
CASE OF RICARDO MADEIRA *et al.*

Victims

v.

REPUBLIC OF ZIRCONDIA

State

MEMORIAL FOR THE REPRESENTATIVES OF THE VICTIMS

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STATEMENT OF FACTS

Zirconia, a member of the UN, has ratified several human rights and international humanitarian law treaties including the American Convention on Human rights, and the four Geneva Conventions.¹ It accepted the jurisdiction of the Inter-American Court of Human Rights in 2002.²

Filipolandia, a province of Zirconia, possesses vast resources, which are then sold abroad to companies.³ An armed movement started to take place in Filipolandia on February 4, 2006, lead by Orlando Monteverde, a former General in the National Army.⁴ His movement, the Front for a New Beginning (“FNC”), aimed to free the wealthy province from the rest of the country.⁵ After three months, Monteverde assembled a 3,000-person army in order to meet FNC’s goals.⁶

With the country in conflict, an armed group called the “Terror Squad” felt as though this was the perfect time to set up operations.⁷ They have control over three towns in Filipolandia where they have taken possession of shipments, and they are also pushing out inhabitants in order to control the region.⁸ One of the towns, El Paraíso, had workers from the company Samarium International.⁹ The two workers, Ricardo Madeira and Milena Reyes, were caught by the Terror Squad in 2006, where the hostage situation involved: being chained by their hands and feet; closed-circuit camera monitoring; and eating food not fit for human

¹ Hypothetical Case, para. 9

² Hypothetical Case, para. 9.

³ Hypothetical Case, para. 7

⁴ Hypothetical Case, para. 10

⁵ Hypothetical Case, para. 10

⁶ Hypothetical Case, para. 11

⁷ Hypothetical Case, para. 14

⁸ Hypothetical Case, para. 14

⁹ Hypothetical Case, para. 15

consumption.¹⁰ After being held hostage for eight days, Milena Reyes escaped, and traveled to Antara, where she reported to the Office of the Ombudsman that her colleague, Ricardo Madeira had been executed by the Terror Squad.¹¹

An anonymous email, thought to be sent by an ex member of the Terror Squad, gave coordinates to a mass grave, potentially containing the remains of Madeira.¹² DNA results confirmed that the mass grave site contained Madeira, and Timoteo Anaya was accused of murder.¹³

The trial against Anaya, which lasted two and a half months, found the defendant guilty and he was sentenced to 12 years in prison.¹⁴

On November 19, 2006, an unmanned aircraft control and directed by the staff members of the company Coltech attacked the Provincial Museum of Hipolito.¹⁵ This attack was carried out with the knowledge and instruction of the Zircondian Army.¹⁶ As a result of this military operation, the museum's curator, Reynaldo Restreo, was killed.¹⁷

The Serena Situation

In stark contrast to Filipolandia, Serena, a northern province, has 63% of its inhabitants living in poverty, and in rural areas, six of every 10 households live in extreme poverty.¹⁸ Additionally, Serena is considered one of the most violent regions in the world. Beginning in 2001, two gangs ("los Locos" and "los Duros") have made their presence known in the area

¹⁰ Hypothetical Case, para. 15

¹¹ Hypothetical Case, para. 16

¹² Hypothetical Case, para. 20

¹³ Hypothetical Case, para. 20

¹⁴ Hypothetical Case, para. 21

¹⁵ Hypothetical Case, para. 17.

¹⁶ Hypothetical Case, para. 17.

¹⁷ Hypothetical Case, para. 17.

¹⁸ Hypothetical Case, para. 23

through violent crime.¹⁹ Ordinary citizens of Serena are now victims of kidnappings, extortion, and murder.²⁰

In January 2007, a march was held in Serena to protest government indifference shown towards the agriculture and education sectors.²¹ 28,000 people were have thought to take part in this march.²² Members of military Battalion 22, were assigned to supervise the march.²³ During the proceedings, one of the march members was identified as Esteban Martinez, a leader of “los Locos”.²⁴ It was ordered that the soldiers apprehend Martinez and in order to do this, the authorities used loudspeakers to demand the demonstrators disperse, but this was taken as provocation, and in return, the protests became violent.²⁵ Participants entered government buildings, and started to beat the employees who were inside.²⁶ At the end of the operation, 12 people had been killed and 14 had been injured, but the International Human Rights Alliance indicated that the death toll exceeded 20.²⁷ 22 people, including Martinez, had been arrested and were taken to a maximum security prison.²⁸

The cells in which the prisoners were held measured 12m, in which three detainees were housed in, and they were each allowed to go outside for two hours per day.²⁹ There were no private bathrooms and the prisoners were forced to eat in their cells.³⁰ Due to these conditions, six inmates went on hunger strike, and two of them were in critical condition after 27 days of the

¹⁹ Hypothetical Case, para. 25

²⁰ Hypothetical Case, para. 25

²¹ Hypothetical Case, para. 30

²² Hypothetical Case, para. 30

²³ Hypothetical Case, para. 31

²⁴ Hypothetical Case, para. 31

²⁵ Hypothetical Case, para. 32

²⁶ Hypothetical Case, para. 32

²⁷ Hypothetical Case, para. 34

²⁸ Hypothetical Case, para. 35

²⁹ Hypothetical Case, para. 37

³⁰ Hypothetical Case, para. 37

strike began.³¹ These inmates were soon force fed, based on the advice of prison Warden.³² After the force feeding concluded, a doctor was taken hostage by an inmate and after five hours of negotiating without a solution, the Warden authorized a tactical team to enter, which ended with the deaths of three inmates, including Martinez.³³

LEGAL ANALYSIS

I. Admissibility

a. Statement of Jurisdiction

The Inter-American Court on Human Rights (hereinafter the “Court”) has jurisdiction to hear this case, as the Republic of Zircondia (hereinafter “respondent State”) ratified the American Convention on Human Rights (hereinafter the “ACHR”) in 1999 and accepted the contentious jurisdiction of the Court in 2002.³⁴ Therefore, pursuant to Articles 61 and 62 of the ACHR, respondent State authorizes the Court to adjudicate all matters concerning the application and interpretation of the ACHR.³⁵

b. Subject Matter Jurisdiction

This Court has subject matter jurisdiction to hear this case, even where it pertains to international humanitarian law. The respondent State asserts that this Court lacks subject matter jurisdiction because international humanitarian law governs the issues of this case. Such an argument was also made by the respondent in the case of *Serrano-Cruz Sisters v. El Salvador*. In that case, El Salvador argued that since there was a non-international armed conflict raging

³¹ Hypothetical Case, para. 3

³² Hypothetical Case, para. 38

³³ Hypothetical Case, para. 38

³⁴ Hypothetical Case, para. 9.

³⁵ Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, Art. 61 & 62 [hereinafter “ACHR”].

within the state, international humanitarian law, not international human rights law, was to be applied.³⁶ However, as found in *Serrano-Cruz Sisters*, the Court can use international humanitarian law, ratified by the State, to give context to the ACHR.³⁷ Therefore, this Court has jurisdiction in the present case to use international humanitarian law to give context to the ACHR violations alleged.

c. Exhaustion of all Remedies

This Court should find that Petitioners have satisfied the requirement to exhaust domestic remedies because: (1) the respondent State failed to invoke the objection of non-exhaustion of domestic remedies before the Inter-American Commission and therefore waived this objection before the Court; (2) the available domestic remedies in Zircondia are inadequate and ineffective; and (3) the Petitioners satisfy the unwarranted delay exception in ACHR Article 46(2)(c). The ACHR provides that the petitioner must, when possible, first exhaust domestic remedies before filing a petition with the Commission.³⁸ The Court has held that if the respondent state failed to invoke the preliminary objection of non-exhaustion of local remedies in the proceedings on admissibility before the Commission, it was precluded from invoking it before the Court.³⁹

Even if the respondent State has not waived the objection to exhaustion, the Court has held that the available domestic remedies must also be adequate to redress the legal wrong and

³⁶ *Case of the Serrano-Cruz Sisters v. El Salvador*, Series C No 118, Inter-Am. Ct. H.R., 23 November 2004, para. 108(f) [hereinafter “*Serrano-Cruz Sisters*”].

³⁷ *Ibid*, para. 119.

³⁸ ACHR, Art. 46(1)(a).

³⁹ Inter-American Court of Human Rights, cases of *Castillo Páez v. Peru* and *Loayza Tamayo v. Peru*, Judgments on Preliminary Objections of January 30 and 31, 1996, respectively, and Separate Opinions (in both) of Judge A.A. Cançado Trindade. Cf. texts of those Judgments (and Opinions), reproduced in: OAS, *Annual Report of the Inter-American Court of Human Rights– 1996*, pp. 43-73.

“capable of producing the result for which it was designed.”⁴⁰ Alternatively, under Article 46(2), the exhaustion requirement does not apply where “there has been unwarranted delay in rendering a final judgment.”⁴¹ The rule of exhaustion is not meant to be a procedural obstacle court that requires victims and their families to jump every possible hurdle before resorting to an international forum.⁴²

i. The Respondent State Waived Its Right To Objection On The Grounds Of Exhaustion Of Domestic Remedies.

In the *Loayza Tamayo* and *Castillo Páez* cases, the Court rightly determining that if the respondent state failed to invoke the preliminary objection of non-exhaustion of local remedies in the proceedings on admissibility before the Commission, it was precluded from invoking it subsequently before the Court.⁴³ Indeed, it is the *rationale* of the mechanism of the ACHR that the decisions as to the admissibility of petitions submitted to the Inter-American Commission are rendered—on solid grounds—by the Commission *in limine litis*, not to be reopened in the subsequent proceedings before the Court, so as to avoid a major imbalance between the individual complainants and the respondent states, to the clear detriment of the former.⁴⁴

In the present case, the respondent State had the opportunity to object to the Petitioners’ exhaustion of domestic remedies as early as June 28, 2008, when the Commission processed the

⁴⁰ *Godínez Cruz v. Honduras*, Series C No 5, Inter-Am. Ct. H.R., 20 January 1989, paras. 67 & 69 [hereinafter “*Godínez Cruz*”].

⁴¹ ACHR, Art. 46(2)(c).

⁴² Pasqualucci, Jo M., “*The Practice and Procedure of the Inter-American Court of Human Rights*”, Cambridge, Cambridge University Press (2003), p. 133.

⁴³ Inter-American Court of Human Rights, cases of *Castillo Páez vs. Peru* and *Loayza Tamayo vs. Peru*, Judgments on Preliminary Objections of January 30 and 31, 1996, respectively, and Separate Opinions (in both) of Judge A.A. Cançado Trindade. Cf. texts of those Judgments (and Opinions), reproduced in: OAS, *Annual Report of the Inter-American Court of Human Rights— 1996*, pp. 43-73.

⁴⁴ Trindade, Antonio Augusto Cancado, *Thoughts on Recent Developments in the Case-Law of the Inter-American Court of Human Rights: Selected Aspects*, 92 Am. Soc’y Int’l L. Proc. 192 (1998), p. 194.

petition and forwarded the pertinent parts to the respondent.⁴⁵ In fact, the respondent State sent a letter to the Commission and the Petitioners on July 14, 2008, and that letter failed to make any objection to Petitioners' exhaustion of remedies.⁴⁶ To allow the respondent to object to Petitioners' exhaustion of remedies a staggering eight years after Petitioners first filed their petition would prove detrimental to the Petitioners. The respondent State should not be rewarded for waiting eight years to make a stale objection and preclude the Petitioners from adjudicating the merits of the case. For those reasons, this Court should find that the respondent State waived its right to object to the exhaustion of domestic remedies.

- ii. Alternatively, the Petitioners satisfied the exhaustion requirement where (1) the available domestic remedies in Zircondia are inadequate and ineffective and (2) the Petitioners satisfy the unwarranted delay exception in ACHR Article 46(2)(c).*

This Court should find that Petitioners have satisfied the Article 42 requirement to exhaust all domestic remedies where Petitioners have in fact tried to exhaust all domestic remedies, but the remedies available were inadequate and ineffective. Additionally, this Court should find that Petitioners satisfy the exception for exhaustion under the unwarranted delay provision in Article 42(2)(c). The State has the burden of providing which domestic remedies remain⁴⁷ and must show that the remedies are both “adequate” and “effective” for the type of violation alleged.⁴⁸

⁴⁵ Hypothetical Case, para. 41.

⁴⁶ Hypothetical Case, para. 42.

⁴⁷ *Cantoral Benavides v. Peru*, Series C No 69, Inter-Am. Ct. H.R., 18 August 2000, para. 31 [hereinafter “*Cantoral Benavides*”]; *Loayza Tamayo v. Peru*, Series C, No 25, Inter-Am. Ct. H.R., 31 January 1996., para. 40 [hereinafter “*Loayza Tamayo*”].

⁴⁸ *Velasquez Rodriguez v. Honduras*, Series C No 4, Inter-Am. Ct HR, 29 July 1988, paras. 63-4 [hereinafter “*Velasquez Rodriguez*”].

In the case of Ricardo Madeira, domestic remedies proved to be both inadequate and ineffective. The Court has held that available domestic remedies must also be adequate to redress the legal wrong and “capable of producing the result for which it was designed.”⁴⁹ This was not the case with Ricardo. Ricardo faced detention,⁵⁰ was tortured for information,⁵¹ and was subsequently killed at the hands of the Terror Squad.⁵² Even though Ricardo’s brother, Girardo Madeira, followed domestic rules in reporting Ricardo’s death to the Minister of Justice, the results were minimal, at best.⁵³ Even after investigation only one man, Timoteo Anaya, was charged for the egregious violations against Ricardo.⁵⁴ In fact, the respondent State only filed murder charges against Anaya, even though Ricardo was both kidnapped and tortured.⁵⁵ In terms of adequacy, then, the domestic remedies were inadequate in preserving Ricardo’s right to personal liberty and right to humane treatment.

Additionally, the Court has held that a domestic remedy is effective if it is capable of producing the anticipated result.⁵⁶ Here, domestic remedies were ineffective in that they did not produce the anticipated result. At the end of his trial, Anaya was only convicted and sentenced to 12 years in prison, a medium-length sentence.⁵⁷ One would assume that a member of an armed terrorist group who kidnapped, tortured, and then murdered an individual would serve more than 12 years.

Furthermore, turning to the respondent State itself, it is apparent that the Respondent will not hold itself accountable. At best, Zircondia is inactive with regards to the Terror Squad. The

⁴⁹ *Godínez Cruz*, paras. 67 & 69.

⁵⁰ Hypothetical Case, para. 15.

⁵¹ Hypothetical Case, para. 15.

⁵² Hypothetical Case, para. 20.

⁵³ Hypothetical Case, para. 18.

⁵⁴ Hypothetical Case, para. 21.

⁵⁵ Hypothetical Case, para. 21.

⁵⁶ *Velasquez Rodriguez*, para. 66; *Juan Humberto Sánchez v. Honduras*. Series C No. 99, Inter-Am. Ct. H.R., 7 June 2003, para. 121.

⁵⁷ Hypothetical Case, para. 21.

Squad is actively stealing shipments of rare earth leaving mining sites and harming individuals like Ricardo, yet the Respondent has not confronted them.⁵⁸ At worst, foreign newspaper correspondents have presented evidence of ties between members of the Squad and members of the police force,⁵⁹ wherein the police force members agree to turn a blind eye to the criminal activities of the Squad in exchange for financial compensation.⁶⁰

With regards to Milena Reyes, she exhausted her domestic remedies when she reported her detention and torture to the Office of the Ombudsman, but the respondent State took no action against the Terror Squad.⁶¹ Even though respondent would argue that the competent authorities continued to investigate the facts after Timoteo Anaya was convicted, we would emphasize that even now, eight after her capture and detention, no one has been charged with the egregious violations against Milena's person.⁶² Further, we would reiterate that the respondent Zircondia was complacent in the Terror Squad's actions.

Additionally, this Court has stated that "the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective."⁶³ For this reason, the ACHR sets forth specific exceptions to the doctrine of the exhaustion of domestic remedies.⁶⁴ One such exception is when there is unwarranted delay in the rendering of a final domestic judgment.⁶⁵ With regards to Reynaldo Restrepo, after extrajudiciously depriving him of his life, the only investigation that the Army conducted was expert work to identify Restrepo's remains.⁶⁶ Here, the respondent State never rendered a final

⁵⁸ Hypothetical Case, para. 14.

⁵⁹ Hypothetical Case, para. 14.

⁶⁰ Clarification Questions, para. 10.

⁶¹ Hypothetical Case, para. 16.

⁶² Clarification Questions, para. 4.

⁶³ *Velasquez Rodriguez*, para. 93.

⁶⁴ ACHR, Art. 46(2).

⁶⁵ ACHR, Art. 46(2).

⁶⁶ Hypothetical Case, para. 17.

judgment as to Reynaldo's guilt or innocence, or the State's justifications for such actions. As such, Reynaldo is exempted from exhausting domestic remedies given the respondent's unwarranted delay in adjudicating Reynaldo's guilt or innocence.

Further, turning to Esteban Martínez, he also satisfies the unwarranted delay exception in Article 46(2)(c). The Court has held that there has been an unwarranted delay in issuing a final judgment when a period of five years has transpired from the initiation of proceedings to the time when the case is brought before the Commission.⁶⁷ Similarly, in *Mangas v. Nicaragua*, the Commission determined that a delay of 5 years between the filing of charges and the rendering of a final judgment went "beyond the limits of reasonability".⁶⁸ With Esteban, his family's initial writ of *habeas corpus* and letters to the Attorney General of the Republic went unanswered.⁶⁹ Even now, eight years after Esteban was shot by a state agent, the Investigation Commission in charge of establish the facts surrounding the shooting still has not filed a report.⁷⁰ Therefore, given the respondent State's unwarranted delay in adjudicating and even investigating the matter, Esteban is exempted from exhausting domestic remedies.

Finally, it must be noted that the respondent State, even though it has the burden of providing which domestic remedies remain,⁷¹ failed to do so even when offered the opportunity to reply to Petitioner's petition.⁷² Therefore, given the above considerations, this Court should find that the Petitioners did exhaust all remedies.

d. Timeliness of Submission

⁶⁷ *Genie-Lacayo v. Nicaragua*, Series C No 45, Inter-Am. Ct. H.R., 27 January 1995, para. 81; *Las Palmeras Case*, Series C No 67, Inter-Am. Ct. H.R., 4 February 2000, para. 38. [hereinafter "*Las Palmeras*"].

⁶⁸ Case 11.218, Report No 52/97, Inter-Am. C.H.R February 18, 1998 para. 124 [hereinafter "*Mangas*"].

⁶⁹ *Ibid*, para. 36.

⁷⁰ *Ibid*, para. 40.

⁷¹ *Cantoral Benavides*, para. 31; *Loayza Tamayo*, para. 40.

⁷² Hypothetical Case, para. 42.

Article 46(1)(b) requires that the petition be filed within “six months from the date on which the party alleging violation of his rights was notified of the final judgment.”⁷³ State parties will waive their right to object on timeliness grounds by failing to file the objection at an early stage in the proceedings.⁷⁴ In this case, the respondent State had opportunity to object to Petitioner’s allegations as early as June 28, 2008.⁷⁵ However, the State did not assert inadmissibility under Article 1(1).⁷⁶ Thus, by waiting a staggering eight years to assert this defense, the respondent State effectively waived its right to do so.

II. ARGUMENT ON THE MERITS

A. The respondent Zircondia has violated Articles 4, 5, and 7 of the American Convention, all read in conjunction with Article 1(1), with respect to Ricardo Madeira and has violated Articles 5 and 7 of the American Convention, all read in conjunction with Article 1(1), with respect to Milena Reyes.

i. The respondent Zircondia violated Article 4, read in conjunction with Article 1(1), with respect to Ricardo Madeira.

Article 4(1) of the ACHR provides that every person has the right to have his or her life respected, protected by the law, and to not have his or her life arbitrarily deprived.⁷⁷ As a citizen of Zircondia, Ricardo Madeira was to be afforded this right from conception.⁷⁸ Additionally, Article 1(1) of the ACHR requires that states “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full

⁷³ ACHR, Art. 46(1)(b).

⁷⁴ *Velasquez Rodriguez*, para. 88.

⁷⁵ Hypothetical Case, para. 42.

⁷⁶ Hypothetical Case, para. 42.

⁷⁷ ACHR, Art. 4(1).

⁷⁸ ACHR, Art. 4(1).

exercise of those rights and freedoms.”⁷⁹ The Court has indicated that compliance with the duties imposed by Article 4 in conjunction with Article 1(1) does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.⁸⁰

In cases where the alleged perpetrator is a third party, not a state, the Inter-American Court holds states accountable through the application of sanctions for breaching their obligations to guarantee rights under Article 1(1).⁸¹ While a State is not responsible for every human rights violation committed by third persons, States must adopt measures of protection to safeguard the lives of those within its jurisdiction through legislative provisions and law enforcement mechanisms.⁸² This means that every state has an obligation to initiate an “immediate, impartial, and effective investigation” in any case involving “extrajudicial executions, forced disappearances and other grand human rights violations,”⁸³ even when the alleged perpetrator is a non-state agent.

In *Pueblo Bello Massacre v. Columbia*, the Court dealt with state responsibility for third party violations of the ACHR. In that case, a paramilitary group abducted and killed thirty-seven farmers in the village of Pueblo Bello.⁸⁴ The Court analyzed this case by looking at whether state authorities supported or tolerated the paramilitary group’s violations of the ACHR. The Inter-

⁷⁹ ACHR, Art. 1(1).

⁸⁰ *Zambrano Velez et al. v. Ecuador*, Series C No 166, Inter-Am. Ct. H.R., 4 July 2007, para. 80 [hereinafter “*Zambrano Velez*”].

⁸¹ *Case of the “Mapiripán Massacre” v. Colombia*, Series C No 134, Inter-Am. Ct. H.R., 15 September 2005, para. 111 .

⁸² *Pueblo Bello Massacre v. Colombia*, Series C No 140, Inter-Am. Ct. H.R., 31 January 2006, paras. 123-24 [hereinafter “*Pueblo Bello Massacre*”].

⁸³ *Ibid*, para. 143.

⁸⁴ *Ibid*, para. 95.

American Commission found that “[t]he State had played an important role in the development of the... paramilitary groups, which it allowed to act legitimately and with legal protection during the 1970s and 1980s, and it is responsible in general for their existence and consolidation.”⁸⁵ The Court noted that despite taking away its legal support and criminalizing the acts of the paramilitary groups, “the State did little to dismantle the structure that it had created and promoted.”⁸⁶ Therefore, given the State’s initial encouragement of the group and subsequent ineffectiveness in mitigating the dangerous situation, the Court held it sufficient to demonstrate that the public authorities supported or tolerated the violation of the rights established in the Convention.⁸⁷

In the present case, it is apparent that the respondent State’s inaction with regards to the Terror Squad and inadequate investigation of Ricardo’s death violated his Article 4 rights in relation to Article 1(1). While Zircondia did not encourage the formation of the Terror Squad like the State initially did in *Pueblo Bello Massacre*,⁸⁸ the record shows that the Zircondian police force turned a blind eye to the Squad.⁸⁹ In fact, the actions of respondent Zircondia are far worse than that of the State’s in *Pueblo Bello Massacre*. While the Court recognized in *Pueblo Bello Massacre* that the State had taken measures to prevent and punish the activities of paramilitary groups in the region,⁹⁰ the record is silent on any preventative or punitive measures that the Zircondian police force took against the Terror Squad. In fact, news reports suggest that members of the Zircondian police force actively worked with the Terror Squad to provide them with aid in exchange for money.⁹¹ Specifically, the record shows that members of the police

⁸⁵ Ibid, para. 96(a).

⁸⁶ Ibid, para. 96(a).

⁸⁷ Ibid, para. 96(c).

⁸⁸ Ibid, para. 96(a).

⁸⁹ Clarification Questions, para. 10.

⁹⁰ *Pueblo Bello Massacre*, para. 125.

⁹¹ Clarification Questions, para. 10.

force gave the Terror Squad advance notice of operations against it and, in some cases, helped the Squad carry on kidnappings in exchange for financial support.⁹² As such, given the respondent State's reluctance to eradicate the Terror Squad, and alleged support of the Terror Squad, the respondent should be held accountable for the Terror Squad's Article 4 violations in relation to Ricardo.

Furthermore, this Court should hold the respondent Zircondia responsible for the violation of Ricardo's Article 4 right to life where the respondent failed to launch an "immediate, impartial, and effective investigation"⁹³ upon learning of Ricardo's murder. In fact, Zircondia had an obligation not just to investigate the crime, but to launch an *effective* investigation into Ricardo's murder, a right guaranteed in through Article 1(1). However, Zircondia's investigation into Ricardo's death fell woefully short of an effective investigation.⁹⁴ Only one man, Timoteo Anaya, was charged for murdering Ricardo, even though the record suggest that it was a group, not one person, who committed this egregious violation.⁹⁵ While the state has allegedly continued investigating the crime, to date it has not filed charged against anyone else.⁹⁶ Additionally, even after reports that members of the police force were working with and encouraging the Terror Squad's criminal acts in the area, the respondent State has yet to launch an investigation into the extent of the police force's implication with the Squad. Consequently, given the above considerations, it is clear that the respondent Zircondia not only complacently turned a blind eye while the Terror Squad perpetrated egregious human rights violations to Ricardo's detriment, but also failed to undertake an effective investigation in violation of Article 4 and Article 1(1).

⁹² Clarification Question, para. 10.

⁹³ *Pueblo Bello Massacre*, para. 143.

⁹⁴ *Ibid*, para. 125.

⁹⁵ *Ibid*, para. 21.

⁹⁶ Clarification Questions, para. 4.

- ii. *The respondent Zircondia violated Article 5, read in conjunction with Article 1(1), with respect to Ricardo Madeira and Milena Reyes.*

This Court should find respondent Zircondia responsible for the violation of Ricardo and Milena's Article 5 rights due to state agents' cooperation and complacency with the Terror Squad and the State's inadequate investigation of the violations. Article 5(1) of the ACHR recognizes that "every person has the right to have his physical, mental, and moral integrity respected,"⁹⁷ while Article 5(2) guarantees a strict prohibition on physical and psychological torture or cruel punishment.⁹⁸ Article 1(1) prescribes that it is a fundamental duty of a State to the "respect and guarantee the rights recognized in the Convention."⁹⁹ Additionally, under Article 1(1), a state has an obligation to initiate an immediate, impartial, and effective investigation in any case involving extrajudicial executions, forced disappearances and other grand human rights violations.¹⁰⁰

In *La Rochela Massacre v. Colombia*, members of the paramilitary group "Los Masetos" detained fifteen members of the Judicial Corps.¹⁰¹ The Judicial Officers were locked in a guarded room for approximately two and a half hours.¹⁰² The Judicial Officers were then tied up and driven to another location.¹⁰³ The Los Masetos then stopped the vehicles and began shooting continuously at the Officers for several minutes.¹⁰⁴ Only three Judicial Officers survived.¹⁰⁵ The petitioners in the case argued that the State should be held accountable for the violations because

⁹⁷ ACHR at Art. 5(1).

⁹⁸ ACHR at Art. 5(2).

⁹⁹ *La Rochela Massacre v. Colombia*, Series C No 163, Inter-Am. Ct. H.R., 11 May 2007, para. 67 [hereinafter "*La Rochela Massacre*"].

¹⁰⁰ *Pueblo Bello Massacre*, para. 143.

¹⁰¹ *La Rochela Massacre*, paras. 106-08.

¹⁰² *Ibid*, para. 110.

¹⁰³ *Ibid*, paras. 111-112.

¹⁰⁴ *Ibid*, para. 112.

¹⁰⁵ *Ibid*, para. 116.

the Los Masetos worked with the cooperation and acquiescence of state agents. The Court agreed, finding the State responsible for the actions of the Los Masetos.¹⁰⁶

Beginning with the victims themselves, the Court found that the deceased Judicial Officers and the three survivors suffered physical, mental, and moral suffering, which constituted psychological torture.¹⁰⁷ The Court held that the hours of detention before and during the massacre constituted psychological torture based on the conditions the victims suffered prior to their deaths, the events the survivors endured to save their own lives, and the horrible violence used during the massacre.¹⁰⁸ The records showed that the Judicial Officers were subjected to intense suffering as a result of threats, intimidation, and deception by a paramilitary group much stronger than them in numbers as well as weaponry.¹⁰⁹ They were interrogated about the judicial investigation they were undertaking¹¹⁰ and were tied with their hands behind their backs.¹¹¹ The Court found that the events of the case demonstrated that this combination of acts caused grave suffering for the members of the Judicial Commission due to the environment of uncertainty about what was to become of them, and the profound fear that they would be deprived of their lives in a violent and arbitrary manner.¹¹²

The Court imparted the violations to the State based on the collaboration and acquiescence¹¹³ between the State and the Los Masetos. The court found collaboration and acquiescence where (1) some State agents were members of the armed forces that were involved in the massacre¹¹⁴ and (2) investigation uncovered relationships between paramilitary groups and

¹⁰⁶ Ibid, para. 136.

¹⁰⁷ Ibid, para. 137.

¹⁰⁸ Ibid, para. 130.

¹⁰⁹ Ibid, para. 134.

¹¹⁰ Ibid, para. 134.

¹¹¹ Ibid, para. 134.

¹¹² *La Rochela Massacre v. Colombia*, para. 136.

¹¹³ Ibid, para. 97.

¹¹⁴ Ibid, para. 136.

state security forces at the time of the events of the case.¹¹⁵ Specifically, reports cited that “[i]n some cases, the military or police either turn a blind eye to what is being done by paramilitary groups or give support by offering safe conduct passes to members of the paramilitary or impeding investigations.”¹¹⁶

Here, like in *La Rochele Massacre* where the court imparted the actions of the paramilitary group to the state, so too should this Court impart the actions of the Terror Squad to the respondent State. First, it is undeniable that Ricardo’s and Milena’s right to physical and mental integrity were violated during their time with the Terror Squad. Like the Judicial Officers who were tied up and questioned in *La Rochele Massacre*, Ricardo and Milena too were chained by their hands and feet. They were also interrogated for more than four hours at a time by different leaders of the Terror Squad. In fact, Ricardo and Milena were subjected to even crueler treatment than the Judicial Officers where they were given food that was not fit for human consumption, monitored at all times by a closed-circuit camera, and even tortured using methods such as submerging their heads in a basin of freezing water. Additionally like in *La Rochele Massacre* where the court found that the Judicial Officers were subject to grave suffering during the three hours where they were uncertain of their fates, Ricardo and Milena were subject to grave suffering approximately six to eight days. This is a substantially longer amount of time than the three hours in *La Rochele Massacre*.

Furthermore, the egregious Article 5 violations committed by the Terror Squad against Ricardo and Milena should be imputed to the respondent State because the respondent, like the state in *La Rochele Massacre*, worked in collaboration and acquiescence to the Terror Squad. It is undeniable that both in the present case and in *La Rochele Massacre* there was a relationship

¹¹⁵ Ibid, para. 137.

¹¹⁶ Ibid, para. 83.

between state agents and the terrorist groups. In *La Rochele Massacre* the relationship was reported as one where “the military or police either turn a blind eye to what is being done by paramilitary groups or give support by offering safe conduct passes to members of the paramilitary or impeding investigations.”¹¹⁷ Here, too, the Zircondian army has not “really wanted to confront the Terror Squad,”¹¹⁸ in effect turning a blind eye to the criminal acts of the Squad. In fact, Zircondia’s acquiescence to the Terror Squad is even more egregious than in *La Rochele Massacre* because there are reports that the Squad and members of the provincial police forces provide each other with mutual support to conduct illegal activity.¹¹⁹ Frankly, this is tantamount to the State encouraging the egregious violations that the Terror Squad commits against defenseless Zircondian citizens like Ricardo and Milena.

Finally, turning to Article 1(1)’s obligation to initiate an immediate, impartial, and effective investigation in any case involving grand human rights violations,¹²⁰ it is apparent that Zircondia’s investigation into the matter falls woefully short of this obligation. First, after the investigation, only one man was convicted in the Madeira Matter: Timoteo Anaya.¹²¹ However, Anaya was only charged for murder, not for violating Ricardo’s right to mental and physical integrity. This is important in light of the fact that a witness, Milena, heard Anaya say that he had “gotten rid of that asshole who didn’t want to talk.”¹²² Given that the record indicates that only Ricardo and Milena were detained,¹²³ this statement amounts to an admission that Anaya was one of the individuals tasked with torturing Ricardo in order to divulge information. However, even given this admission, the respondent State failed to even charge Anaya with violating

¹¹⁷ Ibid, para. 83.

¹¹⁸ Hypothetical Case, para. 14.

¹¹⁹ Hypothetical Case, para. 14.

¹²⁰ *Pueblo Bello Massacre*, para. 143.

¹²¹ Hypothetical Case, para. 21.

¹²² Hypothetical Case, para. 16.

¹²³ Hypothetical Case, para. 14.

Ricardo's right to mental and physical integrity. It is also important to note that though the respondent allegedly continued investigating the case,¹²⁴ no one else has been charged. In fact, the respondent has not even launched an investigation to find the extent of state agents' ties with the Terror Squad even in the light of news reports that police force members provide the Terror Squad with support to conduct illegal activities.¹²⁵

Given the above considerations, it is clear that the respondent Zircondia should be held accountable for the Terror Squad's violations against Ricardo and Milena's Article 5 rights in light of the state's cooperation and acquiescence with the Squad. Further, Zircondia should be held accountable pursuant to Article 1(1) for woefully violating its obligation to effectively investigate the violations. As such, this Court should find that the respondent Zircondia violated Article 5, in relation to Article 1(1), with respect to Ricardo and Milena.

iii. The respondent Zircondia violated Article 7, read in conjunction with Article 1(1), with respect to Ricardo Madeira and Milena Reyes.

Article 7 of the ACHR establishes that “[e]very person has the right to personal liberty and security”¹²⁶ and that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned.”¹²⁷ Notably, the Court has recognized Article 7 protections in cases where deprivations of liberty were carried out by non-State actors, without the order or control of State authorities.¹²⁸

In the case of *19 Tradesmen v. Colombia*, a group of nineteen tradesmen were traveling

¹²⁴ Clarification Questions, para. 4.

¹²⁵ Hypothetical Case, para. 14.

¹²⁶ ACHR at Art. 7(1).

¹²⁷ ACHR at Art. 7(2).

¹²⁸ Antkowiak, Thomas M., and Alejandra Gonza. *The American Convention on Human Rights: Essential Rights*. Oxford University Press, 2017.

near El Diamante farm in Columbia where members of a paramilitary group detained them.¹²⁹ The paramilitary group subsequently murdered the tradesmen, dismembered their bodies, and disposed of their bodies in a nearby stream.¹³⁰ Family members of the tradesmen asked various State authorities for help in locating their missing family members, but the authorities did not immediately search for the tradesmen.¹³¹ It was not until a staggering six years later that the Office of the Prosecutor of the sState ordered the initiation of a formal investigation of four men for kidnapping and homicide.¹³²

In that case, in order to consider the international responsibility of Colombia for the violation of Article 7 of the ACHR in relation to Article 1(1) thereof, the Court considered it necessary to ascertain “the connection of members of the Armed Forces and the support they provided to the ‘paramilitary’ group that controlled the Magdalena Medio region, and also the participation of the latter in the violations committed against the 19 tradesmen.”¹³³ After reviewing the facts, the court determined that the right to personal liberty of the alleged victims was violated.¹³⁴ The Court found this because they were deprived of their liberty when they were detained unlawfully and arbitrarily by the “paramilitary” group that controlled the region, with the support of State agents, thus, preventing any possibility of the safeguards of personal liberty embodied in Article 7 of the American Convention being exercised.¹³⁵

In the present case, it is clear that the respondent Zircondia violated Ricardo’s and Milena’s Article 7 rights. Like the victims in *19 Tradesmen* who were detained by the paramilitary group, Ricardo and Milena were captured and subsequently detained by the Terror

¹²⁹ *19 Tradesmen v. Colombia*, Series C No 109, Inter-Am. Ct. H.R., 5 July 2004, para. 84(d) [hereinafter “*19 Tradesmen*”].

¹³⁰ *Ibid*, para. 85(f).

¹³¹ *Ibid*, para. 85(g).

¹³² *Ibid*, para. 88(b).

¹³³ *Ibid*, para. 115

¹³⁴ *Ibid*, para. 145.

¹³⁵ *Ibid*.

Squad for a period of approximately eight days. In order to consider the international responsibility of Zircondia for the violation of Article 7, this Court should look at the connection between the Terror Squad and Zircondian police forces, like in *19 Tradesmen* where the Court considered it necessary to ascertain “the connection of members of the Armed Forces and the support they provided to the “paramilitary” group.”¹³⁶ Like in *19 Tradesmen*, the connection here between the Terror Squad and the Zircondian police forces manifests itself in the support that the Zircondian police force gives to the Squad. As argued previously, news reports suggest that members of the Zircondian police force actively worked with the Terror Squad to provide them with aid in exchange for money.¹³⁷ Specifically, the record shows that members of the police force gave the Terror Squad advance notice of operations against it and even helped the Squad carry on kidnappings in exchange for financial support.¹³⁸ Given the above considerations, this Court should find that the respondent Zircondia violated Ricardo and Milena’s Article 7 rights in relation to Article 1(1).

B. The respondent Zircondia has violated Article 4 of the American Convention, read in conjunction with Article 1(1), with respect to Reynaldo Restrepo.

The Inter-American system has addressed claims that have arisen during internal armed conflicts on three occasions.¹³⁹ It is important to note that while the Court has jurisdiction to decide cases relating to the interpretation or application of the ACHR, it does not have jurisdiction to adjudicate cases based on other international instruments, such as the Geneva

¹³⁶ Ibid, para. 115

¹³⁷ Clarification Questions, para. 10.

¹³⁸ Clarification Questions, para. 10.

¹³⁹ E.g., *Abella v. Argentina*, Case 11.137, Inter-Am. C.H.R., Report No. 55/97, OEA/Ser.L/V/II.98 doc. 6 rev. 13 (1997) [hereinafter “*Abella*”]; *Las Palmeras*; *Case of Bamaca Velasquez v. Guatemala*, Series C No 70, Inter-Am. Ct. H.R., 25 November 2000 [hereinafter “*Bamaca Velasquez*”].

Conventions.¹⁴⁰ However, as found in *Serrano-Cruz Sisters*, the Inter-American Court can use international humanitarian law, ratified by the State, to give context to the ACHR.¹⁴¹ It is on this premise that Petitioner requests that this Court resolve the issue of Reynaldo Restrepo's Article 4 rights, in relation to Article 1(1), using the applicable international humanitarian law.

In situations where one party argues that the Court should resolve the alleged ACHR violation using international humanitarian law, the Court first must assess the nature of the conflict to determine whether it is merely an "internal disturbance or tension" or whether it amounted to a non-international armed conflict.¹⁴² In such an analysis it "is necessary to determine the sources of applicable law."¹⁴³ If the Court finds that the ACHR violations alleged happened during a non-international armed conflict, then it will use international humanitarian law "to inform its interpretations of relevant provisions of the American Convention."¹⁴⁴

i. Reynaldo Restrepo's Life Was Taken In The Context of An International Armed Conflict.

The threshold for application of international humanitarian law is contingent upon conflicts of "a certain threshold of intensity and nature,"¹⁴⁵ which presents at least "the possibility of" reciprocity.¹⁴⁶ Since the respondent Zircondia has ratified the Geneva Convention as well as the two additional protocols, this Court should determine whether there was a non-international armed conflict in the context of those instruments. In order for Protocol II to apply,

¹⁴⁰ ACHR, Art. 62.

¹⁴¹ *Serrano-Cruz Sisters*, para. 119.

¹⁴² *Abella*, para. 148.

¹⁴³ *Ibid*, para. 148.

¹⁴⁴ *Ibid*, para. 157.

¹⁴⁵ UN Economic and Social Council (ECOSOC), *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 38th session, Geneva, 5-30 August 1985*, 4 November 1985, E/CN.4/1986/5, para. 78 (reporting that "the bigger difficulty with Protocol II is that the protections it offers only apply in internal conflicts meeting a certain threshold of intensity and nature.")

¹⁴⁶ Protocol II, *supra* note 12, Part I Scope of this Protocol, Article 1 Material Field of Application.

dissident forces must be: (i) under responsible command, (ii) in control of a part of the territory, (iii) able to carry out sustained military operations, and (iv) able to implement the obligations set forth therein.¹⁴⁷ Its very high threshold for applicability is evidenced by the exceptionally low application of Protocol II to internal conflicts.¹⁴⁸

In the present case, it is undeniably clear that Reynaldo's life was taken in the context of a non-international armed conflict. Turning to the first Protocol II factor, "responsible command," the dissident force in question, the Front for a new Beginning (hereinafter "the FNC"), satisfies this factor where the leader, Orlando Monteverde, is a former General in the National Army.¹⁴⁹ Monteverde is followed by a force of some 3,000 men and women who are armed and trained in firearms handling.¹⁵⁰ The FNC also satisfies the second Protocol II factor, control of part of the territory, where it controls a staggering 70% of the Filipolandia's territory (Filipolandia covers an area of 58,000 km²).¹⁵¹ The third Protocol II factor is also satisfied where the FNC is able to carry out sustained military operations. As newspaper reports revealed, the FNC has a sophisticated system for obtaining high-powered firearms like AR-15s and AK 47s, grenade launchers, and submachine guns, as well as long-range missiles.¹⁵² Furthermore, the FNC controls the southern border of Filipolandia, so it can regulate the importation of future high-powered firearms.¹⁵³ Such a system for acquiring and using high-powered firearms undoubtedly allows the FNC to carry out sustained military operations. As for the fourth Protocol II factor, the ability to implement the obligations set forth in Protocol II, the FNC, through its impressive command of resources and superior organization would be able to follow Protocol II, though the

¹⁴⁷ Protocol II, *supra* note 12, Part I Scope of this Protocol, Article 1 Material Field of Application.

¹⁴⁸ D'Avolio, Michele, *Regional Human Rights Courts and Internal Armed Conflicts*, 2 Intercultural Hum. Rts. L. Rev. 249, 254 (2007).

¹⁴⁹ Hypothetical Case, para. 10.

¹⁵⁰ Hypothetical Case, para. 11.

¹⁵¹ Hypothetical Case, para. 11.

¹⁵² Hypothetical Case, para. 12.

¹⁵³ Hypothetical Case, para. 12.

record does not indicate whether the group in fact does follow it. As such, given the considerations, it is clear that Zircondia was locked in a non-international armed conflict with the FNC when the State unjustly took Reynaldo's life.

ii. *This Court Should Apply the ACHR and International Humanitarian Law.*

When determining a victim's rights in an armed conflict situation, the Court has held that internal armed conflicts do not absolve the State of its responsibilities under the ACHR.¹⁵⁴ Further, Protocol II requires governments to treat civilians humanely,¹⁵⁵ establishes general protections against the dangers of military operations,¹⁵⁶ and prohibits targeting civilians.¹⁵⁷ Given the Protocol's heightened protection for civilians, it is first important to determine whether Reynaldo was a civilian (thus entitling him to heightened protection) or an enemy combatant.

1. Reynaldo Restrepo Was A Civilian And, Thus, Entitled To The Heightened Protections Of The Geneva Conventions And Protocol II.

Additional Protocol II stipulates that the "civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations."¹⁵⁸ Additionally, Protocol II stipulates that "[c]ivilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities."¹⁵⁹ In accordance with this provision, Petitioner argues that Reynaldo was a civilian given that he was not taking a "direct part in hostilities." While the respondent State argues that Military Intelligence Services

¹⁵⁴ *Bamaca Velasquez*, paras. 143 & 155.

¹⁵⁵ Protocol II, Art. 4.

¹⁵⁶ *Ibid.* Art. 13.

¹⁵⁷ *Ibid.*

¹⁵⁸ Protocol II, Art. 4.

¹⁵⁹ Protocol II, Art. 4.

identified Reynaldo as a member of the FNC,¹⁶⁰ the Petitioner points out that the respondent only proffered evidence which is, at best, speculation. More specifically, respondent's evidence consists of photographs where Reynaldo met with FNC leaders on three occasions and reports from state agents who claim that the meetings took place since July 2006.¹⁶¹

Here, the fact that Reynaldo met with FNC leaders in no way conclusively means that he was, as the respondent calls him, a "legitimate target of attack"¹⁶² or even that he was taking a direct part in hostilities. Without any further evidence or even any witness who will testify as to what the parties were talking about during those meetings, at this moment we do not know if the parties were planning any hostile missions or simply, for example, discussing the weather. In fact, the respondent State's failure to present any other evidence proving that Reynaldo took a direct part in the hostilities suggests that there is no other evidence. This means that the respondent State killed Reynaldo based off of a few photos, and some reports on when the meetings took place - evidence which is in way may conclusive. Given the glaring omission of any definitive proof as to Reynaldo's state as a "legitimate target of attack," Reynaldo should be considered a "civilian." As such, Reynaldo was entitled to the protection of Article 4 of the ACHR in the context of Protocol II.

2. The Respondent Zircondia Violated Reynaldo's Article 4 Rights, In Relation To Article 1(1), When It Attacked The Provincial Museum Of Hipólito.

¹⁶⁰ Hypothetical Case, para. 42.

¹⁶¹ Clarification Questions, para. 41.

¹⁶² Hypothetical Case, para. 42.

Article 4(1) of the ACHR provides that every person has the right to have his or her life respected, protected by the law, and to not have his or her life arbitrarily deprived.¹⁶³

Additionally, Article 1(1) of the ACHR requires that states “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”¹⁶⁴ Protocol II requires governments to treat civilians humanely,¹⁶⁵ establishes general protections against the dangers of military operations,¹⁶⁶ and prohibits targeting civilians.¹⁶⁷

Given that Reynaldo was not taking a direct part in hostilities and was a civilian, he was entitled to the full protections of Article 4 and Protocol II. It follows that the respondent State not only had a duty not to arbitrarily deprive Reynaldo of his life (negative duty) but was also required to adopt any and all necessary measures to protect and preserve Reynaldo’s right to life (positive duty).¹⁶⁸ The respondent State fell woefully short of both its negative and positive duties. It violated its negative duty where it organized and carried out a military operation ending in Reynaldo’s death.¹⁶⁹ The respondent also violated its positive duty to take all necessary measures to protect and preserve Reynaldo’s right to life where it did not effectively warn Reynaldo of the attack or double-check to make sure no one was in the Museum at the time of the attack. Before the attack, soldiers present in the area announced the impending attack throughout the town using megaphones.¹⁷⁰ This system of “warning” is not effective in any town, no matter how small. For example, in a small town with only 1,000 inhabitants, there is no way that soldiers walking around with megaphones would cover enough ground in enough time to

¹⁶³ ACHR at Article 4(1).

¹⁶⁴ ACHR at Art. 1(1).

¹⁶⁵ Protocol II, Art. 4.

¹⁶⁶ *Ibid.* Art. 13.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Zambrano Velez*, para. 80.

¹⁶⁹ Hypothetical Case, para. 17.

¹⁷⁰ Hypothetical Case, para. 17.

warn all 1,000 inhabitants. Additionally, looking at the location of the attack (the Museum) it is ludicrous for the Army to think that there would not be any workers or custodians there at 3:00AM finishing up their studies.

Further, turning to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, which the respondent signed in 1981,¹⁷¹ the respondent was required in times of peace to “introduce... into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.”¹⁷² Given the respondent State’s rash military operation which resulted in Reynaldo’s death, it is clear that the respondent did not undertake its Convention responsibilities seriously enough to come up with an alternate plan to arrest Reynaldo while keeping the Museum intact. Given the above considerations, it is clear that the respondent State violated Article 4, in relation to Article 1(1), with respect to Reynaldo.

C. The respondent Zircondia has violated Articles 4, 5, and 7 of the American Convention, all read in conjunction with Article 1(1), with respect to Esteban Martínez.

- i. The respondent Zircondia violated Article 4, read in conjunction with Article 1(1), with respect to Esteban Martínez.*

Article 4(1) of the ACHR states that “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception,

¹⁷¹ Hypothetical Case, para. 9.

¹⁷² Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240, Art. 7.

No one shall be arbitrarily deprived of his life.”¹⁷³ Article 1(1) prescribes that it is a fundamental duty of a State to “respect and guarantee the rights recognized in the Convention.”¹⁷⁴ The Court has stated that, “while the State possesses the right and duty to take measure to preserve its own security, it may not abuse this right and duty by using force in limitless circumstances.”¹⁷⁵ Further, the State, cannot, through excessive force, deprive an individual of his right to life.¹⁷⁶

In *Durand and Ugarte*, Peru’s Department Against Terrorism detained Mr. Nolberto Durand Ugarte, as well as his uncle, Gabriel Pablo Ugarte Rivera, under suspicion that they were involved in terroristic acts.¹⁷⁷ Criminal proceedings were brought against the two individuals and they were both sent to El Frontón Prison.¹⁷⁸ While imprisoned, an uprising put the prison on lockdown and the inmates took prison guards hostage, while confiscating the guards’ weapons.¹⁷⁹ The President of the Republic of Peru declared the prison a restricted military zone, which gave the Navy absolute control.¹⁸⁰ The military operations performed in the prison included demolishing an area of the prison, causing a large number of deaths and wounded prisoners.¹⁸¹ Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera died as a result of the military operations.¹⁸²

Here, after a prisoner took a doctor hostage, the Warden of the prison ordered a tactical team to enter and take control of the prison.¹⁸³ After five hours of negotiations, with no concrete

¹⁷³ ACHR at Art. 4(1).

¹⁷⁴ ACHR at Art. 1(1).

¹⁷⁵ *Durand and Ugarte v. Peru*, Series C No 50, Inter-Am. Ct. H.R., 28 May 1999, para. 16.

¹⁷⁶ *Ibid*, para. 3.

¹⁷⁷ *Ibid*, para. 59.

¹⁷⁸ *Ibid*.

¹⁷⁹ *Ibid*.

¹⁸⁰ *Ibid*.

¹⁸¹ *Ibid*.

¹⁸² *Ibid*.

¹⁸³ Hypothetical Case, para. 38.

solution reached, it was in the decision of the Warden to take military action.¹⁸⁴ The action resulted in the death of three inmates, including Esteban Martínez.¹⁸⁵ We see that the use of military action in both cases called for unnecessary military action, and the Warden did not fulfill his obligation to protect human life when he gave the order. Further, there were no riots at the prison, and the need to shoot and kill three inmates in order to rescue the doctor did not call for this excessive force used in such a limitless way. This Court should conclude that the actions taken by the military violated Article 4(1).

ii. The respondent Zircondia violated Article 5, read in conjunction with Article 1(1), with respect to Esteban Martínez.

Article 5(1) of the ACHR recognizes that “every person has the right to have his physical, mental, and moral integrity respected,”¹⁸⁶ while Article 5(2) guarantees a strict prohibition on physical and psychological torture or cruel punishment.¹⁸⁷ Article 1(1) prescribes that it is a fundamental duty of a State to the “respect and guarantee the rights recognized in the Convention.”¹⁸⁸

The Court has stated that any person deprived of his freedom has the right to live in prison conditions that are compatible with his personal dignity,¹⁸⁹ and that the State must ensure

¹⁸⁴ Hypothetical Case, para. 38.

¹⁸⁵ Hypothetical Case, para. 38.

¹⁸⁶ ACHR at Art. 5(1).

¹⁸⁷ ACHR at Art. 5(2); *La Rochela Massacre*, para. 132.

¹⁸⁸ *La Rochela Massacre*, para. 67.

¹⁸⁹ *Fermin Ramirez v. Guatemala*, Series C No 126, Inter-Am. Ct. H.R., 20 June 2005, para. 118; *Case of Caesar v. Trinidad and Tobago*, Series C No 123, Inter-Am. Ct. H.R., 11 March 2005, para. 96

the right to personal integrity of all prisoners.¹⁹⁰ Since the State is responsible for detention centers, it must guarantee the existence of conditions that respect the prisoners' rights.¹⁹¹

The Human Rights Committee has stated that keeping a person confined in a small cell, twenty-three hours each day, isolated from other prisoners, in darkness, without anything to keep him occupied, and without being allowed to work or to undergo education, constitutes a violation of his right to be treated with humanity and with regard for the inherent dignity of the human person.¹⁹² In the *Mukong* case, the Committee insisted on the universality of the right to decent and humane treatment and rejected scarcity of resources as an excuse for the failure to respect this right.¹⁹³

The Court considered an Article 7 case in the context of a “state of emergency” in *Bamaca Velasquez*. In 1992, Mr. Efraim Bámaca Velásquez commanded the guerilla group called the Organization of the People in Arms (ORPA), which operated on four fronts throughout Guatemala.¹⁹⁴ Mr. Velásquez was captured in March of 1992 during an armed encounter with the Army, and he was taken alive to Santa Ana Berlin military detachment.¹⁹⁵ During confinement, Velásquez was tied up to his bed, with his eyes covered, and was subjected to threats and coercion during interrogation.¹⁹⁶ The Court found that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and

¹⁹⁰ *Case of Bulacio v. Argentina*, Series C No 100, Inter-Am. Ct. H.R., 18 September 2003, para. 126; *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Series C No 80, Inter-Am. Ct. H.R., 21 June 2002, para. 65; *Cantoral Benavides*, para. 87, and *Durand and Ugarte v. Peru*, Series C No 50, Inter-Am. Ct. H.R., 28 May 1999, para. 78.

¹⁹¹ *Case of Lori Berenson Mejía v. Peru*, Series C No 119, Inter-Am. Ct. H.R., 25 November 2004, para. 102; *Case of Tibi v. Ecuador*, Series C No 114, Inter-Am. Ct. H.R., 7 September 2004, para. 150, and *Case of Bulacio v. Argentina*, Series C No 100, Inter-Am. Ct. H.R., 18 September 2003, para. 126.

¹⁹² Cf. UN, Human Rights Committee, *Anthony McLeod v. Jamaica*, Communication No. 734/1997 (CCPR/C/62/D/734/1997), para. 6(4).

¹⁹³ Cf. UN, Human Rights Committee, *Mukong v. Cameroon*, Communication No. 458/1991, (CCPR/C/51/D/458/1991), para. 9(3).

¹⁹⁴ *Bamaca Velasquez*, para. 121

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”¹⁹⁷ Additionally, the Court found the State’s imprisonment of Velásquez to violate Article 2 of the Inter-American Convention to Prevent and Punish Torture, which states that “Torture shall be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause him physical pain or mental anguish.”¹⁹⁸ The Court concluded the State violated Article 5(1), during the course of Mr. Velásquez’s imprisonment.¹⁹⁹

Here, we see similar circumstances between the former case and Mr. Martínez’s imprisonment. The creation of Article 5(1) seeks to prevent instances of prolonged isolation, as we see is apparent in the imprisonment of Esteban Martínez. The psychological harm suffered from this treatment, along with the lack of fresh air that Martínez was given, is comparable to the treatment in the foregoing case.²⁰⁰ Not only was there prolonged isolation, but the cell size, measuring 12 m², should be considered an act intended to diminish the mental capacities of Martínez, which violates Article 2.²⁰¹ It follows that the State violated Article 5 during the course of imprisoning Esteban Martínez.

iii. The respondent Zircondia violated Article 7, read in conjunction with Article 1(1), with respect to Esteban Martínez.

Article 7 of the ACHR establishes that “[e]very person has the right to personal liberty and security,”²⁰² and that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party

¹⁹⁷ Ibid, para. 151.

¹⁹⁸ Ibid, para. 157.

¹⁹⁹ Ibid, para. 166.

²⁰⁰ Hypothetical Case, para. 37.

²⁰¹ Hypothetical Case, para. 37.

²⁰² ACHR at Art. 7(1).

concerned or by a law established pursuant thereto.”²⁰³ Furthermore, “[a]nyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him,” and “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.” Article 27 allows a State to derogate from its Article 7 obligations, but this provision applies solely “in time of war, public danger, or other emergency that threatens the independence or security of a State Party.”²⁰⁴

Regarding the interpretation of Article 27 of the ACHR, the Court has established that “[t]he starting point for any legally sound analysis of Article 27 and the function it performs is the fact that it is a provision for exceptional situations only.”²⁰⁵ Article 27 permits the suspension of certain rights and freedoms only “to the extent and for the period of time strictly required by the exigencies of the situation.”²⁰⁶

This Court considered a State’s ability to invoke Article 27’s suspension of guarantees in *Zambrano Velez et al. v. Ecuador*. Some of the main cities in Ecuador were “affected by serious acts of delinquency which led to a climate of insecurity and internal commotion.”²⁰⁷ The state authorities found that there was a state of internal commotion as a consequence of “acts of vandalism, attacks against the physical integrity of the persons and considerable damages to public and private property,” which required the adoption of exceptional measures.²⁰⁸ Subsequently, the state authorities decreed a state of emergency.²⁰⁹ The decree did not set a defined territorial limit.²¹⁰ The decree also did not have a fixed time limit for the military

²⁰³ ACHR at Art. 7(2).

²⁰⁴ ACHR at Art. 27(1).

²⁰⁵ *Zambrano Velez*, para. 43.

²⁰⁶ *Ibid*, para. 47.

²⁰⁷ *Ibid*, para. 44.

²⁰⁸ *Ibid*, para. 48.

²⁰⁹ *Ibid*.

²¹⁰ *Ibid*, para. 48.

intervention, nor did it lay down which rights would be suspended.²¹¹ The Court ultimately held that Ecuador exceeded Article 27 “once a military intervention with such a wide scope and based on purposes as broad and vague” had been carried out.²¹²

Here, it is clear that Esteban’s Article 7 rights were violated where the respondent State improperly invoked Article 27 and his family’s *habeas corpus* petitions were ignored. To begin with, the respondent State improperly invoked Article 27 in a letter to the Secretary General of the OAS on August 18, 2006.²¹³ In the letter, the President of Zirconia, Luis Roman, stated that he believed that a “broad and general” suspension of the obligations assumed under the ACHR was necessary in Zircondian territory for a period of six months.²¹⁴ The President further indicated that he reserved the right to extend the measure at the end of the six-month term.²¹⁵ In *Zambrano Velez* the state *at least* gave reasons for its state of emergency decree. In stark contrast, President Luis Roman’s letter only references an “urgent threat to the country’s public order and national security,”²¹⁶ without explicitly stating the reasons he thinks that there is a threat to the public security or who is causing this threat. Additionally, like the State in *Zambrano Velez*, President Roman’s letter did not define a territorial limit, which is outrageous considering Zirconia’s vast size – a staggering 90,000 square kilometers.

Turning to the time limitation, while President Roman stated that the suspension would last six months, he reserved the right to extend the state of emergency.²¹⁷ It follows that this six-month suspension could be extended indefinitely, on President Roman’s whim. As such, given President Roman’s lack of territorial limit and definite time limit, this “state of emergency” is as

²¹¹ Ibid.

²¹² Ibid, para. 52.

²¹³ Clarification Questions, para. 13.

²¹⁴ Clarification Questions, para. 13.

²¹⁵ Clarification Questions, para. 13.

²¹⁶ Clarification Questions, para. 13.

²¹⁷ Clarification Questions, para. 13.

broad and vague as the state of emergency in *Zambrano Velez* which this court found violated Article 27. In fact, President Roman acknowledged that the state of emergency was “broad and general.”²¹⁸

Given that there was no legitimate Article 27 suspension of guarantees, it is clear that Esteban’s detainment with any adjudication as to his guilt was a violation of Article 7. The Petitioners acknowledge that Esteban’s initial arrest was legitimate, given that it was in the context of a riot. However, Esteban’s subsequent detention without any response his family’s writ of *habeas corpus* is ludicrous. As Article 27 stipulates, “[a]nyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.”²¹⁹ Neither Esteban nor his family were informed of the charges against him.²²⁰ In fact, Esteban was arrested on January 5, 2007²²¹ and killed during his detention on February 7, 2007,²²² meaning that he was imprisoned a staggering 34 days without seeing a judge or even being informed of the charges against him, a clear violation of Article 7. Given the above considerations, this Court should find that the respondent State violated Esteban’s Article 7 rights.

REQUEST FOR RELIEF

Based on the foregoing considerations, the Representatives of the Victims respectfully request that this Honorable Court:

1. Adjudge and declare that the Republic of Zircondia has violated the rights enshrined in Articles 4, 5, and 7 of the ACHR, all in relation to Article 1.1 thereof, with respect to Ricardo Madeira;

²¹⁸ Clarification Questions, para. 13.

²¹⁹ ACHR at Art. 27.

²²⁰ Hypothetical Case, para. 36.

²²¹ Hypothetical Case, para. 34.

²²² Hypothetical Case, para. 38.

2. Adjudge and declare that the Republic of Zircondia has violated the rights enshrined in Articles 5 and 7 of the ACHR, all in relation to Article 1.1 thereof, with respect to Milena Reyes;

3. Adjudge and declare that the Republic of Zircondia has violated the rights enshrined in Article 4 of the ACHR, all in relation to Article 1.1 thereof, with respect to Reynaldo Restrepo;

4. Adjudge and declare that the Republic of Zircondia has violated the rights enshrined in Articles 4, 5, and 7 of the ACHR, all in relation to Article 1.1 thereof, with respect to Esteban Martínez.