

**Case of the Rural Community of Candela v. The Federation of Clonalia**  
Case No. 042114/RLJ/0415 Inter-American Court of Human Rights

Memorial on Behalf of the Rural Community of Candela

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## STATEMENT OF FACTS

1. The Republic of Marsili is a small country, with a total land area of 358 square kilometers.<sup>1</sup> In 1987, it had 317,230 inhabitants, and 263,300 of its inhabitants lived on Theodore Island, the main island.<sup>3</sup> Marsili is approximately 280 nautical miles away from the Federation of Clonalia (“Clonalia”). It gained its independence from Clonalia in 1967 and now operates as an independent, centralized democratic republic.
2. Marsili’s economy is dependent on fishing, farming, and tourism.<sup>6</sup> However, it suffers from high levels of poverty, with nearly 35% living on a dollar a day, and more than half living on less two.<sup>7</sup>

### *Environmental Crisis*

3. Since the early 2000s, Marsili has suffered 47 natural hazards including flooding in coastal areas, landslides in urban areas, hurricanes, typhoons and increased average rainfall.<sup>9</sup> In addition, the rapidly rising sea levels have led scientists to believe that Marsili will be fully submerged by 2025.<sup>10</sup> Reports suggest that the bizarre weather patterns and environmental shifts are a result of global climate change and have caused economic and political hardships for the people of Marsili.
4. As far back 1970, the international community identified the need for a scientific body that could obtain empirical evidence to better understand climate change. In 1988, the United Nations (“UN”) established the Global Climate Change Group (“G2C2”).<sup>11</sup>
5. In 1992, the G2C2’s First Report provided overwhelming scientific evidence that global average temperatures had increased since they were first measured in 1880, and that the principal cause was the emission of greenhouse gases (“GHGs”).<sup>12</sup>

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<sup>1</sup> *Fact Pattern*, para. 1.

<sup>3</sup> *Id.*

<sup>6</sup> *Id.* at para. 7.

<sup>7</sup> *Id.*

<sup>9</sup> *Id.* at para 26.

<sup>10</sup> *Id.* at para. 30.

<sup>11</sup> *Fact Pattern*, para. 9–10.

<sup>12</sup> *Fact Pattern*, para. 11.



6. The First Report led to the creation of the UN Framework Convention on Climate Change (“UNFCCC”), ratified by nearly ninety-eight percent of the international community, including Clonalia and Marsili.<sup>14</sup> It seeks to prevent severe anthropogenic interference with the climate system by requiring, among other things, *all* countries to take measures at a national level to stabilize GHG emissions and to enter into negotiations to create a protocol with national emission limits applicable to the international level.<sup>15</sup>
7. As a result of negotiations mandated by UNFCCC, in 1997 the parties created the Kyoto Protocol, which required parties to reduce six types of GHGs by at least five percent below 1990 emission levels by 2012. Clonalia did not ratify the Kyoto Protocol, however it claimed responsibility in a statement to the international community, pledging to undertake domestic measures to achieve “similar or comparable results” to those outlined by the Kyoto Protocol.<sup>16</sup>
8. In its 2014 report, the G2C2 concluded that “scientific evidence has shown, with a certainty of above ninety-five percent, that the phenomenon of climate change is happening, and its main cause is human activity, primarily the emission of [GHGs]”, which includes carbon dioxide (“CO2”).<sup>17</sup> Furthermore, the G2C2 recognized that past estimates were regarding sea level increases were “too conservative” and predicted that by 2040, sea levels will rise more than 1.59 meters.<sup>20</sup> Theodore, Marsili’s main island and economic center, has already begun to suffer from the effects of the rapidly rising sea levels caused by climate change.<sup>21</sup> In 1967, Theodore had an area of 289 square kilometers of land. However, only 46 years later, in 2013, an official measurement found that the island lost 78 square kilometers of land due to rising sea levels. In addition, the coastline shrunk by 16 kilometers.<sup>22</sup>

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<sup>14</sup> *Fact Pattern*, para. 13.

<sup>15</sup> *Id.*

<sup>16</sup> *Fact Pattern*, para. 14–15.

<sup>17</sup> *Id.* at para. 16.

<sup>20</sup> *Fact Pattern*, para. 19.

<sup>21</sup> *Id.* at para. 2.

<sup>22</sup> *Id.* at para. 23.

9. Of Theodore's remaining 211 square kilometers, only 120 square kilometers are devoted to staple crops.<sup>23</sup> The remainder of the rural land is no longer suitable for food cultivation, as constant flooding has caused the land to become acidified. Before the loss of land, Marsili imported roughly four percent of its basic agricultural products.<sup>24</sup> Now, the country is forced to import sixty percent of its agricultural products.<sup>25</sup>

10. The environmental crisis plaguing Marsili has forced the country to commit twenty-four percent of its gross domestic product for reconstruction and adaptation.<sup>26</sup> Unfortunately, the country's spending reallocation has led to a decline in public investment in social issues, primarily in education, health and housing programs.<sup>28</sup> In addition, Marsili has been forced to increase its military spending as a result of the constant riots and revolts, which have arisen because of the population's unrest with the climate crisis.

11. Marsili is not the only country that will suffer from the consequences of rising sea levels. The G2C2 emphasized an increase in sea levels will have a much broader impact and within the next three decades, more than fifty-two island nations with some sixty-two million inhabitants will be over eighty percent submersed.<sup>29</sup>

12. In 2009, several of Clonalia's states with low-levels of emissions, along with a group of citizens organized by the international NGO Climate Change Action ("CCA") commenced legal action against the Ministry of Environment of Clonalia ("MEC").<sup>32</sup> The lawsuit alleges that the MEC has taken no action to regulate GHG emissions at the federal level.<sup>33</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Clarification #48.

<sup>25</sup> *Fact Pattern*, para. 23.

<sup>26</sup> *Id.* at para. 26.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at para. 32.

<sup>32</sup> *Id.* at 34-35.

<sup>33</sup> *Id.* at para. 36.

13. The lawsuit was rejected in all lower court proceedings and Clonalia's Supreme Court stated that "[T]he appropriate forum to take action is the international political level."<sup>37</sup>

14. In March 2012, the CCA filed a nullity action against the MEC's administrative decision and it was rejected in 2014<sup>41</sup>

15. Despite these legal proceedings, which emphasized the strong empirical data explaining the negative consequences of climate change on human rights, and statements from NGOs declaring Clonalia's "inactivity and lack of legal responses" to climate change as "the most notorious of all national legislations studied", Clonalia has failed to take action.<sup>42</sup>

16. In fact, simultaneous to the legal action commenced in 2009, Clonalia, through its state-owned company, commenced oil exploration activities in waters along its coast.<sup>43</sup> In October 2011, a large oil reserve was found.<sup>44</sup> Estimates suggest that the discovery will increase oil production in Clonalia by about four to twelve million barrels per day.<sup>45</sup>

### ***Background of Petitioner's humanitarian crisis***

17. As a direct consequence of the environmental crisis on the island, Marsili's population has undergone rapid mass migration patterns since the mid-nineties, with the number of people dropping at a rate of four percent per year.<sup>46</sup> The mass exodus occurred because of flooding caused by rising sea levels and the retraction of the coastline along many of Marsili's atolls.<sup>47</sup>

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<sup>37</sup> *Id.*

<sup>41</sup> *Fact pattern*, para 41.

<sup>42</sup> *Id.* at para. 41-42.

<sup>43</sup> *Id.* at para. 43.

<sup>44</sup> *Id.* at para. 44.

<sup>45</sup> *Id.*

<sup>46</sup> *Fact Pattern*, para. 25.

<sup>47</sup> *Fact Pattern*, para. 25.

18. Of the 133,682 inhabitants still remaining on Theodore, 14,000 have been displaced due to the environmental crisis and now reside in temporary camps scattered along the outskirts of the urban city center.<sup>50</sup> The rural community of Candela has been the most affected by the loss of territory.<sup>51</sup>

19. In 2010, a report of the Joint Committee on Foreign Affairs of the Republic of Marsili and the Federation of Clonalia (“JCFAMC”) ascertained that approximately 67% of migrants fleeing Marsili relocated to Clonalia.<sup>53</sup> In 2011, just a year after the JCFAMC released its report, Clonalia imposed a visa requirement on all Marsili nationals as a way to prevent large numbers of Marsili people from entering their territory.<sup>54</sup>

20. Deciding it was time to take action, the Candela community created Global Climate Justice (“GCJ”), a citizen dialogue group. Since the Candela community suffered the greatest impact from Marsili’s loss of territory, they sought the help of CCA to create legal strategies focused on addressing the territorial crisis and finding permanent housing for the internally displaced peoples of Marsili.<sup>55</sup> On March 25, 2011, CCA decided to represent 52 rural Candelan families residing in northern Theodore Island.<sup>56</sup>

21. In response to a finding that the disappearance of Marsili was inevitable, the President opened a national dialogue between public entities and grassroots organizations in 2012, to devise a legal program seeking to organize the exodus of inhabitants from the territory of Marsili.<sup>58</sup> The Climate Commission reasoned that national authorities, together with their foreign counterparts, must begin making preparations based on the likely scenario that Marsili would one-day not be a livable territory. The Commission’s report was later corroborated by the G2C2’s 2014 report.

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at para. 29.

<sup>53</sup> *Id.* at para. 25.

<sup>54</sup> *Id.* at para. 25.

<sup>55</sup> *Id.* at para. 29.

<sup>56</sup> *Id.* at para. 46.

<sup>58</sup> *Id.*

22. In October 2013, with little alternatives left to survive on Theodore Island, twenty-three Candelan families fled Marsili by boat, hoping to find refuge in Clonalia.<sup>59</sup> On January 13, 2014, the Candelan asylum-seekers applied for refugee status in Clonalia with the help of the CCA, who made an official request based on Clonalia's Law 715.<sup>60</sup> Law 715, issued in 1989, codifies the country's migrant and asylum law, and derives from Clonalia's Constitution, the 1951 Convention on the Status of Refugees (1951 Refugee Convention), the 1967 Protocol to the Refugee Convention, and other international human rights instruments ratified by Clonalia.<sup>61</sup> In 2009, domestic immigration legislation incorporated both treaties into Clonalia's body of domestic laws.<sup>62</sup> The CCA argued that the Candelans qualified for refugee status because their life, physical wellbeing, and integrity as rural family members were seriously at risk due to the imminent threat of the disappearance of Marsili, caused in part by Clonalia's pollutions.<sup>63</sup>

23. Among other guarantees, Clonalia's immigration laws dictate that Clonalia must not return any asylum seeker whose application is pending a final decision to their country of origin or any other state "where their life, safety or freedom would be at risk by any of the causes that led to the recognition, or request of refugee status, *as well as any other external conditions that may be taking place in the country of origin.*"<sup>64</sup> Given the imminent nature of the threats facing the Candelans, the CCA pursued relief on the basis that neither Marsili nor Clonalia could guarantee that their lives would not be in danger should they be forced to return to Marsili.<sup>66</sup>

24. Despite the procedural guarantees embedded in Clonalia's immigration laws, the Foreign Ministry, in charge of international and immigration affairs, determined it would not give consideration to the refugee

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<sup>59</sup> *Id.* at para. 47.

<sup>60</sup> *See id.* at para. 48 and clarification #13.

<sup>61</sup> *Id.* at para. 46–47.

<sup>62</sup> *Id.* at para. 50, 63.

<sup>63</sup> *Id.* at para. 48.

<sup>64</sup> *Id.* at para. 51 (emphasis added).

<sup>66</sup> *Id.* at para. 48.

petition.<sup>67</sup> On February 28, 2014, the Foreign Ministry determined *sua sponte* that environmental issues could not and should not be included in migration issues. It also determined that the best course of action was for the immigration authorities to ignore the petitions and institute expulsion procedures instead.

25. On March 5, 2014, the Foreign Ministry of Clonalia ordered the 23 families from Candela, including children and elderly community members, be detained, and issued arrest warrants. After learning about the warrant, eight of the families sought refuge in the Marsili Embassy in Clonalia, and several others fled. Approximately half of the families were captured and detained in a temporary prison, and deportation proceedings were instituted against them.<sup>69</sup>

26. Utilizing local law, the CCA filed an appeal on March 8, 2014 to the Foreign Ministry's judicial mechanism, seeking to overturn the administrative decision of the Foreign Ministry not to grant refugee status to the 23 families, as well as its subsequent order of deportation.<sup>70</sup> The dispute garnered significant attention within Clonalia, and was considered to be of widespread importance. However, the Foreign Ministry simply reaffirmed its earlier decision, relying on its arguments already submitted in its first decision.<sup>71</sup>

27. The action taken by the Clonalian Foreign Ministry caused severe political tension between Marsili and Clonalia.<sup>72</sup> On March 20, 2014, Marsili's Ambassador to Clonalia vowed to keep the eight families under refuge in the Marsili embassy until an international body resolved the dispute and the families' safety could be guaranteed.<sup>74</sup>

28. In response, the President of Clonalia established a National Expert Committee (NEC) to draft a proposal answering the question, "If there is a risk to the life and integrity of the citizens of the island

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<sup>67</sup> *Id.* at para. 52.

<sup>69</sup> *Id.*

<sup>70</sup> *See id.* at para. 54 and clarification #10

<sup>71</sup> *Id.* at para. 54.

<sup>72</sup> *Id.* at para. 56.

<sup>74</sup> *Id.*

territories sufficient to justify a potential petition of asylum for environmental reasons, should such a request be denied?”<sup>75</sup> The NEC submitted its proposal directly to the Foreign Ministry, but the Foreign Ministry refused to make public the conclusions of the NEC’s proposal, claiming that releasing the conclusions posed a serious risk to the national security, territorial integrity, civilian population, and social stability of Clonalia. Instead, the Foreign Ministry merely convened a press conference, where members of the agency claimed that the proposal defended their previous decision.<sup>76</sup> The CCA tried to obtain the NEC proposal, but was denied by the Ministry, who cited national security concerns, and was denied again after seeking an appeal.<sup>77</sup>

### **PROCEEDINGS BEFORE THE COURT**

29. Having exhausted all legal remedies available in Clonalia, the CCA filed a petition before the Inter-American Commission on Human Rights (“IACHR” or “the Commission”) on September 10, 2014, on behalf of all Candelan families, including those still in Marsili.<sup>78</sup> Clonalia ratified the American Convention on Human Rights (“ACHR”) in August 1, 1978, and has recognized the jurisdiction of the Inter-American Court of Human Rights since June 28, 1982. Marsili ratified the Convention on Human Rights on May 7, 1984, and has continuously accepted the jurisdiction of the Court since September 14, 1985.<sup>79</sup>

30. In its petition, CCA argues: (1) Clonalia violated the human rights of both Candelans who seek refuge in Clonalia and those who remain in Marsili because of Clonalia’s direct and long-term contribution to the environmental crisis plaguing the islands of Marsili and (2) Clonalia violated the human rights of the Candelans who sought refuge there by denying them refugee status and an opportunity to have full access to

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at para. 58.

<sup>77</sup> *Id.* at para. 58–59.

<sup>78</sup> *Id.* at para. 60–61.

<sup>79</sup> *Id.* at para. 71.

available information on migration and environmental issues directly affecting them. The CCA sought precautionary measures against Clonalia.<sup>80</sup>

31. The IACHR responded positively by granting precautionary measures against Clonalia and declared the case admissible for purposes of examining the alleged violations of Articles 5, 7, 8, 13, 21, 22, and 26 of the ACHR, and Article 11 of the Protocol of San Salvador.<sup>81</sup>

32. In response, Clonalia filed preliminary objections. It argued: (1) the Court lacks jurisdiction *ratione materiae* to hear this case, as to the claimed right to a healthy environment is non-judiciable through legal mechanisms argued here, (2) its obligation on environmental issues is to its national citizens and not to persons belonging to other countries, and (3) within the Inter-American System there is no obligation to grant asylum or refugee status to members of other countries.

33. On October 15, 2014, in case no. 11/14, the Commission sided with the CCA and rejected Clonalia's preliminary objects. It made a series of recommendations to rectify the violations committed against the Marsili people, which Clonalia subsequently ignored.<sup>82</sup>

34. On Dec. 17, 2014, the IACHR formally referred the case, *Rural Community of Candela v The Federation of Clonalia*, to the Court. The IACHR recommends that the Court demand Clonalia: (1) modify its national laws, (2) establish a policy to compensate the members of the rural community of Candela, and (3) offer part of its territory for the environmental refugees that will have to leave the island that is sinking.<sup>83</sup>

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<sup>80</sup> *Id.* at para. 63.

<sup>81</sup> *See id.* at para. 65 and clarifications #16.

<sup>82</sup> *Id.* at para. 69–70.

<sup>83</sup> *See fact pattern* at para. 66 and clarification #15.



## QUESTIONS PRESENTED

35. May Members of the Candela Community Obtain Redress from the Federation of Clonalia for Clonalia's Failure to Enact Effective Environmental Policies, leading to Violations of the Candela Community's Rights Enshrined in Articles 26, 5, 21, and 22 of the ACHR?

36. Did Clonalia Violate the Human Rights of the 23 Candelan Families By Denying them Asylum and Access to Information, as enshrined in Articles 7, 8, 13, 22.7, 22.8, and 25?

## STATEMENT OF JURISDICTION

37. The Inter-American Court of Human Rights ("IACtHR" or the "Court") is the judicial organ of the Inter-American System, which was created by the ACHR.<sup>84</sup> The Court interprets and applies the ACHR, and may only issue judgments when (1) the implicated State has accepted the Court's jurisdiction, (2) the State fails to comply with the Commission's recommendations,<sup>85</sup> and (3) when petitioners first exhaust domestic remedies, or find them to be unavailable, ineffective, or insufficient.<sup>86</sup>

38. Here, the Court has jurisdiction. The implicated state, Clonalia, ratified the ACHR in August 1978 and accepted the contentious jurisdiction of this Court in June 1982.<sup>88</sup> All remedies under Clonalia's domestic law have been exhausted and Clonalia has failed to comply with the Commission's recommendations.<sup>89</sup> Finally, the Commission referred the case within three months after its preliminary report was released. Therefore, the Court is authorized to adjudicate matters concerning application and interpretation of the ACHR pursuant to Articles 61 and 62.<sup>90</sup>

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<sup>84</sup> *Advocacy Before the Inter-American System* available at <http://ijrcenter.org/wp-content/uploads/2009/12/Manual-for-Attorneys-and-Advocates.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> *See Advocacy Before the Inter-American System* available at <http://ijrcenter.org/wp-content/uploads/2009/12/Manual-for-Attorneys-and-Advocates.pdf>.

<sup>88</sup> *Fact Pattern*, at para. 71.

<sup>89</sup> Clarifications, pg. 4.

<sup>90</sup> ACHR, art. 61-62.

## ANALYSIS

### **I. CLONALIA HAS VIOLATED THE RIGHTS AND GUARANTEES OF THE CANDELA COMMUNITY BY FAILING TO ENACT DOMESTIC POLICIES TO STABILIZE CONCENTRATIONS OF GHGS AND BY TAKING REGRESSIVE STEPS IN THAT REGARD, DESPITE EXTENSIVE RESEARCH LINKING GHG EMISSIONS AND THE SEVERE SOCIAL AND ECONOMIC HARMS SUFFERED BY THE CANDELAN COMMUNITY**

39. Clonalia is a historically large emitter of GHGs and is currently the largest individual producer of GHG emissions in the world, contributing approximately eighteen percent of global GHG emissions. Not only is Clonalia the world's largest emitter, its failure to enact effective policies to stabilize its GHG emissions, despite its international obligations, has been systematic and constant. Instead of taking steps to mitigate its GHG contributions and despite decades of empirically supported data substantiating the link between GHG emissions and climate change, Clonalia continues to engage in activities, including offshore oil exploration, which will exacerbate its already substantial contribution to global climate change.
40. While international law recognizes the right of state sovereignty, states are also bound by the principle of *sic uture*, or the idea that a state's own sovereignty only reaches as far it does not negatively impact the rights of others.<sup>95</sup> Here, Clonalia's state environmental policies, or lack thereof, are directly affecting the ability of the community of Candela to survive and fully enjoy their human rights.<sup>96</sup> Therefore, the Court should require Clonalia to adjust its environmental domestic policies and withhold from oil drilling opportunities to help mitigate consequences from climate change that Clonalia is largely responsible for producing.

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<sup>95</sup> See *The Trail Smelter Dispute (U.S. v. Canada)*, 1 CAN. YEARBOOK INT'L LAW 213 (1963) ("[U]nder the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.").

<sup>96</sup> The Community of Candela has faced numerous social, economic, and political challenges because of climate change including loss of land, forced displacement, the inability to engage in sustenance producing activities, threats to personal security due to riots, and the weakening of public investments in education, health and housing programs. *Fact Pattern* at para. 26.

**A. Clonalia's environmental obligations aren't limited to its own citizens.**

41. Clonalia asserts, "its obligation on environmental issues is to its national citizens and not to the persons belonging to other countries."<sup>97</sup> However, Clonalia's ratification of the ACHR and the UNFCCC, as well as customary international law suggest otherwise.

42. An important tenet of the application and interpretation of treaties by the IACtHR is the idea that international instruments should be interpreted in the way most protective of human rights.<sup>98</sup> The Court has also relied on the Vienna Convention on the Law of Treaties ("VCLT") to establish that the American Convention must be interpreted by taking into account other international treaties and instruments related to it.<sup>99</sup>

43. According to Article 31 of the VLCT, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."<sup>100</sup> The ordinary meaning and the context of the ACHR and the UNFCC, both of which Clonalia ratified, suggest that Clonalia's obligation on environmental issues extends to persons belonging to other countries.

44. The ACHR explicitly rejects Clonalia's assertion that is only obligated to its own citizens. It states, "that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection..."<sup>101</sup> Therefore, upon ratifying the ACHR, Clonalia became obligated to any party whose rights, as enshrined in the ACHR, that it violated.

45. In addition, while the UNFCCC requires only that countries take measures at a national level to stabilize

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<sup>97</sup> *Fact pattern*, at para 67.

<sup>98</sup> Lucas Lixinski, *Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law* 21 EJIL 586 (2010).

<sup>99</sup> See *I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of 17 June 2005. Series C No. 125, at para. 126.*

<sup>100</sup> Vienna Convention on the Law of Treaties art. 32, May 23, 1969, 1155 U.N.T.S. 331.

<sup>101</sup> U.N. Framework Convention on Climate Change *opened for signature* May 9, 1992, S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 107 [hereinafter "UNFCCC"].

GHG emissions,<sup>102</sup> it recognizes the global nature of climate change,<sup>103</sup> and refers to affording benefits to “humankind.”<sup>104</sup> Nowhere in the treaty does the text classify or differentiate “humankind” based on nationality.<sup>105</sup>

46. Furthermore, it explicitly states that its intent and purpose is to foster international collaboration to stabilize GHG concentrations within the “climate system.”<sup>106</sup> “Climate system” is defined as “the totality of the atmosphere, hydrosphere, biosphere and geosphere and the interactions”.<sup>107</sup> As such, it would be counterintuitive to the intent and purpose of the UNFCCC, which is to stabilize GHG emissions across the totality of the atmosphere, if emitters were only liable to their own citizens for their contributions.

47. Finally, several precedential cases establish that a State’s obligation regarding environmental issues extends to persons from other countries. For example, in the *Trail Smelter Arbitration*, Canada was obligated to pay damages to the United States of America for trans-boundary pollution caused by a Canadian smelter that injured American residents and their property.<sup>108</sup> Similarly, in an advisory opinion on the *Legality of the Treat of Use of Nuclear Weapons*, the International Court of Justice stated that “the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”<sup>109</sup>

48. For these reasons, Clonalia’s environmental obligations extend to all persons whose rights have been violated, regardless of whether they are citizens of Clonalia or not.

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<sup>102</sup> *Id.*

<sup>103</sup> UNFCCC, *supra* note 101, art. 3(1).

<sup>104</sup> *Id.*

<sup>105</sup> *See* UNFCCC, *supra* note 101.

<sup>106</sup> *Id.* at art. 2.

<sup>107</sup> *Id.* at art. 1(3).

<sup>108</sup> *See The Trail Smelter Dispute (U.S. v. Canada)*, 1 CAN. YEARBOOK INT’L LAW 213 (1963).

<sup>109</sup> *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, para. 29.

**B. A Right to a Healthy Environment Exists Pursuant to Article 26 of the ACHR and Is Justiciable.**

49. In the case *sub judice*, CCA, on behalf of the community of Candela, requests that this Court find a violation of the right to a healthy environment, implicitly established by Article 26 of the ACHR. Clonalia asserts that the Court lacks competence *ratione materiae* to hear a violation to the right to a healthy environment.<sup>110</sup> Presumably, Clonalia argues that the right to a healthy environment falls out of the Court's competence *ratione materiae* because it is not explicitly included in the ACHR and is not one of two rights that are actionable before the Inter-American system under Article 19(6) of the Protocol of San Salvador.<sup>111</sup>

50. This Court may determine the scope of its own jurisdiction,<sup>112</sup> and since Clonalia has accepted its jurisdiction,<sup>113</sup> the Court has competence *ratione materiae* to decide whether the State has failed to comply with and/or violated any of the rights enshrined in the ACHR, even aspects concerning Article 26.<sup>114</sup>

Therefore, the Court must determine whether the right to a healthy environment is a right that “is implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”<sup>115</sup>

51. This Court has already found that environmental rights are implicit in economic, social and cultural rights.<sup>116</sup> In *Kawas Fernández v. Honduras*, the Court examined a violation of the right to freedom of association of an environmental activist who had been murdered because of her activities.<sup>117</sup> In doing so, the

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<sup>110</sup> *Fact Pattern*, para 68.

<sup>111</sup> See Additional Protocol to the American Convention on Human Rights, approved Nov. 14, 1988, 28 I.L.M. 161.

<sup>112</sup> See Acevedo Buendía et al. v. Peru, *Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009, Series C No. 198*.

<sup>113</sup> *Fact pattern*, para 71.

<sup>114</sup> Acevedo Buendía et al. v. Peru, *Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009, Series C No. 198*. (holding that nothing in the wording of the ACHR indicates that the rights inferred to supplement Article 26 are not covered by the individual petitions).

<sup>115</sup> ACHR, art. 26.

<sup>116</sup> See *Kawas Fernández v. Honduras*, 2003 Inter-Am. C.H.R. (ser. C) No. 196 (April 3, 2009).

<sup>117</sup> *Id.*

Court characterized environmental rights as human rights and situated them within the category of economic cultural and social rights.<sup>118</sup>

52. The Court should take a similar approach in the case *sub judice*, and ultimately establish a *per se* right to a healthy environment under Article 26. Here, the negative environmental consequences, caused largely by Clonalia's failure to enact effective policies, have affected the economic, social, and cultural rights of the Candelan people. First, community members have been forced into displacement camps and/or to flee the country. Furthermore, the acidification from the flooding has prevented the rural community from engaging in agricultural activities, a crucial part of the rural community's economic livelihood. As noted, the Marsili must import more than sixty percent of its produce. Finally, as a result of mass displacements, funding for social programs including education have been cut.

53. Furthermore, Article 26 ACHR prohibits countries from taking deliberately retrogressive measures.<sup>119</sup> Clonalia has blatantly disregarded this obligation, as it has recently engaged in major offshore oil explorations that will increase the production of fossil fuels, the leading cause of GHGs, by several million barrels each day.

54. Clonalia's inactions and retrogressive measures have led to violations of Candela's right to a healthy environment, which is implicit in Article 26 of the ACHR, and therefore should be held liable to the community of Candela.

**C. Even if this Court Fails to Recognize the Right to a Healthy Environment *per se* under Article 26, Clonalia Remains Liable to the Community of Candela for Human Rights Violations under Articles 5, 21, and 22 of the ACHR.**

55. This Court has found that "there is an undeniable link between the protection of the environment and the enjoyment of other human rights."<sup>120</sup> "[W]ithout a habitable environment, all other human rights become

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<sup>118</sup> *Id.*

<sup>119</sup> ACHR, art. 26.

<sup>120</sup> *Kawas Fernández v. Honduras*, 2003 Inter-Am. C.H.R. (ser. C) No. 196 (April 3, 2009).

either unattainable or meaningless.”<sup>121</sup> Furthermore, links between environmental degradation and human rights violations are even greater when considering that the victims of environmental degradation are often members of vulnerable populations, as is the case here.<sup>122</sup>

#### 1. Article 5: Right to Humane Treatment

56. The Federation of Clonalia’s inaction to stabilize GHG emissions and its acts exacerbating the problem violate the Community of Candela’s right to humane treatment enshrined in Article 5 of the ACHR. The Convention provides that “Every person has the right to have his physical, mental and moral integrity respected.”<sup>123</sup>

57. In *Moiwana Community v. Suriname*, this Court found that the Government’s failure to fulfill its obligations after an armed conflict, which caused forced separation between a community and its land, constituted a violation of the rights enshrined in Article 5 of the ADHR.<sup>124</sup>

58. Similarly, in current case, Clonalia, despite being the world’s largest GHG emitter and despite numerous legal actions filed against it, has acted with impunity, as the Government did in *Moiwana Community*. Clonalia’s failure to take any action whatsoever has forced extended separation between members of the Candelan community and their land, which this Court should deem a violation of Article 5 of the ADHR.

#### 2. Article 21: Right to Property

59. Article 21 of the ACHR states that “Everyone has the right to the use and enjoyment of his property.”<sup>125</sup>

59. In the case *sub judice*, consequences of global climate change are now preventing the members of the rural community of Candela to use and enjoy their property located on the northern area of Theodore

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<sup>121</sup> ROMINA PICLOTTI AND JORGE DANIEL TAILLANT, LINKING HUMAN RIGHTS AND THE ENVIRONMENT 118-177 (2003).

<sup>122</sup> As noted, more than half of Marsili’s population survives on less than one dollar per day, and the citizens’ economic opportunities including tourism and farming have been greatly reduced by the consequences of climate change.

<sup>123</sup> ACHR, art. 5.

<sup>124</sup> *Moiwana Community v. Suriname*, 2004 Inter-Am. C.H.R. (ser. C) No. 124,132-33 (June 15, 2004).

<sup>125</sup> ACHR, art. 21.

Island.<sup>126</sup> First, rising sea levels have caused seventy-two square kilometers of Theodore Island and sixteen kilometers of its coastline to disappear. This loss of property is especially devastating because tourism associated with Marsili's coastlines is a major source of income for the impoverished nation. Furthermore, many members of the Candela community, who have lost the ability to survive and are in imminent danger of disappearing, have been forced to move into settlement camps or flee the country.

60. The Government will first argue that a violation of right to property did not occur here, as the petition does not suggest individual property rights of the Candela people were violated. However, in the past, this Court has characterized the notion of property broadly, extending it to communally owned lands and even to lands occupied and used that aren't actually "owned."<sup>127</sup> For example, in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, this Court held that an indigenous community's right to property was violated when the Government granted logging concessions to third parties to community members' detriment. The Court took into consideration that the Community's members make their living from agriculture, among other activities.

61. Similarly, here, Clonalia has initiated oil exploration through its public company, which will significantly increase the amount of fossil fuels that the country produces. This development will expedite the grave consequences that the Candelan people face in regard to their disappearing property and will prevent them from vindicating their rights under Article 21.

62. Clonalia will seek to liken this case to *Metropolitan Nature Reserve v. Panama*, in which a petition was filed on behalf of the citizens of the Republic of Panama, claiming a violation of the Right to Property following the Government's adoption of a law which authorized the construction of a public roadway

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<sup>126</sup> See *Fact Pattern*, at para. 29.

<sup>127</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001).



through a nature reserve.<sup>128</sup> In that case, the Commission found the it inadmissible under Article 47 of the ACHR since it did not identify individual victims and was overly broad.<sup>129</sup> However, here, unlike the *Metro Nature* case, where the claim was brought on behalf of the entire Panamanian population, here, a small group of identified victims has been identified and the petition identifies specific, empirically-backed consequences suffered by the Candela people including forced displacement and an inability participate in sustenance activities.

### 3. Article 22: Freedom of Movement and Residence

63. The Court has established that that “liberty of movement is an indispensable condition for the free development of a person.”<sup>130</sup> In *Valle Jaramillo et al. v. Colombia*, the Court found that the State had violated the Petitioner and his family’s right to freedom of movement because “the State had placed him in a situation of vulnerability and defenselessness”, which led to “forced displacement within Colombia and, subsequently, exile in another country.”<sup>131</sup>

64. Similarly in the case *sub judice*, the constant refusal of Clonalia to take steps to stabilize its significant GHG emissions has left members of the Candela community vulnerable and largely defenseless, as evidenced by their current living situations both in Clonalia and in the displacement camps in Marsili.<sup>132</sup> Clonalia has had numerous opportunities to take steps to improve the situation for the community of Candela, but its failure to do so has transformed the Candela community’s land into an insecure and economically unsustainable environment.

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<sup>128</sup> *Metropolitan Nature Preserve v. Panama* Case 11.533, Inter-Am. C.H.R., Report No. 88/03, 3, OEA/Ser.L/V/II.118, doc. 70 rev. 2, 524 (2003).

<sup>129</sup> CATHRINE ZENGERLING, GREENING INTERNATIONAL ENVIRONMENTAL NGOS BEFORE INTERNATIONAL COURTS, TRIBUNALS, AND COMPLIANCE COMMITTEES 97 (2013).

<sup>130</sup> *Moiwana Community v. Suriname*, 2004 Inter-Am. C.H.R. (ser. C) No. 124,132-33 (June 15, 2004).

<sup>131</sup> *Valle Jaramillo et al. v. Colombia*, 2008 Inter-Am. C.H.R. (ser. C) (Merits, Reparations, and Costs) (November 27, 2008).

<sup>132</sup> *Fact pattern*, at para 48.

**II. CLONALIA HAS VIOLATED THE HUMAN RIGHTS OF THE 23 RURAL CANDELAN FAMILIES BY DENYING THEM JUDICIAL GUARANTEES DURING THEIR REFUGEE STATUS-DETERMINATIONS AND FAILING TO RELEASE THE NATIONAL EXPERTS COMMITTEE PROPOSAL.**

**A. There Is a Right to International Protection in the Inter-American System Afforded to All Persons Without Discrimination for Reasons of Race, Color, Sex, Language, Religion, Political or Other Opinion, National or Social Origin, Economic Status, Birth or Any Other Social Condition, and Clonalia Has Violated That Right.**

65. This Court has jurisdiction to hear the asylum claim by the 23 Candelan families from Marsili. Clonalia argues that the Inter-American system contains no obligation to grant asylum to members of other countries however this argument is completely at odds with the text of Article 22(7) of the American Convention and IACHR jurisprudence, which recognizes that various sources of international law encompass a framework of commitments from States, including international human rights law and refugee law. Additionally, this Court has ruled that States must respect the principle of *non-refoulement* for any foreign person as a rule of customary international law.<sup>134</sup> Moreover, Clonalia's failure to uphold the Candelan's right to asylum violated various other legal obligations under the Convention, including the right to life, the right to freedom of movement, right to liberty, right to a fair trial, and right to judicial protection.

1. There is a right to asylum in the Inter-American system established by Article 22(7) of the ACHR.

66. Article 27 of the American Declaration of the Rights and Duties of Man (ADHR) provides that "[e]very person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements." The ADHR serves as the point of reference for human rights standards in the Americas, and was an important source of inspiration for the ACHR.<sup>135</sup> Article 22(7) of the ACHR codifies the same right contained in

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<sup>134</sup> See Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic with regard to Dominican Republic. Provisional measures. Inter-Am. C.H.R., Aug. 18, 2000, Considering clause 4.

<sup>135</sup> This approach follows the "commonly accepted standard." For more on this interpretive tool, see DINAH SHELTON, ADVANCED INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW 111 (Edward Elgar Publishing Ltd., 2014).

ADHR, Article 27.<sup>136</sup> The IACHR has equated this provision with the standards applicable in UN refugee treaties, which define a ‘refugee’ as any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, and is outside of his or her country of nationality and is unable, or unwilling to avail himself of protection of that country, due to fear.<sup>137</sup>

67. The Republic of Marsili’s territory is rapidly disappearing and thousands of its nationals are displaced within the country, forced to take temporary shelter in camps scatters across Theodore Island. The Candelan families fled to Clonalia to seek refuge from these conditions. As a rural community, their livelihoods have been most affected as compared to other Marsili residents. By denying Candelans the opportunity to seek asylum in Clonalia, Clonalia has failed to meet its obligations under Article 22(7) of the Convention.

2. The right to asylum is afforded to persons fleeing harm as a result of environmental harm and/or degradation.

68. This Court should recognize the serious threat facing the Candelan families if they are forced to return to Marsili. In addition to food shortages, loss of land, and loss of housing, Marsili has suffered from uncontrollable mass riots. Approving environmental asylum would be in line with Clonalia’s domestic law, and with the progressive and pro-human approach characterizing the Inter-American judicial system and with the object and purpose of international refugee law and the ACHR.

69. Human rights treaties are *living* instruments, whose interpretation must evolve with the current living conditions, consistent with the general rules of interpretation laid out in Article 29 of the ACHR and Article 31 of the VCLT.<sup>139</sup>

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<sup>136</sup> Article 22(7), “Freedom of Movement and Residence” states, “Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”

<sup>137</sup> See UN Convention relating to the Status of Refugees, April 22, 1954, 189 U.N.T.S. 150, Article 1 (a)(2) (definition adopted by the IACHR in Case No. 11.092, Canada).

<sup>139</sup> The Right to Information on Consular Assistance Within the Framework of the Guarantees of Due Process of Law, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114, and Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2012, Series C No. 257, para. 245.

70. This Court has held that “there is an undeniable link between the protection of the environment and the enjoyment of other human rights.”<sup>140</sup> In addition, Clonalia’s domestic immigration laws specifically include “*any other external conditions that may be taking place in the country of origin*” as acceptable basis for asylum, which would seemingly entail environmental disasters such as those experienced by the Candelans.<sup>142</sup>

71. The next 50 years promises a sharp increase in ‘environmental refugees’, people forced to flee their home state because of disaster resulting from environmental degradation.<sup>143</sup> Clonalia alone is responsible for 21% of historical GHG emissions, linking their behavior directly to the environmental degradation that caused the 23 Candelan families to escape from Marsili.<sup>144</sup>

**B. Even if This Court Should Find That There Is No Per Se Right to Asylum within the Inter-American System, Clonalia Has Failed to Fairly and Transparently Apply its Domestic Asylum Laws, As Required by the ACHR.**

72. Clonalia has incorporated into its domestic law international legal obligations contained in the ‘51 Refugee Convention and ‘67 Protocol, obligating it to enforce and guarantee the observance of the rights contained in these two agreements by fair execution of their domestic laws. If an individual establishes that he or she cannot return to their country of origin, Clonalia is obliged to grant that individual refuge in its own territory or provide that individual with all the facilities necessary to ensure that he or she is able to obtain protection in a third state.

73. Moreover, despite a margin of discretion cognizable for each State, the objectives sought by domestic immigration policies must respect the human rights of all migrants.<sup>147</sup> Minimum procedural guarantees can

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<sup>140</sup> *Kawas Fernández v Honduras*, *supra*.

<sup>142</sup> *Id.* at para. 51 (emphasis added).

<sup>143</sup> Andil Gosine, *Roots of Flight: Environmental Refugees in Latin America – A Response to Analysis by Homer-Dixon*, 15 REFUGE 27 (April 1996).

<sup>144</sup> *Fact Pattern*, para. 19-21.

<sup>147</sup> *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Sept. 17, 2003, Series A No. 18, para. 97; *see also* Jorge Bustamante, “Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development,” *Report of the Special Rapporteur on the Human Rights of Migrants*, UN DOC. A/HRC/20/24, 25 Feb. 2008, para. 14.

be found throughout the text of the ACHR. According to the IACHR, the right to asylum implies the right to: (i) apply to the competent domestic authorities for asylum; (ii) have the claim determined by a competent authority; (iii) a fair hearing; and (iv) not be *refouled* pending a determination of the claim and following any recognition of protection.<sup>148</sup>

74. Despite these obligations, Clonalia failed to provide each of the 23 Candelan families adequate recourse to utilizing and benefiting from the protection afforded by their immigration laws, thus violating procedural guarantees protected by the ACHR, expanded on below.

#### 1. Article 7 violations.

75. Automatic detention of asylum seekers is incompatible with international refugee protections, and arbitrary.<sup>150</sup> Moreover, States bear the burden of justifying detention.<sup>151</sup> The IACHR determined that detention has a significant detrimental impact on the due process rights of immigrants, severely reducing their chances of filing proper claims for relief.<sup>152</sup> Migrants are also known to face high risks of deplorable conditions.<sup>153</sup> Article 7 of the ACHR forbids Clonalia from expelling, extraditing, or deporting a person to a State where he may be subject to inhuman treatment. Moreover, once persons have been detained, Article 7 provides them with the right to a review before a competent court and an impartial arbiter to determine “without delay on the lawfulness of his arrest or detention.”<sup>154</sup>

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<sup>148</sup> See e.g. *The Haitian Centre for Human Rights et al v. United States*, Case 10.675, Report No. 51/96, IACHR, OEA/Ser.L/V/II.95, Doc. 7 rev. at 550 (1997), para. 163; IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., (Oct. 22, 2002), para. 385, 394, 405; and IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/II/Doc. 78/10 (2010), para. 63.

<sup>150</sup> See IACHR, *Report on Terrorism and Human Rights*, (Oct. 22, 2002), para. 380 and ACHR, Article 7(3).

<sup>151</sup> IACHR, *Report on Terrorism and Human Rights*, (Oct. 22, 2002), para. 379–80.

<sup>152</sup> IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II. Doc. 78/10, Dec. 30, 2010, available at [http://www.cidh.oas.org/countryrep/USImmigration/Chap.IV.d.htm#\\_ftnref41](http://www.cidh.oas.org/countryrep/USImmigration/Chap.IV.d.htm#_ftnref41).

<sup>153</sup> OAS Press Release, “Open, Safe and Regular Migration Channels Crucial to Stop Human Rights Violations Against Migrants,” 18 Dec. 2014, [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/155.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/155.asp) (referencing statements made by Felipe González, Rapporteur on the Rights of Migrants of the IACHR).

<sup>154</sup> ACHR, Article 7(6).

76. Migratory children and families enjoy special protections when faced with detention, and detaining them on the basis of their immigrant status or that of their parents is a direct violation of the ACHR.<sup>155</sup> Therefore, states must seek alternatives to detention whenever a child is involved.<sup>156</sup> Recently, this Court determined that the guarantee of personal liberty extends to the family as well, thus authorities of the state must find alternatives for the child and their family.

77. Half of the Candelans in Clonalia were detained solely on the basis of their immigration status, and provided no alternatives by which they could leave Clonalia. Moreover, no distinction was made in regards to the status of children. The detention in the prison solely on the basis of their status as migrants, the arrest warrants for the remaining families, and the failure of the administration to provide all 23 families with access to a judge for review of their arrest and detention, violated the rights afforded to the Candelans under Article 7 of the ACHR.

2. Article 8 and Article 25 due process violations.

78. Clonalia's failure to provide individual hearings to each of the 23 Candelan families seeking refuge in their state, and their lack of due process when delivering their denial of the Candelan's asylum claims were violations of both Article 8 and 25.<sup>157</sup> Rather than allow the Candelan community access to a regular judicial proceeding, the administration of Clonalia elected to resolve the Candelans' claims for asylum *sua sponte* and on an ad hoc basis, without recourse to procedures necessitated by their domestic immigration

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<sup>155</sup> See IACHR, Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, OC-21/14 (19 Aug. 2014), Requested by the Argentine Republic, The Federative Republic of Brazil, The Republic of Paraguay, and the Oriental Republic of Uruguay, para. 31 (citing to Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 154); see also IACHR, *Report on Immigration in the United States: Detention and Due Process*, (2010), para 409.

<sup>156</sup> IACHR, Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, OC-21/14 (19 Aug. 2014), paras. 30–33.

<sup>157</sup> This Court has already applied article 8 due process guarantees to the situation of migrants in a foreign state. See *Id.* at 3.

laws.<sup>158</sup> According to Article 8, Clonalia has an obligation to guarantee due process and unhindered access to its domestic courts for adjudication of claims of persons within its territory.<sup>159</sup>

### 3. Article 22(8) and 22(9) violations.

79. On the basis of *non-refoulement* alone, Clonalia may not return the Candelan families to Marsili if upon their return they would be subject to conditions equating to cruel, inhuman, or degrading treatment, and must recognize the protection owed to the person subject to the *refoulement* claim.<sup>164</sup> By rejecting all 23 families without individualized proceedings, Clonalia subjected the Candelans to a mass expulsion, violating the terms of Article 22(9) of the Convention. In the *Case of Nadege Dorzema et al v. Dominican Republic*, the Court struck down the expulsion of Haitian immigrants because the state failed to take into account individual needs for protection.<sup>165</sup> In situations where individual refugee status determinations may be generally impractical given the pressing need to provide protection, the State must give access to basic humanitarian treatment on the basis of collective or *prima facie* recognition of need.<sup>166</sup> Thus, even if Clonalia felt that processing 23 families at one time would be administratively impracticable, it does not excuse them from *refoulement*.

### C. Article 13 Violation for Failure to Release the NEC Proposal.

80. Individuals have a right to state-held environmental information,<sup>167</sup> subject to limitations established by law that (a) serve a proper objective recognized under the ACHR<sup>168</sup> and (b) serve “a compelling public

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<sup>158</sup> See *Fact Pattern*, paras. 52–54.

<sup>159</sup> See ACHR, Articles 8, 25.

<sup>164</sup> See *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Sept. 17, 2003. Series A No. 18, para. 45.

<sup>165</sup> *Case of Nadege Dorzema et al v. Dominican Republic* (official summary of judgment) Inter-Am. Ct. of Human Rights, Oct. 24, 2012, p. 3.

<sup>166</sup> See generally UNHCR, Executive Comm., *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations*, UN Doc. A/AC.96/1003, No.100 (XLV), 12 October 2004; UNHCR, *Protection of Refugees in Mass Influx Situations: Overall Protection Framework*, UN Doc. EC/GC/01/4, 19 February 2001, para. 6; IACHR, *Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, OC-21/14, Aug. 19, 2014, para. 262.

<sup>167</sup> *Case of Claude-Reyes v. Chile*, 2006 Inter-Am. C.H.R. (ser. C) No. 151, ¶¶6-15. [hereinafter “Claude-Reyes Decision”].

interest.”<sup>169</sup> In IACtHR jurisprudence, access is the general rule, and secrecy a limited exception interpreted in favor of the right to access. In the event of a legal gap, the matter should be interpreted in favor of access.<sup>170</sup> In the *Claude Reyes* case, the Court found that by refusing to release requested environmental degradation information, the Chilean government had violated Article 13 of the ACHR, and that the failure of the domestic courts’ to admit the case against the Chile for release of the information was tantamount to a violation of the right to judicial remedy, as mandated by Article 25 of the ACHR.<sup>172</sup> This case is directly applicable to the Candelans; the NEC proposal directly impacts their status in Clonalia, thus they cannot exercise the rights afforded to them by the ACHR without disclosure of the report.

### CONCLUSION

For the aforementioned reasons, the CCA, on behalf of the community of Candela, respectfully requests this Court to find that the Federation of Clonalia violated the aforementioned rights enshrined in the ACHR and order Clonalia to offer appropriate redress.

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<sup>168</sup> *Claude-Reyes Decision*, ¶¶89, 92.

<sup>169</sup> *Id.* at ¶90.

<sup>170</sup> See e.g. Inter-Am. Juridical Committee, “Principles on the Right of Access to Information,” Res. CJI/RES.147 (LXXIII-0/08), Principle 1 and *The Inter-American Legal Framework Regarding the Right to Access to Information*, Office of Special Rapporteur for Freedom of Expression, Inter-Am. Comm’n on Human Rights, OAS, OEA/Ser.L/V/II/CIDH/RELE/INF.1/09 (30 Dec. 2009), at 3, available at (<http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20POR%20TADA.pdf>) [hereinafter “Inter-American Legal Framework Regarding Right to Information”].

<sup>172</sup> *Claude-Reyes Decision*, at ¶¶6–15.