lucio's application pursuant to Article 25 of its Regulations.<sup>39</sup> However, Juvenlandia objected to the Commission's request and claimed that it had properly processed the writ of habeas corpus for Felicitas.<sup>40</sup>

On May 23, 2007, Lucio filed a petition before the Commission against Juvenlandia alleging violations of Articles 5, 6, 7, 8, 17, 19, 22, 24, and 25 of the American Convention on Human Rights ("Convention"), all in relation to Articles 1(1) and 2 regarding Felicitas' case.<sup>41</sup> Lucio's petition requested that Felicitas be located immediately, the adoption of their son be annulled, and their son returned to him and Felicitas. Juvenlandia answered the Commission and asserted that with respect to Felicitas, domestic remedies had not been exhausted. Additionally, Juvenlandia still maintains that the adoption was lawful and leaving the child with his adoption parents is in his best interest.<sup>42</sup>

After hearing Juvenlandia's arguments, the Commission issued a report pursuant to its Article 37(3) of its Regulations declaring the petition admissible and finding that Juvenlandia had violated Articles 5, 6, 7, 8, 17, 19, 22, 24, and 25 of the Convention.<sup>43</sup> Juvenlandia failed to comply with the recommendations set out in the Commission's report, so the Commission submitted its report to the Inter-American Court of Human Rights (hereinafter "the Court") on August 26, 2010.<sup>44</sup> In regards to Felicitas' son, the Commission alleged that Juvenlandia had also violated Articles 8, 17, 19, 24, and 25

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<sup>39</sup> Hypothetical ¶ 46

<sup>40</sup> *Id.*

<sup>41</sup> Hypothetical ¶ 47

<sup>42</sup> Hypothetical ¶ 49

<sup>43</sup> Hypothetical ¶ 50

<sup>44</sup> Hypothetical ¶ 51

established in Articles 1(1) and 2 of the Convention. Three months after the Commission submitted its petitions against Juvenlandia, Felicitas was found.<sup>45</sup>

Regarding Maria Paz, the National University's free legal aid center filed an appeal *in forma pauperis* before the Juvenlandian Supreme Court for Maria's murder case.<sup>46</sup> According to Article 42 of the Supreme Court Procedure Act of Juvenlandia, the court will accept *in forma pauperis* appeals when an incarcerated person lacked a proper defense.<sup>47</sup> While that court recognized that Maria had effectively lacked proper defense, the court dismissed her appeal.<sup>48</sup> Therefore, the free legal aid center filed a petition on behalf of Maria's mother before the Commission on August 20, 2008. The petition alleged that in respect to Maria, Juvenlandia had violated Articles 5, 6, 7, 8, 19, 22, 24, and 25 of the Convention, all in relation to Articles 1(1) and 2 of the Convention as well as the broad *corpus juris* of human rights protection.<sup>49</sup> In this instance, Juvenlandia requested to handle the case through a friendly settlement procedure. However, Juvenlandia failed to take any steps to resolve Maria Paz's situation. Therefore, on August 26, 2010 the Commission issued its report on the case where it alleged that Juvenlandia violated Articles 5,6,7,8, 19, 22, 24, and 25 of the Convention all in relation to the obligations established in Articles 1(1) and 2 of the Convention and interpreted within the framework of the broad *corpus juris* of human rights protection in respect to Maria.<sup>50</sup>

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<sup>45</sup> Hypothetical ¶ 55

<sup>46</sup> Hypothetical ¶ 41

<sup>47</sup> Hypothetical ¶ 42

<sup>48</sup> Hypothetical ¶ 43

<sup>49</sup> Hypothetical ¶ 56

<sup>50</sup> *Id.*

## LEGAL ANALYSIS

### **I. STATEMENT OF JURISDICTION**

This Honorable Court has jurisdiction to hear this case. Juvenlandia is a State-Party to the Organization of American States (“OAS”) and has ratified the American the Convention. Additionally, Juvenlandia has accepted the contentious jurisdiction of the Court pursuant to Articles 61 and 62 of the Convention on December 10, 1987.<sup>51</sup> Both Maria Paz and Felicitas Unzué have exhausted their domestic remedies because civil remedies were inadequate and ineffective.<sup>52</sup>

### **II. THE STATE OF JUVENLANDIA HAS AN AFFIRMATIVE DUTY UNDER THE CONVENTION AS WELL AS OTHER INTERNATIONAL TREATIES TO PROTECT HUMAN RIGHTS.**

It is well established that states have a duty to prosecute human rights violations.<sup>53</sup> While states are not responsible for the private acts themselves, they are accountable for their response to those acts.<sup>54</sup> States are responsible for the acts or omissions of private persons when the state acts in complicity in the wrongs<sup>55</sup> and also when the state fails to exercise due diligence to control the private persons.<sup>56</sup>

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<sup>51</sup> Clarification Questions & Answers, ¶ 9.

<sup>52</sup> Velasquez-Rodriguez v. Honduras, Merits, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166 (July 29, 1988).

<sup>53</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, Art. 49, Aug. 12, 1949, 75 U.N.T.S. 31, 62(hereinafter “Geneva Convention I”); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Art. 50, Aug. 12, 1949, 75 U.N.T.S. 85, 116(hereinafter “Geneva Convention II”); Geneva Convention Relative to the Treatment of Prisoners of War, Art. 129, Aug. 12, 1949, 75 U.N.T.S. 135, 236 (hereinafter “Geneva Convention III”); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 146, Aug. 12, 1949, 75 U.N.T.S. 287, 386 (hereinafter “Geneva Convention IV”); Organization of the American States, Inter-American Convention to Prevent and Punish Torture, art. 8, Dec. 9, 1985, 67 O.A.S.T.S.

<sup>54</sup> See Theodor Meron, *State Responsibility for Violations of Human Rights*, 83 Am. Soc’y Intl. L. Proc., 372, 375–76 (1989).; *see also* Ian Brownlie, *Principles of Public International Law* 445-57 (1979).

<sup>55</sup> See U.S. v. Mexico, 4 R.I.A.A. 82, 87 (1926)

<sup>56</sup> Velasquez-Rodriguez v. Honduras, *supra* note 52 ¶ 160-63.

**A. Juvenlandia violated Articles 1(1) and 2 of the Convention when it failed to exercise due diligence to protect Maria and Felicitas' fundamental human rights from private actors.**

Article 1(1) of the Convention requires states to respect and protect the fundamental rights set out in the Convention.<sup>57</sup> Failing to protect these rights results in a violation of Article 1(1).<sup>58</sup> This Court has interpreted common convention provisions including such as “to ensure” and “to respect,” also present in the Convention, to impose a sweeping obligation on states to exercise due diligence to prevent, investigate, punish, and remedy human rights violations.<sup>59</sup>

Additionally, Article 2 of the Convention obligates states to create legislative measures to protect the rights and freedoms upheld in the Convention.<sup>60</sup> The existence of a legal system or a constitutional domestic law does not fulfill the affirmative duty requirement.<sup>61</sup> Instead, states must both enact and enforce criminal legislation to punish the violators and preserve the law.<sup>62</sup> The clearest example of a state’s obligation “to ensure” human rights is set out by this Court in the *Velasquez Rodriguez Case*. In

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<sup>57</sup> Organization of the American States, American Convention on Human Rights, Art. 1(1), Nov. 22, 1969, O.A.S.T.S. No. 36.

<sup>58</sup> *Velasquez Rodriguez v. Honduras*, supra note 53, ¶¶ 160-67, 182.

<sup>59</sup> *Id.* at ¶¶ 160-67, 173-74; American Convention, supra note 57, Art.1(1); see Geneva Convention I, supra note 53, art. 1; Geneva Convention II, supra note 53, Art. 1; Geneva Convention III, supra note 53, Art. 1; Geneva Convention IV, supra note 53, Art. 1; see United Nations, International Covenant on Civil and Political Rights, article 2(1), March 23, 1976, 999 U.N.T.S. 171; See e.g., Thomas Buergenthal, State Obligations and Permissible Derogations in The International Bill of Rights, 77 (1981); *Ireland v. United Kingdom*, 25 Eur. Ct. H.R., (ser. A), ¶239 (1978)

<sup>60</sup> American Convention, supra note 57, Art. 2

<sup>61</sup> International Responsibility for the Promulgation and Enforcement of Laws in Violation of the convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94, Inter. Am. Ct. H.R. (ser. A.) No. 14, ¶ 58 (Dec. 9, 1994); see Cecilia Medina, Toward a More Effective Guarantee of the Enjoyment of Human Rights by Women in the Inter-American System, in *Human Rights of Women, National and International Perspectives* 257-58 (1994).

<sup>62</sup> Anthony P. Ewing, Article, Establishing State Responsibility For Private Acts Of Violence Against Women Under The American Convention On Human Rights, 26 Colum. Human Rights L. Rev. 751, 776-77 (1995)(hereinafter “Ewing, State Responsibility”); See generally, Dinah Shelton, Private Violence, Public Wrongs and the Responsibilities of States, 13 Fordham Intl. L. J. 1, 23 (1989); *Velasquez-Rodriguez v. Honduras*, supra note 52, ¶173-174; see General Recommendation No. 19, Jan. 29, 1992, U.N. Doc. CEDAW/C/1992/L.1/Add. 15, ¶10 (hereinafter “General Recommendation No. 19”).

*Velasquez*, this Court held the Honduran government responsible for a violation of the Convention when it failed to investigate disappearances, punish the guilty, and compensate the victim's families.<sup>63</sup>

In the present case, similar to the Honduran government in *Velasquez*, Juvenlandia should be held responsible for violating Articles 1(1) and 2 of the Convention because it failed to investigate and punish the private actors who deprived Maria and Felicitas of their human dignities. Also, Juvenlandia violated Articles 1(1) and 2 when it failed to remedy and compensate Maria and Felicitas. Further, similar to the crime pattern in *Velasquez*, Juvenlandia knew and tolerated a pattern of sexually violent crimes in violation of the Convention. Currently, there are over one hundred cases of the trafficking of women pending in Juvenlandia's judiciary.<sup>64</sup> Additionally, unofficial information indicates not only thousands of similar offenses within Juvenlandia, but also the specific locations where these human rights violations occur. This issue has been publicized in documentaries and news programs.<sup>65</sup> Therefore, consistent with its previous ruling in *Velasquez*, this Court should hold Juvenlandia accountable because it breached its obligations under Articles 1(1) and 2 when it failed to respond to these human rights violations.

**B. Juvenladia violated Article 19 of the Convention when it failed to adopt special measures to provide a heightened level of protection for Maria, Felicitas, and Felicitas' son because all three victims were minors.**

Article 19 of the Convention states that every child is entitled to special measures of protection by his family, society.<sup>66</sup> This Article, in conjunction with Article 1(1) of

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<sup>63</sup>-Rodriguez v. Honduras, supra note 53, ¶ 180

<sup>64</sup> Clarification Questions and Answers ¶ 21

<sup>65</sup> *Id.*

<sup>66</sup> American Convention, supra note 57, Art. 19.

the Convention, requires that states adopt all necessary measures to protect children against mistreatment by either public authorities or private conduct.<sup>67</sup> States have an elevated duty to provide children with special care and to adopt positive measures to ensure effective exercise of their human rights because of their immaturity and inexperience.<sup>68</sup>

This Court incorporates the Convention on the Rights of the Child (“CRC”) as well as other treaties to establish the scope of human rights that the states must protect in Article 19.”<sup>69</sup> The Convention and the CRC comprise an “extremely comprehensive international *corpus juris* for the protection of children’s rights that the Court is bound to observe.”<sup>70</sup> Consistent with Article 19 and the CRC, this Court has held that states have an obligation to adopt all necessary measures to provide minors with a heightened level of protection to ensure their best interests.<sup>71</sup> States comply with this standard only when they implement economic, judicial, social, and cultural measures that protect a child’s right to life and humane treatment.<sup>72</sup>

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<sup>67</sup>Judicial Condition and Human Rights of the Child, Advisory Opinion OC-17/02, Inter-Am Ct. H.R. (ser. A) No. 17, ¶ 87 (Aug. 28, 2002).

<sup>68</sup>*Id.* at ¶¶ 60, 88; see also United Nations, Convention on the Rights of the Child, Preamble, Nov. 20, 1989, 1577 U.N.T.S. 3.; International Covenant on Civil and Political Rights, *supra* note 59, Article 23(4) and 24(1); United Nations, International Covenant on Economic, Social and Cultural Rights, Article 10(3), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>69</sup> Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Cost, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 148 (Sept. 2, 2004); Gomez Paquiyauri Brothers v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 166 (July. 8, 2004); Villan-Morales v. Guatemala, Merits, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 194 (Nov.19, 1999); Advisory Opinion OC-17/02, *supra* note 69, ¶ 24.

<sup>70</sup>*Id.*

<sup>71</sup> Advisory Opinion OC 17/02, *supra* note 67 ¶ 59; *see also* Convention on the Rights of the Child, *supra* note 70, Art. 3; United Nation General Assembly Declaration on the Rights of the Child, Nov. 20, 1959, Principle 2, G.A. Res. 1386, UN Doc A/4354; American Convention, *supra* note 59, Art. 19; International Covenant on Civil and Political Rights, *supra* note 59, Art. 10(3)(b) and 24; International Covenant on Economic, Social and Cultural rights, *supra* note 68, Art. 10; Universal Declaration of Human Rights, Art. 25(2), Art. 26(3), GA Res. 217, U.N. Doc A/ 810.

<sup>72</sup> Juvenile Reeducation Institute v. Paraguay, *supra* note 69 ¶ 149

By ratifying the CRC,<sup>73</sup> Juvenlandia is implicitly bound to uphold the affirmative obligations regarding minors set forth in both the CRC and Article 19 of the Convention. Both the Court and the Commission have adopted the definition of “minor” as set forth in Article 1 of the CRC to include every human being below the age of eighteen years.<sup>74</sup> States violate Article 19 and the CRC when they fail to protect minors regardless of whether the state national majority age is attained prior to eighteen.<sup>75</sup> All of the victims in this case are minors and accordingly, were deprived of their fundamental human rights in violation of Article 19 and the CRC.

In this case, Juvenlandia violated Article 19 when it failed to take measures to protect the best interests and human rights of Maria, Felicitas, and Felicitas’ son. Further, Juvenlandia violated Article 1(1) when it failed to investigate and punish those responsible for the human rights violations set forth in the convention. Therefore, for the following reasons Juvenlandia violated Articles 19 and 1(1) of the Convention as interpreted by the CRC regarding Maria, Felicitas and Felicitas’ son.

### **III. JUVENLANDIA VIOLATED ARTICLES 5, 6 AND 19 OF THE CONVENTION WHEN IT FAILED TO ENSURE MARIA AND FELICITAS’ RIGHT TO HUMANE TREATMENT FREE FROM TORTURE, RAPE, AND TRAFFICKING.**

Article 5 of the Convention protects an individual’s right to humane treatment.<sup>76</sup> This right is a fundamental, non-derogable right under both customary and humanitarian

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<sup>73</sup> Hypothetical Footnote 1.

<sup>74</sup> Advisory Opinion OC 17/02, supra note 67 ¶ 42; Annual Report of the Inter-American Commission on Human Rights (1991), Chap. VI., OEA/Ser. L/V/II.81, Doc. 6 rev 1, (Feb. 14, 1992).

<sup>75</sup> General Comment 17, Rights of the child, 07/24/89, ¶ 4, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/cc0f1f8c391478b7c12563ed004b35e3](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3)

<sup>76</sup> See American Convention, supra note 59, Art. 5



international law.<sup>77</sup> The prohibition of torture is so entrenched in the *corpus juris* of international law that it has acquired a status of *erga omnes* obligations for states and *jus cogens* in international law.<sup>78</sup> As a result, states have an obligation to prosecute and punish gross violations of human rights, including acts of torture.<sup>79</sup> Therefore, Juvenlandia failed to fulfill its international obligation because it never prosecuted nor punished the parties responsible for the torture, rape, and trafficking of Maria and Felicitas<sup>80</sup>

**A. Juvenlandia violated Articles 5(1), 1(1), 7(1), and 19 of the Convention when it failed to protect the moral, mental, and physical integrity of both Maria and Felicitas.**

Article 5(1) of the Convention requires states to protect an individual's physical and mental integrity.<sup>81</sup> Sexual assault and domestic violence violate Article 5(1) because both acts of violence deprive a person of mental and physical integrity.<sup>82</sup> The European Commission ruled that rape violates an individual's right to "respect for personal

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<sup>77</sup> *Id.* at Art.5(2); Catherine M. Grosso, Note, International Law in the Domestic Arena: The Case of Torture in Israel, 86 Iowa L. Rev. 305, 308 (2000).

<sup>78</sup> See Organization of American States, American Declaration on the Rights and Duties of Man, Art. II, Apr. 22, 1948, O.A.S. Res. XXX (hereinafter "American Declaration"); American Convention, *supra* note 59, Art. 5; Inter-American Convention to Prevent and Punish Torture, *supra* note 53, Art. 1; Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, Nov. 4, 1950, 213U.N.T.S. 211; African Charter on Human and Peoples' Rights, Art. 5, June 27, 1981, O.A.U.Doc.CAB/LEG/67/3 rev. 5; International and Political Rights, *supra* note 59, Art. 7; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 9, 1975 G.A. Res. 3452, U.N.Doc. A/10034; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, Art.2(2), G.A. Res. 46, U.N. Doc. E/CN.4/1984/72(hereinafter "UN Convention Against Torture"); Convention on the Rights of the Child, *supra* note 70, Art. 37; Declaration on the Elimination of Violence Against Women, Dec. 20, 1993, G.A. Res. 104, U.N. Doc. A/RES/48/104; *see generally*, Robert K. Goldman, Trivializing Torture: The Office of Legal Counsel's 2002 Opinion Letter and International Law Against Torture, 12 Am. U. Hum. Rts. Brief 1 (2004).

<sup>79</sup> International Covenant of Civil and Political Rights, *supra* note 59, Art 7; Inter-American Convention to Prevent and Punish Torture, *supra* note 78, Art. 1.

<sup>80</sup> Clarification Questions and Answers 21.

<sup>81</sup> American Convention, *supra* note 57, Art. 5(1), 1(1); *see also* International Covenant on Civil and Political Rights, *supra* note 59, Art. 2; *see Loayza Tamayo v. Peru*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 57 (Sept. 17, 1997).

<sup>82</sup> *See Ewing, State Responsibility*, *supra* note 62, at 763.

integrity” and thus violates 5(1) of the Convention.<sup>83</sup> Further, Article 5 in conjunction with Article 1(1) obligates state parties to protect these rights from violations by public as well as private actors.<sup>84</sup> In the instant case, both Maria and Felicitas were repeatedly raped and brutalized by private actors and thus were deprived of their physical and moral integrity in violation of Article 5(1) of the Convention.

This Court, in the context of forced disappearance cases, has held that isolation and the condition of incommunicado by itself violates Article 5(1) because this treatment deprives a person of personal integrity and the right to dignity.<sup>85</sup> In the present case, similar to forced disappearances, the private actors deprived the girls of their physical and mental integrity when they imprisoned and isolated them in the brothel without the ability to contact anyone.<sup>86</sup> Juvenlandia violated Articles 5(1) and 1(1) when it failed to exercise due diligence to prevent private actors from depriving the girls of their physical, mental and moral integrity.

Additionally, any act of coercion that deprives a person of his right to physical liberty also deprives the person of his right to personal liberty and security under Article 7(1).<sup>87</sup> The private actors abused and forced the girls to work and live in the brothel thus violating Maria and Felicitas’ right to physical integrity and personal liberty.<sup>88</sup> Also, Juvenlandia violated its obligations under Article 1(1) when its government officials failed to investigate the brothel. The officials not only ignored the obvious signs of

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<sup>83</sup> See *Aydin v. Turkey*, No. 23178/94, Eur. Comm’n H.R. ¶ 189 (1996).

<sup>84</sup> *Velasquez-Rodriguez v. Honduras*, supra note 52, ¶ 166.

<sup>85</sup> *Id.* at ¶¶156, 187; See *Suarez Rosero v. Ecuador*, Merits, Inter-Am. Ct. H.R. (ser. C), No. 35, ¶ 72 (Nov. 12, 1997); See also *Loayza Tamayo v. Peru*, supra note 81, ¶ 57.

<sup>86</sup> Hypothetical ¶ 16

<sup>87</sup> *Ewing*, State Responsibility, supra note 62 at 763; American Convention, supra note 57, Art. 7(1).

<sup>88</sup> Hypothetical ¶ 16

physical and sexual abuse,<sup>89</sup> but they also socialized with the girls' captors.<sup>90</sup> Thus, Juvenlandia violated Articles 5(1), 1(1), and 7(1) of the Convention when it knowingly failed to prevent and protect the physical and mental integrity as well as the personal liberty of both Maria and Felicitas. Lastly, Juvenlandia violated Article 19 because these human rights deprivations were directed against minors.

**B. Juvenlandia violated Articles 5(2), 1(1), and 19 of the Convention because it failed to prevent, investigate, and prosecute private actors who tortured both Maria and Felicitas.**

Article 5(2) of the Convention requires states to guarantee that no person shall be subjected to torture, cruel, inhuman or degrading punishment or treatment.<sup>91</sup> The Inter-American system has defined torture as the infliction of any intentional physical pain or suffering or any drug-based techniques that are intended to obliterate a person's mental or physical capabilities.<sup>92</sup> Further, the Commission has held that rape<sup>93</sup> falls within the concept of torture.<sup>94</sup>

Rape is recognized as a form of torture because it is particularly cruel, involves severe physical suffering, and directly deprives a victim of physical and moral integrity.<sup>95</sup>

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<sup>89</sup> Hypothetical ¶ 14-16

<sup>90</sup> Hypothetical ¶ 17

<sup>91</sup> American Convention, *supra* note 57, Art. 5(2).

<sup>92</sup> Scott Davidson, *No More Broken Bodies or Minds: The Definition and Control of Torture in the Late Twentieth Century*, 6 *Canterbury L. Rev.* 25-55, 41-9 (1995); Inter-American Convention to Prevent and Punish Torture, *supra* note 53, Art. 5; David Harris & Stephen Livingstone, *The Inter-American System of Human Rights*, 229, (1998); *See* *Martí de Mejía v. Peru*, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, OEA/Ser.L/V/II.91 Doc. 7 ¶ 182-88 (1996); *See*, U.N. Convention Against Torture, *supra* note 78, Art.1.

<sup>93</sup> *Martí de Mejía v. Peru*, *supra* note 93, ¶ 157.

<sup>94</sup> Annual Report of the Inter-American Commission on Human Rights (1981-2), Report on Bolivia, Case 7481, available at <http://www.cidh.org/annualrep/81.82sp/cap.5.htm>; Annual Report of the Inter-American Commission on Human Rights (1995), Report on Peru, Case 10.970, <http://www.cidh.oas.org/annualrep/95eng/Peru10970.htm>.

<sup>95</sup> *See* *Aydin v. Turkey*, No. 23178/94, Eur. Comm'n H.R. ¶ 61, 64, (1996); Report of the Human Rights Situation in Haiti, OEA/Ser.L/V/II.88 Doc. 10 rev., ¶ 134 (1995); Statute of Yugoslavia Tribunal, art. 3, in U.N. Sec. Council Res. 827, May 25 1993, 32 I.L.M. 1203 (1993); Statute of Rwanda Tribunal, art. 3, in U.N. Sec. Council Res. 955, Nov. 8, 1994, U.N. Doc. S/Res/955 (1994).

Additionally, the international community requires states to investigate and take action against crimes against humanity.<sup>96</sup> Rape, sexual slavery, and forced prostitution are considered crimes against humanity<sup>97</sup> and are violations of customary law under the Geneva Conventions.<sup>98</sup>

States fail to meet their obligations under the Convention and customary law when they fail to respond to inadequate state officers<sup>99</sup> or ineffective prosecution<sup>100</sup> of reasonably anticipated human rights violations. Specifically, when state officials and judges fail to investigate and prosecute violence against women, the states are held accountable by the court.<sup>101</sup> Articles 1(1) and 2 reaffirm that states have an obligation to both react to human rights violations and to prevent these violations.<sup>102</sup>

In the instant case, it is clear that Maria and Felicitas were tortured. The girls were intentionally beaten and raped on a constant basis by their captors as well as numerous “customers.” The girls were frequently given pills, which would cause them to lose consciousness.<sup>103</sup> After taking the pills, Maria and Felicitas would wake up naked, and beaten on a blood-stained mattress without any recollection of what had occurred.<sup>104</sup> Juvenlandia violated Articles 5(2) and 1(1) of the Convention when it failed to prosecute the private actors responsible for raping Maria and Felicitas.<sup>105</sup> Also, Juvenlandia failed

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<sup>96</sup> Naomi Roht-Arriaza, Comment, State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law, 78 Calif. L. Rev. 451, 462 (1990); see Velasquez Rodriguez v. Honduras, supra note 52, ¶¶ 149-158.

<sup>97</sup> See Rome Statute of the International Criminal Court, art. 7(1)(g), 37 I.L.M. at 1004.

<sup>98</sup> U.S. Dept. of State, Letter from Robert A. Bradtke, Acting Assistant Secretary for Legislative Affairs, to Senior Arlen Specter (Jan. 27, 1993).

<sup>99</sup> See, e.g., Gr. Brit. v. U.S., 6 R.I.A.A. 160 (1926).

<sup>100</sup> See, e.g. U.S. v. Mex., supra note 55, at 87.

<sup>101</sup> See Katherine Culliton, Article, Finding a Mechanism To Enforce Women’s Right to State Protection From Domestic Violence In The Americas, 34 Harv. Int’l L.J. 507, 522 (1993).

<sup>102</sup> Velasquez –Rodriguez v. Honduras, supra note 52, ¶72

<sup>103</sup> Hypothetical ¶¶15, 16.

<sup>104</sup> Hypothetical ¶¶ 16-17

<sup>105</sup> Clarification Questions and Answers 54

to prosecute the police officers who visited the brothel and ignored the obvious signs of abuse. Thus, Juvenlandia has breached its obligation under Articles 5(2), 1(1) and 19 because all of the victims of these human rights violations were minors.

**C. Juvenlandia violated Articles 6(1) and 1(1) of the Convention when it failed to Protect Maria and Felicitas from trafficking.**

States have a duty to exercise due diligence to prevent and respond to acts of violence against women under customary law.<sup>106</sup> Trafficking is primarily a violent crime against women.<sup>107</sup> States have a responsibility to prevent and investigate trafficking<sup>108</sup> because the very act itself deprives a person of what is most essential to them: their life, liberty, physical welfare, health and dignity.<sup>109</sup>

Article 6(1) of the Convention explicitly says that no person shall be subjected to any form of slavery including trafficking in women.<sup>110</sup> Trafficking is the recruitment, transfer or receipt of women for the purpose of exploitation, which includes sexual exploitation and prostitution.<sup>111</sup> States exercise due diligence when they prevent trafficking by regulating their borders.<sup>112</sup> States fail to exercise due diligence when they

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<sup>106</sup> See Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The due Diligence Standard as a Tool for the Elimination of Violence Against Women, PP 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (prepared by Yakin Erturk) available at <http://www.unhcr.org/refworld/docid/45377afb0.html>; see also General Recommendation No. 19, supra note 62; Declaration on the Elimination of Violence Against Women, supra note 79; Rebecca Cook, Article, State Responsibility for Violations of Women's Humans Rights, 7 Harv. Hum. Rts. J. 125, 151 (1994).

<sup>107</sup> See Viviana Waisman, Article, Human Trafficking: State Obligations to Protect Victims' Rights, the Current Framework and a New Due Diligence Standard, 33 Hastings Int'l & Comp. L. Rev. 385, 386 (2010)(hereinafter "Waisman, Human Trafficking").

<sup>108</sup> See United Nations Convention against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, U.N. Doc. A/RES/55/25 (hereinafter "Palermo Protocol").

<sup>109</sup> See also, Wasiman, Human Trafficking, supra note 107 at 385-86

<sup>110</sup> American Convention, supra note 57, Art. 6(1)

<sup>111</sup> Palermo Protocol, supra note 108, Art. 3(a).

<sup>112</sup> *Id.* at art. 9(1) and art. 11(1).

know or should have know of a pattern of violence and fail to respond.<sup>113</sup>

Additionally, Article 6(1) is always read in light of Articles 1(1) and (2) which impose a positive duty on the state to ensure the no person is a victim of sexual slavery.<sup>114</sup> This Court has required states to “adopt comprehensive measures to comply with due diligence in cases of violence against women” in order to fulfill its obligation under 1(1).<sup>115</sup> Therefore, states must not only prevent violence, but must also respond to complaints of human rights violations.<sup>116</sup> The Commission held that Brazil violated its due diligence obligation because the state tolerated a general pattern of violence against women when it failed to prosecute the aggressors.<sup>117</sup>

In this case, both Maria and Felicitas were victims of trafficking. “Pirucha” targeted Maria because she was a child, female, and impoverished. Juvenlandia violated Articles 6 and 1(1) of the Convention when it failed to prevent trafficking by regulating its borders. Not only did the Customs officers in Juvenlandia fail to inspect the van transporting the girls, but the officers accepted an “envelope” from Maria and Felicitas’ captors.<sup>118</sup> Additionally, the Customs officers violated Juvenlandian law when they allowed the girls to enter the country. Under its code, a person must provide an identification card to enter Juvenlandia. Minors have an additional requirement to present a written document with express permission from their parents and signed by a

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<sup>113</sup> Waisman, Human Trafficking, *supra* note 109, at 412; *see Osman v. United Kingdom*, App. No. 23452/94, 1998-VIII Eur. Ct. H.R. ¶ 115; *Z. and Others v. The United Kingdom*, App. No. 29892/95, 2001-V Eur. Ct. H.R.

<sup>114</sup> Judicial Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct.H.R. (Ser. A) No 18 ¶78-81 (Sept. 17, 2003).

<sup>115</sup> *Gonzalez v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 258 (Nov. 16, 2009).

<sup>116</sup> *Id.*; *See also Velasquez-Rodriguez v. Honduras*, *supra* note 52, ¶ 173.

<sup>117</sup> *See Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, ¶56 (2001).

<sup>118</sup> Hypothetical ¶ 11

notary public.<sup>119</sup> Neither Maria nor Felicitas' parents provided the girls with the requisite written consent necessary to enter Juvenlandia.<sup>120</sup>

Juvenlandia also failed to exercise due diligence because it knew or should have known about the trafficking and failed to prosecute the private actors responsible for the human rights violation. Juvenlandia knew about the pattern of trafficking because there were over one hundred trafficking claims pending in their court system and the media had publicized the issue.<sup>121</sup> Therefore, when Juvenlandia failed to regulate its borders and prosecute the private actors responsible for the trafficking, it created a pattern of state-condoned violence against women in violation of Articles 6 and 1(1).

Additionally, trafficking in women violates a woman's right to physical integrity,<sup>122</sup> personal liberty,<sup>123</sup> and the right to freedom of movement.<sup>124</sup> Article 22(1) requires states to ensure that every person has the right to freely move within a territory.<sup>125</sup> Both Maria and Felicitas were deprived of that freedom because the private actors forced them to live and stay in the brothel. Additionally, when the girls entered Juvenlandia, their captors confiscated their papers and forced them to stay in the country without any form of identification.<sup>126</sup> Thus, Juvenlandia violated Articles 6(1), 7(1), 19, and 22(1) when it failed to take preventative measures and prosecute the aggressors to protect Maria and Felicitas, both minors, from trafficking.

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<sup>119</sup> Clarification Questions and Answers 41.

<sup>120</sup> Hypothetical ¶ 7-8

<sup>121</sup> Clarification Questions and Answers 21

<sup>122</sup> American Convention, supra note 57, Art. 5(1)

<sup>123</sup> American Convention, supra note 57, Art. 7(1)

<sup>124</sup> American Convention, supra note 57, Article 22(1); *see generally* Ewing, State Responsibility, supra note 62.

<sup>125</sup> American Convention, supra note 57, Article 22(1).

<sup>126</sup> Hypothetical ¶ 15

**IV. JUVENLANDIA VIOLATED ARTICLES 8, 19, AND 25 WHEN IT FAILED TO PROVIDE MARIA, FELICITAS, AND FELICITAS'S SON WITH BASIC JUDICIAL GUARANTEES AND EFFECTIVE LEGAL RECOURSE.**

Article 8 of the Convention requires states to protect a person's right to a fair trial and due process of law.<sup>127</sup> Similarly, Article 25(1) guarantees the right of all persons to prompt and effective recourse to a competent court for fundamental rights violations.<sup>128</sup> Articles 1(1) and 2 as well as Articles 8 and 25, require states to protect these rights by enacting and enforcing domestic legislation which provides victims with an opportunity to remedy their human rights violations.<sup>129</sup> The guarantees set forth in Articles 8 and 25 of the Convention are applicable for all persons and should be especially enforced in light of Article 19 to all judicial and administrative proceedings involving the rights of children.<sup>130</sup> Therefore, states have an obligation to adopt specific measures for children to effectively protect the same rights and guarantees granted to adults.<sup>131</sup>

**A. Juvenlandia violated Articles 5(5), 8(1), 8(2)(h) and 25 of the Convention when it deprived Maria of her right to a fair trial in her criminal murder case.**

Article 8(1) of the Convention requires states to provide every person with the right to a fair trial.<sup>132</sup> This Court will examine a state's domestic judicial proceedings, in

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<sup>127</sup> Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights) Advisory Opinion OC-9/87, Inter-Am. Ct. H.R. (ser. A), No. 9, ¶ 28 (Oct. 6, 1987).

<sup>128</sup> American Convention, supra note 57, ¶ Art. 25 (1); Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87, Inter-Am Ct. H.R. (ser. A), No. 8, ¶ 32 (Jan. 30, 1987).

<sup>129</sup> See *Cesti Hurtado v. Peru*, Merits, Inter-Am. Ct. H.R. (ser C) No. 56, ¶ 121 (Sept. 29, 1999); *Castillo Paez v. Peru*, Merits, Inter-Am. Ct. H.R. (ser C), No. 34, ¶ 83 (Nov. 3, 1997); *Suarez Rosero v. Ecuador*, supra note 85 ¶ 65; *Villan-Morales v. Guatemala*, supra note 69 ¶ 164.

<sup>130</sup> Advisory Opinion OC 17/02, supra note 67 ¶ 95.

<sup>131</sup> *Id.* at ¶ 98; *Juvenile Reeducation Institute v. Paraguay*, supra note 69 ¶ 299;

<sup>132</sup> American Convention, supra note 57, Art. 8(1); Advisory Opinion OC 17/02, supra note 62 ¶ 115.



all instances, to determine whether the state violates this obligation.<sup>133</sup> Article 5(5) requires states, in cases involving minors, to provide specialized tribunals<sup>134</sup> as well as special criminal proceedings to protect a child's right to a fair trial.<sup>135</sup> Further, both this Court and the Commission have reaffirmed that minors facing criminal charges must be subjected to different courts than those for adults.<sup>136</sup> It is a universally accepted principle of customary law that a State that has ratified a human rights treaty must make the necessary amendments to its domestic laws to ensure proper compliance with the obligations it has undertaken.<sup>137</sup> As parties to the Convention, the States must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires.<sup>138</sup>

In the instant case, Juvenlandia violated Articles 2, 5(5), and 8 when it failed to enact legislation creating specialized tribunals for minors consistent with the Convention.<sup>139</sup> Even though Juvenlandia changed its justice system to include a juvenile code,<sup>140</sup> the state still ignored its obligation to create "specialized tribunals." As a result, Maria was denied due process when her sentence was pronounced by a regular court as a result of a plea bargain, which the Supreme Court of Juvenlandia affirmed.<sup>141</sup> Therefore, Juvenlandia violated Articles 2, 5(5) and 19 of the Convention because it failed to adopt

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<sup>133</sup> Villan-Morales v. Guatemala, supra note 69 ¶ 224; see also Edward v. United Kingdom, Eur. Ct. H.R. (ser. A), No. 247-B, ¶ 34-35 (1992); Vidal v. Belgium, Eur. Ct. H.R. (ser. A), No. 235-B, ¶ 32-33 (1992).

<sup>134</sup> American Convention, supra note 57, Art. 5(5).

<sup>135</sup> Juvenile Reeducation Institute v. Paraguay, supra note 69 ¶ 210.

<sup>136</sup> Advisory Opinion OC 17/02, supra note 62, ¶ 109; Minors in Detention v. Honduras, Case 11.491, Inter-Am. Comm'n H.R., Report No.41/99, ¶ 99 (1999).

<sup>137</sup> Bulacio v. Argentina, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 140 (Sept. 18, 2003); Five Prisoners v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), No. 98, ¶ 164 (Feb. 28, 2003); Cantos v. Argentina, Merits, Reparations and Cost, Inter-Am-Ct. H.R. (ser. C), No. 97, ¶59 (Nov. 28, 2002).

<sup>138</sup> *Id.*

<sup>139</sup> Hypothetical ¶ 44.

<sup>140</sup> Clarification Questions & Answers, ¶ 62.

<sup>141</sup> Hypothetical, ¶ 44

legislation to create special juvenile courts in violation of the Convention. Juvenlandia also violated Article 8 of the Convention because it did not protect Maria's right to due process of law when it allowed a regular court to adjudicate her murder case.

Additionally, Juvenlandia violated Article 8(2)(h) of the Convention, which requires states to provide a person with the opportunity to appeal to guarantee his due process rights.<sup>142</sup> This Court held that the right to appeal as a legal recourse is only effective when it provides remedies and redresses human rights violations.<sup>143</sup>

Juvenlandia violated Articles 8(2)(h) and 25(1) of the Convention because it did not afford Maria an effective right to appeal. Juvenlandia's Supreme Court allowed Maria to appeal *in forma pauperis* because the court recognized that Maria lacked a proper defense in her murder case. However, Juvenlandia still affirmed Maria's prior conviction without allowing her to present any new information, thus denying her effective appeal and legal recourse.<sup>144</sup> Specifically, Juvenlandia's Supreme Court acknowledged that Maria's public defender did not provide her with a proper defense. The public defender failed to challenge the special mandatory jurisdiction involving minors, the constitutionality of the plea bargain, the legal excuse of rape, and the heat of passion defense.<sup>145</sup> Additionally, the public defender did not specialize in juvenile defense and ignored the procedural safeguards associated with minors who are victims of

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<sup>142</sup> American Convention, supra note 57, Art. 8.2.(h); *See also* Convention on the Rights of the Child, supra note 70, Art. 40 (b); *see also* International Covenant on Civil and Political Rights, supra note 59, Art. 14.5; *see also* Report on the Situation of Human Rights in Panama (1978), Ch. IV, p. 116, OEA/Ser.L/V/II.44, doc. 38, rev. 1, (June 22, 1978); Report on the Situation of Human Rights in Nicaragua (1981), doc. 25, p. 168 OEA/Ser.L/V/II.53, (June 30, 1981); The Secretary General, Report of the Secretary-General (1993), UN Doc. S/25704 and Add.1, 3 May 1993, ¶ 116.

<sup>143</sup> Advisory Opinion OC 9/87, supra note 127, ¶ 24; *See also* Five Pensioners v Peru, supra note 137 ¶ 126; *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No 66, ¶ 112 (Feb. 1, 2000); *Bámaca Velásquez v Guatemala*, Merits, Inter-Am. Ct. H.R. (ser. C) No 70, ¶ 191, (Nov. 25, 2000).

<sup>144</sup> Hypothetical ¶ 42

<sup>145</sup> *Id.*

human trafficking. Therefore, Juvenlandia violated Articles 8(2)(h) and 25 of the Convention because it failed in its obligation to guarantee Maria an effective right to appeal when it denied her right to challenge the public defender's ineffective defense.

**B. Juvenlandia violated Articles 8 and 25 when it failed to ensure Maria's right to a fair trial and effective recourse in her abortion case.**

Juvenlandia violated Maria's right to a fair trial in her abortion case because it failed to provide her with legal counsel in violation of Article 8(e)(2) of the Convention. Additionally, because she was incarcerated without a trial for a period of ten months, Juvenlandia also violated Articles 25(1) and 7(6) of the Convention.

**i. Juvenlandia violated Articles 8(2)(e) and 19 of the Convention because it failed to provide Maria with legal counsel when she was arrested for abortion.**

Article 8(2)(e) of the Convention requires states, in criminal matters, to provide a defendant with counsel.<sup>146</sup> Both this Court and the Commission have held the right to counsel as inalienable and thus requires states to provide a defendant with counsel in order to guarantee a fair hearing.<sup>147</sup> Juvenlandia violated its obligation under Article 8(2)(e) because it never provided Maria with legal counsel in her abortion case. Maria was charged and spent ten months in prison before a women's association obtained an attorney for her. Maria was released immediately upon the attorney's request.<sup>148</sup> Therefore, Juvenlandia violated not only Article 8(2)(e), but also Article 19 of the

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<sup>146</sup> American Convention, supra note 57, Art. 8(2)(e); see also International Covenant on Civil and Political Rights, supra note 59, art. 14.5.

<sup>147</sup> Exemptions to the Exhaustion of Domestic Remedies (Art. 46 (1), 46 (2) (a) and 46 (2) (b) American Convention on Human Rights), Advisory Opinion OC-11/90, Inter-Am Ct. H.R. (ser. A), No 11, ¶¶ 24 -29, (Aug. 10, 1990); see also Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶¶ 140, 148 (Sept. 1, 2001); Desmond McKenzie v Jamaica, Case 12.023, Inter-Am. Comm'n H.R., Report No. 41/00, ¶¶ 311-316 (2000); Michael Edwards et al v Bahamas, Case 12.067, , Inter-Am. Comm'n H.R. Report No. 48/01, ¶¶ 201-207 (2001); Report on the Situation of Human Rights in Guatemala, (1983), OEA/Ser.L/V/II.61, ¶ 95 (Oct. 5, 1983); Report on the Situation of Human Rights in Suriname (1983), OEA/Ser.L/V/II.61, doc.6 rev. 1, ¶ 68 (Oct. 5, 1983).

<sup>148</sup> Hypothetical ¶ 23

Convention when it failed to provide Maria legal counsel for her abortion case. Maria is a minor and Juvenlandia failed in its obligation to employ special measures to protect her fundamental right to a fair trial.

**ii. Juvenlandia violated Articles 25(1) and 19 of the Convention because it did not afford Maria prompt recourse for her abortion case.**

Article 25 requires states to provide individuals with simple and prompt legal recourse.<sup>149</sup> Legal recourse is not “effective” if it is not decided within a time frame that enables the violation of the right to be remedied.<sup>150</sup> In determining whether a judicial proceeding was prompt, this Court considers the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.<sup>151</sup> In *Suarez Rosero v. Ecuador*, this Court found that a delay of four years and two months between the victim’s arrest and resolution of the final appeal exceeded the reasonable time contemplated in the Convention.<sup>152</sup> It is clear that Juvenlandia violated its obligation to provide prompt recourse in Maria’s abortion case because the case was pending for over six years before coming before the Commission. Currently, her abortion case is still awaiting trial in Juvenlandia’s court.<sup>153</sup>

Additionally, Maria’s abortion case is precluded by the statute of limitation as established in Juvenlandia’s Criminal Code.<sup>154</sup> The Code provides that a criminal action is precluded by the statute of limitations once a period of time equal to the maximum

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<sup>149</sup> American Convention, supra note 57, Art. 25(1).

<sup>150</sup> *Juvenile Reeducation Institute v. Paraguay*, supra note 69 ¶ 245.

<sup>151</sup> See *Rosero v. Ecuador*, supra note 85 ¶ 72 (Nov. 12, 1997); see also *Genie Lacayo v. Nicaragua*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 30, ¶ 77 (Jan. 29, 1997);

<sup>152</sup> *Suarez Rosero v. Ecuador*, supra note 85 ¶ 73.

<sup>153</sup> *Id.* at ¶ 73.

<sup>154</sup> Hypothetical ¶¶ 18, 56

<sup>154</sup> See Clarification Questions & Answers ¶ 64

possible sentence has elapsed.<sup>155</sup> In Juvenlandia, abortion is punishable by a term of imprisonment of one to four years.<sup>156</sup> However, Maria's abortion case has been pending for six years. Therefore, Juvenlandia violated Article 25(1) of the Convention as well as its own Criminal Code when it failed to provide Maria timely legal recourse because it refused to grant her the relief mandated by the statute of limitations.

**iii. Juvenlandia violated Article 7(6) of the Convention when it incarcerated Maria before submitting her case to a competent tribunal.**

Article 7(6) of Convention requires that states must provide prompt recourse to a competent court to decide the lawfulness of detention following an arrest.<sup>157</sup> A pre-trial incarceration for long periods of time violates a defendant's presumption of innocence.<sup>158</sup> Failure to comply with these requirements is equivalent to a sentence without a conviction.<sup>159</sup> In cases involving minors, detention before trial is avoided unless there are exceptional circumstances.<sup>160</sup> If minors are detained before trial, the juvenile court must expeditiously process the case to ensure the least amount of detention time possible. If detention is necessary, courts must grant detention for the shortest period of time.<sup>161</sup>

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> American Convention, *supra* note 57, Art. 7(5); Juvenile Reeducation Institute v. Paraguay, *supra* note 69 ¶ 229.

<sup>158</sup> General Comment No. 10: Children's Rights in Juvenile Justice, P.80, U.N. Doc. CRC/C/GC/10 (Feb. 2, 2007), available at <http://www.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>159</sup> Suarez Rosero v. Ecuador, *supra* note 85 ¶ 77; *See also* United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13.2, G.A. Res. 45/113, U.N. Doc. A/45/49 (1990) (hereinafter "Beijing Rules"); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, Rule 17, G.A. Res. 45/113, U.N. Doc. A/45/49 (1990) (hereinafter "U.N. Rules")

<sup>160</sup> *See* Beijing Rules, *supra* note 159, Rule 13.1; U.N. Rules, *supra* note 159, Rule 17; Convention on the Rights of the Child, *supra* note 70, art. 37, 40(4); International Covenant on Civil and Political Rights, *supra* note 59, Art. 10.3.

<sup>161</sup> Convention on the Rights of the Child, *supra* note 68, Art. 37(b); U.N. Rules, *supra* note 159, Rule 17.

In the instant case, Maria was incarcerated for abortion for a period of ten months, and still has not had the opportunity to bring her case before a competent court.<sup>162</sup> This Court in *Bayarri v. Argentina* stated that detaining a person for seven day before any judicial review constituted a breach of Article 7(6).<sup>163</sup> Further, this court held in *Castillo-Petruzzi et al. v Peru*, that, even in a state of emergency, Peru violated the Convention when it detained a person for 36 days.<sup>164</sup> Juvenlandia violated Article 7(6) when it imprisoned Maria for ten months without bringing her case before a court. Additionally, Article 5(4) of the Convention requires states to separate accused and convicted person in prison.<sup>165</sup> Juvenlandia violated Article 5(4) when it failed to separate Maria from convicted women in prison. Therefore, Juvenlandia violated its obligation under Articles 7(6) and 5(4) because it failed to afford Maria the right to prompt recourse when it imprisoned her for months without any judicial review with convicted criminals. Also, Juvenlandia failed to adopt special measures to protect Maria's rights under Article 19.

**C. Juvenlandia violated Articles 8, 17, and 25 when it denied Felicitas and her son the right to a fair trial and right to family by affirming the invalid adoption of her son.**

Juvenlandia violated Felicitas' right to effective legal recourse when its courts affirmed the unlawful adoption of her son. Additionally, Juvenlandia violated Articles 17 and 19 of the Convention when it did not take appropriate measures to punish and prosecute the private actors responsible for the forced separation of Felicitas from her newborn.

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<sup>162</sup> Clarification Question and Answers, ¶ 59.

<sup>163</sup> *Bayarri v. Argentina*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H. R. (ser. C) No. 187, ¶ 67 (Oct. 30, 2008).

<sup>164</sup> *Catillo-Petruzzi at al v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 52 ¶ 110 (May 30, 1999).

<sup>165</sup> American Convention, *supra* note 57, Art. 5(4); *See also* UN Rules *supra* note 159, Rule 17; International Covenant on Civil and Political rights, *supra* note 59, Art. 10.2(a).

**i. Juvenlandia violated Articles 8 and 25 of the Convention when it affirmed the invalid adoption of Felicitas' son.**

Juvenlandia violated Articles 8 and 25 of the Convention when it failed to effectively review the invalid adoption of her baby. The adoption was invalid because Juvenlandia's Code of Civil Procedure requires the parents to affirm the de facto custody before a judge. Instead Felicitas was taken to an office, outside the presence of a judge, and forced by her captors to sign away her rights to her child.<sup>166</sup> Immediately afterwards, she was forced to return to the brothel. Additionally, Lucio, the father of the child, never consented to the adoption.

In spite of the invalid adoption, Juvenlandia affirmed the adoption without analyzing or investigating whether the adoption was lawful. Instead Juvenlandia affirmed the adoption as being in the best interests of the child. However, an adoption does not become legal only because the child would be better off in adoptive care.<sup>167</sup> Further, the European Court emphasized that judicial review for adoptions is a procedural safeguard against arbitrary removal of a child from his natural parents.<sup>168</sup> Juvenlandia violated Felicitas' right to a fair trial because at no time during the adoption process was a judge involved to oversee the proceedings and ensure the adoption was legal. Therefore, Juvenlandia violated Articles 8(1) and 25 of the Convention when it failed to provide Felicitas and Lucio access to effective judicial review in their son's adoption case.

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<sup>166</sup> Hypothetical ¶ 20

<sup>167</sup> *Olsson v. Sweden*, App. No. 10465/83, 11 Eur. Ct. H. R. Rep. 259, ¶ 72 (1987).

<sup>168</sup> *Id.*; see also *W. v. United Kingdom*, App. No. 9749/82 10 Eur. H. R. Rep. 29, P 64 (1988).

**ii. Juvenlandia violated Articles 17 and 19 of the Convention when it failed to prosecute those responsible for the unlawful separation of Felicitas and her son.**

Article 17 of the Convention requires states to protect and preserve the family unit.<sup>169</sup> A child has the right to receive protection against arbitrary or illegal interference with his family.<sup>170</sup> One such protection includes that a child is never separated from his family without judicial review.<sup>171</sup> The European Court of Human Rights held that it is extremely harsh to separate a newborn from his mother immediately after birth.”<sup>172</sup> Further, the court held that a baby should never be physically removed from his mother absent an extraordinary, compelling reason especially when neither parent has consented to the separation.<sup>173</sup>

In the instant case, Felicitas’ captors immediately separated Felicitas from her child without her consent. After giving birth, Felicitas was transferred back to the brothel without her baby. When she asked for her baby, her captors denied her request and told her that the child had to stay in the intensive care unit at the clinic. Only one week later, Felicitas was forced to sign away her rights to her baby.<sup>174</sup> Therefore, Juvenlandia violated Articles 17 and 19 of the Convention pursuant to Articles 1(1) and 2 when it failed to take appropriate measures to punish and prosecute the private actors responsible for the unlawful separation of Felicitas from her newborn.

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<sup>169</sup> American Convention, supra note 57, Art. 17; Convention on the rights of the child, supra note 70, Art. 9(1).

<sup>170</sup> American Declaration, supra note 78, Art. V; International Covenant on Civil and Political Rights, supra note 59, Art. 17; American Convention, supra note 57, Art. 17; Advisory Opinion 17/02, supra note 67 ¶ 71.

<sup>171</sup> Convention on the Rights of the Child, supra note 70, Art. 9(1); Advisory Opinion O/C 17/02, supra note 67 ¶ 5.

<sup>172</sup> Haase v. Germany, 11057/02 ECHR 3 (2004), ¶ 91.

<sup>173</sup> Id.

<sup>174</sup> Hypothetical ¶¶19, 20.



**D. Juvenlandia violated Articles 24 and 25 of the Convention because it discriminated against Maria and Felicitas when it denied the girls access to effective legal redress.**

Article 24 of the American Convention requires states to provide individuals equal protection before the law without discrimination.<sup>175</sup> States must ensure equality before the law as an obligation of *jus cogens* character.<sup>176</sup> This Court has stated that Article 24 must be interpreted by Article 1(1).<sup>177</sup> Specifically, a state cannot discriminate based on race, sex, national or social origin, or any other social condition.<sup>178</sup> Discrimination is defined as any subjective practice that excludes, restricts or favors an individual in a way that adversely affects human rights.<sup>179</sup> Article 25 of the Convention requires states to provide individuals with effective legal recourse. States violate Articles 24 and 25 when they fail to respond to gender-based violence because they discriminate against women<sup>180</sup> by depriving them of effective legal recourse. Additionally, states

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<sup>175</sup> American Convention, supra note 57, Art. 24; *see also* American Declaration, supra note 78, Art. II; Organization of American States; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Art. 4 (f), Nov. 22, 1969, O.A.S.T.S. No. 36; Convention on the Rights of the Child, supra note 70, Art. 2.

<sup>176</sup> American Declaration, supra note 78, Art. II; International Covenant on Civil and Political Rights, supra note 59, Art. 26; American Convention, supra note 57, Art. 24; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 3, Nov. 17, 1988, O.A.S.T.S. No. 69; Universal Declaration of Human Rights, Art. 2, 7, Dec. 12, 1948, U.N. Doc. A/810; International Covenant on Economic, Social and Cultural Rights, supra note 68, Art. 2(2), 3, 26; International Covenant on Civil and Political Rights, supra note 59, Art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, Art. 2, Dec. 21, 1965, G.a. Res. 2106 (XX), at 47, U.N. Doc. A/6014; Convention on the Rights of the Child, supra note 70, Art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Art. 1, 7, 18(1), 25, 27, 28, 43, 45(1), 48, 55, 70, Dec. 18, 1993, 2220 U.N.T.S. 93; Convention on the Elimination of All Forms of Discrimination against Women, Articles 2, 3, 5-16, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>177</sup> Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion 4/84, Inter-Am. Ct. H. R., (ser. A), No. 4, ¶ 54. (Jan. 19., 1984)

<sup>178</sup> American Convention, supra note 57, Art. 1.

<sup>179</sup> Advisory Opinion 4/84, supra note 177, ¶55-57.

<sup>180</sup> Ewing, State Responsibility, supra note 62 at 779; *see* General Recommendation no.19, supra note 62 ¶7; Elisabeth Evatt, Violence and the Convention on the Elimination of All Forms of Discrimination against Women, in *Combating Violence Against Women* 33 (1993).

violate their obligations pursuant to Article 1(1) when they fail to investigate and prosecute acts of gender based violence and abuse.<sup>181</sup>

In the instant case, Juvenlandia violated Article 24 because it failed to investigate and respond to the abuses against Maria and Felicitas, both female and minors. Juvenlandian officials visited the brothel and ignored not only Maria and Felicitas' visible signs of abuse, but the other abused women in the brothel.<sup>182</sup> In addition, Juvenlandia knew there were hundreds of gender based charges filed in their court system and still omitted to take any action to prosecute these charges thus denying the girls effective legal redress. Therefore, Juvenlandia violated Articles 24, 25, and 1(1) because it discriminated against Maria and Felicitas as women when it failed to effectively investigate the abuses therefore denying them access to effective legal recourse.<sup>183</sup>

### **REQUEST FOR RELIEF**

The Victims respectfully request this Court to declare the instant case admissible and find Juvenlandia in violation of Articles 1(1), 2, 5, 6, 8, 17, 19, 24, and 25 of the Convention. The Victims request that this Court determine and declare that Juvenlandia is responsible for violations of all the above mentioned Articles of the Convention and ensure reparation to Maria and Felicitas for the violation of their rights. In this regard, the Victims request that the Court order Juvenlandia to:

- a. Monetarily compensate Maria, Felicitas and Felicitas' son for these gross human rights violations.
- b. Invalidate the adoption of Felicitas' son and return him to the custody of his parents, Felicitas and Lucio.

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<sup>181</sup> Velasquez Rodriguez v. Honduras, supra note 52, ¶177; Godinez Cruz v. Honduras, Merits, Inter-Am. Ct. H.R. (ser. C), No. 4, ¶ 188.

<sup>182</sup> Hypothetical ¶17.

<sup>183</sup> Velasquez Rodriguez v. Honduras, supra note 52, ¶177; Godinez Cruz v. Honduras, supra note 181 ¶ 188.

- c. Dismiss Maria's abortion case that was pending in the Supreme Court of Juvenlandia.
- d. Vacate the conviction for Maria's murder case.
- e. Grant Felicitas, Lucio and their child legal immigration status in Juvenlandia.
- f. Instruct Juvenlandia to enact a special juvenile court system that will comport with Articles 19 and 5(5).

Respectfully submitted

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Team Number: 102