

INTER-AMERICAN HUMAN RIGHTS

MOOT COURT COMPETITION

MITCHELL HENDERSON ET AL

(Petitioner)

V

THE REPUBLIC OF ATHLIMA

(Defendant)

Memorial for the State

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STATEMENT OF FACTS

FACTUAL BACKGROUND

The State of Athlima (hereafter referenced as “the State”) is a Nation in the process of improving the overall wellbeing of its 28 million citizens through increased efforts to expand its tourism industry through the country’s economic commission¹. The State’s intention was to increase its involvement in the international community by hosting the Bocce-Ball finals in the State’s capitol of Kefalaio.² This event and another major event hosted by the capitol city created major revenue for the city’s business and housed over 75,000 tourists for the event.³

During this period, the homeless population in the city of Kefalaio increased by fifty percent, causing businesses in the region to lobby the local government to prevent the disruption of said business.⁴ The National Assembly, with the help of the local business representatives developed the Restoration of Community Act. This Act outlawed vagrancy and panhandling in the city of Kefalaio.⁵

The Act helped establish the Homeless to Work Program (hereafter referred to as “the program”) on the southern side of Kefalaio.⁶ This would be the same program that Mitchell Henderson would be involved with after being detained for panhandling in the city of Kefalaio.

¹ Hypothetical para. 1

² Hypothetical para. 4, 5

³ Hypothetical para. 4

⁴ Hypothetical para. 5, 6

⁵ Hypothetical para. 6

⁶ Hypothetical para. 6

⁷The Program required a mental and physical evaluation of those within the program and treatment was mandatory for those with identified impairments.⁸ The State covered these treatments and all those enrolled in the program were notified of the treatments before being entered into the program.

Within the program individuals were enrolled in one of two work training programs. Each program required 120 days on campus training.⁹ Room and board were provided for by the State, but those enrolled in the program were not allowed to leave the campus during the duration of the program.¹⁰

The program has a ninety-five percent completion rate, upon which graduates of the program would be granted six months housing sponsored by the State and job counseling services that connect them with businesses that hire in the field in which they have been trained.¹¹ If training is not completed however, or there is a lack of dedication to the program, individuals are to be tried based on the previous offence and, on average, individuals would only receive two weeks of imprisonment.¹²

Mitchell Henderson, a 43-year-old male, worked as a farm laborer until he was severely injured, leaving him with a broken left leg and the loss of three fingers on his dominant hand.¹³ He would be granted modest compensation from the incident, but he would eventually become homeless after being unable to find work in the city of Kafalaio. It was during this time that

⁷ Hypothetical para. 15

⁸ Hypothetical para. 7

⁹ Hypothetical para. 8,9

¹⁰ Hypothetical para. 9

¹¹ Hypothetical para. 12

¹² Hypothetical para. 11, 12

¹³ Hypothetical para. 13

Mitchell Henderson would be detained for panhandling and would choose to be enrolled in the program.¹⁴

He would plead guilty and would be enrolled in to the program where he would then be diagnosed by a physician to have a mild form of PTSD, which he would be given treatment for that would be sponsored by the State.¹⁵ Mitchell would then train in the program, until he would request to drop out due to the rigorous methods used by the Homeless to Work program.¹⁶

When he was unable to complete the course, he was sentenced under his original conviction in compliance with the Restoration of Community Act¹⁷. He himself was offered legal counsel, and opted to plead guilty before the court.¹⁸ Mitchell Henderson only served one-week imprisonment.¹⁹

The Human Rights Kafalaio (hereafter referred to as HRK) would file an appeal to the conviction to the Athlima Supreme Court.²⁰ This was denied, and the HRK would then file a petition for constitutional relief from the Restoration of Community Act. This would be heard in a district court, and would be found in favor of the State, arguing that the law applied to those with and without disabilities and provided for a proper judicial hearing.²¹ The HRK would then file another appeal to the Athlima Supreme Court that would be certified.²²

¹⁴ Hypothetical para. 13, 14, 15

¹⁵ Hypothetical para. 16, 17

¹⁶ Hypothetical para. 20, 21, 22

¹⁷ Hypothetical para. 24

¹⁸ Clarification Questions (CQ) 6

¹⁹ Hypothetical para. 24

²⁰ Hypothetical para. 26

²¹ Hypothetical para. 27-29

²² Hypothetical para. 30

On February 23rd, 2015, the Court found that the program did in fact discriminate against those with disabilities. It ordered the program to implement a program more suitable to those with disabilities.²³ The State complied and provided more funding to the program to accommodate those with disabilities within the training paths that added an extra 30 days to the program increasing the graduation rate of those with disabilities by 8 percent.²⁴

The HRK would soon after file a petition to the Inter-American Commission on Human Rights, purporting an idea of the State's violation of the rights of individuals.²⁵ The State would respond that they had not violated the rights of any individuals in Athlima and had acted in accordance with international provisions.²⁶

LEGAL ANALYSIS

1 – ADMISSABILITY

1.1 – STATEMENT OF JURISDICTION

As a founding member of the Organization of American States, the Republic of Athlima (hereafter referred to as “the State”) ratified the OAS Charter on April 30th, 1948. The State also ratified the American Convention of Human Rights (hereafter ‘ACHR’) December 10th, 1989 and accepted the contentious jurisdiction of the Inter-American Court of Human Rights (IACHR) on the same date.²⁷ In accordance with Article 62.1 of the American Convention, the Republic of Athlima has agreed to submit the present dispute to the IACHR for final resolution.

²³ Hypothetical para. 31

²⁴ CQ 10 and Hypothetical para. 32

²⁵ Hypothetical para. 33

²⁶ Hypothetical para. 34

²⁷ Hypothetical para. 36

1.2 – COMPETENCE OF THE STATE’S COURTS

The State has a right, as granted by its involvement in the Organization of American States, to “determine the jurisdiction and competence of its courts”²⁸ providing them the right as a State to “legislate concerning its interests” and to protect its right to “develop its cultural, political, and economic life freely”²⁹. The State holds that it is within its rights to determine the competency of its own court system, and to determine the law of the State to its own discretion in order to better promote the values the State is obligated to uphold, such as “implementing all [] actions required to generate productive employment, reduce poverty, and eradicate extreme poverty.”³⁰ This obligation can only be upheld if the State can be allowed its right to determine the competence of its courts.

2 – ARGUMENTS ON THE MERITS

2.1 – THE STATE AS A PERSON

The State points to Article 10 of the OAS Charter which states that “States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.”³¹ This Article details the State’s right to equal standing under international law, and outlines the ability of the State to partake in their rights under said law, it also details the State’s classification as a “person under international law” and affords the State the same right equally to other persons under international law.

²⁸ The Organization of American States Charter (OAS Charter) Article 13

²⁹ OAS Charter Article 17

³⁰ Inter-American Democratic Charter Article 12

³¹ OAS Charter Article 10

2.2 – THE STATE’S RIGHTS AS GRANTED BY ARTICLE 8 OF THE AMERICAN CONVENTION

The State holds that under section 4 article 8 of the American Convention, which states that “An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause”,³² the State is afforded the same right granted by international law, and outlined in the OAS Charter to not be held accountable to a new trial for the same cause that has already been deliberated upon in the State’s court system. The State would suggest that by adhering to its right to determine the jurisdiction and competence of its own courts, a right granted by the OAS Charter³³, that the State has confidently been subjected to a trial of the same cause that is being brought into the IACHR. The State holds that it has already found itself to be guilty of discriminating against those with disabilities, and is currently in compliance within its own jurisdiction to work towards bettering the program to be more inclusive and effective, and that any further proceeding would be an infringement upon the right of the State to protect its interest in justice.

With an increase of 8 percent completion rate by those with disabilities,³⁴ the State firmly believes that it has followed the decision of its own court system, and has worked to implement new work training paths for those with disabilities, making the program longer and more accommodating to those with disabilities.³⁵

The State believes that by increasing the graduation rate of the program, and by adhering to the decision of its court, it would be inappropriate to further to debate on the case.

³² The American Convention Article 8

³³ OAS Charter Article 13

³⁴ CQ 10

³⁵ Hypothetical para. 32

2.3 – THE CONSEQUENCES OF DENYING THE EXISTENCE OF THE PROGRAM

The State would mention that as it has complied with its own courts, and believes that further proceedings are unnecessary, it has also worked to complete its obligation not only to the citizens of the State, but to the other member of the OAS as well. The American Democratic Charter states in Section 3 Article 12 that “the OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty.”³⁶ Whereas before the program was in fact discriminatory, the State has complied with its Supreme Court’s decision³⁷ and has made the program into an inclusive and effective mode of employment, working to eliminate poverty in the city of Kafalaio. This can be seen by the 94 percent hiring rate³⁸ that graduates can look forward to, as well as in the 8 percent increase in graduating citizens with disabilities. To abolish the Restoration of Community Act would be to abolish the Homeless to Work program, which would impede the State’s ability to uphold its commitment to the American Democratic Charter and infringe upon the States right as a person under international law as outlined under Article 8 of the American Convention.

2.4 – THE STATE HAS A RIGHT TO GOVERN WITHIN ITS OWN JURISDICTION.

The State has the ability to determine its own jurisdiction and competence of its courts, as granted by the OAS Charter.³⁹ State is allowed, to its own discretion, to develop its cultural, political, and economic life freely, and to encourage education and culture toward the overall

³⁶ Inter-American Democratic Convention Article 12

³⁷ Hypothetical para. 31

³⁸ CQ 5

³⁹ OAS Charter Article 13

improvement of individuals within the State, to support the foundation of social justice more fully.

The Court must uphold these rights of the State as stated in the OAS Charter, under international law, and by intervening in these rights of the State would therein violate Article 12 of the Charter, and therefore would be an infringement upon the States sovereignty.

2.5 – THE STATE’S RIGHT TO ESTABLISH THE EQUAL RIGHTS OF CITIZENS

The State has the right, as granted in the Inter-American Democratic Charter, to provide the right to help promote to it is citizens the responsibility to participate in decisions relating to their own development.⁴⁰ The States Right to Work Program, while acting within the authority of the States laws, worked to establish these rights to individuals who are impoverished and are without the means to have their voices heard.

2.6 – THE STATE IS CURRENTLY IN COMPLENECE WITH ARTICLE 7 OF THE AMERICAN CONVENTION

In Article 7 section 1 of the American Convention, it states that “every person has the right to personal liberty and security.”⁴¹ The State feels that prior to the Supreme Court decision on the Mitchell Henderson case, it followed this provision, and that after the Supreme Court hearing has further worked to expand the liberties of the State’s citizen’s by working to help better the lives of those who are homeless, and now those who are disabled and homeless. This can be seen by the 8 percent increase of graduates with disabilities, and by the 94 percent employment rate after completion of the program.⁴² The State feels that it has acted within its

⁴⁰ Inter-American Democratic Charter Article 6

⁴¹ American Convention Article 7

⁴² CQ 10 and 5

established rights granted by the OAS Charter and adhered to each provision of the Article to its fullest, and has further increased its efforts following the Supreme Court hearing.

Regarding the second provision of the Article, there have been no individuals in the city of Kafalaio who have been deprived of their physical liberty, except those who have been detained under the law that was previously established within in the State; the Restoration of Community Act. Following the Supreme Court’s ruling on the issue, the State has fully worked to supply individuals with whatever they need to be able to graduate the program.⁴³ As the State is a member of the OAS the State must work to comply with the American Democratic Charter, which states that “member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty.”⁴⁴ The State feels that after the Supreme Court hearing it is obligated to adhere to its commitment to the American Democratic Charter, and work to better the lives of those who are homeless in the city of Kafalaio, especially if it creates a burden upon the State to house those within the program, and allow them to train for free within the State sponsored schools. The State holds that while they are still subject to the law, if they fail or drop out of the program, they are not fully “in custody” and are instead given the training to be able to achieve the physical liberty that is promised to them in Article 7 section 2.

Section 3 of the Article is shown to be upheld, as the plaintiff was in fact not arbitrarily imprisoned as it was public knowledge that the Restoration of Community Act was in place in Kafalaio⁴⁵. Mitchell Henderson knew that he had broken the law and was notified of this when detained. Prior to the Supreme Court hearing, the State worked diligently to inform the populace

⁴³ Hypothetical para. 8, 9, 12, 13

⁴⁴ ibd

⁴⁵ CQ 11

of Kafalaio of the new law, and to work towards helping individuals understand what options they had upon being detained.⁴⁶ The fourth section of the Article states that “Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him,”⁴⁷ and the State did in fact comply with this prior to the Mitchell Henderson Case and will continue to comply with after. The facts state that Henderson was told of his options after being detained, and as previously stated, the public knew well the Act.

Section 5 of the Article was met prior to the Mitchell Henderson Case, and, as stated in the facts, the State has as series of courts that allow for citizens to appeal their cases⁴⁸ to, which Henderson took full advantage of after his initial trial. Henderson was granted a hearing by a court in a period compliant with the Article, and pleaded guilty to the charges against him. The State feels that prior to the Supreme Court hearing and after, it will continue to work in compliance with this provision of the Article, and allow for the proper exercise of judicial power in relation to the rights of the accused.

Section 6 of the Article directly deals with the system of appellate courts that must exist within a state to comply with American Convention. That State feels that prior to the Henderson Case it fully upheld this section by establishing a system of appellate courts that can be used by citizens within in the competency of its own courts. Mitchell Henderson and the HRK used these courts to appeal to the State’s Supreme Court, where the court found that the Act was discriminatory to those with disabilities and the program was changed to better benefit those

⁴⁶ ibd

⁴⁷ ibd

⁴⁸ Hypothetical para. 3

within the program. This series of courts fully comply with the Article and have allowed for citizens to “recourse to a competent court.”

Section 7 of the Article details that “no one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.”⁴⁹ This section has been met by the State prior to the Henderson Case and will continue to be met by the State. The Restoration of Community Act itself does not concern those individuals who are in debt, nor does it imply that those who are in debt are to be detained.

2.7 – THE STATE IS CURRENTLY COMPLIANT WITH ARTICLE 8 OF THE AMERICAN CONVENTION

Article 8 section 1 of the Convention states that “Every person has the right to a hearing with due guarantees,”⁵⁰ and that the hearing should be done within a set time, and decided upon by a “competent, independent, and impartial tribunal.” It was stated in the facts that the State granted Mitchell trial in a short duration of time after his incarceration, and the State is confident that its courts are competent in deliberating upon the nature of law.⁵¹ After the Supreme Court hearing the State has worked to continue its efforts to provide competent, independent, and impartial tribunal’s like the State’s own Supreme Court, as well as dedicate itself towards guaranteeing individuals their rights to hearings, just as Mitchell Henderson would have been afforded had he not pleaded guilty.

Regarding section 2, point A of Article 8, the State feels that prior to the Supreme Court hearing the State has provided for individuals translators and interpreters, but as Henderson

⁴⁹ American Convention Article 7

⁵⁰ American Convention Article 8

⁵¹ Hypothetical para. 15, 24

spoke the language of the State, the State did not feel obligated to provide this resource. In point B, The State did notify Mitchell Henderson of the charges against him, and has done so prior to the Supreme Court hearing. While the State works to comply with point C prior to and after the Supreme Court hearing, it does not feel as if it had violated this section as Mitchell Henderson had pleaded guilty to the charges against him with knowledge of the law and of the Act.⁵² The State will further work to supply individuals the time necessary to build a case for themselves as is deemed adequate, but the current case afforded to waive this time.⁵³ Point D, where “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” is another section that the State feels it has complied with in full prior to the Henderson Case, and would like to point that this right was afforded to Mitchell Henderson, who waived this right and pleaded guilty before the court. Point E was afforded to Mitchell Henderson but was again waived prior to the trial, the State works to supply counsel to those who cannot afford counsel, and offered this to Henderson.⁵⁴ The State also feels that because there was no trial, that Henderson could not obtain witnesses, and that the State is normally in compliance with point F of the second provision, however, as Henderson pleaded guilty, and waived his right to counsel, this point was voided. The State holds that prior to the Supreme Court hearing, it has complied with point G of the second provision, which states that “the right not to be compelled to be a witness against himself or to plead guilty”, and within the Henderson Case itself this was witnessed as Mitchell Henderson, himself, pleaded guilty after being told his options and the nature of his conviction. Finally, the State has held to the “right to appeal the judgement to a higher court” within point H

⁵² CQ 11

⁵³ CQ 6

⁵⁴ CQ 6

of the Article prior to the Supreme Court hearing through its dedication to its own court system, that was witnessed in the HRK appellate hearings where the Supreme Court would eventually find the Act to be discriminatory, leading to the changes in the program.⁵⁵

Section 3 of the Article states that “a confession of guilt by the accused shall be valid only if it is made without coercion of any kind.” And as the facts state, the State, prior to the Henderson Case and during, did not in any way coerce Mitchell into pleading guilty,⁵⁶ allowing for Henderson’s confession of guilt to be valid and upheld in the court of Kafalaio, and to be in full compliance of section 3.

Section 4 states that “an accused person acquitted by a nonappealable judgement shall not be subjected to a new trial for the same cause”, and this is respected by the State prior to the Supreme Court hearing and after, as the State believes that Henderson or any other citizen was not tried on the grounds of a new trial of the same cause, and that, prior to the case, the State’s courts acted in a competent and just manner when deliberating upon the laws of the State.

Section 5 of the Article states that “criminal proceeding shall be public, except insofar as may be necessary to protect the interest of justice”, and the State fully believes that prior to the Supreme Court hearing and after, the State has made proceedings public, and has not denied this section to any individuals within the State.

2.8 – THE STATE IS CURRENTLY IN COMPLIANCE WITH ARTICLE 24 OF THE AMERICAN CONVENTION

⁵⁵ ibd

⁵⁶ Hypothetical para. 24

Article 24 states that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law”. The State holds that they have since changed the way they have acted in accordance with the Restoration of Community Act following the Supreme Court hearing, and that it has worked to eliminate discriminatory practices within the program and has continued to provide for the equal protection of individuals under the State’s law,⁵⁷ which was seen in the appellate court hearings of the HRK’s petition for constitutional relief,⁵⁸ leading to the changed in the program allowing it to be more inclusive and ultimately more effective.

2.9 – THE STATE IS CURRENTLY IN COMPLIANCE WITH ARTICLE 25 OF THE AMERICAN CONVENTION

Article 25 section 1 allows for all individuals in the State to the right to a “competent court or tribunal for protection against acts that violate his fundamental rights recognized by the state.” The State holds that prior to the Supreme Court hearing the State upheld this provision, establishing the series of appellate courts that individuals, like Henderson and the HRK, can take advantage of to protect their rights. It is also important to note that the State has the right to determine the competence of its courts, as previously stated, and that the State’s own Supreme Court already found that the Act was in violation of the rights of those with disabilities. Which leads to section 2 which states that,

- “ 2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

⁵⁷ Hypothetical para. 31, 32

⁵⁸ Hypothetical para. 27

- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.”⁵⁹

The State, as stated by the facts, complied with each of these subpoints within the provision prior to the Supreme Court hearing, and has continued to work towards improving the program in compliance with its own courts. It complied and is currently in compliance with point A by allowing the HRK’s case to be moved up in the State’s appellate courts, and to “have [their] rights determined by the competent authority provided for by the legal system of the state.”⁶⁰ By allowing the HRK to use the State’s system of appeals, the State granted Mitchell Henderson and others this right and complied with the first point of the second section. Regarding point B, the State’s courts did in fact developed possibilities for judicial remedy, which was the funding of a supplemental work training path in the program, which increased peoples with disabilities graduation from the program by 8 percent.⁶¹ The State was made to create these changes after having the Supreme Court deliberate over the case, and the State will continue to work towards complying with this section to its fullest. These facts also show the States compliance with point C of the section, as the State has worked to implement the changes recommended by its own courts to improve the program and make it more inclusive and effective.⁶²

3 – REQUEST FOR RELIEF

Based on the foregoing submissions, the State respectfully requests the Court:

- A) Declare the State not responsible for the accusations in accordance with Articles 7, 8, 24, and 25 of the American Convention based on

⁵⁹ American Convention Article 25

⁶⁰ Hypothetical

⁶¹ Ibid

⁶² ibd

the State's commitment to adhering to the decision of its own Supreme Court

- B) Request that the Court declare the petitioner's case to be without standing to protect the rights of the State and of the citizens in the State who have benefited from the program
- C) Judge the Restoration of Community Act to currently be in compliance with the American Convention Articles 7, 8, 24, and 25 proceeding the State's own Supreme Court Case.