

2011 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

INTER-AMERICAN COURT OF HUMAN RIGHTS

Richardson, Unzué et al.

Applicants

v.

Juvenlandia

Respondent

MEMORIAL FOR THE VICTIMS

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

STATEMENT OF FACTS.....1

LEGAL ANALYSIS7

I. STATEMENT OF JURISDICTION.....7

II. THE STATE OF JUVENL

- B. Juvenlandia violated Articles 8 and 25 when it failed to ensure Maria’s right to a fair trial and effective recourse in her abortion case22
 - i. Juvenlandia violated Articles 8(2)(e) and 19 of the Convention because it failed to provide Maria with legal counsel when she was arrested for abortion.....22
 - ii. Juvenlandia violated Article 25(1) and 19 of the Convention

Castillo-Petruzzi et al. v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), No.52 (May 30, 1999).....25

Cesti Hurtado v. Peru, Merits, Inter-Am. Ct. H.R. (ser C) No. 56, (Sept. 29, 1999).....19

Five Prisoners v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser C) No. 98, (Feb. 28, 2003).....20, 21

Genie Lacayo v. Nicaragua, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C)

Marti de Mejia v. Peru, Case 10.970, Inter-Am. Comm’n H.R., Report No. 5/96, (1996)14

Minors in Detention v. Honduras, Case 11.491, Inter-Am. Comm’ n H.R., Report No.41/99, (1999).....20

Michael Edwards et al. v Bahamas, Case 12.067, Inter-Am. Comm’n H.R. Report No. 48/01, (2001).....22

European Court of Human Rights Cases

Edward v. United Kingdom, Eur. Ct. H.R. (ser. A) No. 247-B (1992)20

Haase v. Germany, 11057/02 Eur. Ct. H. R. (ser. A) 3 (2004).....27

Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) (1978)8

Osman v. United Kingdom, App. No. 23452/94, 1998-VIII Eur. Ct. H.R. (1998)17

Vidal v. Belgium, Eur. Ct. H.R. (ser. A), No. 235-B (1992)20

Z. and Others v. The United Kingdom, App. No. 29892/95, 2001-V Eur. Ct. H.R. (2001).....17

European Commission of Human Rights Cases

Aydin v. Turkey, No. 23178/94, Eur. Comm’n H.R. (1996).....15

Olsson v. Sweden, App. No. 10465/83, 11 Eur. H. R. Rep. 259, (1987)26

W. v. United Kingdom, App. No. 9749/82 10 Eur. H. R. Rep. 29, (1988)26

Cases in Arbitration

Gr. Brit. v. U.S., 6 R.I.A.A. 160 (1926).....15

U.S. v. Mexico, 4 R.I.A.A. 82, 87 (1926).....8, 15

Treaties

American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36

Article 1(1).....7, 13, 28

Article 29

Article 512

Article 5(1).....13, 18

Article 5(2).....12, 14

Article 5(4).....25

Article 5(5).....20

Article 6(1).....17

Article 7(1).....18

Article 7(5).....24

Article 8(1).....20

Article 8(2)(e)22

Article 8(2)(h)20

Article 1726, 27

Article 1910, 11

Article 22(1).....18

Article 2427, 28

Article 25(1).....19

**Additional Protocol to the American Convention on Human Rights in the Area of
Economic, Social and Cultural Rights, Art. 3, Nov. 17, 1988, O.A.S.T.S. No. 69**

Article 328

**American Declaration on the Rights and Duties of Man, Apr. 22, 1948, O.A.S. Res.
XXX**

Article II.....12, 27, 28

Article V.....27

**African Charter on Human and Peoples’ Rights, June 27, 1981, O.A.U.Doc.
CAB/LEG/67/3**

Article 512

**Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment, Dec. 10, 1984, G.A. Res. 46, U.N. Doc. E/CN.4/1984/72**

Article 114

Article 2(2).....12

Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 211

Article 312

Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

Preamble10

Article 227, 28

Article 311

Article 9(1).....26, 27

Article 3712, 24

Article 37(b).....25

Article 40(4).....24

Article 40(6).....20

Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13

Article 2, 3, 5-1628

**Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949,
75 U.N.T.S. 135.**

Article 1298

**Geneva Convention Relative to the Protection of Civilian Persons in Time of War,
Aug. 12, 1949, 75 U.N.T.S. 287**

Article 1468

**Inter-American Convention on the Prevention, Punishment and Eradication of
Violence Against Women, Nov. 22, 1969, O.A.S.T.S. No. 36**

Article 112

Article 4(f)27

Article 514

**Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, 67
O.A.S.T.S 13.**

Article 112

Article 514

Article 88

**International Convention on the Elimination of All Forms of Racial Discrimination,
Dec. 21, 1965, G.A. Res. 2106 (XX), at 47, U.N. Doc. A/6014**

Article 228

**International Covenant on Civil and Political Rights, March 23, 1976, 999 U.N.T.S.
171**

Article 213, 28

Article 2(1).....8

Article 712

Article 10(2)(a)25

Article 10(3)(b)11

Article 10(3).....24

Article 14(5).....21

Article 1727

Article 23(4).....10

Article 2411

Article 2628

International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

Article 2(2), 3, 26.....28

Article 1011

Article 10(3).....10

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1993, 2220 U.N.T.S. 93.

Article 1, 7, 18(1), 25, 27, 28, 43, 45(1), 48, 55, 7028

Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810

Article 2,728

Article 25(2), 26(3)11

United Nations Convention against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, UN GAOR 55th Sess., UN Doc. A/RES/55/25

Article 3(a)17

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/40/53 (1985)

Rule 1724,25

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/45/49 (1990)

Rule 13(1)24

Rule 13(2)24

Naomi Roht-Arriaza, Comment, State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law, 78 Calif. L. Rev. 451 (1990)15

Dinah Shelton, Private Violence, Public Wrongs and the Responsibilities of States, 13 Fordham Intl. L. J. 1 (1989).....9

Viviana Waisman, Article, Human Trafficking: State Obligations to Protect Victims' Rights, the Current Framework and a New Due Diligence Standard, 33 HASTINGS INT'L & COMP. L. REV. 385 (2010).....16, 17

Web Sources

Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The due Diligence Standard as a Tool for the Elimination of Violence Against Women, PP 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (prepared by Yakin Erturk) available at <http://www.unhcr.org/refworld/docid/45377afb0.html>16

Other

U.S. Dept. of State, Letter from Robert A. Bradtke, Acting Assistant Secretary for Legislative Affairs, to Senior Arlen Specter (Jan. 27, 1993).....15

result of her protests, one of her captors beat her, raped her, and threatened her with more violence if she didn't behave.¹⁰ In response to the violent rape of her cousin, Felicitas fainted. Not long afterwards, Felicitas learned that she was pregnant with Lucio's baby. Maria became pregnant as a result of the rape.¹¹

For the next six months, the girls were forced to live and work as prostitutes in the apartment, which served as a brothel, without the ability to leave or communicate with anyone.¹² The girls were prevented from leaving the brothel unless they were accompanied by some very aggressive men they referred to as "the thugs." Frequently, the girls were given pills that caused them to lose consciousness. After taking the pills, the girls would wake up beaten on a blood-stained mattress.¹³ Despite the injuries, the girls never received any medical attention and stopped complaining because any request was met with brutal violence.¹⁴

On one occasion, government officials visited the brothel, but "the thugs" were tipped off beforehand and had given the girls stories to tell the officials. However, the officials didn't talk to the girls and ignored the obvious condition of the brothel as well as the visible signs of abuse.¹⁵ Additionally, after the visit, the officials went out with "the thugs" to the neighborhood bar.¹⁶

On August 10, 2002, after Maria had slept with ten customers, exhausted from the pain and desperate over her situation, Maria tried to terminate her pregnancy.¹⁷ As a result, she suffered serious hemorrhaging and had to be taken to a medical facility. The

¹⁰ Hypothetical ¶ 15

¹¹ Id.

¹² Hypothetical ¶ 16

¹³ Id.

¹⁴ Id.

¹⁵ Hypothetical ¶ 17

¹⁶ Id.

¹⁷ Hypothetical ¶ 18

doctor at the facility filed a complaint against Maria for the abortion. Maria was charged

de factocustody of her child.²⁸ While the Civil Code of Juvenlandia allows for the direct surrender of a child, known as de factocustody, it is legally accepted as pre-adoptive custody when the parents affirm the surrender before a judge.²⁹ The adoption became final in July of 2004.³⁰

In December 2004, Felicitas was able to contact Lucio on a phone that a customer accidentally left on the mattress.³¹ After the call, Lucio decided to go to Juvenlandia immediately to reclaim his girlfriend and, mainly, his son.³² After Felicitas' call, Lucio contacted Maria's mother and offered to help her find Maria. Both Mrs. Paz and Lucio traveled to the capital of Juvenlandia to find the girls.³³

In Juvenlandia, Lucio found an attorney who filed a writ of habeas corpus on Felicitas' behalf.³⁴ t04 Tm433

issue and granted Lucio’s application pursuant to Article 25 of its Regulations.³⁹ However, Juvenlandia objected to the Commission’s request and claimed that it had properly processed the writ of habeas corpus for Felicitas.⁴⁰

On May 23, 2007, Lucio filed a petition before the Commission against Juvenlandia alleging violations of Articles 5, 6, 7, 8, 17, 19, 22, 24, and 25 of the American Convention on Human Rights (“Convention”), all in relation to Articles 1(1) and 2 regarding Felicitas’ case.⁴¹ Lucio’s petition requested that Felicitas be located immediately, the adoption of their son be annulled, and their son returned to him and Felicitas. Juvenlandia answered the Commission and asserted that with respect to Felicitas, domestic remedies had not been exhausted. Additionally, Juvenlandia still maintains that the adoption was lawful and leaving the child with his adoption parents is in his best interest.⁴²

After hearing Juvenlandia’s arguments, the Commission issued a report pursuant to its Article 37(3) of its Regulations declaring the petition admissible and finding that Juvenlandia had violated Articles 5, 6, 7, 8, 17, 19, 22, 24, and 25 of the Convention.⁴³ Juvenlandia failed to comply with the recommendations set out in the Commission’s report, so the Commission submitted its report to the Inter-American Court of Human Rights (hereinafter “the Court”) on August 26, 2010.⁴⁴ In regards to Felicitas’ son, the Commission alleged that Juvenlandia had also violated Articles 8, 17, 19, 24, and 25

³⁹ Hypothetical ¶ 46

⁴⁰ *Id.*

⁴¹ Hypothetical ¶ 47

⁴²

established in Articles 1(1) and 2 of the Convention. Three months after the Commission submitted its petitions against Juvenlandia, Felicitas was found.⁴⁵

LEGAL ANALYSIS

I. STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction to hear this case. Juvenlandia is a State-Party to the Organization of American States (“OAS”) and has ratified the American the Convention. Additionally, Juvenlandia has accepted the contentious jurisdiction of the Court pursuant to Articles 61 and 62 of the Convention on December 10, 1987.⁵¹ Both Maria Paz and Felicitas Unzué have exhausted their domestic remedies because civil remedies were inadequate and ineffective.⁵²

Velasquez this Court held the Honduran government responsible for a violation of the Convention when it failed to investigate disappearances, punish the guilty, and

the Convention, requires that states adopt all necessary measures to protect children

By ratifying the CRC,⁷³ Juvenlandia is implicitly bound to uphold the affirmative obligations regarding minors set forth in both the CRC and Article 19 of the Convention. Both the Court and the Commission have adopted the definition of “minor” as set forth in Article 1 of the CRC to include every human being below the age of eighteen years.⁷⁴ States violate Article 19 and the CRC when they fail to protect minors regardless of whether the state national majority age is attained prior to eighteen.⁷⁵ All of the victims in this case are minors and accordingly, were deprived of their fundamental human rights in violation of Article 19 and the CRC.

In this case, Juvenlandia violated Article 19 when it failed to take measures to protect the best interests and human rights of Maria, Felicitas, and Felicitas’ son. Further, Juvenlandia violated Article 1(1) when it failed to investigate and punish those responsible for the human rights violations set forth in the convention. Therefore, for the following reasons Juvenlandia violated Articles 19 and 1(1) of the Convention as interpreted by the CRC regarding Maria, Felicitas and Felicitas’ son.

III. JUVENLANDIA VIOLATED ARTICLES 5, 6 AND 19 OF THE CONVENTION

international law.⁷⁷ The prohibition of torture is so entrenched in the corpus juris of international law that it has acquired a status of *erga omnes* obligations for states and *jus cogens* in international law.⁷⁸ As a result, states have an obligation to prosecute and punish gross violations of human rights, including acts of torture.⁷⁹ Therefore, Juvenlandia failed to fulfill its international obligation because it never prosecuted nor punished the parties responsible for the torture, rape, and trafficking of Maria and Felicitas.⁸⁰

A. Juvenlandia violated Articles 5(1), 1(1), 7(1), and 19 of the Convention when it failed to protect the moral, mental, and physical integrity of both Maria and Felicitas.

Article 5(1) of the Convention requires states to protect an individual's physical and mental integrity.⁸¹ Sexual assault and domestic violence violate Article 5(1) because both acts of violence deprive a person of mental and physical integrity.⁸² The European Commission ruled that rape violates an individual's right to "respect for personal

⁷⁷ *Id.* at Art.5(2); Catherine M. Grosso, Note, International Law in the Domestic Arena: The Case of Torture in Israel, 86 Iowa L. Rev. 305, 308 (2000).

⁷⁸ See Organization of American States, American Declaration on the Rights and Duties of Man, Art. II, Apr. 22, 1948, O.A.S. Res. XXX (hereinafter "American Declaration"); American Convention, *supra* note 59, Art. 5; Inter-American Convention to Prevent and Punish Torture, *supra* note 53, Art. 1; Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, Nov. 4, 1950, 213U.N.T.S. 211; African Charter on Human and Peoples' Rights, Art. 5, June 27, 1981, Pr081 [(213U)5(4D

integrity” and thus violates 5(1) of the Convention.⁸³ Further, Article 5 in conjunction

physical and sexual abuse,⁸⁹ but they also socialized with the girls' captors.⁹⁰ Thus, Juvenlandia violated Articles 5(1), 1(1), and 7(1) of the Convention when it knowingly failed to prevent and protect the physical and mental integrity as well as the personal liberty

Additionally, the international community requires states to investigate and take action against crimes against humanity.⁹⁶ Rape, sexual slavery, and forced prostitution are considered crimes against humanity⁹⁷ and are violations of customary law under the Geneva Conventions.⁹⁸

States fail to meet their obligations under the Convention and customary law when they fail to respond to inadequate state officers⁹⁹ or ineffective prosecution¹⁰⁰ of reasonably anticipated human rights violations. Specifically, when state officials and judges fail to investigate and prosecute violence against women, the states are held accountable by the court.¹⁰¹ Articles 1(1) and 2 reaffirm that states have an obligation to both react to human rights violations and to prevent these violations.¹⁰²

In the instant case, it is clear that Maria and Felicitas were tortured. The girls were intentionally beaten and raped on a constant basis by their captors as well as numerous “customers.” The girls were frequently given pills, which would cause them to lose consciousness.¹⁰³ After taking the pills, Maria and Felicitas would wake up naked, and beaten on a blood-stained mattress without any recollection of what had occurred.¹⁰⁴ Juvenlandia violated Articles 5(2) and 1(1) of the Convention when it failed to prosecute the private actors responsible for raping Maria and Felicitas.¹⁰⁵ Also, Juvenlandia failed

⁹⁶ Naomi Roht-Arriaza, Comment, State Responsibility to Investigate and Prosecute Grave Human

to prosecute the police officers who visited the brothel and ignored the obvious signs of abuse. Thus, Juvenlandia has breached its obligation under Articles 5(2), 1(1) and 19 because all of the victims of these human rights violations were minors.

C. Juvenlandia violated Articles 6(1) and 1(1) of the Convention when it failed to Protect Maria and Felicitas from trafficking.

States have a duty to exercise due diligence to prevent and respond to acts of violence against women under customary law.¹⁰⁶ Trafficking is primarily a violent crime against women.¹⁰⁷ States have a responsibility to prevent and investigate trafficking¹⁰⁸ because the very act itself deprives a person of what is most essential to them: their life, liberty, physical welfare, health and dignity.¹⁰⁹

Article 6(1) of the Convention explicitly says that no person shall be subjected to any form of slavery including trafficking in women.¹¹⁰ Trafficking is the recruitment, transfer or receipt of women for the purpose of exploitation, which includes sexual exploitation and prostitution.¹¹¹ States exercise due diligence when they prevent trafficking by regulating their borders.¹¹² States fail to exercise due diligence when they

¹⁰⁶ See Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The due Diligence Standard as a Tool for the Elimination of Violence Against Women, PP 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (prepared by Yakin Erturk) available at <http://www.unhcr.org/refworld/docid/45377afb.html>; see also General Recommendation No. 19, supra note 62; Declaration on the Elimination of Violence Against Women, supra note 79; Rebecca Cook, Article, State Responsibility for Violations of Women's Humans Rights, 7 Harv. Hum. Rts. J. 125, 151 (1994).

¹⁰⁷ See Viviana Waisman, Article, Human Trafficking: State Obligations to Protect Victims' Rights, the Current Framework and a New Due Diligence Standard, 33 Hastings Int'l & Comp. L. Rev. 385, 386 (2010) (hereinafter "Waisman, Human Trafficking").

¹⁰⁸ See United Nations Convention against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, U.N. Doc. A/(a)4(0 6.48)-12(r)-79;me;m86(7)11.15e(1)7(l)Nod CcRaisyRn12(or)2(s)5(1)302(j)]D.H.02mTc -0.006 Tw 0.53 0 Td [2See

know or should have know of a pattern of violence and fail to respond.¹¹³

Additionally, Article 6(1) is always read in light of Articles 1(1) and (2) which impose a positive duty on the state to ensure the no person is a victim of sexual slavery.¹¹⁴ This Court has required states to “adopt comprehensive measures to comply with due diligence in cases of violence against women” in order to fulfill its obligation under 1(1).¹¹⁵ Therefore, states must not only prevent violence, but must also respond to complaints of human rights violations.¹¹⁶ The Commission held that Brazil violated its due diligence obligation because the state tolerated a general pattern of violence against women when it failed to prosecute the aggressors.¹¹⁷

In this case, both Maria and Felicitas were victims of trafficking. “Pirucha” targeted Maria because she was a child, female, and impoverished. Juvenlandia violated Articles 6 and 1(1) of the Convention when it failed to prevent trafficking by regulating its borders. Not only did the Customs officers in Juvenlandia fail to inspect the van transporting the girls, but the officers accepted an “envelope” from Maria and Felicitas’ captors.¹¹⁸ Additionally, the Customs officers violated Juvenlandian law when they

notary public.¹¹⁹ Neither Maria nor Felicitas' parents provided the girls with the requisite written consent necessary to enter Juvenlandia.¹²⁰

Juvenlandia also failed to exercise due diligence because it knew or should have known about the trafficking and failed to prosecute the private actors responsible for the human rights violation. Juvenlandia knew about the pattern of trafficking because there were over one hundred trafficking claims pending in their court system and the media had publicized the issue.¹²¹ Therefore, when Juvenlandia failed to regulate its borders and prosecute the private actors responsible for the trafficking, it created a pattern of state-condoned violence against women in violation of Articles 6 and 1(1).

Additionally, trafficking in women violates a woman's right to physical integrity,¹²² personal liberty,¹²³ and the right to freedom of movement.¹²⁴ Article 22(1) requires states to ensure that every person has the right to freely move within a territory.¹²⁵ Both Maria and Felicitas were deprived of that freedom because the private actors forced them to live and stay in the brothel. Additionally, when the girls entered Juvenlandia, their captors confiscated their papers and forced them to stay in the country without any form of identification.¹²⁶ Thus, Juvenlandia violated Articles 6(1), 7(1), 19, and 22(1) when it failed to take preventative measures and prosecute the aggressors to protect Maria and Felicitas, both minors, from trafficking.

¹¹⁹ Clarification Questions and Answers 41.

¹²⁰ Hypothetical ¶ 7-8

¹²¹ Clarification Questions and Answers 21

¹²² American Convention, supra note 57, Art. 5(1)

¹²³ American Convention, supra note 57, Art. 7(1)

¹²⁴ American Convention, supra note 57, Article 22(1); see generally Ewing, State Responsibility, supra note 62.

¹²⁵ American Convention, supra note 57, Article 22(1).

¹²⁶ Hypothetical ¶ 15

IV. JUVENLANDIA VIOLATED ARTICLES 8, 19, AND 25 WHEN IT FAILED TO PROVIDE MARIA, FELICITAS, AND FELICITAS'S SON WITH BASIC JUDICIAL GUARANTEES AND EFFECTIVE LEGAL RECOURSE.

Article 8 of the Convention requires states to protect a person's right to a fair trial and due process of law.¹²⁷ Similarly, Article 25(1) guarantees the right of all persons to prompt and effective recourse to a competent court for fundamental rights violations.¹²⁸ Articles 1(1) and 2 as well as Articles 8 and 25, require states to protect these rights by enacting and enforcing domestic legislation which provides victims with an opportunity to remedy their human rights violations.¹²⁹ The guarantees set forth in Articles 8 and 25 of the Convention are applicable for all persons and should be especially enforced in light of Article 19 to all judicial and administrative proceedings involving the rights of children.

legislation to create special juvenile courts in violation of the Convention. Juvenlandia also violated Article 8 of the Convention because it did not protect Maria's right to due process of law when it allowed a regular court to adjudicate her murder case.

Additionally, Juvenlandia violated Article 8(2)(h) of the Convention, which requires states to provide a person with the opportunity to appeal to guarantee his due process rights.¹⁴² This Court held that the right to appeal as a legal recourse is only effective when it provides remedies and redresses human rights violations.¹⁴³

Juvenlandia violated Articles 8(2)(h) and 25(1) of the Convention because it did not afford Maria an effective right to appeal. Juvenlandia's Supreme Court allowed Maria to appeal in forma pauperis (i-1.)

Convention when it failed to provide Maria legal counsel for her abortion case. Maria is a minor and Juvenlandia failed in its obligation to employ special measures to protect her fundamental right to a fair trial.

ii. Juvenlandia violated Articles 25(1) and 19 of the Convention because it did not afford Maria prompt recourse for her abortion case.

Article 25 requires states to provide individuals with simple and prompt legal recourse.¹⁴⁹ Legal recourse is not “effective” if it is not decided within a time frame that enables the violation of the right to be remedied.¹⁵⁰ In determining whether a judicial proceeding was prompt, this Court considers the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.¹⁵¹ In *Suarez Rosero v. Ecuador* this Court found that a delay of four years and two months between the victim’s arrest and resolution of the final appeal exceeded the reasonable time contemplated in the Convention.¹⁵² It is clear that Juvenlandia violated its obligation to provide prompt recourse in Maria’s abortion case because the case was pending for over six years before coming before the Commission. Currently, her abortion case is still awaiting trial in Juvenlandia’s court.¹⁵³

Additionally, Maria’s abortion case is precluded by the statute of limitation as established in Juvenlandia’s Criminal Code.¹⁵⁴ The Code provides that a criminal action is precluded by the statute of limitations once a period of time equal to the maximum

¹⁴⁹ American Convention, supra note 57, Art. 25(1).

¹⁵⁰ *Juvenile Reeducation Institute v. Paraguay*, supra note 69 ¶ 245.

¹⁵¹ See *Rosero v. Ecuador*, supra note 85 ¶ 72 (Nov. 12, 1997); see also *Genie Lacayo v. Nicaragua*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 30, ¶ 77 (Jan. 29, 1997);

¹⁵² *Suarez Rosero v. Ecuador*, supra note 85 ¶ 73.

¹⁵³ *Id.* at ¶ 73.

¹⁵⁴ Hypothetical ¶¶ 18, 56

¹⁵⁴ See Clarification Questions & Answers ¶ 64

possible sentence has elapsed.¹⁵⁵

In the instant case, Maria was incarcerated for abortion for a period of ten months, and still has not had the opportunity to bring her case before a competent court.¹⁶² This Court in *Bayarri v. Argentina* stated that detaining a person for seven days before any judicial review constituted a breach of Article 7(6).¹⁶³ Further, this court held in *Castillo-Petruzzi et al. v Peru* that, even in a state of emergency, Peru violated the Convention when it detained a person for 36 days.¹⁶⁴ Juvenlandia violated Article 7(6) when it imprisoned Maria for ten months without bringing her case before a court. Additionally, Article 5(4) of the Convention requires states to separate accused and convicted persons in prison.¹⁶⁵ Juvenlandia violated Article 5(4) when it failed to separate Maria from convicted women in prison. Therefore, Juvenl

i. Juvenlandia violated Articles 8 and 25 of the Convention when it affirmed the invalid adoption of Felicitas' son.

Juvenlandia violated Articles 8 and 25 of the Convention when it failed to effectively review the invalid adoption of her baby. The adoption was invalid because Juvenlandia's Code of Civil Procedure requires the parents to affirm the de facto custody before a judge. Instead Felicitas was taken to an office, outside the presence of a judge, and forced by her captors to sign away her rights to her child.¹⁶⁶ Immediately afterwards, she was forced to return to the brothel. Additionally, Lucio, the father of the child, never consented to the adoption.

In spite of the invalid adoption, Juvenlandia affirmed the adoption without analyzing or investigating whether the adoption was lawful. Instead Juvenlandia affirmed the adoption as being in the best interests of the child. However, an adoption does not become legal only because the child would be better off in adoptive care.¹⁶⁷ Further, the European Court emphasized that judicial review for adoptions is a procedural safeguard against arbitrary removal of a child from his natural parents.¹⁶⁸ Juvenlandia violated Felicitas' right to a fair trial because at no time during the adoption process was a judge involved to oversee the proceedings and ensure the adoption was legal. Therefore, Juvenlandia violated Articles 8(1) and 25 of the Convention when it failed to provide Felicitas and Lucio access to effective judicial review in their son's adoption case.

¹⁶⁶ Hypothetical ¶ 20

¹⁶⁷ Olsson v. Sweden, App. No. 10465/83, 11 Eur. Ct. H. R. Rep. 259, ¶ 72 (1987).

¹⁶⁸ Id.; see also *W. v. United Kingdom*, App. No. 9749/82 10 Eur. H. R. Rep. 29, P 64 (1988).

ii. Juvenlandia violated Articles 17 and 19 of the Convention when it failed to prosecute those responsible for the unlawful separation of Felicitas and her son.

Article 17 of the Convention requires states to protect and preserve the family unit.¹⁶⁹ A child has the right to receive protection against arbitrary or illegal interference with his family.¹⁷⁰ One such protection includes that a child is never separated from his family without judicial review.¹⁷¹ The European Court of Human Rights held that it is extremely harsh to separate a newborn from his mother immediately after birth.”¹⁷² Further, the court held that a baby should never be physically removed from his mother absent an extraordinary, compelling reason especially when neither parent has consented to the separation.¹⁷³

In the instant case, Felicitas’ captors immediately separated Felicitas from her child without her consent. After giving birth, Felicitas was transferred back to the brothel without her baby. When she asked for her baby, her captors denied her request and told her that the child had to stay in the intensive care unit at the clinic. Only one week later, Felicitas was forced to sign away her rights to her baby.¹⁷⁴ Therefore, Juvenlandia violated Articles 17 and 19 of the Convention pursuant to Articles 1(1) and 2 when it failed to take appropriate measures to punish and prosecute the private actors responsible

D. Juvenlandia violated Articles 24 and 25 of the Convention because it discriminated against Maria and Felicitas when it denied the girls access to effective legal redress.

Article 24 of the American Convention requires states to provide individuals equal protection before the law without discrimination.¹⁷⁵ States must ensure equality before the law as an obligation of *jus cogens* character.¹⁷⁶ This Court has stated that Article 24 must be interpreted by Article 1(1).¹⁷⁷ Specifically, a state cannot discriminate based on race, sex, national or social origin, or any other social condition.¹⁷⁸ Discrimination is defined as any subjective practice that excludes, restricts or favors an individual in a way that adversely affects human rights.¹⁷⁹ Article 25 of the Convention requires states to provide individuals with effective legal recourse. States violate Articles 24 and 25 when they fail to respond to gender-based violence because they discriminate against women¹⁸⁰ by depriving them of effective legal recourse. Additionally, states

¹⁷⁵ American Convention, *supra* note 57, Art. 24; *see also* American Declaration, *supra* note 78, Art. II; Organization of American States; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Art. 4 (f), Nov. 22, 1969, O.A.S.T.S. No. 36; Convention on the Rights of the Child, *supra* note 70, Art. 2.

¹⁷⁶ American Declaration, *supra* note 78, Art. II; International Covenant on Civil and Political Rights, *supra* note 59, Art. 26; American Convention, *supra* note 57, Art. 24; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural

violate their obligations pursuant to Article 1(1) when they fail to investigate and prosecute acts of gender based violence and abuse.¹⁸¹

In the instant case, Juvenlandia violated Article 24 because it failed to investigate and respond to the abuses against Maria and Felicitas, both female and minors. Juvenlandian officials visited the brothel and ignored not only Maria and Felicitas' visible signs of abuse, but the other abused women in the brothel.¹⁸² In addition, Juvenlandia knew there were hundreds of gender based charges filed in their court system and still omitted to take any action to prosecute these charges thus denying the girls effective legal redress. Therefore, Juvenlandia violated Articles 24, 25, and 1(1) because it discriminated against Maria and Felicitas as women when it failed to effectively investigate the abuses therefore denying them access to effective legal recourse.¹⁸³

REQUEST FOR RELIEF

The Victims respectfully request this Court to declare the instant case admissible and find Juvenlandia in violation of Articles 1(1), 2, 5, 6, 8, 17, 19, 24, and 25 of the Convention. The Victims request that this Court determine and declare that Juvenlandia is responsible for violations of all the above mentioned Articles of the Convention and ensure reparation to Maria and Felicitas for the violation of their rights. In this regard, the Victims request that the Court order Juvenlandia to:

- a. Monetarily compensate Maria, Felicitas and Felicitas' son for these gross human rights violations.
- b. Invalidate the adoption of Felicitas' son and return him to the custody of his parents, Felicitas and Lucio.

¹⁸¹ Velasquez Rodriguez v. Honduras, supra note 52, ¶177; Godinez Cruz v. Honduras, Merits, Inter-Am. Ct. H.R. (ser. C), No. 4, ¶ 188.

¹⁸² Hypothetical ¶17.

¹⁸³ Velasquez Rodriguez v. Honduras, supra note 52, ¶177; Godinez Cruz v. Honduras, supra note 181 ¶ 188.

