

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**MOOT COURT COMPETITION**

**MITCHELL HENDERSON ET AL**

(Defense)

**V**

**THE REPUBLIC OF ATHLIMA**

(Respondent)

**MEMORIAL FOR THE DEFENSE**

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Human Rights Kefalaio.....	6,7
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## STATEMENT OF FACTS

### ***Factual Background***

The Republic of Athlima (hereafter; “the Republic,” “the State” or “Athlima”) is a State that attempted to flourish its economy through the process of hosting beneficial competitions and tournaments.<sup>1</sup> The gross income developed from these arrangements also caused an influx of tourism to the capital, Kefalaio, and an onslaught of panhandling from the homeless population in the general area.<sup>2</sup> As this issue developed and patrons and business owners complained, Kefalaio’s National Assembly soon responded with the Restoration of Community Act.<sup>3</sup> This program would only apply to the capital city<sup>4</sup> and was hopeful in rehabilitating the homeless demographic to working members of society rather than flooding the prison industrial complex in the Republic.<sup>5</sup>

Mitchell Henderson, a hard-working farmer, was injured on site which resulted in the loss of three of his fingers on his dominant hand and a broken leg.<sup>6</sup> He was unable to continue working in the farming sector and used the modest compensation rewarded for his injuries to move to the capital city with the mindset that there would be more work for him.<sup>7</sup> As there wasn’t, he quickly depleted his resources and became homeless.<sup>8</sup> Soon he encountered authorities, where they left him with the decision to join the Homeless to Work program or to go to trial; Mr. Henderson chose the former and was enrolled in the public works training program.<sup>9</sup>

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<sup>1</sup> Hypothetical para. 4

<sup>2</sup> Hypothetical para. 5

<sup>3</sup> Hypothetical para. 6

<sup>4</sup> Hypothetical para. 7

<sup>5</sup> Hypothetical para. 6

<sup>6</sup> Hypothetical para. 13

<sup>7</sup> Hypothetical para. 14

<sup>8</sup> Hypothetical para. 14

<sup>9</sup> Hypothetical para. 15

During the program, he was diagnosed with mild post-traumatic stress disorder (PTSD)<sup>10</sup> and, in order to stay in compliance with the program's regulations, was told to take medication everyday or face dismissal from the program and, therefore, trial.<sup>11</sup> Mr. Henderson requested to be transferred from public works, which triggered physical strain from his previous injuries, to the hospitality services training program, which was ultimately rejected due to Mr. Henderson's diagnosed PTSD.<sup>12</sup> When told he would have to stay in the public work training, without accommodations, Mr. Henderson, alongside his brother, decided that he would leave the program and return home.<sup>13</sup> Mr. Henderson informed the staff at the facility of his decision and it was explained to him that he would have to go to trial if he did not complete the program.<sup>14</sup> He was charged with violating the Restoration of Community Act soon thereafter.<sup>15</sup>

Mitchell Henderson elected to continue to trial without an attorney and decided to plead his guilt to the court.<sup>16</sup> Mr. Henderson was sentenced to a week of imprisonment as the court found his actions of panhandling to have disturbed businesses.<sup>17</sup> Mr. Henderson's brother, Francis Henderson, found the decision to be unfair and contacted the human rights organization, Human Rights Kefalaio (HRK), to appeal the decision.<sup>18</sup> The district court of Kefalaio, when presented the case, ruled in favor of the state as they argued that disabled individuals were not specifically targeted in the making of the program nor in the duration.<sup>19</sup> As that felt unsatisfactory to the HRK, they appealed to the Athlima Supreme Court, where they ruled in

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<sup>10</sup> Hypothetical para. 16

<sup>11</sup> Hypothetical para. 19

<sup>12</sup> Hypothetical para. 20

<sup>13</sup> Hypothetical para. 21

<sup>14</sup> Hypothetical para. 22

<sup>15</sup> Hypothetical para. 23

<sup>16</sup> Hypothetical para. 24

<sup>17</sup> Hypothetical para. 24

<sup>18</sup> Hypothetical para. 25

<sup>19</sup> Hypothetical para. 30

favor of the HRK and ordered the program to implement a program apt for individuals with disabilities.<sup>20</sup> Later that year, in 2015, the Petitioners brought the case up to the Inter-American Commission on Human Rights (Inter-American Commission, Commission, or IACHR) on the grounds of the state being in violation of Articles 5, 7, 8, 24, 25 of the American Conventions as well as provisions outlined in the American Convention on Human Rights.<sup>21</sup>

## LEGAL ANALYSIS

### 1 – ADMISSIBILITY

#### *1.1 – Statement of Jurisdiction*

As a founding Member State of the Organization of American States (OAS), the Republic consciously agreed to all provision in all charters and conventions signed under the OAS, such as the OAS Charter which was signed on April 30, 1948.<sup>22</sup> Additionally, Athlima approved and supported the American Convention on Human Rights (the Convention, or ACHR) on December 10, 1989.<sup>23</sup> By signing onto the previously aforementioned conventions, Athlima accepted contentious jurisdiction of the Commission on December 10, 1989.<sup>24</sup> In order to stay in accordance with Article 62(1) of the Convention, the Republic has agreed to submit the present dispute to the Inter-American Commission for final resolution.

#### *1.2 – Exhaustion of Domestic Remedies*

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<sup>20</sup> Hypothetical para. 31

<sup>21</sup> Hypothetical para. 33

<sup>22</sup> Hypothetical para. 36

<sup>23</sup> Hypothetical para. 36

<sup>24</sup> Hypothetical para. 36

In accordance with Article 46 in the Convention<sup>25</sup>, Member States must first completely exhaust all domestic resources and remedies before Petitioners are able to be heard in front of the court.

The Petitioners have exhausted domestic resources and remedies with efforts at both the district courts as well as with their appeal to the State's Supreme Court. While at the Supreme Court, where the Petitioners were found to have been correct in their statement of violation against the State, the court found the training program to be inherently discriminatory against disabled individuals.<sup>26</sup> Therefore, the Court ordered for a program to be inserted for people who have disabilities.<sup>27</sup> Additionally, funding was provided to the program that lengthened and improved the program for disabled participants.<sup>28</sup> However, they took no action towards relief for the violations done directly to Mitchell Henderson's rights.

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<sup>25</sup> American Convention on Human Rights 1978 Article 46

<sup>26</sup> Hypothetical para. 31

<sup>27</sup> Hypothetical para. 32

<sup>28</sup> Hypothetical para. 32



## 2 – ARGUMENTS ON THE MERITS

### ***2.1 – The State Violated the Right to Humane Treatment of the Alleged Victims***

A Member State under the American Convention on Human Rights is liable for infringements of any rights protected under the Convention's provisions whereas conduct committed against individuals within their official capacity constitutes violations attributable against the State or where the State is found to have effectively failed to prevent, investigate, and prosecute human rights violations.<sup>29</sup>

### ***2.2 – The Republic Violations of Mitchell Henderson's Right to Humane Treatment Through the Forced Consumption of Medication***

The Republic of Athlima failed in their duty to treat individuals under their detention, which occurred during the imprisonment or custody in a government-run facility, with humane conduct. This occurred through the extent of his experience and time spent at the training facility where he was placed into a program that did not, nor could not, meet Mr. Henderson at the extent of his physical abilities. That is to state, the work that he was mandated to do under the provision in the Homeless to Work Program caused a great deal of strain from Mr. Henderson's physical handicaps.<sup>30</sup> The inhumane treatment continued even after Mr. Henderson informed staffers of his burden and requested to be put in the less strenuous of the two programs.<sup>31</sup> As these conditions continued relentlessly, as did the inhumane treatment Mr. Henderson was put through.

As was stated in the proceedings in the Situation Regarding the Right to Work of Persons with Disabilities in Tucumán, Argentina,<sup>32</sup> which was heard in front of the IACHR, it was decided that individuals who are physically or mentally disabled should have the same

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<sup>29</sup> American Convention on Human Rights 1978 Article 5

<sup>30</sup> Hypothetical para. 20

<sup>31</sup> Hypothetical para. 20

<sup>32</sup> Situation Regarding the Right to Work of Persons with Disabilities in Tucumán, Argentina [2015] (I/A Court H.R.

opportunities to work without discrimination. As this ruling was not applied to the circumstances of Mr. Henderson, both when he was rejected from the hospitality service program<sup>33</sup> as well when Kefalaio's Homeless to Work program distinctly lacked alternatives for mentally and or physically handicapped participants.

The Restoration of Community Act did outline that physical therapy and other forms of rehabilitation be available for participants in the program<sup>34</sup>, however the physical therapy offered little to no assistance to Mr. Henderson, despite his required three therapy sessions a week.<sup>35</sup>

Therefore, Mitchell Henderson's right to humane treatment was violated as Mr. Henderson was in constant pain due to his previous injuries, in which the facility hosting him did nothing about. These actions are a breach of the duty of the State to rightfully treat individuals that are under the State's care and, henceforth, the State has the duty to punish or correct the actions of the perpetrators and give reparations to the victims under Article 5 of the Convention<sup>36</sup>, which in this case would be Mitchell Henderson.

### ***2.3 - The State Violated Mitchell Henderson's Right to Personal Liberty by Forceful Imprisonment for the Same Crime Twice***

The Republic of Athlima allows for the option of the Restoration of Community Act as an alternative from a trial and, inevitably, prison sentence in order to have a non-judicial course for their homeless population.<sup>37</sup> However, comparatively to the one week Mitchell Henderson later received at his trial for his incompletion of the program, Mr. Henderson spent roughly four

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<sup>33</sup> Hypothetical para. 21

<sup>34</sup> Hypothetical para. 7

<sup>35</sup> Hypothetical para. 17

<sup>36</sup> American Convention on Human Rights 1978 Article 5

<sup>37</sup> Hypothetical para. 6

months in a facility<sup>38</sup>, not able to leave the grounds,<sup>39</sup> taking medication daily even after notifying staffers that the dosage did not fit him,<sup>40</sup> forced to perform daily on his legs which could not support him due to his injuries.<sup>41</sup> Mitchell Henderson's experience with the Homeless to Work program was punishing, grueling and physically and mentally taxing. These conditions summed together are similar to those prisoners are often detained under.

Mr. Henderson later admitted to guilt and was sentenced to one-week imprisonment in a government facility.<sup>42</sup> However, comparatively to the near four months Mr. Henderson spent confined to a twenty-four-hour facility, where he was forced to live as if he was living in prison, the Petitioners would argue that Mr. Henderson had already gave his time to the state in a program that was made to make him fail.

According to Article 7, Mr. Henderson's liberty was infringed upon, as he was forcibly and unlawfully detained for a crime he had already served time for.<sup>43</sup> In conclusion, Mr. Henderson's sentence to a one-week imprisonment was redundant and unjust as he had already been under a detention facility from which he could leave from and that dictated his every move.

#### ***2.4 The State Violated Mitchell Henderson's Right to A Fair Trial by Allowing the Defense to Defend Himself***

The ACHR states that "the right of the accused [has the right] to defend by himself...of his own choosing."<sup>44</sup> Further, Article 8 specifically outlines that a "confession of guilt [is only] valid...if it is made without coercion of any kind."<sup>45</sup>

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<sup>38</sup> Hypothetical para. 15 & 23

<sup>39</sup> Hypothetical para. 9

<sup>40</sup> Hypothetical para. 19

<sup>41</sup> Hypothetical para. 20

<sup>42</sup> Hypothetical para. 24

<sup>43</sup> American Convention on Human Rights 1978 Article 7

<sup>44</sup> American Convention on Human Rights 1978 Article 8

<sup>45</sup> American Convention on Human Rights 1978 Article 8

Mitchell Henderson was only fully given the choice of trial with his second encounter with authorities.<sup>46</sup> In this instance, he was offered his right to be represented by legal council (an option he did not receive when he was first arrested), however, he turned it away.<sup>47</sup> While Mr. Henderson had the options clearly laid for him, he did not hold the capability to refuse council nor defend himself in the name of the law.

In the Access to Justice for People with Disabilities in Guatemala<sup>48</sup> case heard before the IACHR, it was discussed that individuals mentally incapable of making their own decisions regarding their legal counsel and highlighted the abuse parties with mental disabilities encounter within the legal system in Latin America. As Mr. Henderson was diagnosed with PTSD, and was forced to take medication for his condition just days before his trial and sentencing<sup>49</sup>, it is under the Petitioners' opinion that Mr. Henderson's mind was in, as Mr. Henderson described when he first complained of the medication, foggy. However, if Mr. Henderson's medication had had the time to completely escape his system, his symptoms of PTSD would have left him impulsive, not able to focus, nor able to interact in a social or professional setting.<sup>50</sup>

Under these conditions, Mr. Henderson was not capable of making clear, concise decisions for himself legally. Therefore, as he was not given adequate counsel, Mr. Henderson was not afforded a fair trial, according to Article 8(2-d and 2-e).<sup>51</sup>

Additionally, while Mr. Henderson plead guilty, the condition under which he entered his plea are not sound. While there the detail of Mr. Henderson's mental state to take into account, there is also the suspicion of coercion present.

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<sup>46</sup> Hypothetical para. 15

<sup>47</sup> Hypothetical para. 24

<sup>48</sup> Access to Justice for People with Disabilities in Guatemala [2015] para. 3 (I/A Court H.R.

<sup>49</sup> Hypothetical para. 19

<sup>50</sup> Clarification Question (CQ) #9

<sup>51</sup> American Convention on Human Rights 1978 Article 8

The day of Mr. Henderson's trial, it is important to note that the presiding judge emphasized that the defense caused trouble for businesses with his panhandling.<sup>52</sup> Mr. Henderson, while he might have felt guilty, also continued to attempt to stay out of jail, specifically when he offered leaving the city with his brother altogether.<sup>53</sup> Mr. Henderson also noted that he felt he had violated the law, however, with not a single entity at his defense, he could not be sure.

In conclusion, the Republic is in violation of Article 8(3) as there were instances, however slight, of coercion to an already fragile mind.<sup>54</sup> The Republic of Atlima has clearly indications of instances where the State is in breach of not providing a fair trial to the defense.

### ***2.5 - The State of Atlima Violated Mitchell Henderson's Right To Equal Protection Through An Inherently Discriminatory Program***

In the ACHR, Article 24 declares that all individuals are equal and, henceforth, are entitled to equal protection under the law.<sup>55</sup>

In Mr. Henderson's situation, this was not the case as the Homeless to Work program was inherently discriminatory against individuals who are disabled.<sup>56</sup> While it may not have had the intent of increasing the rate of jailed disabled individuals<sup>57</sup>, that was the result of the program not having a comprehensive system in which to better accommodate disabled participants.

One Petitioner from the case Access to Justice for People with Disabilities in Guatemala<sup>58</sup> heard in front of the IACHR testified that, as a blind woman, it was "difficult and,

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<sup>52</sup> Hypothetical para. 24

<sup>53</sup> Hypothetical para. 24

<sup>54</sup> American Convention on Human Rights 1978 Article 8

<sup>55</sup> American Convention on Human Rights 1978 Article 24

<sup>56</sup> Hypothetical para. 31

<sup>57</sup> CQ #3

<sup>58</sup> Access to Justice for People with Disabilities in Guatemala [2015] para. 2 (I/A Court H.R.

at times, unattainable” to lodge a complaint through any legal proceedings. These words describe how disabled individuals’ experience during their time at the Homeless to Work program.

Many disabled individuals find the program impossible to graduate from as only 25% of those who are disabled (which actually make up a total 26% of those who participate in the program) actually successfully complete the job training program.<sup>59</sup> These numbers are drastically different from the 95% completion rate the overall program has.<sup>60</sup>

These numbers do not reflect the incapability of the disabled community who find themselves homeless; rather, it is a testimony that the Restoration of Community Act has difficult protocols that make it challenging for disabled individuals to thrive under it.

Therefore, Mitchell Henderson, as a disabled individual enrolled in the program, was discriminated against and is among a greater percentage of victims who have received jail time.

## ***2.6 – The State Failed to Shield Mitchell Henderson’s Right to Judicial Protection by Not Presenting Mr. Henderson Reparation***

Outlined in Article 25, the ACHR clearly states that in Section 2(b), the State has the obligation to “develop...judicial remedies” for those seeking “simple and prompt recourse.”<sup>61</sup>

While this case was presented in front of the Supreme Court of Atlima, where they ruled in favor of the Petitioners, which were petitioning on the premise that the Republic was inherently discriminatory against disabled participants, they handed down orders for Atlima to change aspects of the program in order to construct the program as more readily accessible to disabled individuals.<sup>62</sup> These actions were taken in order to ensure that there would be no future victims of the program that would be put through what the state put Mitchell Henderson through.

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<sup>59</sup> CQ #3

<sup>60</sup> Hypothetical para. 13

<sup>61</sup> American Convention on Human Rights 1978 Article 25

<sup>62</sup> Hypothetical para. 31 & 32

However, the state ignored Mitchell Henderson. Mr. Henderson was put through strenuous conditions as well as inhumane treatment. He still stands in the same socioeconomic level, now dependent on his brother, without healthcare in which to assist him become independent within Athlima's borders.

The Republic made excellent measures in order to ensure the safety of disabled participants of the future, however, Athlima made no moves to offer Mr. Henderson any sort of compensation for his time in a twenty-four-hour discriminatory facility. Thereby, the Republic of Athlima is in clear violation of Article 25.<sup>63</sup>

### 3 - INSUFFICIENCY OF REPARATIONS

While Athlima took steps to improve their Homeless to Work program in order to prevent the harm and discrimination to disabled homeless individuals, the Republic has subsequently ignored Mitchell Henderson and the harm he had experienced due to the proceedings and conduct in the program. With this utter lack of attention, it is important for the Athlima government to aid the man that they held, and ignored, in their custody for months. Mr. Henderson also lacked access to comprehensive healthcare which did nothing to improve his health status as someone who suffered from both physical and mental disabilities.

Moreover, as Athlima is a Member State that has previously signed their approval for the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (hereafter, IACEAFDAPD)<sup>64</sup>, acknowledging the types of discrimination done towards disabled individuals. Thereby, the Republic should also recognize that "rehabilitation and treatment" are only two of the main goals in the list of top priorities to the IACEAFDAPD.<sup>65</sup>

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<sup>63</sup> American Convention on Human Rights 1978 Article 25

<sup>64</sup> Hypothetical para. 36

<sup>65</sup> Inter-American Convention On the Elimination of All Forms of Discrimination Against Persons with Disabilities 2004 Article 3

Due to these circumstances, the Petitioners stand firmly that the State failed to provide some sort of reparation in order to compensate Mr. Henderson for the arduous time and energy spent for the duration of the program.

#### 4 - REQUEST FOR RELIEF

Based on the abovementioned submission, the Petitioner would like to request the following of the State:

- a) As Mr. Henderson nearly completed the Homeless to Work program, or he would have completed it if they could comprehensively accommodate to his disabilities, Mitchell Henderson asks for access to post-program job services in order to assist Mr. Henderson find work.
- b) Order the Republic of Athlima to accord a satisfactory monetary amount to Mitchell Henderson for the futile time spent within the program as well as for the pain and suffering he forced himself to endure throughout.
- c) Additionally, there is the issue of Mr. Henderson's health care. While he may not have acquired his injuries in the custody of the State during the Homeless to Work program, the Restoration of Community Act's purpose is to transform and rehabilitate homeless individuals who find themselves in Athlima. The Republic's original resolution was to make these individuals productive members of society. While their program failed Mr. Henderson, and as their attempt at medication was unreasonably unjust, the State should carry the burden of Mr. Henderson's full medical care coverage for a period not to exceed 18 months.