

INTER-AMERICAN HUMAN RIGHTS

MOOT COURT COMPETITION

MITCHELL HENDERSON ET AL

(Victims)

V

THE REPUBLIC OF ATHLIMA

(Respondent)

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF FACTS

Factual Background

The Republic of Athlima (further referred to as; ‘The State’ or ‘Athlima’) is preparing for an economic boosting event in the cities capital, Kefalaio (further referred to as; ‘The Capital’). To boost the country’s economy, The State is making improvements in the country’s tourism industry. One of the improvements the country is making is hosting international tournaments in different sports that attracts tourists from all over the world.

The successes from past tournaments brought an influx of homeless citizens to The Capital in search of jobs and hopes of economic prosperity. An annual consensus¹ showed that the population of homeless in The Capital grew by over fifty percent in 2010. This growth in homeless population created a shortage of jobs and an overflow of homeless citizens with nothing to do except panhandle. The local business owners called for action against the homeless citizens because they reported a loss in profits due to the presence of the homeless citizens.

In order to combat the issue of the Homeless Citizens in The Capital, the local legislative entity proposed an ordinance that would outlaw vagrancy and ²panhandling. The ordinance ultimately failed due to a mayoral veto. The ³mayor suggested there being an alternative to criminal proceedings for the individuals found violating the law. This resulted in the local business owners applying pressures to the ⁴National Assembly for action.

¹Hypothetical para. 5

²Hypothetical para. 6

³Hypothetical para. 6

⁴Hypothetical para. 6

The National Assembly held ⁵hearings with NGO's and local businesses and to address both sides concerns, the Restoration of Community Act (further referred to as; 'the act') was born. The act outlawed public vagrancy and panhandling while creating a separate program that acted as a diversion from prosecution if all the requirements were met by the individual.

The Homeless to Work Program (further referred to as; 'the program') served as the diversion program from prosecution. The program was voluntary and if all ⁶guidelines were met, the individual would avoid prosecution. This program had a 95 % ⁷completion rate and out of all the participants in the program ⁸26% had a diagnosed mental or physical disability. Additionally, of the enrolled participants in the program ⁹25% of the individuals who completed the program had a diagnosed mental or physical disability. The program had completion rate of ⁷95% of those that completed the program, ¹⁰94% found employment.

¹¹In June of 2014 The State arrested Mitchell Henderson (further referred to as; 'petitioner' or 'Henderson') for being in violation of The Act. The Petitioner was given a choice; to either face prosecution or to complete the work study program. The Petitioner chose to complete the program under his own recognizance after being informed of all the requirements of the program and consequences of not complying with the rules of the ¹²program.

⁵Hypothetical para. 6

⁶Hypothetical para. 7-12

⁷Hypothetical para. 13

⁸Clarification Questions (CQ) 3

⁹CQ 3

¹⁰CQ 5

¹¹Hypothetical para. 15

¹²CQ 7

The program found that the Petitioner had PTSD from a previous injury incurred not because of any of the issues being litigated herein. The program prescribed medication for the Petitioner to take as a requirement for the program and found that the diagnoses was the underlying issue for the Petitioner not being able to keep a ¹³job. The Petitioner felt as if his medication was too strong and asked for it to be reduced as well as asked for a change in the program assignment to public works with the concern that it was too physically ¹⁴demanding.

On his own recognizance the Petitioner left the program and the program notified the courts of Petitioner's action. The case was then prosecuted by the court and the petitioner was notified of the prosecution. The Petitioner felt as if he had ¹⁵violated the law and chose the plead guilty and ¹⁶waived the appointment of counsel. The Petitioner requested that he be allowed to live with his brother outside the Capital instead of being ¹⁷imprisoned. The Trial Court accepted the Petitioner's guilty plea and sentenced the petitioner to one week in jail.

The Petitioner, through counsel, filed an appeal to reverse the conviction and the ¹⁸State Supreme Court denied the appeal with the opinion that the Petitioner pleaded guilty on his own accord and without duress. ¹⁹The Petitioner also filed a petition for constitutional relief from the Act on behalf of all citizens with disabilities. ²⁰The district court found in favor of The State citing the States argument that the law was constitutional because the law was applied equally, and imprisonment was only a result after due process was afforded.

¹³Hypothetical para. 19

¹⁴Hypothetical para. 19, 20

¹⁵Hypothetical para. 24

¹⁶Hypothetical para. 24

¹⁷Hypothetical para. 24

¹⁸Hypothetical para. 26

¹⁹Hypothetical para. 27

²⁰Hypothetical para. 29, 30

²¹After being appealed to the Supreme Court, the court found that the Act discriminated against those with disabilities, and ordered the Program to implement a program suitable for those with disabilities. Furthermore, the court did not find that the Act unjustly institutionalized those with disabilities.

²²After the Supreme Court's ruling, the State implemented the required program for those with disabilities and ²³the program saw an 8% increase in completion of the program.

In response to the Supreme Court's ruling the Petitioner filed a petition to the Inter-American Commission on Human Rights seeking relief and alleging the State to be in ²⁴violation with Articles 5, 7, 8, 24, and 25 of the American Convention.

²¹Hypothetical para. 31

²²Hypothetical para. 32

²³CQ 10

²⁴Hypothetical para. 24

LEGAL ANALYSIS

1-ADMISSABILITY

1.1-STATEMENT OF JURISDICTION

²⁵As a founding Member of the Organization of American States ('OAS') the Republic of Atlima ratified the OAS Charter on April 30, 1948 and the American Convention of Human Rights (hereafter 'ACHR' or 'American Convention' or 'Convention') on December 10, 1989. The State of Cardenal accepted the contentious jurisdiction of The Court on December 10, 1989. Additionally, The State has been a party to the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities since October 27, 2004. On August 30, 2009, The State ratified the Convention on the right of Persons with Disabilities.

1.2-COMPETENCY OF THE STATES COURTS

In accordance with the OAS charter Article 13:

²⁶“...the state has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts.”

The state would argue that it has been in compliance with this provision throughout the legislative and enforcement process of the Restoration of Community Act.

²⁵Hypothetical para. 36

²⁶OAS Charter Article 13

The State implemented the program in order to “legislate concerning its interest”, and “to administer Services”. The State saw the Homeless to Work Program as a way to deal with two issues at once: by training homeless people who wanted to stay out of jail and getting homeless people of the streets while doing it. When the legislation was challenged, the state ²⁷Supreme Court ordered revisions to the Program which were complied with and successes of the revisions were felt, ultimately accounting for any perceived discrimination. The Petitioner takes issue with the court ²⁷finding that the program as a whole is constitutional toward persons with disabilities. The OAS Charter explicitly lays out that the states have the right to legislate in their own interests and to determine the competence of its courts.

1.3-GENERAL DENIAL

The State enters a general denial and would herein show the court:

2-ARGUMENTS ON THE MERITS

2.1-STANDING

The State would argue that the Petitioner has no standing to bring this case to the IACHR. ²⁸The Petitioner alleges that the Act and the Program discriminates against all persons with disabilities and is entitled to relief requested from this court. The State would argue that “all persons with disabilities” are not subjected to this program or act and therefore requested relief should be denied. In order for a party to be entitled to relief, said party must be subjected to the harm in which relief is requested.

²⁷Hypothetical para. 31

²⁸Hypothetical para. 27, 33

²⁹Should the court rule that all persons with disabilities are harmed by this act and program then the State would argue against any violations the Petitioner would allege and the Inter-American Commission on Human Rights found violating including: Article 7, 8, 24, and 25 under the American Convention. The state would also argue against the allegation the Petitioner made regarding Article 5 but not found in violation by the Inter-American Commission on Human Rights.

2.2-RIGHT TO HUMANE TREATMENT

The state would hold that under no circumstance is the individual subjected to inhumane treatment as a result of this law. The individual, if found in violation of this law is given the opportunity to avoid prosecution and imprisonment by agreeing to the terms of the Homeless to Work Program. At all times this program is voluntary, and the individual may opt out for the alternative of prosecution and the possibility of imprisonment. ³⁰The average imprisonment time is two weeks for the infraction, which by no means is inhumane or cruel treatment. The state would argue that the Commission was correct in not finding the State in violation of this article.

2.3-RIGHT TO PERSONAL LIBERTY

The Commission found a violation under Article 7 and the state would show that it did not violate any Personal Liberty. In ³¹*Lopez Soto v. Venezuela* the petitioner requested relief alleging article 7 violations when the party was kidnapped and disallowed personal liberty to move about freely.

²⁹Hypothetical para. 33, 35

³⁰Hypothetical para. 13

³¹Commission Report No. 33/16 Case 12,797 Lopez Soto v. Venezuela

The State would argue that the Petitioner does not meet the element to allege similar violations under this Article.³² Section 2 of Article 5 states that, “No one shall be deprived of his physical liberty except...by the constitution of the State Party concerned or by the law established pursuant thereto.” The law was passed democratically by the proper authority to pass laws and enforced by the proper authorities. At no point was the Petitioner deprived of his personal liberty. Upon being arrested the Petitioner made a conscious decision to take part in the Work Program after being given all alternatives. Had he chosen to not take part in the work program the Petitioner could have exercised his right to a trial. The Petitioner was also aware that at any time, he could exit the Program and instead face trial for the original charge should he decided to do so. At no point did the State deprive the Petitioner personal liberty and the State would show that he was given fair treatment throughout the entire process. The State would ask that the court find no violation under Article 5.

2.4-RIGHT TO A FAIR TRIAL

The Petitioner was afforded the right to counsel at all times after the date of arrest. Both before joining the program and after being notified of the prosecution. The Petitioner in both cases waived his right to counsel.

The Petitioner was notified of his right to trial. However, chose the diversion option and chose to participate in the program. When the Petitioner voluntarily left the program he again was notified of the court prosecuting his case and his right to counsel and trial.

³²OAS American Convention- Article 7

³³Hypothetical para. 24

³³The Petitioner again waived his right to trial and right to counsel and entered a guilty plea noting that he believed he was guilty of violating the State's law. The Petitioner then requested to be allowed to live with his brother outside of the Capital in lieu of imprisonment. The court is not obligated to grant the Petitioner's request of his own idea of justice. Rather, the law was applied to the Petitioner as it would be applied to anyone. This process is blind to any discriminations. In fact, on appeal the ³⁴Supreme Court deemed the program to be discriminatory and ordered the Program to make revisions that would provide a program specifically for disabled persons, to which was complied with and ultimately addressed the complaint of discrimination. The overall law and program were not found to be discriminatory though nor the procedure in which one selects the disposition of their case. The State would ask that no violations be found under article 8.

2.5-RIGHT TO EQUAL PROTECTION

Article 24 of the American Convention reads, ³⁹“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” Persons with disabilities are protected the same as other non-disabled persons under this law. No disabled persons rights were or is being infringed upon as a result of this law. In fact, before the Supreme Court's ruling that the Program was discriminatory, the individual, whether disabled or not had a choice between imprisonment and alternative measures providing for equal justice and protections. After the State complied with the Supreme Court's ruling persons deemed disabled were given an advantage and extra protections under the law.

³⁸Hypothetical para. 31

³⁹American Convention- Article 24

The State is under no obligation to provide such alternative remedies in the first place but went above and beyond in order to provide less fortunate citizens with services that allowed for the betterment of their job skills and medical conditions. Additionally, the state has always provided services to those that are disabled through free medical evaluations and therapies. If an individual does not comply with the terms, then they will be dismissed from the program and still enjoy the right to a fair trial and equal protection under the law. The State would ask the court to find no violation under Article 24.

2.6-RIGHT TO JUDICIAL PROTECTION

As previously stated the Petitioner and all persons of disabilities are afforded the right to have their case heard by a competent court. If they choose to go through the Program, then they are agreeing to follow the terms of the deal. If they choose not to or cannot complete the program, for whatever reason, then they can still enjoy the rights afforded to them under this article and have their case heard by a competent court.

In ⁴⁰*19 Tradesmen v. Columbia* the case dealt with the disappearance and murder of 19 workers. As an ultimate example of deprivation of the right to judicial protections. The case before the court couldn't be more different as the Petitioner's enjoyed the rights to judicial protection always. A perfect example is the fact that the Supreme Court addressed the concerns of those with disabilities and the State complied with that ruling in a timely manner. Affording the Petitioner's with judicial protections that addressed their concerns. The State would ask the court to find no violation under Article 25.

⁴⁰19 Tradesmen v. Columbia (2004) IACHR Case

3-APPLICATION OF INTERNATIONAL LAW CASES

In ⁴¹*Luis Rolando Cuscul Pivaral et al v. Guatemala* this court ruled that there were multiple violations that resulted in discriminations against disabled persons. (namely persons living with HIV) In that case, the government failed to act and provide healthcare to those living with this disability. The case currently before the court, differs in that the State has offered multiple programs to keep its citizens from violation the Act. ⁴²There are currently Social Security and disability programs offered by the state in which the Petitioner and other disabled persons can qualify for. Additionally, the current case is different from the *Pivaral* case in that the remedy, in the form of the program, also attempts to address medical issues, which is a service that this State is providing, whereas the Guatemalan government was not. The State was also attempting to provide jobs training and new skills to its homeless population.

In ⁴³*Lopez Alvarez v. Honduras*, the Petitioners of that case successfully showed this court what actions can be deemed as discriminatory. In *Lopez* the Petitioner was an indigenous leader that was arrested and detained for a prolonged period of time even after being acquitted of the allegations against him. This discrimination was based on race and status of Lopez in his community and was arbitrarily arrested for the interests of foreign investors for the indigenous people's lands. In the present case before the court there was no arbitrary arrests in which the court can find a violation. ⁴⁴The Law or Act was highly publicized from the beginning of the legislative process and the individuals should have made preparations. Additionally, the State did not hold the Petitioners for a prolonged period of time as did the government in the Lopez case.

⁴¹Report No. 32/05

⁴²CQ 2

⁴³*Lopez Alvarez v. Honduras-IACHR Case*

⁴⁴CQ 11

The State would hold that one of the best cases to draw conclusions and differences from would be ⁴⁵*Street Children (Villagrán Morales et al.) v. Guatemala*. In the Street Children Case very similar circumstances came about the creation of a law to deal with a homeless citizen issue. However, the biggest and most crucial difference in the present case is the treatment of the individuals violating the law. ⁴⁵This court found the State in the *Street Children* case responsible for committing egregious human rights violations against the street children, in the form of, torture, forced disappearance, and even homicide. In the present case before the court the Petitioners have failed to raise any legitimate human rights violations that arise from the institution of this Act. In fact, the State implemented, through this act, a program that would not only deal with the issue of homelessness but also train the homeless population in order for them to be able to obtain jobs.

In ⁴⁶*Fernandez Ortega et al v. Mexico (2010)* this court ruled that the State failed to do its due diligence in holding perpetrators accountable for the horrific crimes committed against Fernandez. The State in the present case before the court did take the proper due diligence in investigating the allegations of discrimination against disabled persons. When the Supreme Court ruled the original program unconstitutional on the grounds of discrimination, the state then complied with its order and established a third program for persons with disabilities ultimately addressing that issue.

⁴⁵ *Street Children (Villagrán Morales et al.) v. Guatemala*

⁴⁶ *Fernández Ortega et al. v. Mexico*

4-CHARTER OF THE ORGANIZATION OF THE AMERICAN STATES

⁴⁷The OAS Charter States in Article 12 that, “The fundamental rights of States may not be impaired in any manner whatsoever.” The state would hold that any ruling by this court over issues already litigated in its own ⁴⁸‘competent’ state court would in fact impair the fundamental right of the State. Through the processes of the States courts the Supreme Court found that there was a discrimination in how the Act was carried out. However, the court ruled that the overall act was not unconstitutional. For this reason, the Court ordered the State to make adjustments to the program in which the State complied therefore rectifying any violation of Human Rights.

⁴⁹Additionally the Charter states that the state has the obligation to give primary importance to encourage education, science, technology, and culture, oriented toward the overall improvement of the individual. The State has exhibited special importance to this article through this program. Rather than just imprisoning its Citizens it provides an alternative that would better the individual to the greater good of the society as a whole.

5- ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS

The Additional Protocol to the American Convention on Human Rights (Further referred to as; ‘ the protocol’) has many points in which the State wishes to use to argue against the allegations. The first stems from ⁵⁰Article 6: The Right to work. Under subsection 1 the protocol states that everyone has the right to work.

⁴⁷OAS Charter- Article 12

⁴⁸OAS Charter- Article 13

⁴⁹OAS Charter-Article 47

⁵⁰ADD Protocol to the ACHR- Article 6.1

The second subsection points out that the state has an obligation to adopt measures to this end with special regard to vocational guidance and the development of technical and vocational training projects, especially those directed to the disabled. The state would argue that not only is the act not in violation with the convention on human rights. Rather, it actually complies with the requirements under the additional protocol to promote programs to improve the skills and education of workers.

Additionally, under ⁵¹article 7 subsection c states that, “The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority.” The State has respected this right the full extent as written. When the Petitioner applied to a change in programs the above requirements were considered and due to his qualifications the program denied his request. There was no discrimination that resulted in the denial of the program switch, rather it was a merit based decision.

The State would further argue that it was in ⁵²compliance with the ACHR and the additional protocol regarding Article 18 of the protocol. Special attention was received by the Petitioner in the way of disability exams prior to admittance to the program. After the exam and diagnoses was complete the Program implements a wellness plan to achieve the spirit of Article 18.

⁵¹ADD Protocol to the ACHR- Article 7

⁵²ADD Protocol to the ACHR- Article 18

6-INTER-AMERICAN CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

The State would argue that under the ⁵³definition of ‘discrimination against persons with disabilities’ the petitioner does not meet the element under this article. No restriction, distinction, or exclusion was made based on disability in this case. Rather, the State attempted to assist the petitioner with their condition by means medical evaluations and prescribing proper medication and physical therapy sessions.

In fact, under ⁵⁴Article 3, section 2, subsection b, the state has the obligation to, “early detection and intervention, treatment, rehabilitation, education, job training...” The State has met all of these requirements through the program it has implemented. Providing services for all people regardless of disability and the program was designed to help all citizens regardless of any discriminatory factors the skills necessary to obtain jobs.

7-PRAYER FOR RELIEF

Based on the aforementioned reasons, the state prays the court will deny any and all relief to the petitioner under this petition considering the competent state court has already made the necessary rulings in order to address the Petitioners concerns. Additionally, the State would ask the court to exonerate the State from guilt under Articles, 7, 8, 24 and 25 per the Commission’s report.

⁵³IAC on the elimination of discrimination against persons with disabilities- Article 1

⁵⁴ IAC on the elimination of discrimination against persons with disabilities- Article 3

