Case of Gonzalo Belano and 807 Other Wairan Persons

Victims

v.

Republic of Arcadia

Respondent

Representatives for the Victims

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III. Statement of Facts

A. *Background on the Republic of Arcadia*

Arcadia is a developed country with a sound democracy, a clear separation of powers, and strong system of public institutions, which has been progressively consolidated since its independence in 1825. Throughout the following years, it has ratified the following treaties: the International Covenant on Civil and Political Rights (1966), ratified in 1969; the International Covenant on Economic, Social and Cultural Rights (1966), ratified in 1969; the International Convention on the Elimination of All Forms of Racial Discrimination (1965), ratified in 1969; the Convention on the Elimination of All Forms of Discrimination against Women (1979), ratified in 1982, and its Optional Protocol (1999), ratified in 2002; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), ratified in 1985, and the Optional Protocol to the Convention against Torture (OPCAT) (2002), ratified in 2004; the Convention on the Rights of the Child (1989), ratified in 1990, and its Optional Protocols (2000), ratified in 2002; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ratified in 1995; the Convention on the Rights of Persons with Disabilities (2006), ratified in 2010; and the International Convention for the Protection of All Persons from Enforced Disappearance (2006), ratified in 2010. Arcadia also ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, both in 1983. Moreover, Arcadia ratified most of the instruments of the Inter-American Human Rights System, including, among others, the American Convention on Human Rights (1969), ratified in

1971, and the Inter- American Convention to Prevent and Punish Torture (1988), ratified in 1989.[1]

B. Background on the Republic of Puerto Waira

Puerto Waira is a democratic republic with a presidential system of government. According to a 2010 government survey, the Puerto Waira's monetary poverty rate was 46.9% and 18% of the country's population lived in severe poverty.[2] The figures mentioned above are outdated as the government of Puerto Waira ceased to measure socioeconomic and citizen security indices and rates several years ago. Since the early 2000s, Puerto Waira has been plagued with severe issues of insecurity and gang violence which includes threats, extortion, and the recruitment of children, torture, rape, murder, and forced disappearances.[3] The Ministry of Interior and Police of Waira reports that gangs are estimated to have between 45,000 and 60,000 members, while the National Police has 14,700 officers to ensure safety and public order.[4] In order to ensure the growth and prolong existence of the gang, members of the gang would recruit children and adolescents from poor or homeless families.[5] In 2014, Puerto Waira was ranked the most violent country in the Western Hemisphere, with 6,592 murders for that year, which meant a homicide rate of 103 per 100,000 inhabitants. [6] The state, as a result of the inability of police to maintain public order and security, resorted to heavy- handed policies which sought to terminate criminal activities of gangs by stopping or eliminating them at all costs.[7] These policies led to

[1] Hypothetical, para. 9.
[2] Hypothetical, para. 3.
[3] Hypothetical, para. 4.
[4] Hypothetical, para. 4.
[5] Hypothetical, para. 5.
[6] Hypothetical, para. 4.
[7] Hypothetical, para. 6.

the emergence of "clean-up" groups which anonymously attempted to kill gang members. Additionally, impunity as an endemic was evidenced in reports which indicate that approximately 90% of violent crimes go unpunished. [8] As a result numerous victims of gang violence would relocate in an attempt to seek safety, however, the objective of such relocation was defeated as gang violence is prevalent throughout the entire state. [9]

C. *Facts of the case: Mass migration of people from Puerto Waira to Arcadia*

A caravan to migrate from Puerto Waira to the Republic of Arcadia was organized through several announcements on social media.[10] The caravan consisted of more than 7,000 people and was made up of hundreds of families, children, adolescents, pregnant women, and older adults, most of them of African descent.[11] The large influx of migrants in Arcadia generated disturbances in the small southern towns of Arcadia, as many migrants slept in the streets and begged for money, given the predicament.[12] Similarly, Wairans who arrived in Arcadia with medical conditions began to place strain on the public health services of these communities. [13]

In response to the massive influx of Wairans, the Arcadian government arranged to send National Police officers to provide support to officials from the National Migration Institute (NMI) to organize people to register on a list and apply for asylum by turns.[14] On August 16, 2014, the government of Arcadia hosted a meeting with multiple government institutions and

[8] Hypothetical, para. 7.
[9] Hypothetical, para. 7.
[10] Hypothetical, para. 14.
[11] Hypothetical, para. 15.
[12] Hypothetical, para. 16.
[13] Hypothetical, para. 16.
[14] Hypothetical, para. 16.

agencies of the UN System, including representatives of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) to explore a detailed diversified response to the mass influx of Wairans into its territory. [15] As a consequence of the mass influx of Wairans, Arcadia began to face grave challenges to guaranteeing all the economic, social, and cultural rights of the people of Puerto Waira. [16] As a result, the procedure for obtaining *prima facie* refugee status would consist of visiting the offices of the National Commission for Refugees (CONARE), submitting an application for recognition of refugee status, undergoing a brief interview, and obtaining a refugee document and work permit within no more than 24hours. [17] The Arcadian authorities would then proceed to use the services of the Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior to ascertain whether the person had a criminal record. [18] This process led to the identification of 808 individuals with criminal records which they proceeded to detain by placing 490 of them in the immigration detention center (with a capacity of 400) and the remaining 318 individuals in separate penitentiary units given the inadequate capacity to hold them in immigration detention.[19] It was determined that in 729 of the 808 cases, the individuals would face a 'high risk' of torture and their lives would be in danger if returned to Puerto Waira; the remaining 79 cases had a "reasonable likelihood" of the same. [20]

The news of Arcadia's determination that the lives of 808 persons with criminal records would be at risk if they were returned, resulted in widespread public discontentment and led to

[15] Hypothetical, para. 17.
[16] Hypothetical, para. 19.
[17] Hypothetical, para. 20.
[18] Hypothetical, para. 21.
[19] Hypothetical, para. 22.
[20] Hypothetical, para. 23.

the emergence of several marches demanding the deportation and publicizing of the criminal activities of the gangs in Puerto Waira.[21] A culmination of the events in Puerto Waira resulted in the state concluding that the country did not have the capacity to take these people in, hence, Arcadia called for shared responsibility of the international community in an effort to aid in accommodating the Wairan migrants.[22] Two months elapsed with no reply and as a result on January 21, 2015, Arcadia published an Executive Decree ordering the deportation of the individuals who had been excluded from refugee status due to the presence of criminal records.[23]

Following the decree, two weeks later, on March 16, 2015, Arcadian authorities proceeded to return to Tlaxcochitlán the 591 people who had been excluded for having a criminal record and who had not filed any kind of judicial or administrative appeal. [24] On February 10, 2015, the remaining 217 people filed a writ of *amparo* to stop the deportation, alleging that their lives were in danger and that they should not be returned to Puerto Waira. On February 20, 2015, the Pima Immigration Court ordered their deportation to be suspended until the merits of the case were adjudicated. [25] Subsequently, on March 22, 2015, the court denied protection and upheld the deportation orders. The people filed a motion for the reconsideration of the decision, which was also denied and resulted in the deportation orders being affirmed on April 30, 2015.[26] Finally, on May 5, 2015, the government of Arcadia proceeded to return the remaining 217 people to Tlàxcochitlán. [27]

[21] Hypothetical, para. 25.
[22] Hypothetical, para. 26.
[23] Hypothetical, para. 26.
[24] Hypothetical, para. 27.
[25] Hypothetical, para. 28.
[26] Hypothetical, para. 28.
[27] Hypothetical, para. 28.

The family of Gonzalo Belano, one of the Wairans who had been deported, sought legal advice from the Legal Clinic for Displaced Persons, Migrants, and Refugees of the National University of Puerto Waira. [28] Gonzalo Belano was forcibly recruited by a gang when he was 14 years old and as a result served time in prison for extortion from age 18 to 21. [29] After his release from prison in early July 2014, he decided that he could not return to the gang, and fled the country to seek safety in Arcadia. [30] On June 28, 2015, a few days after being deported, Gonzalo Belano was murdered outside his family's home. Furthermore, the Legal Clinic documented 29 other cases of deportees who were killed within two months of their return to Tlaxcochitlán, as well as 7 cases of disappeared persons. [31] The lawyers from the Legal Clinic brought a legal action alleging administrative irregularities, violations of the principle of non-refoulement and of the rights to life, a fair trial, and judicial protection, to the detriment of Mr. Gonzalo Belano and 36 other named victims (29 murder victims and 7 disappeared persons), as well as the other 771 Wairans who had been returned from Arcadia to Tlaxcochitlán and later deported to Puerto Waira. [32] Additionally, comprehensive reparation of the harm in Arcadia. Following, the filing of the complaint with the IACHR, the individual petition procedure was triggered and on November 30, 2017 the IACHR declared the petition admissible. [33] In its merits report, the IACHR attributed international responsibility to the State of Arcadia for the violation of the rights to life (Article 4), personal liberty (Article 7), a fair trial (Article 8), to seek and be granted asylum (Article 22.7), non-refoulement (Article 22.8), family unity (Article 17), the best interests of the

[28] Hypothetical, para. 30.
[29] Hypothetical, para. 30.
[30] Hypothetical, para. 30.
[31] Hypothetical, para. 31.
[32] Hypothetical, para. 32.
[33] Hypothetical, para. 35.

child (Article 19), equal protection (Article 24), and judicial protection (Article 25) of the American Convention on Human Rights, all in relation to Article 1.1 thereof, to the detriment of Gonzalo Belano and 807 other Wairans. [34]

Legal Analysis

Admissibility

D. Statement of Jurisdiction

This Honorable Court has the jurisdiction to hear this case. The Republic of Arcadia is a state party to the Organization of American States and ratified the American Convention on Human Rights (hereinafter "ACHR"). Pursuant to article 61 and 62 of the Convention, the Republic of Arcadia accepted the binding jurisdiction of the Court and authorizes this court to adjudicate matters concerning the application and the interpretation of the American Convention.

E. Exhaustion of Domestic Remedies

1. *The exhaustion of domestic remedies, in respect to the 591 persons who did not file an appeal in Arcadia.*

Article 46(1)(a) of the ACHR provides that Admission by the commission of a petition or communication…shall be pursued and exhausted in accordance with generally recognized principles of international law.[35] Furthermore, the Inter-American Court on Human Rights

[34] Hypothetical, para. 36.
[35] IACHR, Rules of Procedure of the Inter-American commission on Human Rights, art. 31(1); American Convention Human Rights, art. 46(1)(a)

(henceforth "the IACHR") observed that the exhaustion requirement stated in article 46(1)(a)only refers to remedies that are adequate and effective. Thus, a petitioner is not required to exhaust all domestic remedies, only those remedies that are deemed adequate and effective. [36] Additionally, the IACHR has recognized that adequacy of a remedy depends on whether the remedy is suitable to address an infringement of a legal right. Additionally, remedies may be considered ineffective when it is demonstrated that any proceedings raising the claims before domestic courts would appear to have no reasonable prospect of success. [37] For example, the State's highest court has recently rejected proceedings in which the underlying issue of a petition had been raised.

In the given case, 217 of the 808 Wairans who filed a writ of amparo to stop the deportation, alleging their lives were in danger and they should not be returned to Puerto Waira. The Pima Immigration court denied protection and upheld the deportation orders. The people filed a motion for the reconsideration of the deportation decision which was also denied, resulting in the deportation orders being affirmed. The 217 Wairans were then deported. The remedies available at this time that were fully exhausted by the 217 Wairans included 'reconsideration' and the 'writ of Amparo'. These remedies were fully exhausted by the 217 Wairans and the final decision were unfavorable. The remaining 591 Wairans would not have been required to exhaust the very measures that the 217 Wairans exhausted as they would have faced no reasonable prospect of success. The 217 Wairans would have successfully proved that

[36] IACHR, Admissibility Report No. 134/11, Petition 1190-06, Undocumented Workers (United States), 20 October 2011, para. 27, available at http://www.oas.org/en/iachr/decisions/2011USAD1190-06EN.doc (citing IACHR, Admissibility Report No. 105/09, Petition 592-07, Hul'Qumi'Num Treaty Group (Canada), 30 October 2009, para. 31).

[37] IACHR, Admissibility Report No. 43/10, Petition 242-05, Mossville Environmental Action Now (United States), 17 March 2010, para. 32, available at http://www.cidh.org/annualrep/2010eng/USAD242-05EN.DOC. (citing IACHR, Admissibility Report No. 105/09, Petition 592-07, Hul'Qumi'Num Treaty Group (Canada), 30 October 2009, para. 31).

the Pima Immigration Court would have recently rejected the proceedings regarding the same underlying issue of deportation, therefore this remedy would not be required to be exhausted.

2. *The exhaustion of domestic remedies in respect of Arcadia's alleged noncompliance with the domestic legal requirements, which consist of filing the administrative lawsuit directly with the competent court.*

The rule of exhaustion of domestic remedies "is not meant to be a procedural obstacle course" which requires the victims to jump every possible hurdle before resorting to an international forum."[38] Rather it is meant to allow the State the opportunity to resolve the problem under its internal law before being confronted with an international proceeding. The IACHR prescribes that

> "If a person who is seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigency), prevents him from so doing because he cannot afford either the necessary legal counsel or the costs of the proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law".[39]

In the present case due to the Legal Clinic's limited resources and the families' interest in pursuing the case, the decision was made to file the claim for reparation for direct harm with the Arcadian consulate on November 15, 2015. This was in contravention of Arcadia's domestic legal requirements which prescribes filing administrative lawsuits directly with the competent

[38] Jo M. Pasqualucci, The Practice and Procedure Of the Inter-American Court of Human Rights, (Cambridge University Press, 2013), p.96.
[39] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 22, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf

court. However, such a requirement could not be observed due to the lack of resources of the Legal Clinic and in such a circumstance the State of Arcadia stipulated that free legal assistance would only be provided in matters of a criminal matter. Both Arcadia's domestic legal requirement and the aforementioned stipulation acts as a bar for the families of the Puerto Wairan's migrants to access the remedy available under Acadian law. The IACHR emphasized that, "Any state that does not provide indigents with such counsel free of charge cannot, therefore, later assert that appropriate remedies existed but were not exhausted".[40] Hence, the state of Arcadia cannot assert that the appropriate domestic remedy was not exhausted as no legal assistance was provided to the families of the 808 migrants. This is bolstered by the court's pronouncements which prescribes "that it must be concluded that if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized and a person is unable to obtain such services because of his indigency, then that person would be exempted from the requirement to exhaust domestic remedies".[41]

Argument on the Merits

A. Arcadia violated Article 24 (Right to Equal Protection) of the Convention, read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons.

[40] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 26, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf
[41]I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 30, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf

Arcadia's ratification of the ACHR in 1971, indicated that the state was prepared to be bound by the provisions of the Convention and more so to respect the rights entailed. Article 24 of the ACHR provides that, "all persons are equal before the law" and "consequently, they are entitled, without discrimination to equal protection of the law". Article 1(1) of the ACHR provides that State Parties undertake to respect the free and full exercise of the rights and freedoms recognized by the ACHR to all persons subject to their jurisdiction.[42] This court has made considerations that the principles of equality before the law, equal protection before the law and non-discrimination, belong in the domain of jus cogens, thereby not allowing for any derogation or any exception. [43] States have a duty "not to induce discriminatory regulations into their laws, to eliminate regulations of a discriminatory nature; to combat practices of this nature; and guarantee all persons effective equality before the law.[44]

Article 48 of Arcadia's constitution provides that the right to seek and receive asylum is recognized in accordance with the law and international human right instruments.[45] Article 48, of Arcadia's constitution provides that States should respect and guarantee the principle of non-refoulement. [46] Under the Inter-American System, Article 22 (8) of the ACHR prohibits of expulsion or return of any "alien to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions." Accordingly, the

[42]Velasquez-Rodriguez v Honduras, (Merits) Judgement of July 29 [1998], IACtHR, Series C No. 4, Para 62
[43]*Case of Vélez Loor v Panama* (Preliminary Objections, Merits, Reparations and Costs) Judgement of November 23, [2010] , IACtHR, Series C No. 218, para 248
[44]*Case of Vélez Loor v Panama* (Preliminary Objections, Merits, Reparations and Costs) Judgement of November 23, [2010] , IACtHR, Series C No. 218, para 248
[45]Hypothetical, para. 11.
[46]Hypothetical, para. 11.

Inter-American system, recognizes the right of not only refugees but any alien, to not be returned, when there is a risk of that person's life or personal freedom being violated.[47]

Approximately, 7000 Wairan individuals sought asylum in Arcadia, owing to the gross human right violations of in Puerto Waira.[48] Arcadia identified 808 Wairans with criminal records and proceeded to detain those individuals, placing 490 of them in detention centers and the remaining 318 persons in separate penitentiary units due to the inadequate space in the immigration detention centre.[49] These individuals with a criminal record would have been detained on the basis of section 111 of the General Immigration Act.[50] These 808 persons would have not only been detained but were sent back to United States of Tlaxcochitlán, a country known for serious human right violations.[51] These 808 persons would not have been afforded the right to equal protection of the law provided for in Article 24 of the ACHR, with respects to the rights to seek and receive asylum 22 (7) and the right to non-refoulement 22 (8) of the ACHR. The respondent State Arcadia violated the 808 Wairans right to equal protection before the law by not providing means through which they could receive legal counsel or afford the cost of the proceedings

1. *The respondent State Arcadia violated the 808 Wairans right to equal protection before the law by not providing means through which they could receive legal counsel or afford the cost of the proceedings.*

[47]Case of The Pacheco Tineo Family v Plurinational State of Bolivia (Preliminary objections, merits, reparations and costs) Judgement of November 25, [2013] IACtHR, Series C No. 272 para. 134.
[48] Hypothetical, para. 15.
[49] Hypothetical, para. 22.
[50] Clarifications, para. 11.
[51]Hypothetical, para. 14.

Article 1(1) imposes on the States Parties, the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.[52] Article 1(1) of the ACHR prohibits a state from discriminating on numerous grounds, one such being a person's economic status.[53] Discrimination, employed under Article 24 should be done with respects to the list enumerated in Article 1(1). [54] A person who believes that their rights under the convention have been violated, has the right to simple and prompt recourse, or any other effective recourse under Article 25(1) of the ACHR. If the person seeking recourse is not able to do so because of indigency, and as result is unable to afford the necessary legal counsel and the cost of the proceedings, that person is being discriminated against by virtue of his economic status. Therefore, that person has not received equal protection before the law.[55]

In the present case, the Legal Clinic's limited resources led them to file the claim for reparation or direct harm with the Arcadian consulate instead of filing it directly with the court of competent jurisdiction.[56] The matter surrounding the filing of the claim dealt with administrative irregularities and seeking comprehensive reparation for the harm in Arcadia. Arcadia did not provide or organize governmental apparatus that would be capable of juridically ensuring the free and full enjoyment of human rights. The respondent state only provided free legal assistance in relation to criminal matters. This would mean that Arcadia made no provisions to deal with legal assistance in relation to administrative or constitutional matters. The victims would have

[52] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 22, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf
[53] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 26, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf
[54] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 26, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf
[55] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 26, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf
[56] Hypothetical, para 32.

therefore been discriminated against by virtue of their economic status and would have not been the full guarantee to the right to equal protection before the law.

B. Respondent State violated Article 22 (7)(Right to Asylum) Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) of the Convention read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons

The Inter-American Commission in Pacheco Family laid down the principle that State obligations in relation to Article 22 (7) of the Convention must be analyzed in relation to the guarantees established in Articles 8 and 25 respectively under ACHR. This imposes a positive duty on States, during asylum application proceedings to interpret and apply the provisions of fair trail pursuant to Article 8 and ensure due process guarantees in the corresponding proceeding through judicial protection, pursuant to Article 25.[57]

1. *Arcadia violated the right of asylum, in conjunction with right to fair trial and Judicial protection when it failed to adhere to the special obligation of caution, diligence and care in processing the asylum applications of 808 Wairans*

The right to seek and be granted asylum is amongst the most basic mechanisms for the international protection for refugees.[58] The concept of asylum evolved with the inclusion of the

[57] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 154
[58] UN High Commissioner for Refugees (UNHCR), Note on Burden and Standard of Proof in Refugee Claims,16 December 1998, para. 4

right in the 1948 American Declaration of Rights and Duties of Man Article XXVII, which influenced the universal adoption in Article 14 of the 1948 Universal Declaration of Human Rights (hereinafter "(UDHR)"[59]. The 1951 Convention even though not explicitly establishing the right, is considered to be implicitly incorporated in its text.[60] Under Article 22(7) of the Convention every person has "the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions". The Court in *Pacheco Tineo Family v Bolivia*, highlighted this interrelationship between the scope and content of the right and international refugee law.[61] The Court, reaffirmed the international law requirement within Inter-American system that obligates States to have effective substantive and procedural safeguards in place to identify and protect the rights of individuals eligible for asylum.[62] The Court, in reiterating the standard, endorsed its decision declared in *Nadege et al. v Dominican Republic*, asserted that legal proceedings that might result in the expulsion or deportation of an alien must be of an individual nature, in order to allow the personal circumstances of each person to be assessed, and there must be no discrimination based on nationality, color, race, sex, language, religion, political opinions, social status or other condition comply with the following guarantees;[63]

1. Expressly and formally informed of the charges against him or her, and of the reasons for the expulsion or deportation. Including information about his or her rights, such as:

[59] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 137
[60] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 138
[61] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 141
[62] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 145
[63] *Case of Nadege Dorzema et al. v Domonican Republic, Ju*dgement of October 24, 2012, IACtHR Series C No 251, para. 161-170

2. In case of an unfavorable decision, the alien must be entitled to have his or her case reviewed by the competent authority and appear before this authority for that purpose, and
3. The eventual expulsion may only take effect following a reasoned decision in keeping with the law and must be duly notified.[64]

The eventual expulsion may only take effect following a reasoned decision in keeping with the law and must be duly notified.[65] The tribunal went on to assert that, when an alien, not only refugees pleas before a State that he will be in danger if he is returned, the competent authorities of that State must make it a duty to at the very least interview that person making a preliminary individual assessment on the substantial risk existence, if he or she is deported. If such danger is verified, he should not be returned to his country of origin or any country where danger exists.[66] The Court held, that the Bolivian authorities were in breach of its obligations, for not effectively carrying such procedures which led to the unlawful refoulement of the *Pacheco Tineo Family v. Bolivia*.[67] This entails the adherence to the aforementioned minimum guarantees, in Article 8 and 25 as a part of the chance to explain the reason why he must not be expelled. The Court further recognized the UNHCR's Executive Committee's Conclusions on the importance of instituting and ensuring access reconcilable, with the 1951 Convention and its 1967 Protocol for all "asylum-seekers to fair and efficient procedures for the determination of the refugee status in order to ensure that all refugees and other persons eligible for protection under international or national law are identified and granted protection" in its judgement.[68]

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[64] *Case of Nadege Dorzema et al. v Domonican Republic, Ju*dgement of October 24, 2012, IACtHR Series C No 251, para. 161-170
[65]*Case of Nadege Dorzema et al. v Domonican Republic, Ju*dgement of October 24, 2012, IACtHR Series C No 251, para 180
[66] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 136
[67]*Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 189
[68] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 149

In accordance with the established minimum guarantees laid down in Articles 8, 22(7) and 25 of the ACHR, and alluding to the guidelines and criteria established under the UNHCR, asylum seekers should have access to procedures that allow for adherence to proper effective and substantive examinations of their application, in accordance with the fundamental guarantees contained in the ACHR and other related international instruments.[69] As such, States are obligated to:

A. Ensure applicant guaranteed right to the necessary facilities, including the services of a competent interpreter, and where appropriate, access to legal assistance and representation to submit their request to the authorities. The applicant should receive the necessary guidance concerning the procedure to be followed, in a manner that he can understand and, if appropriate, he should be given the opportunity to contact a UNHCR representative;
B. The request must be examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview;
C. Decisions taken by the competent bodies should be properly and explicitly substantiated in order to protect the rights of applicants who may be in danger, all stages of the asylum procedure must respect the protection of the applicant's personal information and the application, and the principle of confidentiality;
D. If the applicant is denied refugee status, he should be provided with information on how to file an appeal under the prevailing system and granted a reasonable period for this, so that the decision adopted can be formally adopted, and
E. The appeal for review must have suspensive effects and must allow the applicant to remain in the country until the competent authority has adopted the required decision, and even

[69] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 159

while the decision is being appealed, unless it can be shown that the request is manifestly unfounded.[70]

Despite Arcadia's compliance with the procedural and substantive adherence to the requirements laid down by the commission[71], they failed to respect the overarching duty of non-refoulement after the verification of a substantial and reasonable likelihood of danger.[72] The Court has repeatedly clarified that a reasoned decision regarding expulsion should be carried out, in keeping with the international obligations of a State concerning the right of non-refoulement.[73] The Respondent, failed at their special obligation of caution, diligence and care in processing the deportation cases of the 808 cases despite the verification of a substantial risk of danger present both in United State of Tlàxochitlán and Puerto Waira.[74] As such, the respondent violated the right to seek and be granted asylum under article 22 (7) in conjunction with article 8 and 25 and Article 1(1).

C. The State of Arcadia violated Article 25 (Right to Judicial Protection) of the Convention read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons

[70] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 159-160
[71] Clarification, para. 50
[72] Hypothetical, para. 27-28
[73] Inter-American Commission on Human Rights (IACHR), *Resolution 03/08, Human Rights of Migrants, International Standards and the Return Directive of the EU*, 25 July 2008, 03/08, para. 22.
[74] Hypothetical, para. 28-29

1. *Arcadia was in violation of the right to judicial protection by failing to provide an effective remedy which could provide redress for the rights violated*

Article 25 (1) of the ACHR confers on all persons the "right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights". It is not sufficient that such a remedy merely exists, it must be effective ; in other words, the persons must be offered the real possibility of filing a simple and prompt recourse in the terms of Article 25 of the Convention.[75] In determining the effectiveness of a recourse, the Inter-American Human Rights System (hereinafter "IASHR"), prescribes that "effectiveness" of a remedy consists of a normative and empirical aspect.[76] The normative aspect has to do with the "suitability" of the remedy.[77] A "suitable" remedy should offer the possibility of addressing human right violations and providing adequate redress for such violations.[78] The IACHR report on *Loren Riebe et al* further established the standard of an "effective" remedy, within the normative aspect by prescribing that the simplicity, promptness, and effectiveness of the writ of amparo should be measured on the basis of the possibility of verifying the existence of such violations, the possibility of remedying them; and the possibility of making reparation for the damage done and of punishing those responsible.[79] The writ of amparo filed by the 217 refugee seekers was not an effective recourse in remedying the human rights violations experienced by the Wairan people. The remedy did not comply with the

[75] The"Panel Blanca" Case (Paniagua Morales et al, Judgment of March 8, 1998. Series C No. 37, para. 164.
[76] Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 245.
[77] Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 246.
[78]Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 247.
[79] Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 248.

aforementioned standard of an effective remedy when the immigration courts found, without sufficient legal grounds, that Arcadian officials had acted legally. The Court's lack of finding of human rights violations was made irrespective of the fact that Arcadian authorities had previously determined that, in 729 of the 808 cases, the individuals would face a "high risk" of torture and that their lives would be in danger if they were returned or deported to Puerto Waira; the remaining 79 cases had a "reasonable likelihood" of the same.[80] Furthermore, the State of Arcadia ratified the ACHR in which article 22 (8) prohibits the return of an alien to a country where his right to life or personal freedom is in danger of being violated. Article 22 (8) does not provide for an exception to the right to non-refoulement, therefore the decision of the Court, by way of the amparo, consolidated the violations of the human rights of the Wairan people.

The second aspect of an "effective" remedy is of an empirical nature. The empirical nature refers to '[T] he political or institutional conditions that enable a legally recognized remedy to "fulfill its purpose" or "produce the result for which she was designed.'[81] Thus, the Inter-American Court has determined that 'a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.'[82] The political and social atmosphere in Arcadia illustrates the widespread political and social discourse which existed due to the immigration of Wairan individuals.[83] The immigration of the Wairan refugee seekers was met with fierce public outcry,

[80] Hypothetical, para. 23.
[81] Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 251.
[82]Access to Justice as a Gurantee of Economic, Social, and Cultural Rights: A Review Of the Standards Adopted By The Inter-American System Of Human Rights, OEA/Ser.L/V/II.129. Doc. 4, September 2007, para 251.
[83] Hypothetical, para. 25.

irrespective of the knowledge that these migrants would face a risk to their life if returned to Puerto Waira. Pubic condemnation of these individuals allowed for them to be cast in a negative light throughout numerous social media and broadcasting outlets.[84] The general social atmosphere prevailing in Arcadia prior to the deportation of the Puerto Wairans in conjunction with the violations of the rights to life, personal liberty, a fair trial, to seek and be granted asylum, non-refoulement, family unity, the best interests of the child, equal protection, and judicial protection, played a role in rendering the amparo an ineffective remedy. In *Cantoral Benavides v Peru* the IACHR concluded that "the in-existence of an effective recourse against violations of the acknowledged rights by the American Convention constitutes a transgression thereof by the State Party."[85] Arcadia was in violation of the right to judicial protection by failing to provide an effective remedy which could provide redress for the rights violated.

D. Arcadia violated Article 22 (8) (Right to Non- refoulement) and Article 4 (1) (Right to Life) read conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan persons

The Respondent State of Arcadia assumed responsibility to respect the provisions of ACHR and rights included of Gonzalo Belano and 807 Other Wairan Persons when they ratified it in 1971. Under the ACHR, Article 22 (8) imposes a negative duty on a State to not expel or

[84]Hypothetical, para. 24.
[85] Cantoral Benavides Case, Judgment of August 18, 2000. Series C No. 69, para. 164)

return an alien individual to a country, regardless of whether or not it is his country of origin, where his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions. Pursuant to Article 4 (1), State parties have an obligation to not arbitrarily deprive any person's right to life and ensure its protection under law. These each should be with regards to the commitment of such States to confirm the free and full exercise of the rights recognized by ACHR to any or all persons subject to their jurisdiction consistent to Article 1(1).

1. *Arcadia violated Article 22 (8) (non-refoulement), read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan persons*

The principle of Non - refoulement is considered as the cornerstone of international protection for refugees and asylees.[86] The Court has repeatedly underscored that the principle is an integral component both with International refugee law and International humanitarian law.[87] The Tribunal in Pacheco Tineo family, asserted that the principle is also embedded in customary international law.[88] The Court went on to assert that the principle is broader in meaning and scope within the Inter-American system.[89]As such, refugees are protected initially as a selected modality of protection under 22 (8) of the ACHR, regardless their legal status or migratory standing, and second as an integral part of the international protection of refugees, under the 1951 Refugee Convention and its 1967 Protocol. [90] Article 33(1) of the 1951 Convention

[86] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 156
[87] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 158
[88] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 159
[89] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 134
[90] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para. 152

establishes that "[n]o Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The 1951 Convention however, excludes this means of protection to persons who fall outside the spectrum of a refugee, pursuant to article 1F or 33(2).[91]A refugee as defined by the 1951 convention is defined as a person"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." The protection given by article 22 (8) has no equivalent to 1F or 33(2), substantiating the claim that within the Inter-American system the right to non-refoulement is non-derogable by virtue of the fact that any other interpretation would fall foul of article 27 (1) and 29 (b).[92]

In *Pacheco Tineo Family v. Bolivia*, the tribunal posited that under no circumstance within the inter-am system can a 'alien', 'asylee' and/or refugee be refouled where it is recognized that his life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country where he is.[93] The Commission further extended this inherent right regardless of whether it is the country origin and or any other third State.[94]

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[91] Alison Stuart, The Inter-American System of Human Rights and Refugee protection: Post 11 September 2001, Refugee Survey Quarterly, Volume 24, Issue 2, 2005, pg 69

[92] Alison Stuart, The Inter-American System of Human Rights and Refugee protection: Post 11 September 2001, Refugee Survey Quarterly, Volume 24, Issue 2, 2005, pg 71

[93] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 136

[94] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 139

Obligating a State not to extradite, deport, expel, or otherwise remove a person from their territory, where there is substantial grounds that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may be subsequently be removed or is at risk.[95] After the arrival of the Wairans in Arcadia the authorities in a collaborative effort with the National Commission for Refugees (CONARE), Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior were able to identify and detain 808 asylum claims with alleged criminal records.[96] It was determined that 729 individuals cases would face a "high risk" of torture and that their lives would be in danger if they were returned or deported back; the remaining 79 cases had a "reasonable likelihood" of the same substantial risk, [97]As such, falling within the spectrum established principle of non-refoulement.

The Inter-American Commission reaffirmed in, Pacheco Tineo that the contours of the obligation of non- refoulement is enabled once a State, has substantiated the existence of danger upon expulsion.[98] States should implement the required safeguards to ensure that the recognized rights of individuals are respected. The Arcadian administration in keeping with the principle of shared responsibility and non-refoulement issued a executive decree calling upon the international community to aid with the accommodation of refugees who had been excluded from refugee status because of crimes committed[99]. Threatening, the order of deportation of these individuals if aid isn't offered. Subsequently, with the absence of no response the Arcadian authorities convened a meeting the United States of Tlàxxoxhitlan; a country known for human

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[95] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 141
[96] Hypothetical, para 20-21
[97] Hypothetical, para 23
[98] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 140
[99] Hypothetical, para 26

right violations for the return of Wairans to Puerto Waira.[100] Following the arrival and a brief detention in Tlàxcochitlan; immigration authorities deported them to Puerto Waira.[101] Therefore, the Respondent State, failed to prevent the violation of the 808 cases substantial risk of violations of their fundamental rights afforded under the ACHR. The State after substantiating the risk of the existence of danger carried out the expulsion, committing a serious irreparable violation of Article 22(8) of both direct and indirect non-refoulement when they allowed for the deportation of the 808 Wairan's to Tlàxcochitlan and then to Puerto Waira.

2. *Arcadia violated Article 4 (1) (right to life) read in conjunction with Article 1(1) to the detriment of Gonzalo Belano and 807 Other Wairan persons*

Under the ACHR, Article 4(1) imposes a positive duty on State parties to respect and ensure the protection of right to life. 141 The positive duty requires States to adopt necessary measures to protect and preserve the right to life of individuals in their jurisdiction.143

The State violated the right to life under article 4 (1) of the Convention when they ordered the deportation of Gonzalo Belano & 807 Other Wairan Persons to Puerto Waira, after the determination of a existence of a substantial risk of a violation to their right to life.[102] Within the Inter-American system, Article 4(1) imposes on the State the legal obligation to respect the right to life of all persons, irrespective status; as established in *Pacheno Family*[103], 'that under the Inter-American system the right of any alien and not only refugees or asylees to non-

[100] Hypothetical, para 27-28
[101] Hypothetical, para 29
[102] Hypothetical, para 28
[103] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 139

refoulemnt is recognized where his, life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country'.[104]

Therefore, the respondent State violated its positive duty of ensuring the adherence to the right to life under Article 4 (1) of the Convention, after its authorization for the expulsion for the 808 Wairans to the United States of Tlàxcochitlan and then to Puerto Wairan which led to the death of Gonzalo Belano and 29 other murder victims.[105]

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E. The State of Arcadia violated Article 7 (Right to Personal Liberty) of the Convention read in conjunction with Article 1(1) to the detriment of the 808 Puerto Waira individuals.

Article 7 (1) of the ACHR guarantees all every persons the right to personal liberty and security. Article 7 (2) goes further to prescribe that an individual must not deprived of his liberty except for the reasons and under the conditions established by the constitution of the State Party concerned or by a law established. The Republic of Arcadia violated article 7 of the ACHR when they placed 318 refugee seekers in penitentiary units.

1. The Republic of Arcadia violated article 7 of the ACHR when they placed 318 refugee seekers in penitentiary units

International law establishes, that migrants should not be held in prison facilities. The IACHR establishes that asylum or refugee status seekers and persons deprived of liberty due to

[104] *Pacheco Tineo Family v. Bolivia*, Judgement of November 25, 2013, IACtHR., Series C No. 272, para 138
[105] Hypothetical, para 30

migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.[106] The IACHR's stance is in accordance with Principle 8 of the United Nations General Assembly resolution, which states, "Persons in detention shall be subject to treatment appropriate to their unconvicted status."[107] Accordingly, they shall, whenever possible, be kept separate from imprisoned persons."[108] The U.N. Working Group on Arbitrary Detention's Body of Principles prescribes that detained, immigrants and asylum seekers should be housed in a facility "specifically intended for this purpose."[109] 48 The Special Rapporteur on the Human Rights of Migrants emphasized that migrants should not be detained in facilities for criminals and that detention centres "should not bear similarities to prison-like conditions."[110] The State of Arcadia was in violation of the right to personal liberty when rather than detaining these Wairan refugee seekers in prescribed immigration detention centers or facilities other than a prison, these 318 were detained in penitentiary units. The State cannot relay upon the premise of the inadequate capacity of the immigration center to detain all individuals and as a result the remaining 318 refugee seekers were detained in penitentiary units. In *Caso Velez Loor vs Panama,* the Court held, 'States must provide separate public establishments specifically allocated for each purpose, and if the State does not have such establishments, it must provide other premises, which should never be prison.' [111] The reasoning of the Court is indicative of

[106] Report on Immigration in the United States: Detention and Due Process, OEA/Ser.L/V/II. Doc. 78/10, 2010, para. 76.
[107] UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment : resolution / adopted by the General Assembly, 9 December 1988, A/RES/43/173, available at: https://www.refworld.org/docid/3b00f219c.html
[108] UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment : resolution / adopted by the General Assembly, 9 December 1988, A/RES/43/173, available at: https://www.refworld.org/docid/3b00f219c.html
[109] U.N. Comm'n on Human Rights, Working Group on Arbitrary Detention, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Regarding the Situation of Immigrants and Asylum Seekers, Principle 9, U.N. Doc. E/CN.4/2000/4/Annex 2 (Dec. 28, 1999)
[110] Special Rapporteur on the Human Rights of Migrants, August 2010 report A/65/222, ¶ 87.
[111] Caso Vélez Loor vs. Panamá, Judgement of November 23, 2010, IACtHR., para. 208.

Arcadia's obligation to source alternative locations to detain the Wairan refugee seekers rather than employ the use of penitentiary units when Arcadian immigration detention centers were filled to capacity.

F. Respondent Arcadia violated Articles 17 (Rights of the Family) and 19 (Rights of the Child) of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans

1. Respondent State violated Article 17(1) (Right of the Family;Unity), read in conjunction with Article 1(1) to the detriment of the 808 Wairans.

Article 17(1) provides that the "family is the natural and fundamental group unit of society and is entitled to protection by society and the state". Under the ACHR, States have the obligation to ensure that the family unit is protected, this view is also consistent with that of the UN Commission on Human Rights which states that the "family is the basic unit of society and should be strengthened".[112] The notion of family unification, though expressed through soft law requirements, reaffirms the family unity as a fundamental principle, whereby countries of asylum should 'apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family".[113] The Final Act of the UN Conference of Plenipotentiaries on the States of Refugees and Stateless Persons endorsed the principle of family unity as 'an essential right of the refugee'.[114] The Final Act also provided a strongly worded recommendation for 'Governments to take the necessary measures for the

[112] Caso Vélez Loor vs. Panamá, Judgement of November 23, 2010, IACtHR., para. 208.
[113] UN High Commissioner for Refugees (UNHCR), Family Reunification No. 24 (XXXII) - 1981, 21 October 1981, No. 24 (XXXII) - 1981, available at: https://www.refworld.org/docid/3ae68c43a4.html [accessed 25 March 2019]
[114] United Nations, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3e2becbb4.html [accessed 25 March 2019]

protection of the refugee's family, especially with a view to ensuring that the unity of the family is maintained' and for 'the protection of refugees who are minors'.[115] The Final Act puts a positive duty on the Respondent State to 'take necessary measures for the protection of the refugee's family, seeking to ensure the maintenance of family unity.[116]

The caravans of person traveling destined for Arcadia consisted of hundreds of families, children, adolescents, pregnant women and older adults who were in a vulnerable state.[117] Arcadia expelled 808 Wairans who had reportedly committed criminal offenses and would therefore be excluded from obtaining refugee status.[118] No child or adolescent was excluded from international protection, detained or expelled from Arcadia.[119] This would mean that only adults with criminal records would have been deported and in the case that these adults had children, the children would have remained in Arcadia. Arcadia has failed to ensure the protection of Article 17(1) as they made no attempts apply a liberal criterion for the adults with criminal records seeking asylum in a bid of promoting family unity. There were many vulnerable groups that sought Arcadia, such as pregnant women and the elderly.[120] If the main provider of the family or the person that the pregnant women or elderly depended on was deported this would not only be a breach of family unity but would put these persons at a disadvantage. Arcadia would have failed to take necessary measure for the protection of the refugee's family and moreover would have failed to ensure the unity of the family.

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[115]United Nations, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3e2becbb4.html [accessed 25 March 2019]
[116] United Nations, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3e2becbb4.html [accessed 25 March 2019]
[117]Hypothetical, para. 15.
[118] Hypothetical, para. 22.
[119] Clarifications, para. 21.
[120] Hypothetical para. 15,

2. *Respondent State violated Article 19(1) (Best interests of the child) read in conjunction with Article 1(1) to the detriment of the refugee children in Arcadia and the deported adults who committed criminal acts as child.*

Article 19 of the ACHR States that every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state. Violations of the rights of the child must be interpreted in light of the international corpus juris for the protection of children.[121] The corpus juris should aim to address the obligation the State has assumed once the rights of children are analyzed.[122] Special measures for protecting the interests of the child lies within the ambits of the State, as well as to the family, the community and the society to which they belong.[123] Moreover, any decision taken by the State, society or family that includes the limitation of any right of a child must consider the right of the best interests of the child, in Article 19. Article 12 of the Convention on the Rights of the Child (hereinafter "CRC") recognizes the right to be heard in any judicial proceedings affecting them. This provides the obligation of the state to consider the child's right to be heard in matters that affect them. Article 9 of the CRC requires State to ensure that a child is not separated from his or her parents against their will save in circumstances where separation is necessary for the best interests of the child. No child or adolescent was deported or excluded from international protection, but due to the

[121] Caso Vélez Loor vs. Panamá, Judgement of November 23, 2010, IACtHR., para. 216.
[122] Case of Forneron and daughter v. Argentina. (Merits, reparations and costs) Judgment of April 27, [2012] Series C No. 242, para. 44.
[123] Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62.

deportation of the 808 Wairans this still resulted in the separation of some families.[124] Children who were not placed in the care of their closest relatives were placed in the custody of the state.[125] Arcadia breached the Article 9 of the CRC which provides that States should ensure that a child is not separated from his parents save in circumstances where this separation is in the best interest of the child. Arcadia has failed to substantiate that the reason for separating the child from their parents was for the best interest of the child. Furthermore, in the judicial and administrative process which resulted in the deportation of the 808 Wairans, the children of the deported adults were not included in the judicial proceedings. Arcadia's failure to include the children in the judicial proceedings affecting the deportation of their parents, would not have been in the best interest of the child and would have been a clear violation of Article 12 of the CRC.

3. Arcadia violated Article 19(1) of the Convention by deporting Gonzalo Belano and other Wairans who committed crimes as children.

The Home Office of the United Kingdom in 'Exclusion (Article 1F) and Article 33(2) of the Refugee Convention, stated that exclusion on the grounds of crimes committed by children must always involve an assessment of their ability to understand acts that have been ordered to do.[126]The Home Office in the same release stated that if "there are serious reasons for believing that a claimant (whether a child or an adult at the time of the claim) committed acts or crimes contrary to Article 1F whilst they were a child" this claimant more likely to have been a victim of offences against international law than a perpetrator." [127]The negotiations of Additional

[124] Clarifications, para. 21.
[125] Clarifications, para. 21.
[126]United Kingdom: Home Office, Exclusion (Article 1F) and Article 33(2) of the Refugee Convention, 1 July 2016, Version 6.0, available at: https://www.refworld.org/docid/58b017e4391.html [accessed 26 March 2019]
[127] United Kingdom: Home Office, Exclusion (Article 1F) and Article 33(2) of the Refugee Convention, 1 July 2016, Version 6.0, available at: https://www.refworld.org/docid/58b017e4391.html [accessed 26 March 2019]

Protocol I to the Geneva Conventions, Committee III, to whom the draft article (relating to the prohibition of penal offence against children) had been assigned, agreed on there was a general principle that a person cannot be convicted of an offence, if at the time the person committed it, the person was unable to understand the consequences of the act. [128] Arcadia's age of criminal and civil majority is 18.[129] Gonzalo Belano, was forcibly recruited by a neighbourhood gang when he was 14 and served time in prison for crimes committed when he was a child contrary to Article 1F. [130] Gonzalo Belano, and other Wairans in his position should not have been excluded from refugee protection as they should not have been treated as perpetrators of international law but rather victims. Gonzalo was forced to carry out the crimes contrary to Article 1F, his coerced actions could lead to the assertion that he was not able to understand the acts he was carrying out. Arcadia failed to make these considerations in determining whether Gonzalo and other Wairans who had criminal records from crimes committed as children and as a result failed to consider the best interests of the child, whereby these individuals would be seen as victims rather than perpetrators

III. REQUEST FOR RELIEF

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

[128] Happold Matthew, 'Excluding Children From Refugee Status: Child Soldiers and Article 1F of the Refugee Convention' (2002), 17/6 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1229&context=auilr> accessed 20 March 2019
[129] Clarifications, para. 75.
[130] Hypothetical, para. 30.

1. Adjudge and declare that the Republic of Arcadia violated Article 24 of the ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons;
2. Adjudge and declare that the Republic of Arcadia violated Article 22 (7) Article 8 and Article 25 of the ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons;
3. Adjudge and declare that the Republic of Arcadia violated Article 25 of the ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons;
4. Adjudge and declare that the Republic of Arcadia violated Article 22 (8) and Article 4 (1) of the ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons;
5. Adjudge and declare that the Republic of Arcadia violated Article 7 of the ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons;
6. Adjudge and declare that the Republic of Arcadia violated Articles 17 and 19 ACHR read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons.