2011 Inter-American Human Rights Moot Court Competition
American University Washington College of Law

Richardson, Unzué *et al. v. Juvenlandia*

Background of the case

1. *Juvenlandia* is a country located in the Americas, and it is politically organized as a federal representative democracy. Its legal system, like the majority of the countries in the region, traces back to the civil law tradition of Spain in terms of its subconstitutional order, while the constitutional order — at both the provincial and federal levels — is based on the European and North American constitutional systems established in the hemisphere in the mid-19th century, with important reforms that introduced social rights in the mid-20th century, and universal and regional human rights treaties at the beginning of the 1990s.[1]

2. *Juvenlandia* has an area of 1,500,000 km^2 and a population of 25 million inhabitants. Its average human development index, *per capita* GDP, and economic growth and quality of life indicators—in terms of access to basic social benefits (security, education, health, cultural goods)—have placed it at the top of the index of Latin American countries for several years now.

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1 In particular, *Juvenlandia* has ratified the *American Convention on Human Rights*, signed in San José, Costa Rica, on November 22, 1969; the *International Covenant on Economic, Social and Cultural Rights*, signed in New York City, United States of America, on December 19, 1966; the *International Covenant on Civil and Political Rights*, signed in New York City, United States of America, on December 19, 1966; the *International Convention on the Elimination of All Forms of Racial Discrimination*, signed in New York City, United States of America, on July 13, 1967; the *Convention on the Elimination of All Forms of Discrimination against Women*, adopted by United Nations General Assembly Resolution 34/180 of December 18, 1979; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by the United Nations General Assembly on December 10, 1984; the *Convention on the Rights of the Child*, adopted by the United Nations General Assembly in New York, United States of America, on November 20, 1989, as well as its two Optional Protocols; the *Inter-American Convention on the Forced Disappearance of Persons*, adopted during the 24th General Assembly of the Organization of American States on June 9, 1994 in Belém do Pará, Federal Republic of Brazil; the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"* (1988); the *Inter-American Convention on International Traffic in Minors*, adopted in Mexico on March 18, 1994; the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, adopted in 1994; and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, which supplements the United Nations Convention against Transnational Organized Crime. *Juvenlandia* is also a member State of the United Nations and of the Organization of American States.

3. *Juvenlandia* has not experienced any interruptions of the constitutional order over the course of its history. Its political system is bipartisan, with provincial and national elections held every four years for executive office and every two years for legislative office.

4. *Juvenlandia* had a very small indigenous population in relation to its considerable territory, and that population was decimated at the end of the 19th century. The country was settled, from the time of its constitutional establishment at the beginning of the 19th century until after World War II, by European immigrants. The settlers were mainly Spaniards and Italians, but also Central and Eastern Europeans. Accordingly, *Juvenlandians* are identified mainly as people of European descent.

5. Over the past two decades, *Juvenlandia* has been the destination for growing waves of immigrants from bordering states. According to the last national population census conducted in the year 2000, 20% of the population was originally from neighboring countries. The rapid transformation of the country's demographics has had an effect on public opinion which, at times—especially with regard to matters of security and employment—appears not to have assimilated its new inhabitants adequately and in accordance with its tradition of democratic tolerance.

The frustrated dream of María Paz Richardson and Felicitas Unzué

6. María Paz, an illiterate 14-year-old girl, was working on a cotton plantation in *Pobrelandia*, a country on *Juvenlandia's* northern border. Her wages were not enough to satisfy her most basic needs, and her working conditions amounted to exploitation according to the laws in force. In March of 2002, she met a *Juvelandian* woman who promised to get her into *Juvenlandia*, where she could work as a domestic employee and, in time, obtain legal residence in order to attend school and eventually get a better job.

7. Excited about the proposal, but afraid at the prospect of leaving her family and her town, she did not tell her parents about the offer she had received. However, she did share it with her cousin Felicitas, who was 16 years old and wanted to accompany her, with the excuse that she was older than María Paz and would protect her.

8. Felicitas did tell her parents, who gave her permission to travel and wished her all the best. Felicitas promised to call them as soon as she was able, and to give them all her contact information. Lucio Devereux, Felicitas's boyfriend who worked at a sugar mill, told her that he would travel to the capital of *Juvenlandia* to meet her as soon as he could.

9. María Paz and Felicitas met the woman who had made the offer to them—whose real name they did not know (she had introduced herself as "Pirucha")—at the bus station. After talking with some men who were unknown to the young women, Pirucha said goodbye to them as she introduced them to another woman, "Porota", who would travel with them.

10. Felicitas had gotten her boyfriend Lucio to give her a cell phone, but when Porota saw her talking on the phone, she asked to have it. When Felicitas asked for it

back, Porota told her she had lost it and that she would buy her another one when they got to Tierra Soñada, the capital of *Juvenlandia*.

11. When they crossed the border, Porota asked the girls for their documents and told them not to talk to anyone. She then had a conversation with the Customs and Immigration officers. The girls could not hear the conversation, but they saw that Porota handed the public officials an envelope.

12. María Paz and Felicitas's trip was very long, given that they had to travel 2000 km. overland in an unidentified vehicle that made many stops, lasting several hours each, due to various mechanical problems and searches conducted by what appeared to be security forces.

13. During the 30 hours that the journey lasted, Porota gave the girls just a few cookies and some water, and they both arrived in the capital completely exhausted.

14. A man with a very prominent scar on his face was waiting for them at the station. He very nastily told them to get into a pickup truck, saying that he would take them to the two houses where employment had already been arranged for them. To the girls' surprise, they arrived at a very dirty apartment crowded with other women. Some were younger and some were older, they had little clothing, and some of them showed signs of having been beaten.

15. María Paz became frightened and reacted by asking for her documents so she could leave the place. Porota told her that they were going to keep the girls' documents until they could pay for their trip. María Paz got nervous and began shouting. Then, the man with the scar on his face took her by force, raped her, and told her that from that point on she would be well advised to behave herself if she wanted to stay out of trouble. Felicitas fainted (not long afterwards, she learned that she was pregnant). María Paz became pregnant as a result of the rape.

16. They were forced to work for six months at that place, which served as both a living quarters and a brothel. They were prevented from leaving unless accompanied by some very aggressive men they referred to as "the thugs." Every so often they were given some money to buy food and sanitary items. Any complaint—no matter how mild—was met with a brutal attack, so eventually they stopped complaining. They never received any medical attention. They were frequently given pills. The girls did not know what the pills were for, but they had very strange effects on them. After taking the pills, the girls would lose consciousness and later wake up on a mattress, nearly always beaten and blood-stained.

17. On one occasion, government officials visited the place. The young women realized that the thugs had been tipped off in advance, since they told the girls what answers they had to provide in the event that they were questioned. They had to say that they were the girlfriends of two of the men, and that they just lived there. The officials did not ask any questions, in spite of the conditions of the place and the fact that some of the women showed signs of having been beaten, and they went out with the thugs to eat at a neighborhood bar on the corner.

18. On August 10, 2002, a day on which she had been with ten "customers", María Paz, exhausted from the pain and desperate over her situation, tried to terminate her pregnancy. The hemorrhaging did not stop, so she was taken to the health center. The doctor on duty reported the incident to the police, who filed a complaint against her alleged abortion. The report stated that the fetus was anencephalic. A few days later, María Paz was transferred to the Women's Prison in the capital.

19. Eight months after arriving in the capital, Felicitas started having contractions. A woman was called in to act as a midwife, but she said that it was necessary for a cesarean to be performed at a health center. Felicitas was taken to a place that seemed like a clinic, and her son was born there. She was immediately transported back to the brothel, and when she asked for her baby she was told that he had to be in intensive care and would therefore remain at the clinic for a time.

20. One week later she was told that she could not keep him because she was not going to be able to raise him properly, but that a financially well-off family could take responsibility for him and provide him with everything she would not be able to give him. She was taken to an office where she signed some papers and said a tearful goodbye to her baby with a kiss to his forehead. Porota and the man with the scarred face were present at all times. They greeted the man who had them sign the papers as if they already knew him, and he gave them manila envelopes that they quickly put in their pockets.

21. According to the Civil Code of *Juvenlandia*, the direct surrender of a child (known as *de facto* custody) is not unlawful, and is legally accepted as pre-adoptive custody.

22. Felicitas's baby was adopted by a family in the capital based on her direct surrender of *de facto* custody of the child. The adoption became final in July of 2004.

23. In jail, María Paz met a group of women who were working to help the inmates. She told them her story, and they quickly obtained an attorney for her. The attorney requested María Paz's release, which was granted immediately. This Women's Association also provided her with minimal financial support until she could find employment, and found her a place to sleep.

24. On February 5, 2004, some time after being released from jail, María Paz, who was then 16 years old, positioned herself outside the brothel with a kitchen knife. At nightfall she saw the man with the scarred face leave the place, walking as if he were drunk. She jumped on him and stabbed him in the neck with the knife. She remained at the scene, panic-stricken, and was detained by Chocha, one of the women who also lived at the brothel and apparently ran the place. Chocha had come out quickly to the street and called the police, who arrived within minutes.

25. After a plea bargaining, in which she admitted her guilt, María Paz was convicted on December 10, 2004, under the juvenile criminal justice laws of *Juvenlandia*, enacted subsequent to the ratification of the Convention on the Rights of the Child, and sentenced to 15 years in prison for first degree murder.

26. She was tried in a regular criminal court, due to the fact that the case law of the Supreme Court of *Juvenlandia* holds that the special jurisdiction[2] derived from the international treaties signed by the country (in particular, art. 40(3) of the Convention on the Rights of the Child) refers only to the right to the application of a special legal system for minors under the age of eighteen; it does not call for a specialized court system separate from the regular criminal justice system which, ultimately, must respect the criminal and procedural rights of any person accused of a crime, and is suitable for implementing the specific guarantees derived from the juvenile criminal justice laws currently in effect in *Juvenlandia*.

27. Meanwhile, the abortion case was still at the pre-trial stage. The prosecutor had opposed its dismissal based on the legal excuse of rape, given that, in his understanding, there was no final conviction against the perpetrator that could exempt María Paz from being tried and, possibly, convicted.

28. Felicitas was still working in the brothel. She managed to contact Lucio, her boyfriend, in December 2004, approximately two years after their child was born, thanks to a cell phone that a "customer" had inadvertently left behind on a mattress.

The demand for justice: María Paz's mother and Lucio travel to *Juvenlandia*

29. María Paz's mother was anxious about her daughter's situation. She had found out about the girls' trip through Felicitas's family, but she was worried because in all those months she had not received a phone call or any news from María Paz. Felicitas's family and her boyfriend soon became concerned as well. They asked around everywhere: they went to the Embassy of *Juvenlandia*, to the police, to the hospitals—but no one knew anything; nor was there any record of María Paz and Felicitas's departure from the country or of their entry into *Juvenlandia*.

30. When Lucio received the call from Felicitas in December 2004, he set out to reclaim his girlfriend and, mainly, his son. He also offered his assistance to María Paz's family, who had even fewer financial resources than he did, to help alleviate their daughter's situation.

31. María Paz's mother and Lucio traveled to the capital of *Juvenlandia*. They had some difficulties, and were delayed for 12 hours at the border because they were told that the reasons for which they wished to enter the country were unclear. Nevertheless, they were finally able to enter, and after traveling an additional 20 hours by bus, they arrived in the capital.

32. Lucio had the contact information for the *Juvenlandian* sugar cane harvesters' union in the capital. After checking into a room near the bus terminal with María Paz's mother, he went there to ask for help. They gave him the office hours of the legal department, and he returned two days later to speak with the attorney on duty, Mr. Justo. Lucio had no other references besides the vague information provided by Felicitas, who had told him about a large supermarket five blocks from the brothel, a road, and a traffic circle.

[2] 'Special jurisdiction' refers to the preemptive character that juvenile jurisdiction has over other ordinary jurisdictions.

33. The union's attorney referred María Paz's mother to the free legal aid center at the National University, and he took on Lucio and Felicitas's case due to the connections between the *Juvenlandia* and *Pobrelandia* unions.

The case of Felicitas, Lucio, and their son

34. Lucio and Felicitas's attorney filed a criminal complaint alleging human trafficking, grievous bodily harm, subjecting another to servitude, and violation of the Prophylaxis Law. The court issued a search warrant at the request of the Office of the Public Prosecutor, but when it was executed, the brothel was deserted. In view of the lack of evidence, the complaint was dismissed without further proceedings. The Office of the Public Prosecutor did not file an appeal.

35. Driven to despair by the situation, and unable to make any further contact with his girlfriend, Lucio asked the attorney to help him find Felicitas and their son. They filed a writ of *habeas corpus* on behalf of his girlfriend. The sitting judge ordered several measures involving searches of brothels in the area, inquiries to immigration authorities, hospitals, and security forces, as well as investigations based on newspaper advertisements offering sexual services. The judge exhausted all of the measures requested by Lucio's attorney, and ordered new measures when the prior measures failed to yield results; nevertheless, it was impossible to find Felicitas.

36. Regarding Lucio's son, the attorney made several inquiries that enabled him to locate the *de facto* custody file, and he then filed suit in family court to recover the child and annul the adoption.

37. The request was denied at all instances, on the argument that the adoption was legal and that, given the length of time that had elapsed, it was in the best interests of the child to remain with his adoptive family because it was the only family he had ever known. The Supreme Court denied the extraordinary appeal on procedural grounds.

38. Some time earlier, Mr. Justo had started a professional development class through the Bar Association. By chance, he was taking classes on the "inter-American system for the protection of human rights" at the time. The union attorney had never before thought to bring a case before the inter-American system, but he was so committed to the defense of Lucio and Felicitas's rights that he thought it was the opportunity of his professional lifetime. Accordingly, he consulted with the course professor, who gave him a suggested bibliography and advised him on how to proceed.

39. Basically, the professor told him to request precautionary measures on behalf of Felicitas and to file a petition before the Inter-American Commission on Human Rights (hereinafter "the Commission") in the case of her son.

The case of María Paz

40. María Paz was represented by the National University's free legal aid center in her criminal case.

41. Since no appeal had been filed before the Supreme Court—and although the procedural deadlines had expired—the attorneys from the legal aid center assisted María

Paz's mother and met with María Paz to tell her to file an appeal *in forma pauperis* requesting a review of the conviction. In accordance with Article 42 of the Supreme Court Procedure Act of *Juvenlandia,* untimely extraordinary appeals filed by incarcerated persons are admissible when such persons are clearly lacking proper defense.

42. According to the law, the reason that justified the filing of the appeal *in forma pauperis* was that she effectively lacked proper defense because the public defender that had been appointed to her case had: a) failed to challenge the judgment on the grounds of violation of the special jurisdiction, as it had been handed down by a regular criminal court (the public defender himself was not specialized); b) failed to allege the unconstitutionality of plea bargaining based on the violation of the right to due process and a defense at trial, as well as the fact that it involved an act committed by a minor under 18 years of age—in which case the use of plea bargaining is not permitted; c) omitted to assert the excuse that the act was committed in the heat of passion; and d) ignored the circumstance that the case involved an illiterate foreigner who was the victim of a human trafficking ring.

43. The Supreme Court admitted the appeal *in forma pauperis* upon accepting the arguments relating to María Paz's lack of proper defense at the time the extraordinary appeal was filed. Subsequently, however, upon examining the merits of the case, and after hearing the Prosecutor General of *Juvenlandia,* the Court affirmed the judgment based on the Prosecutor General's arguments. The Supreme Court judgment that rejected the arguments set forth on behalf of María Paz and affirmed her conviction that was handed down on March 5, 2008.

44. In his brief to the Supreme Court, the Prosecutor General had asserted that the special jurisdiction derived from international treaties, in particular from the Convention on the Rights of the Child, does not require that there be a specialized court system or agency; rather, it requires the application of criminal laws that are different from those applied to adults. He stated that the issue had been verified in this case, because otherwise María Paz would have received a life sentence. He further asserted that there is no international standard that prohibits plea bargaining for minors, and that—on the contrary—this concept is part of the special juvenile criminal justice law of *Juvenlandia,* and has been used as an example by other countries in the region as an appropriate standard of compliance to guarantee that the case be of a reasonable duration. He also argued that the heat of passion issue referred to factual and evidentiary matters not subject to review in an extraordinary appeal; and finally, that the defendant's personal circumstances relating to her vulnerability had been sufficiently weighed in the lower court's judgment, which ruled out, in a reasoned and well-founded manner, the possibility that these factors could mitigate the defendant's culpability and result in a lighter sentence.

The accounts provided to the inter-American system for the protection of human rights

The case of Felicitas and her son

45. a) On December 18, 2006, with the legal assistance of Mr. Justo, the attorney from the union, Lucio requested that the Commission issue precautionary measures with

respect to Felicitas. The Commission processed his petition immediately pursuant to Article 25 of its Regulations, as it considered it an urgent and serious matter that merited the issuance of such measures.

46. *Juvenlandia* replied to the Commission's request with the argument that the requirements for the proper issuance of precautionary measures had not been met, given that it had not verified the urgency and seriousness required under the applicable provisions. In addition, the State maintained that the writ of *habeas corpus* had been processed correctly and that all of the measures within the State's power had been exhausted in its attempts to locate Felicitas.

47. b) In addition, on May 23, 2007, Lucio filed a petition before the Commission against *Juvenlandia* alleging the violation of Articles 5 (right to humane treatment), 7 (right to personal liberty), 6 (freedom from slavery), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "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, at the center of which is the Convention on the Rights of the Child, with respect to Felicitas; and Articles 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 24 (right to equal protection), 25 (right to judicial protection), 1(1) and 2 of the Convention with respect to their son.

48. The petition requested that Felicitas be located immediately, and the annulment of the procedure whereby her son had been given up for adoption and, consequently, the return of the child to his birth family.

49. In its reply to the Commission, *Juvenlandia* asserted, as a preliminary issue with respect to Felicitas, that the domestic remedies had not been exhausted; and with respect to the adoption proceedings, it maintained that there had been no violation of any human right contained in the Convention or in the entire *corpus juris* of the protection of the rights of the child, insofar as the adoption was carried out legally because the biological mother had consented to the surrender of her child. Finally, in any case, the State underscored that it would be contrary to the best interests of the child, under Article 3 of the Convention on the Rights of the Child, to annul the adoption, given the length of time that had passed and the bonds that had already been formed with the adoptive family; according to all of the expert reports, the family cares for the child in the best possible way, as it has all of the material and emotional resources to do so. The State also forwarded new expert reports from the Psychology Department at the National University pointing to the child's attachment to his adoptive family as well as the harmful effects that his separation from them could cause.

50. The Commission adopted a report pursuant to Article 37.3 of its Regulations, declaring the petition admissible and finding that the State had violated all of the Articles alleged by the petitioner as the representative of the victims Felicitas Unzué and her son.

51. Given that the deadlines and requirements established by the Convention and the Regulations of the Commission had been met, and considering that *Juvenlandia* failed

to take any measures to comply with the recommendations contained in the Report timely prepared by the Commission, the Commission submitted the case to the Inter-American Court of Human Rights (hereinafter "the Court") on August 26, 2010. The Commission alleged that, with respect to Felicitas, *Juvenlandia* had violated Articles 5 (right to humane treatment), 7 (right to personal liberty), 6 (freedom from slavery), 8 (right to a fair trial), (right of the family), 17 (rights of the family), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) 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, at the center of which is the Convention on the Rights of the Child.

52. The Commission also requested that the Court issue provisional measures concerning the urgent need to locate Felicitas.

53. With respect to her son, the Commission considered that Articles 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), 24 (right to equal protection) and 25 (right to judicial protection) of the Convention had been violated, 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, at the center of which is the Convention on the Rights of the Child.

54. Lucio, as the victims' representative, agreed with the arguments of the Commission but also alleged that *Juvenlandia* had violated the Convention of Belem do Pará and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the Protocol of Palermo, the Inter-American Convention on International Traffic in Minors, and the Inter-American Convention on the International Return of Children. All of these treaties are in force and have been ratified by *Juvenlandia*.

55. Three months after the respective petitions against *Juvenlandia* had been submitted by the Commission and by Lucio, Felicitas was found as a result of a search conducted at a brothel by order of a federal judge who was investigating a network engaged in human trafficking for purposes of sexual exploitation. According to information provided by the State, she was referred to a service for the protection of human trafficking victims, where she is receiving comprehensive psychological and medical treatment, and where she has been placed in contact with her family from *Pobrelandia*.

The case of María Paz

56. With respect to María Paz, the National University's free legal aid center filed a petition for María Paz's mother before the Commission on August 20, 2008, alleging that *Juvenlandia* had violated Articles 5 (right to humane treatment), 7 (right to personal liberty), 6 (freedom from slavery), 8 (right to a fair trial), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) 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, at the center of which is the Convention on the

Rights of the Child. *Juvenlandia* requested that the case be processed through the friendly settlement procedure.

57. The time periods established by the Commission for the State to come to an agreement with the victim's representatives elapsed without *Juvenlandia* taking any measures to resolve María Paz Richardson's situation. Accordingly, the Commission issued its Report on the case. On August 26, 2010, it brought the case before the Court, alleging violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), 6 (freedom from slavery), 8 (right to a fair trial), 19 (rights of the child), 22 (freedom of movement and residence), 24 (right to equal protection) and 25 (right to judicial protection) 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, at the center of which is the Convention on the Rights of the Child. The petitioners did not allege any additional violations before the Court.