

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

HENDERSON ET. AL

(Victims)

V

THE REPUBLIC OF ATHLIMA

(Respondent)

MEMORIAL FOR THE VICTIMS

Assigned Role: Petitioner

TABLE OF CONTENTS

INDEX OF AUTHORITIES	3
STATEMENT OF FACTS	4
Factual Background.....	4
LEGAL ANALYSIS	9
1 – ADMISSIBILITY	9
1.1 – STATEMENT OF JURISDICTION.....	9
2 - ARGUMENTS ON THE MERITS	10
2.1 - THE STATE BREACHED DUTY OF CARE FOR THE ALLEGED VICTIMS VIA THE UNCONSTITUTIONAL 2013 RESTORATION OF COMMUNITY ACT.....	10
2.1 (a) - THE STATE BREACHED DUTY OF CARE VIA VIOLATION OF RIGHTS TO PERSONAL LIBERTY AND EQUAL PROTECTION.....	10
2.1 (b) - THE STATE BREACHED DUTY OF CARE VIA UNLAWFUL DETENTION.....	11
2.1 (c) - THE STATE BREACHED DUTY OF CARE VIA UNJUST INSTITUTIONALIZATION	13
2.1 (d) - THE STATE BREACHED CONTRACT VIA DENIAL OF DUE PROCESS RIGHTS.....	14
3 – REQUEST FOR RELIEF	15

INDEX OF AUTHORITIES

Legal Books and Articles

3 Responsibilities Every Government Has Toward its Citizens	11
Actio Popularis: The Class Action in International Law.....	9
American Convention on Human Rights 1969.....	9-16
De Wilde, Ooms and Versyp v. Belgium (1971)	11
Ethiopia v. South Africa (1962)	8
European Convention on Human Rights 1952.....	10
Liberia v. South Africa (1962)	8
International Covenant on Civil and Political Rights 1966.....	11 ,17
The Right to Dignified Living Conditions and the Position of Vulnerability in the Jurisprudence of the Inter-American Court	14
When Process is Due: Goldberg v. Kelly (1970)	14

STATEMENT OF FACTS

Factual Background

As part of its initiative to increase its international standing and effect a more competitive economy,¹ the small Republic of Athlima (hereafter “Athlima,” “The State,” or “The Republic”) agreed to demands from their capital city’s business leaders that—in anticipation of Kefalaio hosting major international sporting events expected to draw up to 300,000 tourists in the near future—public vagrancy and panhandling be criminalized across the country’s Federal District.² This new law, widely publicized since its inception,³ is known as 2013 Restoration of Community Act (hereafter “ROCA”) and targets the problem of capital city patronage losses by reducing homeless persons’ presence and begging on the streets of Kefalaio. Successful state prosecution of ROCA results in a convict’s enduring an average of two weeks of jail time,⁴ however the Mayor of Kefalaio has championed what he styles as a non-judicial alternative to that punishment: within ROCA a work training program called “Homeless to Work” is offered to arrestees, in lieu of facing prosecution.

In order for arrested homeless to remain in good standing with the Restoration of Community Act, its Homeless to Work Program (hereafter “HTW”), as its participants are informed beforehand,⁵ stipulates several requirements of arrestees: that enrollees (hereafter “arrestees,” “enrollees” and/or “program participants”) not show a “lack of dedication to the program by violating rules or fail . . . to engage adequately in the training program,”⁶ that enrollees submit to medical treatment for mental and physical impairments as evaluated,

¹ Hypothetical para. 4

² Hypothetical para. 5-6

³ Clarification Questions (CQ) 11

⁴ Hypothetical §II, para. 13

⁵ CQ 7

⁶ Hypothetical para. 10

diagnosed, and prescribed by government sponsored HTW,⁷ and that those arrestees opting for the HTW in lieu of prosecution under ROCA not “leave the [HTW] campus for the duration of the program.”⁸ Whether program participants are enrolled in either the hospitality service branch or the public works branch of HTW, participants are required to remain on campus for training for a total of 120 days.⁹ After 120 days of successful program participation, campus-bound homeless ROCA offenders are then released subsequently into the final phase of the HTW, where they are “provided housing for 6 months and job counseling services to connect them with businesses hiring in the field in which they had been trained.”¹⁰

In the summer of 2012 several months before the 2013 ROCA was signed into law, Petitioner and then-farm laborer Mitchell Henderson (hereafter known as “Petitioner,” or “Henderson”) broke his left leg and endured amputation of three of his dominant hand’s fingers during a “traumatic accident” at work.¹¹ Subsequent modest workers’ compensation did little to aid Henderson in surviving while he searched for new work in Kefalaio, in the hopes that that city environment would offer work accommodating his physical disabilities in a way that country work no longer could. Petitioner, however, “found it difficult to maintain a job,” and the money from his work settlement ran out. Being unable to “pay rent and support himself,” Petitioner Henderson “became homeless in October 2013.”¹² Henderson struggled with the homeless experience approximately seven months before, under the Restoration of Community Act, he was arrested for panhandling in downtown Kefalaio, at which time he was presented with either prosecution under that law or participation in the Homeless to Work program. “Feeling that

⁷ Hypothetical para. 7

⁸ Hypothetical para. 9

⁹ Hypothetical para. 8-9

¹⁰ Hypothetical para. 12

¹¹ Hypothetical §III, para. 13

¹² Hypothetical para. 14

there was no real option for him, Mitchell [Henderson] enrolled in the Homeless to Work program.”¹³

Petitioner, however, experienced hardships under the Restoration of Community Act and its Homeless to Work program. Upon initial intake, the ROCA required evaluations both mental and physical, during which Petitioner was diagnosed with PTSD.¹⁴ He expressed concern about his prescribed medication for PTSD, appealing to HTW personnel on its side effects and pointing to a potential overdose for him; no appeal of dosage adjustment was granted, however, and Henderson’s self-report of it “leaving him in a mental fog” was met with pressure to continue the medication on pain of dismissal.¹⁵ Despite its strength and effects’ potency being in question, the record makes no mention of Petitioner behaving other than faithfully in taking the antipsychotic(s) prescribed him under HTW for the duration of his custodial stay on the work training campus.

Additionally, the requisite tri-weekly physical therapy sessions commensurate with Petitioner’s leg injury “residuals”¹⁶ resulted in increased pain in that leg.¹⁷ Furthermore, Henderson’s assignment into the work branch “Public Works” was less about classroom instruction and more about physical training, with the training path requiring Henderson to stand or walk greater than 70% of the time.¹⁸ Petitioner proposed changing work training programs from public works to Hospitality, expressing concern to HTW about the Public Works path being inappropriate for his limitations, citing the increase—despite physical therapy—of physical distress in his leg and the fact that the majority of Public Works trainees spent 70% of their time

¹³ Hypothetical para. 15

¹⁴ Hypothetical paras. 16, 19

¹⁵ Hypothetical paras. 17, 19

¹⁶ Hypothetical para. 16

¹⁷ Hypothetical paras. 20-21

¹⁸ Hypothetical para. 20

standing or walking and that presumably the same or similar percentage of time standing or walking would be required of Henderson, once he'd completed the program and had taken employment typical of the program's results. Based on both Henderson's PTSD diagnosis and the excess of 50% standing or walking time the Hospitality branch of the HTW program required, Henderson's request to move from Public Works to Hospitality was, like his overdose appeal, also denied.¹⁹

Petitioner endured a further two weeks of pain and potential overdose²⁰ until his distress under the Restoration of Community Act inspired a phone call to his brother, who lived in the Athlimian state of Notios where no such ROCA existed. Henderson concocted the best option he could to both relieve the State of his heretofore panhandling presence while simultaneously ceasing training "intolerable" to his broken body: he was considering leaving the Homeless to Work program in favor of the distant Notios, and informed the program's personnel of that thought.²¹ In turn, the HTW reminded Henderson that departing from the custodial sentence of 120 days total on the work program campus would result in immediate prosecution for his original crime under the Restoration of Community Act.²² Despite Henderson's having, in the face of potentially suspicious dosage, shown dedication to the program by continuing with the medication in its original quantity; despite his expressing continued interest in engaging adequately with the program via training branch switch to one in which lesser pain and demand would be placed on his damaged leg;²³ and despite Henderson having only spoken aloud of his exit plans to HTW staff yet not having acted upon them,²⁴ on August 30, 2014 despite Petitioner

¹⁹ Ibid.

²⁰ Hypothetical para. 21

²¹ Hypothetical paras. 21-22

²² Ibid.

²³ Hypothetical para. 20

²⁴ Hypothetical para. 22

having remained on the HTW campus, against its own standards of dismissal the Restoration of Community Act's Homeless to Work program then dismissed Mitchell Henderson.²⁵

Petitioner Mitchell Henderson was officially charged on August 31, 2014 "with violating the Restoration of Community Act."²⁶ Petitioner, who had spent a potential of 90 days under an antipsychotics mental fog, was offered by the Republic of Atlima's court system counsel, "but elected to plead guilty as he felt he had violated the law."²⁷ Having spent potentially 90 days detained on the Homeless to Work campus, Henderson experienced further detention via 1-week sentence of jail time for panhandling under ROCA.²⁸

With the help of human rights organization "Human Rights Kefalaio," Mitchell Henderson has brought claims against the State of Atlima for the violation of his human rights.²⁹ At the behest of Human Rights Kefalaio, all homeless with disabilities who have endured human rights violations at the hands of the Republic of Atlima's Restoration of Community Act are also represented.³⁰ Both groups, as one,³¹ submit to The Inter-American Court for constitutional relief³² from and invalidation of the 2013 Restoration of Community Act, as well as comprehensive reparations³³ for each victim, respectively.

²⁵ Hypothetical para. 17-23

²⁶ Hypothetical para. 24

²⁷ Ibid.

²⁸ Hypothetical para. 24

²⁹ Hypothetical paras. 26-28

³⁰ Hypothetical para. 33

³¹ The Inter-American Court of Human Rights Rules of Procedure Articles 35.2 and 50.1 and 50.3 in contradiction of the Doctrine of Actio Popularis, as in Ethiopia v. South Africa and Liberia v. South Africa ICJ 1962 Report 335

³² Hypothetical para. 27

³³ Hypothetical para. 35

LEGAL ANALYSIS

1 – ADMISSIBILITY

1.1 - STATEMENT OF JURISDICTION

On April 30, 1948 The Republic of Athlima ratified the Organization of American States Charter³⁴ and has, since 2008, “conferred constitutional status on the human rights treaty to which the Republic is a party.”³⁵ The Republic of Athlima’s ratifications include “main regional and universal instruments” and treaties on human rights and rights of persons with disabilities, such as the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, the Convention on the Rights of Persons with Disabilities, and the American Convention on Human Rights (ACHR) ratified by the country on December 10, 1989. The Republic of Athlima has “accepted the contentious jurisdiction of the Inter-American Court of Human Rights³⁶ (hereafter The Court) and it is to this Court “in accordance with Article 62(1)”³⁷ of said ACHR sConvention, that the Republic of Athlima submits the present dispute . . . for final resolution.”³⁸

³⁴ Hypothetical para. 36

³⁵ Ibid.

³⁶ Ibid.

³⁷ American Convention on Human Rights 1969 Article 62.1

³⁸ Bolt et. al v. Cardenal ESMOAS Hypothetical 2016

2 – ARGUMENTS ON THE MERITS

2.1 - THE STATE BREACHED DUTY OF CARE FOR THE ALLEGED VICTIMS VIA THE UNCONSTITUTIONAL 2013 RESTORATION OF COMMUNITY ACT.

As a state party to the “main regional and universal [human rights] instruments,”³⁹ to include the American Convention on Human Rights (ACHR), the Republic of Atlima’s constitution protects, among others, the following rights: Right to Personal Liberty,⁴⁰ Right to a Fair Trial,⁴¹ Right to Equal Protection,⁴² and the Right to Judicial Protection,⁴³ all read in conjunction with its Articles 1 and 2: Obligation to Respect Rights, and Domestic Legal Effects. However, the country’s recently passed Restoration of Community Act (hereafter ROCA) rests on a foundation of rights violations, through criminalization of physical and mental disabilities and through eschewing of duty of care. Over the last four years that foundation has resulted in violations of the rights of Petitioner Mitchell Henderson and other of the Federal District of Kefalaio’s homeless citizens with disabilities. Because of its inherent violations of the Republic’s primary ratified human rights instruments and specifically those revered in the American Convention on Human Rights, Atlima’s 2013 Restoration of Community Act is unconstitutional and violates human rights in the following ways:

2.1 (a) - THE STATE BREACHED DUTY OF CARE VIA VIOLATION OF RIGHTS TO PERSONAL LIBERTY AND EQUAL PROTECTION.

Despite vagrancy laws being considered normative, internationally,⁴⁴ vagrancy committed by persons whose physical and/or cognitive faculties are compromised necessitates,

³⁹ Hypothetical para. 36

⁴⁰ American Convention on Human Rights Article 7

⁴¹ American Convention on Human Rights Article 8

⁴² American Convention on Human Rights Article 24

⁴³ American Convention on Human Rights Article 25

⁴⁴ De Wild v. Belgium (1966); European Convention on Human Rights Article 5(e)

according to Athlima’s ratified human rights instruments, a non-judicial remedy⁴⁵ to those crimes and a remedy that addresses humanely the factors which may have driven such vagrancy and/or panhandling crimes in the first place.

While Petitioner stipulates that the Republic of Athlima has an obligation to improve its economy⁴⁶ and that the formulation of the 2013 ROCA may assert its origins lie in vagrancy and panhandling reformation, the State—in discriminating against a minority whose members suffer from disabilities—sublimated its duty of care to its own Federal District’s homeless, violating Petitioner’s right to Equal Protection.⁴⁷ Violation of the Right to Equal Protection was performed in favor of “expand[ing] [the Republic’s] tourism industry and standing in the international community. . . .”⁴⁸ Thus, in prioritizing a more competitive economy over basic care of its Federal District’s homeless, the State violated Petitioner’s Rights to Personal Liberty, Physical Liberty,⁴⁹ and Equal Protection.⁵⁰

2.1 (b) - THE STATE BREACHED DUTY OF CARE VIA UNLAWFUL DETENTION.

The Republic of Athlima owed Petitioner a duty of care devoid of human rights violations.⁵¹ Instead of penalizing the method by which homeless persons with disabilities sought to survive, the State should have, upon identification, referred these persons with disabilities to its government-sponsored disabilities program(s),⁵² thereby reducing the likelihood

⁴⁵ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities 1999 Article 3.1(a)

⁴⁶ Slaughter, Anne-Marie. *3 Responsibilities Every Government Has Toward Its Citizens*. 2017

⁴⁷ American Convention on Human Rights 1969 Article 24

⁴⁸ Hypothetical para. 4

⁴⁹ American Convention on Human Rights 1969 Article 7

⁵⁰ American Convention on Human Rights 1969 Article 24

⁵¹ American Convention on Human Rights 1969 Articles 1, 2, 7, 8, 24 and 25

⁵² CQ 2

of vagrancy and panhandling interfering with Kefalaio's business leaders⁵³ and their reported past and anticipated patronage losses during major sporting events hosted by the capital city. As it was, the State increased its number of violations against the Federal District's homeless with disabilities by exerting undue influence upon arrestees of the ROCA, diverting such persons towards either a judicial option entailing likely jail time or a non-judicial alternative characterized by 120 days of unlawful detention.⁵⁴ At the behest of the Athlima Supreme Court, the Restoration of Community Act in 2015 "provided funding for a supplemental work training path in the Homeless to Work program that provided for accommodated work training within the two existing training paths [Hospitality and Public Works] that added 30 days to the program."⁵⁵ Nevertheless, as originally conceived as well as in its present iteration, all ROCA options rely on detention: more able-bodied enrollees endure 120 days of detention in the Homeless to Work program while enrollees suffering from disabilities endure 150 days. The Restoration of Community of Act was formulated using (and continues to utilize at its core) human rights violations of ACHR Articles 7, 8.2.3, and 24. Since the ROCA was unconstitutional in the first place, therefore, any and all rights violations flowing from enforcement of said law is also unconstitutional, in which case unlawful detention occurred when mentally and/or physically impaired homeless Athlimians resorting to vagrancy and/or panhandling were arrested for that mode of survival attempt.

***2.1 (c) - THE STATE BREACHED DUTY OF CARE VIA UNJUST
INSTITUTIONALIZATION.***

⁵³ Hypothetical paras. 4-6

⁵⁴ Hypothetical paras. 6 and 8; International Covenant on Civil and Political Rights 1966 Article 9.5

⁵⁵ Hypothetical paras 31-32

The Republic of Athlima owed Petitioner a duty of care devoid of human rights violations.⁵⁶ This duty included upholding the Right to Personal Liberty⁵⁷ as well as his Right to Equal Protection.⁵⁸ However, throughout Petitioner’s experience with the ROCA, the State not only presented him with its reformatory options characterized by unlawful detention, but—as a person also experiencing physical, mental, and economic disabilities—the State coerced the destitute Petitioner into complying with forced medications and therapies during his custodial stay on the Homeless to Work program campus.⁵⁹

Under the ROCA’s Homeless to Work program, Petitioner’s self-reported left leg pain from “a traumatic accident”⁶⁰ was exacerbated via ROCA’s physical therapy sessions, of which were required under the Act’s program, to be attended tri-weekly.⁶¹ Furthermore, Petitioner’s suspicion of antipsychotics overdose was ignored. While “the medication was helpful in relieving many of the symptoms . . . [Ppetitioner] felt the medication was too strong and often left him in a mental fog.”⁶² Instead of granting Petitioner’s program appeal for a reassessment of the on-campus medical practitioners’ original prescription, the state program continued to require the medication in its originally prescribed quantity to be taken by Petitioner, or else Henderson would be “dismissed from the program.”⁶³ Despite Petitioner being “informed of the details of the program prior to accepting the terms, including the need to engage in medical treatment and the nature of the work training program,”⁶⁴ the State disregarded his Right to Equal Protection⁶⁵ by behaving as though his capacity to consent to the terms of said ROCA program were not, due

⁵⁶ American Convention on Human Rights 1969 Articles 1, 2, 7, 24, and 25

⁵⁷ American Convention on Human Rights 1969 Article 7

⁵⁸ American Convention on Human Rights 1969 Article 24

⁵⁹ Hypothetical paras. 7, 10, 17

⁶⁰ Hypothetical §III, para. 13

⁶¹ Hypothetical para. 16-17, 19-20

⁶² Hypothetical para. 19

⁶³ Ibid.

⁶⁴ CQ 7

⁶⁵ American Convention on Human Rights 1969 Article 24

to his physical, mental, and economic circumstances, potentially diminished.⁶⁶ This resulted in Petitioner self-reporting harm of both previous left leg traumatic injury and overdose of antipsychotic pharmaceutical(s). In disregarding Petitioner's Rights of Personal Liberty and Equal Protection in these ways, the State unlawfully institutionalized Petitioner.

2.1 (d) - THE STATE BREACHED CONTRACT VIA DENIAL OF DUE PROCESS RIGHTS.

Once Petitioner and certain of the City of Kefalaio's homeless with disabilities were enrolled in the ROCA's Homeless to Work program, certain promises of state benefits were implied. Petitioner and such homeless persons, however, were forced into the contract, and Petitioner himself was dismissed from the program despite not meeting the program's own qualifications for dismissal.⁶⁷

Under the contract exacted upon Petitioner, ROCA benefits included physical and mental therapy, room and board, and job training,⁶⁸ with a future contingent offer of "housing for 6 months and job counseling services to connect [Petitioner et. al] with businesses hiring in the field in which they had been trained,"⁶⁹ should enrollees like Petitioner complete the 120 day program. The first set of benefits above were a property right Petitioner retained,⁷⁰ but of which he was deprived, subsequently, through the denial of proper hearing to assess lawful removal of said property right.⁷¹

As a person diagnosed and offered treatment by a state-initiated government program, before Petitioner's benefits could be removed his property interest was, by law, to be evaluated "in a

⁶⁶ Hypothetical para. 29

⁶⁷ Hypothetical paras. 10, 22-23

⁶⁸ Hypothetical paras. 7-9

⁶⁹ Hypothetical para. 12

⁷⁰ Beloff, M; Clerico, L: *The Right to Dignified Living Conditions and the Position of Vulnerability in the Jurisprudence of the Inter-American Court*

⁷¹ Hypothetical paras. 22-23; Goldberg v. Kelly (1970); American Convention on Human Rights Article 25

competent court or tribunal.”⁷² However, because Petitioner was afforded no such hearing, his due process rights, Right to a Fair Trial, and Right to Judicial Protection were violated. This occurred when the Homeless to Work program dismissed Henderson against their own requirements.⁷³

3 – REQUEST FOR RELIEF

Based on the foregoing submissions in conjunction with American Convention on Human Rights Article 63(1), the Inter-American Court’s Rules of Procedure Article 35(1)(g), Petitioner respectfully requests the Court:

- a) Declare the responsibility of The Republic of Athlima for the violation of the rights enshrined in Articles 7, 8, 24, and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2, and with respect to Mitchell Henderson and all “other disabled Athlimians subjected to the Restoration of Community Act.”⁷⁴
- b) Order that Athlima, without delay, abrogate or annul⁷⁵ the Restoration of Community Act and the Homeless to Work Program, both the Act’s original conception and its present iteration, and abrogate or annul all associated legislation that permitted, institutionalized, and/or enabled that Republic to violate the human rights protected under the aforementioned Articles and any and all other human rights instruments to which Athlima is a party.
- c) Order The Republic of Athlima to develop and enforce an effective judicial remedy for comprehensive reparations to be delivered to Petitioner Mitchell Henderson and to all Athlimian persons with disabilities subjected to the Restoration of Community

⁷² American Convention on Human Rights 1969 Article 25

⁷³ Hypothetical paras. 10, 22-23

⁷⁴ Hypothetical para. 35

⁷⁵ Bolt et. al v. Cardenal ESMOAS Hypothetical 2016

Act.⁷⁶ We request that the form such comprehensive reparations⁷⁷ take include compensatory damages for Petitioner's suffering. We also request that the intake evaluations performed by the ROCA government-initiated Homeless to Work program act as waivers into Athlima's traditional disabilities program for all Petitioners in this matter, and that all persons suffering under the ROCA be granted by this Court disabilities enrollment and all apposite state benefits, with immediate effect.

⁷⁶ Hypothetical para. 35

⁷⁷ International Covenant on Civil and Political Rights 1966 Article 14.6