

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

MITCHELL HENDERSON ET AL

(Victims)

V

THE REPUBLIC OF ATHLIMA

(Respondent)

MEMORIAL FOR THE VICTIMS

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STATEMENT OF FACTS

Factual Background

The Republic of Athlima (hereafter ‘the State’ or ‘Athlima’) is a state facing a crisis of homelessness in their capital city of Kefalaio.¹ Athlima has made dedicated advances to expand its standing in the international community, and increase its tourism industry, by attracting and hosting international sporting events such as: the 2006 Junior Inter-American Bocce-Ball Federation Finals and the 2010 Junior Rugby Federation Finals.² As these events take place, local business owners have complained of lost profits and tourist traffic due to the influx of homeless individuals into Kefalaio. It is alleged by the business owners that the homeless individuals deterred tourists based on their presence, appearance and panhandling, as the homeless population increased over 50 percent in 2010.³

In January 2013, Athlima passed the *Restoration of Community Act* as a preemptive measure to combat the problem of homelessness prior to hosting the 2018 International Rugby Federation Finals. The *Restoration of Community Act* outlawed public vagrancy and panhandling, and provided first time offenders the opportunity to enroll in Kefalaio’s Homeless to Work program instead of facing prosecution.⁴

Prior to being enrolled in the Homeless to Work Program, individuals were required to undergo a medical evaluation for mental and physical impairments. Any identifying impairments required mandatory treatment or therapy. Based on the medical and physical evaluations, individuals were enrolled in either the hospitably service or public work-training program for a duration of 120 days, and given room and board provided they remain on campus as the act

¹ Hypothetical par. 5

² Hypothetical par. 4

³ Hypothetical par. 5

⁴ Hypothetical par. 6

prohibits leave while enrolled in the program. Individuals would be dismissed from the program for displaying lack of dedication to the program by violating the program's rules, and failure to engage sufficiently, and would face prosecution for their original violations.⁵

The victim in this case is Mitchell Henderson, a 43-year-old man who was a farm laborer before he was in an accident that left him disabled. He was given compensation for his work-related injury, and used his compensation to relocate to Kefalaio. Henderson found himself unable to maintain a job, and became homeless in October 2013. Henderson was arrested in June 2014 for violating the *Restoration of Community Act* by panhandling in front of a sporting goods store in Kefalaio. Henderson was told by authorities he could either face prosecution, or enroll in the Homeless to Work program.⁶

Henderson was noted as having physical disabilities including residuals of a left leg injury, and the amputation of three fingers on his dominant hand, and was noted as having a mental disability of post-traumatic stress disorder (PTSD) from his accident. He was provided therapy for his disorders, and prescribed antipsychotic medication. He had to attend physical therapy three times a week, and take his medication every morning or he would be dismissed from the program. He was enrolled in the public works training program.⁷ Through mental therapy, Henderson learned his PTSD symptoms prevented him from keeping a job and impeded his employment. The medication helped relieve many of his symptoms, but Henderson felt the medication left him in a mental fog and was too strong. His request for his medication to be reduced was denied, and he was told if he did not take what was prescribed to him he would be dismissed from the program.⁸

⁵ Hypothetical par. 7-11

⁶ Hypothetical par. 13-15

⁷ Hypothetical par. 16-18

⁸ Hypothetical par. 19

The public works training program Henderson was enrolled in involved physical training on how to operate maintenance equipment, and required standing or walking for 70% of the time. After six weeks, Henderson requested to change programs based on his physical capabilities. His request was denied on the bases that the hospitality service training program involved standing or walking more than 50% of the time, and his PTSD made him unfit to provide direct customer service.⁹ Henderson stayed with his current program two weeks following the denial, but found the training intolerable. Henderson's contacted his brother, and his brother agreed to bring him back to their home state. He informed the program staff he would be leaving the program, and the staff informed him that would be considered grounds for dismissal from the program to which the Kefalaio Court would be informed, and he would be prosecuted for originally violating the *Restoration of Community Act*.¹⁰ Henderson was dismissed from the program, and the Kefalaio Court was notified on August 30, 2014.¹¹

On August 31, 2014 Henderson was charged with violating the *Restoration of Community Act*. He did not consult with legal counsel and plead guilty. He requested he be allowed to return to his home state with his brother, but was sentenced him to a week in prison.¹²

A human rights organization in Kefalaio, Human Rights Kefalaio (HRK) filed an appeal on behalf of Henderson, and when the appeal was denied, filed another appeal for constitutional relief from the *Restoration of Community Act* on behalf of all Athlimians with disabilities.¹³ The district court of Kefalaio ruled in favor of the state, and HRK appealed to the Athlima Supreme Court, to which the Court found the Homeless to work program discriminated against those with

⁹ Hypothetical par. 20

¹⁰ Hypothetical par. 22

¹¹ Hypothetical par. 23

¹² Hypothetical par. 24

¹³ Hypothetical par. 26-27

disabilities. The court ordered that the program implement a training program for the disabled.¹⁴

The state then provided a supplemental work training program that provided accommodated training within the two existing training paths that added an additional 30 days to the program.¹⁵

In May 2015, HRK filed a petition to the Inter-American Commission on Human Rights (hereafter ‘Commission’ or ‘IACHR’) alleging Athlima in violation of Articles of the American Convention of Human Rights (hereafter ‘American Convention’ or ‘Convention’).¹⁶ In September 2016, the Commission found in its admissibility and merits report (Report 194/2016) that the state was in violation of articles 7, 8, 24 and 25 of the Convention. Additionally, the Commission recommended that the State of Athlima invalidate the *Restoration of Community* Act and implement comprehensive reparation measures to compensate Mitchell Henderson and other disabled Athlimians subjected to the *Restoration of Community Act*.¹⁷

LEGAL ANALYSIS

1-ADMISSIBILITY

1.1-STATEMENT OF JURISDICTION

As a founding member of the Organization of American States (hereafter ‘OAS’), the Republic of Athlima ratified the Organization of American States Charter on April 30, 1948. The state ratified the American Convention on Human Rights, and accepted the jurisdiction of the Inter-American Court of Human Rights (hereafter ‘Inter-American Court’ or ‘Court’) on December 10, 1989.¹⁸ Athlima is bound by its Constitutional requirements to adhere to the judgments, opinions and reparations as directed by the Inter-American Court. In accordance with

¹⁴ Hypothetical par. 31

¹⁵ Hypothetical par. 32

¹⁶ Hypothetical par. 33

¹⁷ Hypothetical par. 35

¹⁸ Hypothetical par. 36

Article 62, Section 1 of the American Convention, the state has acceded to present this particular dispute to the Inter-American Court for final resolution.¹⁹

2- ARGUMENTS AND THE MERITS

2.1- VIOLATIONS TO THE AMERICAN CONVENTION OF HUMAN RIGHTS

If a state is found to have committed human rights violations enshrined in the American Convention, then the state is to be held internationally responsible for those violations. By implementing the *Restoration of Community Act*, Athlima is acting in violation of the right to personal liberty, the right to a fair trial, the right to equal protection, and the right to judicial protection of Mitchell Henderson and other disabled Athlimians subjected to the *Restoration of Community Act*. The Commission has already found the state and the *Restoration of Community Act* to be in violation of Articles 7, 8, 24 and 25 of the American Convention, and the victims in this case assert their rights have been violated.²⁰

2.2-VIOLATION OF ARTICLE 7: RIGHT TO PERSONAL LIBERTY

Article 7, Section 3 of the American Convention explicitly states, “No one shall be subject to arbitrary arrest or imprisonment.” Section 6 states, “Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.”²¹ The Homeless to Work program constitutes unlawful detainment by requiring individuals to remain on campus for the duration of 120 days. The supplemental work program implemented by the state, in an effort to remedy its wrongs towards disabled individuals, still unlawfully detained those with disabilities for 150 days. Those in the Homeless to work program were arrested, but not charged with violating the law, constituting an arbitrary

¹⁹ American Convention of Human Rights 1978 Article 62.1

²⁰ Hypothetical par. 35

²¹ American Convention of Human Rights 1978 Article 7.3, 7.6

arrest and imprisonment. Article 15 of the International Covenant on Civil and Political Rights (hereafter ‘ICCPR’) states, “nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed.”²² The state detained those in the Homeless to Work program for the duration of 120 days, and 150 days in the supplemental work program, when those who did not complete the program served an average two weeks imprisonment as punishment for their offenses.

The victim in this case, Mitchell Henderson was detained unlawfully in this program. The state coerced Henderson into the Homeless to Work program, and Henderson feeling he had no real option elected to enroll in the program rather than face prosecution.²³ Henderson was unable to complete the program due to existing mental and physical disabilities, and was unlawfully detained, and further faced prosecution for his original crime.

Article 7, Section 1 of the American Convention states, “Every person has the right to personal liberty and security.”²⁴ The Europe Court of Human Rights in the cases of *De Wilde, Ooms and Versyp v. Belgium*, set precedent regarding putting vagrants into work training programs. In putting vagrants into work-training programs, the European Court of Human Rights found this to be classified as custodial detainment. Additionally, the Court noted in this case that the placing of a vagrant at the disposal of the government, in this event, immediately deprived him of his liberty.²⁵ This precedent can be applied to this case.

Additionally, Henderson was denied personal liberty because he was wrongfully dismissed from the program. Henderson engaged adequately in the program to the best of his abilities. Even after physical therapy, Henderson’s leg injury bothered him to the point where it

²² International Covenant on Civil and Political Rights 1978 Article 15

²³ Hypothetical par. 15

²⁴ American Convention of Human Rights 1978 Article 7.1

²⁵ *De Wilde, Ooms, and Versyp v. Belgium* [1971] (European Court H.R.)

was unbearable. The medication, which he was forced to take, left him in a mental fog. After being denied a transfer, Henderson only informed staff of his plans to leave the program and return to Notios, but the record does not indicate he actually left. Henderson was wrongfully dismissed from the program when he attempted to participate in the program, attempted an appeal when necessary, and never physically left.²⁶

2.3-VIOLATION OF ARTICLE 8: RIGHT TO A FAIR TRIAL

Article 8 section 1 of the ACHR states “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”²⁷ The victim was not afforded proper due process in this case. The system set in place in Athlima denied Henderson a fair trial. There was not an avenue to appeal decisions made within the Homeless to Work program. Henderson, to the best of his abilities, actively participated and attempted to transfer and request lower amounts of medication. There was not a legal avenue in place for Henderson, and others with disabilities, to challenge the actions against them.

Article 8 section 2 guarantees every person a minimum of “the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel” and, “the inalienable right to be assisted by counsel.”²⁸ Mitchell Henderson’s dismissal from the Homeless to Work program led to his arrest for violating Restoration of Community Act. During the domestic court proceedings, Mitchell Henderson did not have adequate legal counsel. While Henderson was afforded the opportunity

²⁶ Hypothetical par. 21-24

²⁷ American Convention of Human Rights 1978 Article 8.1

²⁸ American Convention of Human Rights 1978 Article 8.2

to have legal counsel, he elected not to have assistance, and entered a plea of guilt without adequate legal counsel. Henderson's decision was based on his own personal feelings as he had felt that he violated the law.²⁹ His confession was under duress seeing as how he did not have council, and that it was based on the emotions he was feeling. This is in violation of Article 8, Section 3, where it is stated, "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."³⁰ It is noted that Henderson's PTSD symptoms include: increased distraction, lack of focus, difficult forming social relationships, lack of impulse control, and sleep disturbances.³¹ The state was aware of Henderson's disabilities, and should have insisted he had legal council. The state has a responsibility and duty of care to disabled people. Instead of placing those with disabilities into criminal detainment, the state should have placed those into a disability support program.

2.4-VIOLATION OF ARTICLE 24: RIGHT TO EQUAL PROTECTION

Article 24 of the Convention states "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."³² The Homeless to work program only provided two work-training programs. There was not a program in place for disabled individuals. Disabled individuals in the Homeless to work program were expected to participate in the program in its entirety, even if they could not, such as Mitchell Henderson. The state denied the victims in this case equal protection by failing to address disabled people as a population.

²⁹ Hypothetical par. 24

³⁰ American Convention of Human Rights 1978 Article 8.3

³¹ Clarification Questions (CQ) 9

³² American Convention of Human Rights 1978 Article 24

The state admitted fault via the Athlima Supreme Court decision that found the original work-training program discriminated against those with disabilities.³³ Additionally, the state admitted fault in response to the Athlima Supreme Court ruling by providing funding for a supplemental work training path to accommodate work training within the two existing training paths, and added an additional 30 days to the program.³⁴

Article 1, Section 2 of the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities states, “The term “discrimination against persons with disabilities” means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.”³⁵ Also, the state has a duty to adopt legislative measures to eliminate discrimination against persons with disabilities.³⁶ The state also has a duty to disabled persons to “detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities.”³⁷ The state discriminated against disabled Athlimians by not providing a program for disabled persons, and by not providing those disabled persons the duty of care they are bound to provide them. Therefore, the state acted discriminately towards people with disabilities and is in violation of the equal protection rights of Mitchell Henderson and other disabled Athlimians.

³³ Hypothetical par. 31

³⁴ Hypothetical par. 32

³⁵ Organization of American States (OAS) *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities* 1999 Article 1.2

³⁶ Organization of American States (OAS) *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities* 1999 Article 3

³⁷ Organization of American States (OAS) *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities* 1999 Article 3

2.5-VIOLATION OF ARTICLE 25: RIGHT TO JUDICIAL PROTECTION

Article 25 of the Convention states, “Everyone has 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 recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”³⁸ Mitchell Henderson, and other disabled Athlimians subjected to the Restoration of Community Act have the right to judicial recourse, and the right to demand just compensation from the state for the violations of Articles 7, 8, 24 and 25 of the American Convention.

Article 9, section 5 of the ICCPR states “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”³⁹ As previously states, the Restoration of Community Act unlawfully detained Henderson, and as such, he is afforded the right to compensation. As this court recognizes the ICCPR, Athlima is required to take steps to ensure compensation for wrongful incarceration and wrongful detainment is provided to victims.

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Article 14, section 6 of the ICCPR states “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-

³⁸ American Convention of Human Rights 1978 Article 25

³⁹ International Covenant on Civil and Political Rights 1978 Article 9.5

⁴⁰ 47 Cal. W. Int'l L.J. 35 2016

disclosure of the unknown fact in time is wholly or partly attributable to him.”⁴¹ The state admitted fault in its Supreme Court ruling that found the Restoration of Community Act discriminated against people with disabilities. The state also admitted fault when by changing the Homeless to Work program in an attempt to accommodate persons with disabilities. These two admissions of guilt display a miscarriage of justice to which Henderson suffered punishment from. Henderson, at the very least, deserves adequate compensatory damages.

3 – ACTIO POPULARIS

The doctrine of *actio popularis* allows for class action lawsuits to be brought forth by a third party on behalf of the public interest as a whole.⁴² The case of *Ethiopia v. South Africa*; *Liberia v. South Africa*, establishes that *actio popularis* does not have standing in international law and international relations.⁴³

The provisions of the American Convention contemplate the possibility of class action or *actio popularis* litigation. Article 23 of the Rules and Procedure of the Inter-American Commission on Human Rights states, “Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right...”⁴⁴ The *locus standi* requirements indicate any person, group of persons, or nongovernmental entity can lodge a petition with the Commission, and the applicant does not need to claim to be the actual victim.⁴⁵ HRK was in the right to submit a petition on behalf of the victims in this case per Article 23 of the Convention.

⁴¹ International Covenant on Civil and Political Rights 1978 Article 14.6

⁴² Actio Popularis- The Class Action in International Law

⁴³ *Ethiopia v. South Africa*; *Liberia v. South Africa* [1962] (International Court of Justice)

⁴⁴ Rules and Procedure of the Inter-American Commission on Human Rights 2013 Article 23

⁴⁵ Aceves, William J. "Actio Popularis - The Class Action in International Law," University of Chicago Legal Forum: Vol. 2003: Iss. 1, Article 9, and Rules and Procedure of the Inter-American Commission on Human Rights 2013 Article 23

In the case of *Yanomami v Brazil* several groups of nongovernmental organizations filed suit on behalf of the Yanomami Indians, alleging several violations of the American Convention. The petitioners asserted the Brazilian government failed to protect the interests of the Yanomami people by allowing for the exploitation of natural resources of the Amazon and development of territories occupied by the Yanomami people. The Commission accepted the petition without challenges to admissibility, and the Inter-American Court found Brazil to be in violations of Articles 1, 8, and 11 of the Convention.⁴⁶ While the *Yanomami v Brazil* case concerns itself with Indigenous people, there are similarities to be drawn between this case and the case at hand. Both cases involve a group of people whom the state has a special duty of care of to provide protection to.

The Commission set forth a precedent by its admissibility and merits reports, and interpretation of *actio popularis* cases. When addressing the inadmissibility case of *Roman and Penaloza, Brazil*, Report Number 48/04, the Commission noted Article 23 should not be interpreted to allow abstract actions to be brought before the Commission.⁴⁷ Furthermore, the Commission noted in the inadmissibility case, *International Abductions, United States*, Report 100/14, that for a petition to be admissible “there must be specific, individualized and determined victims.”⁴⁸ Additionally, the IACHR has considered that the petition must “allege concrete violations of the rights of specific individuals, whether separately or as part of a group, in order that the Commission can determine the nature and extent of the State’s responsibility for those violations as well as the appropriate reparations to be afforded to that victim or his or her

⁴⁶ *Yanomami v Brazil* [1985] (IACHR)

⁴⁷ IACHR, Report No. 48/04, Petition 12,210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, para. 43.

⁴⁸ IACHR, Report No. 100/14, Petition 11.082, Inadmissibility, International Abductions, United States, November 7, 2014.

next of kin.”⁴⁹ The Commission also noted in the case that petitions carried out as *actio popularis* requests, such as on behalf of the population of a country, which both of these cases entail, is inadmissible to the Court.

The case at hand, unlike the previous inadmissible cases afore cited, identifies its specific individuals. The alleged victims in this case can be identified as Mitchell Henderson, and other disabled Athlimians subjected to the *Restoration of Community Act*. These victims account for 26% of those enrolled, completed or graduated from the Homeless to Work program.⁵⁰ The petitioner specifically request for reparations for Mitchel Henderson, and for other disabled Athliamns subjected to the *Restoration of Community Act* who wish to bring forth suit. This furthers the determined aspect of *actio popularis* admissibility. The victims in this case meet the Commissions standards for “specific, individualized, and determined victims.”⁵¹

If the commission had found this case inadmissible to the Court, it would have been reported in its report and admissibility and merits Report 194/2016 filed in September 2016, and this case would not be presented before this Court.⁵² Because the Commission’s standards were met in regards to the victims, it is appropriate for the Court to determine the extent of the alleged human rights violations, and the appropriate reparations sought.

4-REQUEST FOR RELIEF

Based upon the foregoing reasons stipulated in this submission, the Petitioner respectfully requests that this Honorable Court:

⁴⁹ IACHR, Report No. 48/04, Petition 12,210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, para. 44.

⁵⁰ CQ 3

⁵¹ IACHR, Report No. 100/14, Petition 11.082, Inadmissibility, International Abductions, United States, November 7, 2014.

⁵² Hypothetical par. 35

- a) Declare the Republic of Athlima responsible for the violation of the rights enshrined in Article 7, 8, 24, and 25 of the American Convention of Human Rights, with respect to the victims Mitchell Henderson and other disabled Athlimians subjected to the *Restoration of Community Act*.
- b) Command the state to invalidate and repeal the *Restoration of Community Act* and the Homeless to Work Program.
- c) Instruct the state to establish and implement a replacement program, in particular, to combat the homelessness problem. To this effect, the Petitioner asks that the state provide protections to persons with disabilities.
- d) Order the state to provide adequate compensatory damages to Mitchell Henderson.
- e) Require the state to grant adequate compensatory damages to disabled Athlimians subjected to the *Restoration of Community Act* who wish to bring suit.