

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

**THE CHURICHAYAN LEGAL AID PROJECT & THE YGUARA  
FAMILY**

(Victims)

V.

**THE REPUBLIC OF BANAGUAY**

(Respondent)

Memorial for the Respondent

# **TABLE OF CONTENTS**

INDEX OF AUTHORITIES. . . . . 4

STATEMENT OF FACTS. . . . . 7

LEGAL ANALYSIS. . . . . 10

I. Procedural Objections and Admissibility. . . . . 10

    A. Statement of Jurisdiction . . . . . 10

    B. The Petitioners Failed to File the Petition Within the Timeframe of Article 46. . . . . 10

        1) The Petitioners Filed More than Six Months After the Final Judgement. . . . . 10

        2) Failure to File Within the Correct Timeframe is Jurisdictional. . . . . 11

II. Legitimate Restrictions of Rights Analysis. . . . . 12

    A. Article 32 Limits the Rights of the Yguara Family. . . . . 12

    B. The Actions of the State Were Necessitated by the State’s Other Positive Obligations. . . . . 13

        1) Article 19 Creates an Obligation to Protect Minors. . . . . 13

        2) Article XII of the American Declaration of the Rights and Duties of Man Creates an Obligation to Provide Education. . . . . 14

        3) The Inter-American Convention Against Terrorism Justifies the State’s Actions. . . . . 14

    C. The State May Suspend Articles 7, 8, 10, 11, 16, and 21 under Article 27. . . . . 15

        1) The State had Justification to Suspend Rights under Article 27. . . . . 15

        2) The State is Not Required to Fulfill Article 27 (3). . . . . 16

III. Human Rights Law Analysis. . . . . 17

    A. The State Did Not Violate Articles 7, 8, 11, or 21. . . . . 17

        1) Mr. Yguara was Held in Administrative Detention. . . . . 17

        2) Administrative Detention Does Not Violate the ACHR. . . . . 18

    B. The State Did Not Violate Article 5. . . . . 20

    C. The State Did Not Violate Article 16. . . . . 20

D. The State Did Not Violate Article 17. . . . . 21

E. The State Did Not Violate Article 10. . . . .22

    1) Article 10 Requires Sentencing and a Final Judgement. . . . . 22

    2) The Compensation that the Family Received was Sufficient. . . . . 22

REQUEST FOR RELIEF. . . . .25

## **INDEX OF AUTHORITIES**

### **Books and Articles**

Cassel, Douglass. "Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law." <i>Journal of Criminal Law and Criminology</i> . . . . .	18, 19
Feinberg, Joel. "The Expressive Function of Punishment." <i>Doing and Deserving</i> . . . . .	20
Hakimi, Monica. "International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide." <i>Yale Journal of International Law</i> . . . . .	18
Hanna, Nathan. "Taking the Consequences." <i>Criminal Law and Philosophy</i> . . . . .	20
Nowak, Manfred. <i>UN Covenant on Civil and Political Rights: CCPR Commentary</i> . . . . .	18
Sooka, Yasmin. <i>International Review of the Red Cross</i> . . . . .	23
<i>The Charter of the United Nations: a Commentary</i> (Bruno Simma et al., eds.). . . . .	17
United Nations Counter-Terrorism Implementation Task Force. <i>Detention in the Context of Countering Terrorism</i> . . . . .	19

### **Treaties and Other International Agreements**

American Convention on Human Rights. . . . .	passim
American Declaration of the Rights and Duties of Man. . . . .	14
Inter-American Convention Against Terrorism. . . . .	14, 15
Rules of Procedure of the Inter-American Commission on Human Rights. . . . .	11
Rules of Procedure of the Inter-American Court of Human Rights. . . . .	12

**Inter-American Court on Human Rights Cases**

<i>Case of Acosta Calderón v. Ecuador</i> (2005) . . . . .	19
<i>Case of Atala Riffo and Daughters v. Chile</i> (2012) . . . . .	21
<i>Case of the Caracazo v. Venezuela</i> (1999) . . . . .	16
<i>Case of Castillo Páez v. Peru</i> (1996) . . . . .	12
<i>Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador</i> (2008) . . . . .	20
<i>Case of Escher et al. v. Brazil</i> (2009). . . . .	21
<i>Case of Expelled Dominicans and Haitians v. Dominican Republic</i> (2014) . . . . .	13
<i>Case of Fornerón and Daughter v. Argentina</i> (2012) . . . . .	22
<i>Case of Herrera Espinoza et al. v. Ecuador</i> (2014) . . . . .	19
<i>Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua</i> (2000) . . . . .	12
<i>Case of Maritza Urrutia v. Guatemala</i> (2003) . . . . .	11
<i>Case of Mémoli v. Argentina</i> (2013) . . . . .	20
<i>Case of Suárez Rosero v. Ecuador</i> (1997) . . . . .	19
<i>Case of Vélez Restrepo and Family v. Colombia</i> (2012) . . . . .	14
<i>Case of Yarce et al. v. Colombia</i> (2016) . . . . .	21
<i>Case of Zambrano Velez et al. v. Ecuador</i> (2007) . . . . .	16
<i>Habeas Corpus in Emergency Situations</i> (1987) (Advisory Opinion) . . . . .	16

*In the matter of Viviana Gallardo et al.* (1981) .....11

**Other International Cases**

*Brogan v. UK* (1988) ECHR .....18

*Case of Cesar Alberto Mendoza et al. v. Argentina* (2008) IACommHR .....11

*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)* (1986)  
ICJ..... 17

*Statement of the Inter-American Commission on Human Rights on the Application and Scope of  
the Justice and Peace Law in Colombia* (2006) IACommHR. ....23

**Hypothetical**

Hypothetical. ....passim

Clarification Questions. ....passim

## **STATEMENT OF FACTS**

The Republic of Banaguay (State or Banaguay) is an independent unitary republic comprised of approximately ten million people.<sup>1</sup> Two main ethnic groups make up the majority of the population of Banaguay: the Banaguayans, who account for 7,251,000 people, and the Churichayans, who account for 2,000,000 people.<sup>2</sup> The government of Banaguay is made up of a popularly elected president, a unicameral legislature that contains at-large members and presidential appointees, and a judicial branch comprised of a five member Supreme Court, secondary courts, and municipal courts.<sup>3</sup>

Banaguay has been combatting various separatist movements since its independence, some of which have used violence and terrorism as a tool. Most recently, two main groups have formed. The Churichauan Independence Coalition (CIC) advocates for Churichayan independence but has disavowed terrorism.<sup>4</sup> The Shimmering Path formed as a wing of the CIC, and continues to use violent tactics and terrorism to attempt to achieve its goals. While not officially recognized by the CIC, the Shimmering Path is largely tolerated by CIC leadership.<sup>5</sup> The Shimmering Path has been increasing its terrorist activities exponentially since the 2014 presidential election, including bombing a football stadium during a CONCACAF match.<sup>6</sup> In response to the violence of the Shimmering Path, the State has enacted the Anti-Terrorism Act of

---

<sup>1</sup> Hypothetical ¶1

<sup>2</sup> Hypothetical ¶2

<sup>3</sup> Hypothetical ¶2-3

<sup>4</sup> Hypothetical ¶8

<sup>5</sup> Hypothetical ¶8

<sup>6</sup> Hypothetical ¶12

2001 (criminalizing the public display of Shimmering Path flags), the Safety and Internal Security Act of 2003 (criminalizing the knowing material or financial support of the Shimmering Path), and the See Something Say Something Program (incentivizing tips related to activities of the Shimmering Path).<sup>7</sup>

On October 3, 2018, ten year old student Jamir Yguara was participating in an online class from his parents' bedroom using a camera and laptop purchased from a government program after all schooling was moved online due to the Orinoco Flu outbreak.<sup>8</sup> During the class period, Jamir's video showed a Shimmering Path flag hanging on the wall.<sup>9</sup> The teacher conducting the class reported the incident to the proper authorities, and as a result, on October 7, 2018, the State's Anti-Terrorism Force of the National Police searched the house under the authority of a properly issued warrant.<sup>10</sup> Both of Jamir's parents were arrested, and Jamir was taken into protective custody until his mother was released on October 9, 2018, after his father, Josef Yguara, admitted to purchasing and hanging the flag.<sup>11</sup> Josef Yguara was detained on suspicion of terrorism without legal counsel until January 10, 2019, while the State investigated his connections to the Shimmering Path. During this time, Mr. Yguara signed a confession admitting that he purchased the flag from a known Shimmering Path leader who held a rally in the Yguara's village.<sup>12</sup> During Mr. Yguara's detainment, he lost his job and the family's home

---

<sup>7</sup> Hypothetical ¶9, 13

<sup>8</sup> Hypothetical ¶14-17

<sup>9</sup> Hypothetical ¶17

<sup>10</sup> Hypothetical ¶19

<sup>11</sup> Hypothetical ¶19-20

<sup>12</sup> Hypothetical ¶20-21



was foreclosed upon; additionally, Jamir was taken back into protective custody on December 10, 2018, because of truancy, but he was returned to his parents on February 15, 2019.<sup>13</sup>

The Yguara family filed a civil suit against Banaguay on March 20, 2019, seeking payment for their home, Josef's lost wages, and \$250,000 for distress. Mr. Yguara argued during the course of the suit that his confession was coerced.<sup>14</sup> Eventually, the Supreme Court awarded damages of \$80,000 on August 30, 2019, but the Court did not explain under what cause of action the damages were awarded.<sup>15</sup> On March 1, 2020, the Churichayan Legal Aid Project and Yguara Family (Petitioners) filed a petition with the Inter-American Commission of Human Rights (Commission) arguing that the State had violated Articles 5, 7, 8, 10, 11, 16, 17, and 21 of the American Convention on Human Rights (ACHR).<sup>16</sup> The State argued that it had not violated the Petitioners' rights, but the Commission found Banaguay in violation of Article 5, 7, 10, 11, and 21.<sup>17</sup> Once the deadline for Banaguay to implement the Commission's recommendations passed, the case was brought before the Inter-American Court on Human Rights (Court).<sup>18</sup>

---

<sup>13</sup> Hypothetical ¶22-24

<sup>14</sup> Hypothetical ¶25

<sup>15</sup> Hypothetical ¶26

<sup>16</sup> Hypothetical ¶27

<sup>17</sup> Hypothetical ¶29-30

<sup>18</sup> Hypothetical ¶32

## **LEGAL ANALYSIS**

### **I. Preliminary Objections and Admissibility**

#### **A. Statement of Jurisdiction**

Banaguay ratified the American Convention on Human Rights in 1969 and recognized the contentious jurisdiction of the Inter-American Court of Rights in 2000.<sup>19</sup> Banaguay is also a party to the Inter-American Convention Against Terrorism<sup>20</sup> and the American Declaration of the Rights and Duties of Man.<sup>21</sup> Thus, Banaguay is treaty bound to abide by the ACHR and the decisions of this Court.

#### **B. The Petitioners Failed to File the Petition Within the Timeframe of Article 46**

##### **1) The Petitioners Filed More than Six Months After the Final Judgement**

The Petitioners complaint is inadmissible because they did not file their petition within the timeframe established by the ACHR. Article 46 of the ACHR requires that all petitions before the Commission be lodged within six months of the final judgement exhausting domestic remedies.<sup>22</sup> However, the Petitioners were notified of the decision of the Supreme Court of Banaguay on August 30, 2019,<sup>23</sup> and did not file their petition until March 1, 2020.<sup>24</sup> Thus, the Petitioners did not file within the timeframe of Article 46. Under the requirements of Article 46,

---

<sup>19</sup> Hypothetical ¶6

<sup>20</sup> Clarification Question 14

<sup>21</sup> Clarification Question 15

<sup>22</sup> ACHR Art. 46 (1)(b)

<sup>23</sup> Hypothetical ¶26

<sup>24</sup> Hypothetical ¶27

the Commission should have received the petition on or before February 29, 2020. Additionally, the Commission's Rules of Procedures make no exception for weekends or holidays. Rather, the only possible exception is when exhaustion of domestic remedies is not possible; clearly, it was possible here, however, because the Petitioners exhausted domestic remedies.<sup>25</sup> Even though February 29, 2020, fell on a weekend, Petitioners were clearly able to file on weekends because March 1, 2020, also fell on a weekend. Thus, because the petition was not filed within the timeframe established by Article 46 of the ACHR, the complaint is inadmissible.

## 2) Failure to File Within the Correct Timeframe is Jurisdictional

The question of whether or not Petitioners filed their petition within the six month timeframe is a jurisdictional one. Given the nature of the requirement, the Commission itself has recognized that the "six-month rule ensures the juridical certainty and stability of a decision once it is adopted."<sup>26</sup> Because of the need for precise limits on the power of review over domestic judicial bodies, this Court has always recognized the jurisdictional nature of the timeframe requirement for the petition itself.<sup>27</sup> As such, the State may raise this objection at any point, and it may not be waived except under a specific set of circumstances. This Court has explained that the requirements laid out in Article 46 of the ACHR are only waiveable in specific instances: when the State explicitly waives the objection,<sup>28</sup> when the State complies with the Commission's

---

<sup>25</sup> Rules of Procedure of the Inter-American Commission on Human Rights Art. 32 (2)

<sup>26</sup> *Case of Cesar Alberto Mendoza et al. v. Argentina*, Merits Report No. 26/08 (2008) ¶50 IACommHR

<sup>27</sup> *Case of Maritza Urrutia v. Guatemala* (2003) 103 C ¶140

<sup>28</sup> *In the matter of Viviana Gallardo et al.* (1981) 101 A ¶26 IACHR

recommendations,<sup>29</sup> or when the objection is filed in an extremely untimely manner.<sup>30</sup> None of these cases apply here.

The only possible argument that the Petitioners can rely on is the notion that the State is raising this objection in an extremely untimely manner. Yet, this case is clearly different from the Court's previous cases involving untimely objections. In those cases, the State raised the objections years into the proceedings before the Court.<sup>31</sup> Here, the State is raising the objection only months after the petition was first filed. Additionally, before the Court, the State has two months after the Commission and Victims file any briefs to respond and raise preliminary objections.<sup>32</sup> Seeing as that deadline has not yet passed, this objection is timely before the Court. Therefore, the petition should be dismissed as inadmissible because it was not filed within the jurisdictional timeframe established in Article 46.

## **II. Legitimate Restriction of Rights Analysis**

### **A. Article 32 Limits the Rights of the Yguara Family**

Article 32 of the ACHR explains that “the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”<sup>33</sup> As such, the State may legitimately restrict the rights of individuals in a necessary manner in order to secure the rights and safety of the general public. Thus, while the State may not arbitrarily restrict rights without cause, in instances such as this one, where the State has

---

<sup>29</sup> *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2000) ¶50 IACHR

<sup>30</sup> *Case of Castillo Páez v. Peru* (1996) 24 C ¶40-43 IACHR

<sup>31</sup> See *Mayagna Community* and *Castillo Páez*

<sup>32</sup> Rules of Procedure of the Inter-American Court of Human Rights Art. 41, 42 (1)

<sup>33</sup> ACHR Art. 32 (2)

good reason to suspect that an individual may pose a threat to the general welfare, the State may limit the exercise of certain rights. Here, the State did just that. Mr. Yguara's rights were only restricted for the duration of the time in which the State had grounds to suspect he might be aiding terrorism. Once the State's investigation was concluded, Mr. Yguara was released and the State refrained from further restricting his rights. Therefore, any restrictions on the rights of the Petitioners were permissible under Article 32 of the ACHR.

## **B. The Actions of the State Were Necessitated by the State's Other Positive Obligations**

### 1) Article 19 Creates an Obligation to Protect Minors

Article 19 of the ACHR requires that the State provide any "measures of protection required by his condition as a minor" to children within the State.<sup>34</sup> This Court has held that Article 19 requires state parties to always consider the best interests of children when they are dealing with family separation or policies involving minors.<sup>35</sup> Therefore, the State's intervention to take protective custody of Jamir Yguara when he had missed school and was homeless was justified and required under Article 19.<sup>36</sup> Furthermore, the State's duty to provide for minors justifies their requirement that students use video cameras in their homes for online classes.<sup>37</sup> Clearly, the State cannot put the health and safety of its students at risk by sending them to school during a pandemic, which justifies their decision to move to online classes where the State took affirmative action to provide for students. By providing students with camera

---

<sup>34</sup> ACHR Art. 19

<sup>35</sup> *Case of Expelled Dominicans and Haitians v. Dominican Republic* (2014) 282 C ¶ 274

<sup>36</sup> Hypothetical ¶22-23

<sup>37</sup> Clarification Question 16

equipment and requiring them to keep their cameras on so that teachers could ensure students were present and participating, the State was simply fulfilling its duty under this Court's precedents to provide materially and mentally for what is best for minors.<sup>38</sup>

2) Article XII of the American Declaration of the Rights and Duties of Man Creates an Obligation to Provide Education

The State had a duty under Article XII of the American Declaration of the Rights and Duties of Man to fulfill its obligation to provide an education to Jamir Yguara.<sup>39</sup> As such, especially when read in conjunction with Article 19 of the ACHR, the State was justified in requiring students to use video cameras during online classes. This does not constitute an invasion of privacy, rather it is a necessary requirement so that teachers may note attendance and ensure that all students are able to follow along and participate.<sup>40</sup> Had the State not used computer cameras during online classes and students began to fall behind, the State could be held liable for failing to fulfill its Article XII obligations. Therefore, the State acted properly in providing resources for students to attain the educational opportunities during a global pandemic.

3) The Inter-American Convention Against Terrorism Justifies the State's Actions

The State was required to act by its legal obligations under the Inter-American Convention Against Terrorism. Under the Convention, the State has an obligation to "institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism."<sup>41</sup> It is

---

<sup>38</sup> *Case of Vélez Restrepo and Family v. Colombia* (2012) 248 C ¶226, 230

<sup>39</sup> American Declaration of the Rights and Duties of Man Art. XII

<sup>40</sup> Clarification Question 16

<sup>41</sup> Inter-American Convention Against Terrorism Art. 4 (1)

also permitted under the Convention to “take such measures as may be necessary to provide for the identification, freezing or seizure for the purposes of possible forfeiture, and confiscation or forfeiture, of any funds or other assets constituting the proceeds of, used to facilitate, or used or intended to finance” terrorist activities.<sup>42</sup> As both the Commission and Mr. Yguara admitted, purchasing the flag from a known leader of the Shimmering Path constituted financial support for the group in violation of domestic law.<sup>43</sup> Therefore, the State not only had a duty to investigate and attempt to prevent this financial support of terrorism from occurring again, but the Convention also gives the State the power to take the steps necessary to identify sources of financial support of terrorism and cut off the flow of funds. In this way, the State’s duties under the Convention both necessitate and permit the State’s actions in this case.

### **C. The State May Suspend Articles 7, 8, 10, 11, 16, and 21 under Article 27**

#### 1) The State had Justification to Suspend Rights under Article 27

The State did not violate Articles 7, 8, 10, 11, 16, or 21 because the State does not have to guarantee those rights during “time of war, public danger, or other emergency that threatens the independence or security of a State Party.”<sup>44</sup> Of course, the State may not broadly suspend rights for an unlimited period of time. Instead, two factors indicate that the State could invoke Article 27 in this case. First, the State may suspend the rights of specific individuals who may pose a threat to the State, especially when the State is combatting an active terrorist organization. Second, the State may limit specific rights insofar as safety concerns during a pandemic are

---

<sup>42</sup> Inter-American Convention Against Terrorism Art. 5 (1)

<sup>43</sup> Clarification Question 13, Hypothetical ¶21

<sup>44</sup> ACHR Art. 27 (1)

relevant. This Court's standard for justifying actions under Article 27 involves evaluating considerations dependent upon the "character, intensity, pervasiveness, and particular context of the emergency and upon the corresponding proportionality and reasonableness of the measures."<sup>45</sup> This case clearly meets that standard. Mr. Yguara was not detained arbitrarily but rather because he was suspected of materially aiding terrorism, and his detainment should not be considered unlawful during the duration of the investigation. Likewise, a State can temporarily deny access to an attorney when the individual being detained poses a potential security threat and a pandemic poses practical problems. In the same vein, particular concerns regarding terrorism justify restricting the privacy, free association, and property rights of Mr. Yguara. Additionally, compensation is not guaranteed where the actions were undertaken for the protection of the State or general welfare. Thus, the State had a right to suspend the guarantees of Articles 7, 8, 10, 11, 16, or 21.

## 2) The State is Not Required to Fulfill Article 27 (3)

Under international customary law, the State does not have to fulfill the requirements of Article 27 (3) of the ACHR in order to satisfy its obligations under international law. This Court has held that the primary function of Article 27 (3) is that it "allows other State Parties to evaluate if the scope of this suspension is consistent with the provisions of the Convention."<sup>46</sup> Here, the State did not attempt to cover up or hide the suspension of certain guarantees; it clearly passed laws that were aimed at combatting the dual threats of terrorism and a pandemic.<sup>47</sup>

---

<sup>45</sup> *Habeas Corpus in Emergency Situations* (1987) (Advisory Opinion) 8 A ¶28 IACHR

<sup>46</sup> *Case of Zambrano Velez et al. v. Ecuador* (2007) 166 C ¶70 IACHR

<sup>47</sup> See *Case of the Caracazo v. Venezuela* (1999) 58 C IACHR



Additionally, it notified the OAS before and after the enactment of the Anti-Terrorism Act of 2001, which was the justification the State relied on to detain Mr. Yguara.<sup>48</sup> Other State Parties could easily observe what was occurring in Banaguay. While the record does not indicate that the State notified the Secretary General of the Organization of American States, international custom has long recognized that in the modern world where communications and news coverage are almost instantaneous, such notice requirements are often ignored. Take the U.N. Charter for example. That charter also contains a notice requirement before states can use force in self-defense, but it is widely accepted that states may ignore that requirement.<sup>49</sup> Additionally, the International Court of Justice determined that when the Security Council has constructive knowledge, proper notice is not required.<sup>50</sup> The same principle can be applied here with respect to the Secretary General. Therefore, the State's lack of proper notice under Article 27 (3) falls within general international norms.

### **III. Human Rights Law Analysis**

#### **A. The State Did Not Violate Article 7, 8, 11, or 21**

##### **1) Mr. Yguara was Held in Administrative Detention**

The State's imprisonment of Mr. Yguara constituted administrative detention for the sake of national security. Under international norms, administrative detention is permitted "to the extent necessary to achieve a purpose relevant to the criminal prosecution, such as avoiding

---

<sup>48</sup> Clarification Question 21

<sup>49</sup> *The Charter of the United Nations: a Commentary* 803-5 (Bruno Simma et al., eds.) (2002).

<sup>50</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)* (Merits) (1986) ¶218-19 ICJ

flight, repeating the offense or interference with witnesses.”<sup>51</sup> Clearly, the detention at issue should be examined within an administrative detention context. The international community has recognized that administrative detention functions differently than pure criminal detention and that a country may detain an individual legitimately even if it does not end up charging them with an actual crime.<sup>52</sup> Thus, administrative detention always exists as “an alternative option for detention under international human rights law” for states.<sup>53</sup> However, because of the nature of administrative detention, separate procedural and substantive guarantees exist. When a state chooses to detain an individual for security reasons, often for a prolonged period (as occurred here), that constitutes administrative detention. Therefore, administrative detention is the correct way to frame the analysis of Mr. Yguara’s detainment.

## 2) Administrative Detention Does Not Violate the ACHR

The State’s administrative detention of Mr. Yguara does not violate Articles 7, 8, 11, or 21 of the ACHR. The State had good cause to believe that Mr. Yguara had provided material aid to the Shimmering Path.<sup>54</sup> As such, the State had a legitimate reason to detain Mr. Yguara. Courts have routinely accepted that alleged terrorist or supporters of terrorist organizations pose a flight and danger risk if they are not detained.<sup>55</sup> Thus, the State could detain Mr. Yguara administratively without violating his rights under international law provided that the manner in

---

<sup>51</sup> Nowak, Manfred. *UN Covenant on Civil and Political Rights: CCPR Commentary*, 233 (2nd rev. ed. 2005)

<sup>52</sup> *Brogan v. UK* (1988) 145 A at 16 ECHR

<sup>53</sup> Hakimi, Monica. “International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide.” *Yale Journal of International Law* 33 at 614 (2008).

<sup>54</sup> Hypothetical ¶20

<sup>55</sup> Cassel, Douglass. “Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law.” *Journal of Criminal Law and Criminology*, 826 (2008)

which the State did so did not violate its obligations under international law. The international community has recognized that “administrative or ‘preventive’ detention for reasons of public security must not be arbitrary and must be based on grounds and procedures established by law.”<sup>56</sup>

Here, Mr. Yguara was arrested and detained in accordance with crimes outlined by the State’s Safety and Internal Security Act.<sup>57</sup> Thus, Mr. Yguara’s detention was neither arbitrary nor abusive because the grounds for his arrest comports with national law and he posed a risk if released during the investigation, so the State did not violate Article 7(3). On that same note, Mr. Yguara was able to go before a judge on three separate occasions during his detainment to challenge his status, so the State did not violate Article 7(5).<sup>58</sup> Likewise, the State could deny Mr. Yguara the assistance of counsel for security concerns, and therefore, it did not violate Article 11.<sup>59</sup> This Court has always tied denial of counsel claims to instances in which the individual was not told what he was accused of or the individual was ultimately convicted.<sup>60</sup> None of these instances apply here. Again, on the question of Article 11, the State had good reason to interfere with Mr. Yguara’s private life and home because they had reason to believe he might pose a security threat or had materially supported the Shimmering Path. Finally, with respect to Article 21, the Court has historically read this portion of the ACHR in conjunction with a state’s own

---

<sup>56</sup> United Nations Counter-Terrorism Implementation Task Force. *Detention in the Context of Countering Terrorism* (2014)

<sup>57</sup> Hypothetical ¶9

<sup>58</sup> Clarification Question 5

<sup>59</sup> Cassel, Douglass. “Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law.” *Journal of Criminal Law and Criminology*, 845 (2008)

<sup>60</sup> See *Case of Herrera Espinoza et al. v. Ecuador*; *Case of Suárez Rosero v. Ecuador*; and *Case of Acosta Calderón v. Ecuador*

laws regarding property rights.<sup>61</sup> However, any domestic property right violations have been addressed through the domestic courts. Additionally, this Court has required that the State actually seize property, not just cause an individual to incidentally lose property.<sup>62</sup> Therefore, the State's administrative detention of Mr. Yguara did not violate the ACHR.

## **B. The Stated Did Not Violate Article 5**

The State did not violate Article 5, specifically section 3 as alleged, of the ACHR because only Mr. Yguara was directly and purposefully detained or punished by the State. While both Jamir and Ana Yguara were initially detained, they were released once it was clear that they did not pose a threat and any investigation into their activities had concluded.<sup>63</sup> Thus, the only punishment they suffered was the hardship of Mr. Yguara's detainment and subsequent unemployment. However, this does not violate Article 5(3). This Court has never extended Article 5(3)'s guarantees to cover hardships faced incidental to a family member's detainment, and it should not do so now. First, the international community has recognized that punishment must be intended to harm an offender.<sup>64</sup> Second, it must be condemnatory in nature.<sup>65</sup> Here, the hardship faced by Mr. Ygaua's family satisfies neither of these conditions. Therefore, the State did not violate Article 5 of the ACHR.

## **C. The State Did Not Violate Article 16**

---

<sup>61</sup> *Case of Mémoli v. Argentina* (2013) 265 C ¶180 IACHR

<sup>62</sup> *Case of Chaparro Álvarez and Lapo Ñíñez v. Ecuador* (2008) 189 C ¶209 IACHR

<sup>63</sup> Hypothetical ¶20

<sup>64</sup> Hanna, Nathan. "Taking the Consequences," *Criminal Law and Philosophy*, vol. 8 pp. 589–604. (2014)

<sup>65</sup> Feinberg, Joel. "The Expressive Function of Punishment," *Doing and Deserving*, Princeton University Press, pp. 95–118. (1970)

The State did not violate Article 16 of the ACHR because the State may restrict association as necessary for “national security, public safety, or public order.”<sup>66</sup> While the State may not prohibit or impair membership and support for groups that contribute to society, it may prohibit or restrict support for organizations that harm or are a danger to society.<sup>67</sup> Here again, the State’s obligation to protect its citizens and its obligations under the Convention Against Terrorism outweighs Mr. Yguara’s right to associate with the Shimmering Path because the Shimmering Path constitutes a threat to national security. Therefore, because the State has a legitimate purpose for restricting freedom of association, it did not violate Article 16.<sup>68</sup>

#### **D. The State Did Not Violate Article 17**

The State did not violate Article 17 of the ACHR because any effects on the Yguara family were only necessitated by Mr. Yguara’s criminal actions and the State’s Article 19 obligations. This Court has recognized that the ACHR requires the State to favor protecting children over the integrity of the family unit.<sup>69</sup> As such, when Jamir Yguara failed to attend school, the State had an obligation to take him into protective custody to ensure that he was receiving the education to which he is entitled.<sup>70</sup> Because this separation of the family had a legitimate legal basis and the separation was only incidental to the State’s act of detaining Mr.

---

<sup>66</sup> ACHR Art. 16 (2)

<sup>67</sup> *Case of Yarce et al. v. Colombia* (2016) 325 C ¶271 IACHR

<sup>68</sup> *Case of Escher et al. v. Brazil* (2009) 200 C ¶173 IACHR

<sup>69</sup> *Case of Atala Riffo and Daughters v. Chile* (2012) 239 C ¶169 IACHR

<sup>70</sup> Hypothetical ¶23

Yguara, the State acted within the realm of the ACHR.<sup>71</sup> Therefore, the State did not violate Article 17.

#### **E. The State Did Not Violate Article 10**

##### 1) Article 10 Requires Sentencing and a Final Judgement

The State did not violate Article 10 of the ACHR because Article 10 only requires compensation when an individual "has been sentenced by a final judgment through a miscarriage of justice."<sup>72</sup> Mr. Yguara was not sentenced by a final judgement. First and foremost, while Mr. Yguara did go before a judge on multiple occasions, he was never convicted of a crime or sentenced to imprisonment.<sup>73</sup> Thus, he never met the necessary conditions for compensation through Article 10. This Court has never extended monetary damages under Article 10 to a case where the Petitioners could not show that they were sentenced in a final judgement. Secondly, the text of Article 10 forecloses any compensation because it requires a "miscarriage of justice." While what happened to the Yguara family is clearly regrettable in hindsight, administrative detention of a suspected terrorist while an investigation is ongoing is not a miscarriage of justice. Thus, the State did not violate Article 10.

##### 2) The Compensation that the Family Received was Sufficient

While the Family initially sought a total of \$346,000 from the State in domestic courts, the \$80,000 they received is sufficient.<sup>74</sup> While the Court has, at times, extended general

---

<sup>71</sup> *Case of Fornerón and Daughter v. Argentina* (2012) 242 C ¶116

<sup>72</sup> ACHR Art. 10

<sup>73</sup> Clarification Question 5

<sup>74</sup> Clarification Question 2

reparations to some Petitioners under articles other than Article 10, there is no need to do so if the compensation that the Petitioners received is already sufficient for acknowledging any State wrongdoing and healing for the victims.<sup>75</sup> Those criteria have been met here. The State has already paid the Family \$80,000.<sup>76</sup> Mr. Yguara's lost wages only amount to \$4,000 which leaves a sizable sum of \$76,000 for any mental and physical distress suffered by the family.<sup>77</sup> The Petitioners must show why \$250,000 is an appropriate sum to redress their suffering, and they have failed to do so; the IACHR is not simply a means of enriching oneself or one's heirs in the face of human rights violations.<sup>78</sup> The State is not responsible for the loss of the Family's home because it was incidental to the State's actions, and therefore, the State is not required to compensate the Family for the value of their home.

Furthermore, punitive damages are not appropriate in this instance for two main reasons. First, the State did not have impermissible intentions in detaining Mr. Yguara. As previously discussed, the State had legitimate reasons to restrict the rights of the Petitioners including their positive legal obligations. Second, punitive damages are only effective insofar as they dissuade further actions of the same character. However, there is no reason to think that even the full \$346,000, which notably would not be coming from the people who perpetrated these acts but rather the general taxpayers of Banaguay, would be significant enough to dissuade public

---

<sup>75</sup> Sooka, Yasmin. *International Review of the Red Cross*, vol. 88, no. 862 (2006)

<sup>76</sup> Hypothetical ¶26

<sup>77</sup> Clarification Question 2

<sup>78</sup> *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia* ¶48 (2006)

officials to risk terrorist activity in order to greater ensure compliance with the ACHR. Thus, the compensation already received by the Family was sufficient.



**REQUEST FOR RELIEF**

For the foregoing reasons, the State respectfully requests that the Court:

- 1) Declare that the petition of the Churichayan Legal Aid Project and the Yguara Family is inadmissible under Article 46.
- 2) Declare that Banagauy's actions were justified and legitimate under their legal obligations.
- 3) Declare that Banaguay did not violate the American Convention on Human Rights.
- 4) Declare that the Yguara family has already been fairly compensated under domestic law.