

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

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**Case No. 042114/RLJ/0415**

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**RURAL COMMUNITY OF CANDELA,**  
**Petitioner,**  
**v.**

**FEDERATION OF CLONALIA,**  
**Respondent.**

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**MEMORIAL FOR PETITIONER**

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## **STATEMENT OF JURISDICTION**

Pursuant to Articles 62(3)<sup>1</sup> and 61(1),<sup>2</sup> the Court has jurisdiction in this case because the Federation of Clonalia (“Clonalia” or “the State”) ratified the American Convention of Human Rights (“ACHR” or “the Convention”) on August 1, 1978,<sup>3</sup> accepted the jurisdiction of the Court on June 28, 1982,<sup>4</sup> and the Inter-American Commission on Human Rights (“IACHR” or “the Commission”) referred the case to the jurisdiction of the Court on December 17, 2014.<sup>5</sup> All alleged violations occurred after Clonalia accepted the jurisdiction of this Court.

## **SUMMARY OF THE PLEADINGS**

This case arises out of a series of actions taken by the Federation of Clonalia against a group of environmental refugees from the Republic of Marsili (“Marsili”) beginning in early 2014. Marsili is an impoverished low-lying island nation whose economy is based on fishing, agriculture, and tourism.<sup>6</sup> Its maximum elevation is 2.3 meters and total land area is 358 square kilometers.<sup>7</sup> Over the past decade, 47 major natural disasters, including massive storms and floodings, struck Marsili and caused approximately half of its population to flee as refugees to Clonalia and other nations.<sup>8</sup> Marsili is unable to feed its own population,<sup>9</sup> which decreases by 4% annually.<sup>10</sup>

Clonalia is a wealthy industrialized nation that is historically the world’s greatest emitter of green house gases (“GHGs”) due largely to its extensive use of coal fired power plants.<sup>11</sup>

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<sup>1</sup> Organization of American States, American Convention on Human Rights, art. 62(3), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter “American Convention”].

<sup>2</sup> American Convention, art. 61(1).

<sup>3</sup> Hypothetical Case at ¶ 71.

<sup>4</sup> Hypothetical Case at ¶ 71.

<sup>5</sup> Hypothetical Case at ¶ 70.

<sup>6</sup> Hypothetical Case at ¶¶ 6-7.

<sup>7</sup> Hypothetical Case at ¶¶ 4, 5.

<sup>8</sup> Hypothetical Case at ¶¶ 24, 26.

<sup>9</sup> Hypothetical Case at ¶ 23.

<sup>10</sup> Hypothetical Case at ¶ 25.

<sup>11</sup> Hypothetical Case at ¶ 21.

According to the United Nations' Global Climate Change Group, sea level rise caused by GHGs will increase global sea levels by 1.59 meters by 2100.<sup>12</sup> That group estimates that Marsili will be fully submerged by the year 2025.<sup>13</sup>

In October 2013, 23 families from the Rural Community of Candela traveled by boat from Marsili to Clonalia and entered the country in an irregular manner without proper immigration documentation.<sup>14</sup> On January 13, 2014, the environmental refugees from Candela requested refugee status from the Clonalian Foreign Ministry ("FM").<sup>15</sup> In a widely reported determination, the FM announced that environmental issues are distinguishable from migration issues, denied the refugees' application, and ordered their prompt deportation.<sup>16</sup> The FM did not allow the refugees the opportunity to present their case.<sup>17</sup> Shortly thereafter, the FM ordered the detention of the families and issued an arrest warrant that included children and the elderly.<sup>18</sup>

On March 8, 2014, a citizen group known as Climate Change Action ("CCA") appealed the FM's deportation decision.<sup>19</sup> The FM reaffirmed its previous decision by reiterating the arguments previously submitted.<sup>20</sup> Several months later, CCA unsuccessfully attempted to obtain a document produced by the Clonalian National Expert Committee ("NEC").<sup>21</sup> That document purported to consider possible links between migration issues and climate change, a topic of some significance for Clonalia as it emits nearly 1/5 of the world's greenhouse gases.<sup>22</sup> However, the

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<sup>12</sup> Hypothetical Case at ¶ 19.

<sup>13</sup> Hypothetical Case at ¶ 30.

<sup>14</sup> Hypothetical Case at ¶ 47.

<sup>15</sup> Hypothetical Case at ¶ 48.

<sup>16</sup> Hypothetical Case at ¶ 52.

<sup>17</sup> Hypothetical Case at ¶ 52.

<sup>18</sup> Hypothetical Case at ¶ 53.

<sup>19</sup> Hypothetical Case at ¶ 52.

<sup>20</sup> Hypothetical Case at ¶ 54.

<sup>21</sup> Hypothetical Case at ¶ 59.

<sup>22</sup> Hypothetical Case at ¶ 21.

NEC report was kept from the public because of alleged national security concerns.<sup>23</sup> On September 10, 2014, CCA went before the Commission on Candela's behalf.<sup>24</sup>

After considering CCA's petition, the Commission declared the case admissible for the purposes of examining potential violations by Clonalia of the American Convention for Human Rights ("Convention") and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador" or "the Protocol").<sup>25</sup> On October 15, 2014, the Commission rejected a preliminary jurisdictional objection by Clonalia.<sup>26</sup> On December 17, 2014, the Commission referred the case to this Court.<sup>27</sup>

## **LAW AND ANALYSIS**

### **I. The petition is admissible because this Court has jurisdiction *ratione materiae* and the Community of Candela exhausted its domestic judicial remedies.**

#### **A. This Court has jurisdiction *ratione materiae*.**

The Court's jurisdiction *ratione materiae*<sup>28</sup> extends to "all matters relating to the interpretation or application of [the American] Convention."<sup>29</sup> Furthermore, this Court has repeatedly recognized that it "may exercise its contentious jurisdiction regarding Inter-American instruments other than the American Convention when these instruments establish a system of petitions subject to international supervision in the regional sphere."<sup>30</sup> This Court's jurisdiction over "other Inter-American instruments that grant it jurisdiction" extends to the San Salvador

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<sup>23</sup> Hypothetical Case at ¶ 59.

<sup>24</sup> Hypothetical Case at ¶ 61.

<sup>25</sup> Hypothetical Case at ¶ 65.

<sup>26</sup> Hypothetical Case at ¶ 69.

<sup>27</sup> Hypothetical Case at ¶ 70.

<sup>28</sup> In other words, "subject matter jurisdiction." Black's Law Dictionary (9th ed. 2009).

<sup>29</sup> American Convention, art. 62(3).

<sup>30</sup> *González et al. (Cotton Field) v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 205, ¶ 37 (Nov. 16, 2009); *Vélez Loor v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 218, ¶ 32 (Nov. 23, 2010); *Las Palmeras v. Colombia*, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 66, ¶ 34 (Feb. 4, 2000).

Protocol. Consequently, the Protocol's Article 11, the Right to a Healthy Environment, is justiciable before this Court for two reasons.

First, the Court has jurisdiction under Protocol Article 19(6) to hear petitions involving the Right to Education (Article 13) and Trade Union Rights (Article 8).<sup>31</sup> However, this is not an exhaustive list of violations the Court can hear under the Protocol. This Court established in *González et al. ("Cotton Field")*, *Vélez Loor v. Panama* and *Las Palmeras v. Colombia* that it can expand its jurisdiction to documents that do not explicitly mention the Inter-American Court.<sup>32</sup>

Second, the right to a healthy environment (Article 11) is judiciable before this Court because it forms an essential part of the corpus juris of international humanitarian law that this Court uses to interpret the American Convention.<sup>33</sup> This Court previously established that the American Convention is a "living instrument," the interpretation of which evolves and "must consider the changes over time and present-day conditions."<sup>34</sup> The right to a healthy environment is fundamental and consequential to the proper functioning of the rights enshrined in the American Convention, as well as other documents that form the corpus juris of international humanitarian law. In *Vélez Loor*, this Court rejected a "restrictive interpretation of the scope of the Court's jurisdiction" because such an approach would be "contrary to the purpose and aim of the [American] Convention."<sup>35</sup> Further, a restrictive interpretation would "affect the effective application of the [the Convention Against Torture] and its guarantee of protection."<sup>36</sup>

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<sup>31</sup> San Salvador Protocol, art. 19(6).

<sup>32</sup> *González et al. ("Cotton Field")* at ¶ 37; *Vélez Loor* at ¶ 32; *Las Palmeras* at ¶ 34.

<sup>33</sup> *Las Palmeras* at ¶¶ 32-33.

<sup>34</sup> *Gómez Paquiyauri Bros. v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 165 (July 8, 2004).

<sup>35</sup> ¶ 34.

<sup>36</sup> *Id.*



Here, the Court should similarly reject a restrictive interpretation of its jurisdiction because the right to a healthy environment is fundamental to the proper functioning of the American Convention, the Charter of American States, and other international treaties to which Clonalia is a party. Clonalia signed and ratified numerous international law documents that firmly establish its obligations under international law to respect the environment, including but not limited to: (1) the Stockholm Declaration (calling “upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity”);<sup>37</sup> (2) the Rio Declaration (“The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority.”);<sup>38</sup> (3) the Convention on Biological Diversity (“States have... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”);<sup>39</sup> and (4) the San Salvador Protocol (“The States Parties shall promote the protection, preservation, and improvement of the environment.”).<sup>40</sup>

Clonalia’s actions, including the wanton disregard for air pollution that is causing environmental distress to the Republic of Marsili, are reviewable before this Court because the right to a healthy environment is fundamental to the proper functioning of international humanitarian law. Reckless emission of greenhouse gases is currently causing rapid depopulation

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<sup>37</sup> U.N.E.P., Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”), ¶ 7, June 16, 1972.

<sup>38</sup> U.N.E.P., Rio Declaration on Environment and Development (“Rio Declaration”), Principle 6, June 14, 1992.

<sup>39</sup> Convention on Biological Diversity, art. 3, Dec. 29, 1993, 1760 U.N.T.S. 79.

<sup>40</sup> Organization of American States, Additional protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 16, 1999, O.A.S.T.S. No. 69, 28 I.L.M. 156 (“San Salvador Protocol”), art. 11(2).

of the nation of Marsili.<sup>41</sup> This has created an international crisis wherein Marsilians are fleeing to other countries, including Clonalia.<sup>42</sup> The victims of Clonalia's reckless development and repression of migrants require protection under international humanitarian law.

**B. Candela exhausted its domestic judicial remedies in Clonalia.**

The American Convention requires that “remedies under domestic law [be] pursued and exhausted” prior to lodging a petition with the Inter-American Commission.<sup>43</sup> In this case, the Community of Candela exhausted its administrative and judicial remedies within the state of Clonalia prior to submitting its petition because the FM determined, twice, that their application was invalid.

The refugees from the Community of Candela lack any further judicial recourse in Clonalia. Clonalia's Migration and Asylum Law 715 states that Clonalia's “system of protection of refugees and asylum seekers” is “based on the country's Constitution, the Convention on the Status of Refugees of 1951 and its Protocol of 1967, as well as other international human rights instruments ratified by the Federation of Clonalia.”<sup>44</sup> On February 28, 2014, the FM determined that it would not consider the refugee status of the 23 Marsilian families.<sup>45</sup> As a result, those families were unable to present their case for asylum in Clonalia, and were forcibly detained instead.<sup>46</sup> On appeal, the FM reaffirmed its decision to deny asylum by reiterating the arguments previously submitted.<sup>47</sup> Not only did the refugees exhaust their judicial remedies in Clonalia, but

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<sup>41</sup> Hypothetical Case at ¶ 24.

<sup>42</sup> Hypothetical Case at ¶ 25.

<sup>43</sup> American Convention, art. 46(1)(a).

<sup>44</sup> Hypothetical Case at ¶¶ 48-49.

<sup>45</sup> Hypothetical Case at ¶ 52.

<sup>46</sup> Hypothetical Case at ¶ 52.

<sup>47</sup> Hypothetical Case at ¶ 54.

the Clonalian government at large, including the FM, the Ministry of the Environment,<sup>48</sup> and the Supreme Court,<sup>49</sup> continues to stubbornly deny that any relationship exists at all between environmental change, threats to coastal communities, and migration.<sup>50</sup>

## **II. Clonalia violated the human rights of the 23 Candelan families who fled to Clonalia as environmental refugees.**

### **A. Clonalia violated Candela's Article 5 right to humane treatment.**

Article 5(1) states that “[e]very person has the right to have his physical, mental, and moral integrity respected.”<sup>51</sup> The right to personal integrity requires that “[p]unishment...not be extended to any person other than the criminal.”<sup>52</sup> Further, minors that are subject to criminal proceedings require special protections “so that they may be treated in accordance with their status as minors.”<sup>53</sup> It is insufficient for a state to merely abstain from violating rights; rather, the state must adopt the appropriate measures to guarantee the rights of individuals involved in a particular case based on the circumstances of that case.<sup>54</sup> A state's failure to conduct a serious and thorough investigation into potential human rights violations constitutes a breach of Article 5(1).<sup>55</sup>

For example, in *Moiwana Cmty.*, this Court determined that the State's refusal to investigate an indigenous group's human rights concerns violated Article 5(1). The Court found that the State had an “obligation to ensure the right to humane treatment” beyond simply refraining from violating the group's rights.<sup>56</sup> The State's failure to fulfill that obligation despite continued

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<sup>48</sup> Hypothetical Case at ¶ 39.

<sup>49</sup> Hypothetical Case at ¶ 39.

<sup>50</sup> Hypothetical Case at ¶¶ 58-59.

<sup>51</sup> American Convention, art. 5(1).

<sup>52</sup> American Convention, art. 5(3).

<sup>53</sup> American Convention, art. 5(5).

<sup>54</sup> *Suárez Peralta v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 261, ¶ 127 (May 21, 2013).

<sup>55</sup> *Moiwana Cmty. v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 94 (June 15, 2005).

<sup>56</sup> *Id.* at ¶ 92.

efforts from the indigenous group and its legal representatives to resolve the matter violated the group's right to humane treatment.<sup>57</sup>

In this case, the Candelans and their legal representatives have attempted numerous times to argue the families' case for refugee status before the FM.<sup>58</sup> Despite these efforts, the FM has never granted the families personal interviews, let alone the opportunity to present their arguments.<sup>59</sup> Moreover, the FM ordered the forcible detention of the families who were guilty of nothing more than being the victims of an environmental crisis. As a result, Clonalia has failed in its obligation to ensure that the Candelans are treated with personal integrity in violation of Article 5(1).

**B. Clonalia violated Candela's Article 7 right to personal liberty.**

Clonalia arbitrarily arrested the Marsilian refugees in violation of Article 7. Article 7 establishes procedural safeguards that "[e]very person has the right to personal liberty and security"<sup>60</sup> and "[n]o one shall be subject to arbitrary arrest or imprisonment."<sup>61</sup> "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful."<sup>62</sup>

In *Chaparro Álvarez Íñiguez v. Ecuador*, this Court established four criteria to ensure that a detention is not arbitrary: (i) the purpose of the measures must be "legitimate" and "compatible with the Convention;" (ii) the measures adopted must be "appropriate to achieve the purpose

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<sup>57</sup> *Id.* at ¶ 94.

<sup>58</sup> Hypothetical Case at ¶¶ 52, 54.

<sup>59</sup> Hypothetical Case at ¶¶ 52, 54.

<sup>60</sup> American Convention, Art. 7(1).

<sup>61</sup> American Convention, Art. 7(1).

<sup>62</sup> American Convention, Art. 7(6).

sought;” (iii) the measures must be “necessary, in the sense that they are absolutely essential to achieve the purpose sought;” and (iv) the measures must be “strictly proportionate so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought.”<sup>63</sup>

As established by this Court in *Chaparro Álvarez Íñiguez*, no one may be arbitrarily detained on a whim, and the detainee must be given an opportunity to make a claim in a competent court. Here, the detentions were arbitrary because detention was not “absolutely essential,” and was not “strictly proportionate.” The detention was excessive compared to the advantage gained by detaining a group that included numerous children and elderly individuals. Clonalia further denied the refugees a competent forum in which their grievances could be heard. Clonalia could have taken a number of alternative actions, but instead decided to promptly detain and deport the refugees without a hearing.

**C. Clonalia violated Candela’s Article 8 right to a fair trial.**

**i. The FM was not a “competent, independent, and impartial tribunal.”**

Clonalia violated the basic pillar of the guarantees of due process enshrined in the Convention because the FM is not a competent, independent, and impartial tribunal for purposes of Article 8. Article 8 provides that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”<sup>64</sup>

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<sup>63</sup> IACHR, November 21, 2007, Preliminary Objections, Merits, Reparations and Costs, Series C No. 170, para. 93.

<sup>64</sup> American Convention, art. 8.

In *Herra Ulloa v. Costa Rica*, this Court held that justices of the Costa Rican Supreme Court “should have abstained” from deciding a case on appeal because “those very same justices examined the merits” and this was incompatible with the impartiality requirement of Article 8.<sup>65</sup> Similarly here, the Marsilian refugees’ request for asylum was denied on the merits by Clonalia’s FM, and the appeal was also heard by the same agency.<sup>66</sup> On appeal, the FM reaffirmed its denial by reiterating the same arguments already submitted.<sup>67</sup> Like in *Herra Ulloa*, Clonalia should have allowed the refugees to present their case to a tribunal, and then a second tribunal on appeal. Clonalia effectively denied the Marsilian refugees’ right to have their request for asylum heard by a competent and impartial trier of fact.

**ii. Clonalia violated the right to procedural due process guaranteed to the Candelan families under Article 8(2).**

Clonalia violated the due process guarantees under Article 8(2) by not allowing the Marsilian refugees to explain their situation before a tribunal. Article 8(2) establishes a list of minimum procedural guarantees, including but not limited to the right to be presumed innocent, the right of the accused to defend himself, the right of the defense to examine witnesses, and the right to appeal the judgment to a higher court.<sup>68</sup>

This Court established in *Yatama v. Nicaragua* that, under Article 8, a procedural body must allow judicial process “so that a person may defend himself adequately against any act of the State that could affect his rights.”<sup>69</sup> Here, the FM detained the Marsilian refugees and did not

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<sup>65</sup> *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 107 ¶¶ 174-75 (July 2, 2004).

<sup>66</sup> Hypothetical Case at ¶ 54.

<sup>67</sup> Hypothetical Case at ¶ 54.

<sup>68</sup> American Convention, art. 8(2).

<sup>69</sup> Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 147 (June 23, 2005).

allow them to present their case to the FM for seeking asylum.<sup>70</sup> On appeal, the FM reaffirmed its decision by simply reiterating the arguments already submitted.<sup>71</sup> Thus, the FM failed to give the Candelan refugees the rights required by due process because it gave the refugees no ability to defend themselves, and did not allow an appeal to a “higher court.”

**D. Clonalia violated Candela’s Article 13 right to freedom of thought and expression.**

Article 13 protects the right to seek, receive and impart information and ideas of all kinds from direct or indirect government abuse.<sup>72</sup> The freedom of thought and expression described in Article 13 requires that “no one...be arbitrarily harmed or impeded from expressing his own thought.”<sup>73</sup> Additionally, every person has “a collective right to receive any information and to know the expression of the thought of others.”<sup>74</sup> When examining an alleged limitation on freedom of thought and expression, this Court has not restricted itself to merely examining the act, but has also looked to the context in which the act occurred.<sup>75</sup>

For example, in *Ivcher Bronstein*, this Court found that a State arbitrarily restricted the right of its citizens to receive information when it initiated administrative proceedings against a local news broadcaster.<sup>76</sup> The State violated Article 13 because, by withholding information from the public, it “limit[ed] their freedom to exercise political opinions and develop fully in a democratic society.”<sup>77</sup> The Court held that such actions undermined the right to “try and

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<sup>70</sup> Hypothetical Case at ¶ 52.

<sup>71</sup> Hypothetical Case at ¶ 54.

<sup>72</sup> American Convention, art. 13(1), 13(3).

<sup>73</sup> *Ivcher Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 146 (Feb. 6, 2001).

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

<sup>75</sup> *Id.* at ¶ 154.

<sup>76</sup> *Id.* at ¶ 163.

<sup>77</sup> *Id.*

communicate one's points of view to others" as well as "everyone's right to know opinions, reports, and news."<sup>78</sup>

In this case, Clonalia violated the Candelan families' right to freedom of thought and expression in two significant ways. First, when the FM refused to hear the families' arguments for refugee status and then detained them shortly thereafter,<sup>79</sup> it impeded the families' ability to express their own thoughts about their situation. Then, when the Clonalian government refused to release the NEC report,<sup>80</sup> it violated the collective right of all people in Clonalia to know the opinions of others, to wit, the experts who studied the links between climate change and migration. Thus, Clonalia arbitrarily limited the free exchange of opinions and ideas in breach of Article 13.

**E. Clonalia violated Candela's Article 22 right to freedom of movement and residence.**

**i. The Candelan families had a right to present their case for refugee status.**

Article 22(7) grants "[e]very person...the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions." This Court has interpreted Article 22(7) as "ensur[ing] that the person applying for refugee status **must be heard by the State** to which he applies" (emphasis added).<sup>81</sup> Significantly, those proceedings to determine refugee status must observe minimum guarantees of due process, including a personal interview with the individual seeking refugee status;<sup>82</sup> the objective examination of the request by a competent and clearly identified authority;<sup>83</sup> and, if the request is denied, a reasonable amount

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<sup>78</sup> *Id.* at ¶ 148.

<sup>79</sup> Hypothetical Case at ¶¶ 52, 53.

<sup>80</sup> Hypothetical Case at ¶ 59.

<sup>81</sup> *Pacheco Tineo Family v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶ 154 (Nov. 25, 2013).

<sup>82</sup> *Id.* at ¶ 159(b).

<sup>83</sup> *Id.*



of time to appeal.<sup>84</sup> Most importantly, individuals seeking refugee status “cannot be...expelled **without an adequate and individualized analysis of their application**” (emphasis added).<sup>85</sup> It is the State’s responsibility to ensure that the individual seeking refugee status has the resources and aid available to submit a proper application.<sup>86</sup>

In *Pacheco Tineo Family*, this Court found a violation of Article 22(7) when a state agency made a summary decision on a request for refugee status from a family fleeing from Peru.<sup>87</sup> Specifically, the Court cited the agency’s failure to arrange a personal interview with the applicants, collect and dispense evidence, assess the circumstances affecting the applicants at the time of the request, allow the applicants to contest the arguments against their request, and provide sufficient grounds for the denial of the request.<sup>88</sup> As a result, the agency lacked sufficient grounds to make its decision in a way that respected the guarantees of due process for the individuals seeking refugee status.<sup>89</sup>

Similarly, in this case, the FM refused to allow the 23 Candelan families seeking refugee status to present their case.<sup>90</sup> Instead, the FM issued a summary decision based on the superficial conclusion that the families’ application was invalid.<sup>91</sup> At the very least, the FM should have arranged personal interviews with the families, allowed the families to contest the arguments against their request, and provided the families with the rationale for its decision.<sup>92</sup> The FM’s

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<sup>84</sup> *Id.* at ¶ 159(e).

<sup>85</sup> *Id.* at ¶ 153.

<sup>86</sup> *Id.* at ¶ 159(a).

<sup>87</sup> *Id.* at ¶ 174.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at ¶ 177.

<sup>90</sup> Hypothetical Case at ¶ 52.

<sup>91</sup> Hypothetical Case at ¶ 52.

<sup>92</sup> *Pacheco Tineo Family* at ¶ 174.

stubborn refusal to observe the bare minimum required of it by Article 22(7) deprived the Candelan families of their right to due process.

The FM then ordered the detention of the Candelan families, including children and the elderly, mere days after it issued its decision.<sup>93</sup> An essential due process guarantee in Article 22(7) is that the individual seeking refugee status must have a reasonable amount of time to appeal a denial of their request.<sup>94</sup> Here, the FM denied the Candelan families that due process right in an especially egregious fashion: by immediately arresting some of the families and chasing others to the gates of the Marsilian embassy or into the Clonalian countryside.<sup>95</sup> Although CCA eventually appealed the FM's decision,<sup>96</sup> Clonalia nevertheless violated the Candelan families' due process rights under Article 22(7).

**ii. The Candelan families have the right to be protected from forcible return to a dangerous situation.**

Article 22(8) states, “[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated.” This Court has extended the protections of Article 22(8) to “any alien, and not only refugees or asylees...when his life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country where he is.”<sup>97</sup> Consequently, when an alien alleges before a State that he will be in danger if he is returned, the State must interview that person and make a preliminary assessment in order to

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<sup>93</sup> Hypothetical Case at ¶ 53.

<sup>94</sup> *Pacheco Tineo Family* at ¶ 159(e).

<sup>95</sup> Hypothetical Case at ¶ 53.

<sup>96</sup> Hypothetical Case at ¶ 54.

<sup>97</sup> *Pacheco Tineo Family* at ¶ 135.

determine whether the danger exists if he is deported.<sup>98</sup> If the danger is verified, the alien must not be returned to the country where the danger exists.<sup>99</sup>

In *Pacheco Tineo Family*, this Court ruled that the expulsion of a family to its country of origin without consideration for the potential dangers the family might face there violated Article 22(8).<sup>100</sup> Notably, the Court highlighted the “summary manner” in which the state agency decided to expel the family without granting them a hearing and in an unreasonably short period of time.<sup>101</sup> Moreover, there was no evidence that the state agency gave any consideration to the potential dangers the family might face if they were returned to their country of origin.<sup>102</sup> Finally, the Court explained that the family’s request for asylum warranted special attention because at least one of the individuals involved was a child.<sup>103</sup>

In this case, the FM likewise failed to consider the dangers that the Candelan families might face before it initiated deportation proceedings against them.<sup>104</sup> Indeed, the FM seems more concerned with detaining and deporting the Candelan families than it does with actually speaking to them about their concerns.<sup>105</sup> The fact that the 23 Candelan families included children and elderly individuals,<sup>106</sup> makes the FM’s reckless pursuit of deportation that much more troubling. The absence of any evidence that the FM considered the dangers faced by the Candelan families constitutes a violation of Article 22(8).

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<sup>98</sup> *Id.* at ¶ 136.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at ¶ 189.

<sup>101</sup> *Id.* at ¶ 187.

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

<sup>103</sup> *Id.*

<sup>104</sup> Hypothetical Case at ¶ 52.

<sup>105</sup> *See* Hypothetical Case at ¶¶ 52-53.

<sup>106</sup> Hypothetical Case at ¶ 53.

Even if the FM were to produce evidence that it considered the Candelan families' situation, its actions still breached the non-refoulement<sup>107</sup> provisions of Article 22(8) and Clonalia's own domestic law. Recently, Clonalia recognized the rights of aliens, regardless of their legal or migratory status, to seek asylum when its legislature passed the Immigration Law of 2009.<sup>108</sup> That statute, which incorporates language from the Convention on the Status of Refugees of 1955 and the Additional Protocol of 1967, states in relevant part:

This Law is applicable to any foreign person in refugee status or seeking asylum in the territory of the Federation of Clonalia...No person in such refugee or asylum seeking status, **whose application is pending of a final decision**, may be returned to their country of origin or another country 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.

(emphasis added).<sup>109</sup> Additional domestic law in Clonalia states that administrative decisions by the FM regarding refugee status and deportation are appealable.<sup>110</sup>

Here, the Candelan families were still entitled to an appeal of the FM's decision at the time the FM initiated deportation proceedings against them.<sup>111</sup> As a result, the families' application was pending under Clonalia law.<sup>112</sup> Additionally, the families feared for their rights to life and personal freedom if they returned to Marsili.<sup>113</sup> Under Clonalia's own non-refoulement statute, the FM's efforts to return the families to Marsili were unlawful. Consequently, the FM violated Article 22(8).

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<sup>107</sup> In other words, "a refugee's right not to be expelled from one state to another, esp. to one where his or her life or liberty would be threatened." Black's Law Dictionary (9th ed. 2009).

<sup>108</sup> Hypothetical Case at ¶ 51.

<sup>109</sup> Hypothetical Case at ¶ 51.

<sup>110</sup> Hypothetical Case at ¶ 54.

<sup>111</sup> Hypothetical Case at ¶¶ 52, 54.

<sup>112</sup> Hypothetical Case at ¶ 54.

<sup>113</sup> Hypothetical Case at ¶ 48.

**III. Clonalia violated the human rights of the Marsilians who continue to reside in the Community of Candela.**

**A. Clonalia violated Candela's right to a healthy environment under Article 11 of the San Salvador Protocol.**

Article 11(1) of the San Salvador Protocol states, “[e]veryone shall have the right to live in a healthy environment and to have access to basic public services.”<sup>114</sup> To ensure that right, Article 11(2) provides that “[t]he States Parties shall promote the protection, preservation, and improvement of the environment.”<sup>115</sup> Additionally, States are required to “adopt the necessary measures, both domestically and through international cooperation... to achieve progressively... the full observance of the rights recognized in [the] Protocol.”<sup>116</sup> Clonalia failed to adopt necessary measures both domestically and through international cooperation to reduce its disproportionately large responsibility for the sea level rise that is impacting Marsili and other nations.

This Court and the Commission have consistently stressed that environmental rights are inextricably linked to human rights. According to the Commission, “[t]he realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one's physical environment.”<sup>117</sup> Consequently, where environmental contamination and degradation pose a persistent threat to human life and health, human rights are necessarily implicated.<sup>118</sup> States therefore have an obligation to take reasonable measures to prevent risks to health and human life by severe environmental pollution.<sup>119</sup>

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<sup>114</sup> San Salvador Protocol, art. 11(1).

<sup>115</sup> San Salvador Protocol, art. 11(2).

<sup>116</sup> San Salvador Protocol, art. 11(1).

<sup>117</sup> Inter-Am. Comm'n H.R., Report on the Situation of Human Rights in Ecuador, OR OEA/Ser.L/V/II.96/doc.10 rev. 1, 88 (1997).

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

<sup>119</sup> *Id.*

This Court has reaffirmed the Commission's position. In *Maya Indigenous Cmty. of the Toledo Dist. v. Belize*, the Court held:

“[D]evelopment activities must be accompanied by appropriate and effective measures to ensure that they do not proceed at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural and spiritual well-being.”<sup>120</sup>

Here, Clonalia is liable for violating Marsili's environmental rights because, as in *Maya Indigeous Cmty.*, Clonalia's development has gone unhindered by domestic regulatory programs. Although it did not ratify the Kyoto Protocol, Clonalia declared to the international community that it would “undertake domestic measures to achieve similar or comparable results to those defined” in the Protocol.”<sup>121</sup> Instead, Clonalia reneged on its reduction pledge. Today, the Ministry of the Environment refuses to regulate carbon dioxide and other green house gases.<sup>122</sup> Clonalia continues to emit 18% of the Earth's green house gases.<sup>123</sup> Further, Clonalia is in the beginning stages of oil exploration activities within its coastal zone.<sup>124</sup> In the words of Amnesty Environmental, an international non-governmental organization, “the inactivity and lack of legal responses [to climate change] from this State have been the most notorious of all national legislations studied by this organization.”<sup>125</sup> Clonalia's unregulated GHG emissions, lack of effective domestic reduction programs, and expansion of oil exploration implicate Marsili's environmental and human rights. Because of Clonalia's lack of action in face of dire sea level rise, Marsili is disappearing. As a result, Clonalia's actions limit Marsili's ability to realize the

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<sup>120</sup> *Maya Indigenous Cmty. of the Toledo Dist. v. Belize*, Case 12.053, Inter-Am. Comm'n H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. ¶¶ 149-50 (2004).

<sup>121</sup> Hypothetical Case at ¶ 15.

<sup>122</sup> Hypothetical Case at ¶ 36.

<sup>123</sup> Hypothetical Case at ¶ 21.

<sup>124</sup> Hypothetical Case at ¶ 43.

<sup>125</sup> Hypothetical Case at ¶ 42.

“right to life, and the physical security and integrity,” and are in violation of San Salvador Protocol Article 11.

**B. Clonalia violated Candela’s Article 21 right to property.**

**i. Candela has a right to use and enjoy its property.**

Article 21(1) grants “[e]veryone...the right to the use and enjoyment of his property.” This Court has defined “property” as “those material things which can be possessed, as well as any right which may be part of a person’s patrimony...includ[ing] all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value.”<sup>126</sup> A state may only restrict the use and enjoyment of property where the restrictions are: (1) set forth by law; (2) necessary; (3) proportional; and (4) aim to achieve a legitimate objective in a democratic society.<sup>127</sup> Additionally, a state’s restrictions must not amount to a denial of a group’s traditions and customs “in a way that endangers the very survival of the group and of its members.”<sup>128</sup>

In this case, Clonalia failed to satisfy these criteria when it pursued a reckless and hedonistic economic policy to the detriment of its neighbors in Candela. In an era where other industrial states have attempted to reduce their carbon emissions,<sup>129</sup> Clonalia has turned a blind eye to international cooperative efforts.<sup>130</sup> As a result, Clonalia is not only the biggest carbon emitter in the region, but also one of the worst air polluters worldwide.<sup>131</sup> As the single-largest contributor to global warming in the region, Clonalia is responsible for the rising seawaters and

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<sup>126</sup> *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (Aug. 31, 2001).

<sup>127</sup> *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 127 (Nov. 28, 2007).

<sup>128</sup> *See id.* at ¶ 128 (applying Article 21 to indigenous groups).

<sup>129</sup> Hypothetical Case at ¶ 14; *see also* U.N.F.C.C.C., Status of Ratification of Kyoto Protocol (listing states that have ratified the Kyoto Protocol, including industrial states such as China, India, and Brazil).

<sup>130</sup> Hypothetical Case at ¶ 15.

<sup>131</sup> Hypothetical Case at ¶ 21.

resulting destruction of physical property in Candela and throughout Marsili. Consequently, any claim that Clonalia's actions are "necessary" or "proportional" or that they "aim to achieve a legitimate objective in a democratic society" is inconsistent and defective.

Further, Clonalia's actions in destroying property in Candela threaten "the very survival of [a] group and of its members," to wit, the people of Candela and other Marsilians. It is well established that the island of Marsili is gradually succumbing to rising sea levels.<sup>132</sup> Unfortunately, these ongoing changes have already begun to eat away at property throughout the island,<sup>133</sup> and every expectation is that the island will soon be fully underwater.<sup>134</sup> The resulting annihilation of all immovable property on Marsili, and the displacement or destruction of the movable property, clearly endangers the survival of the culture of Marsili as well as the Marsilians themselves. Accordingly, Clonalia's restrictions on the right to property constitute a violation of Article 21(1).

**ii. Candela has a right to fair compensation for lost property.**

Implicit in the right to use and enjoy property is the right to fair compensation for property lost due to State action.<sup>135</sup> To that end, Article 21(2) provides, "[n]o one shall be deprived of his property **except upon payment of just compensation**, for reasons of public utility or social interest, and in the cases and according to the forms established by law" (emphasis added). The requirement for fair compensation is greatest when the State's actions threaten basic living conditions and the continuation of the community itself.<sup>136</sup> When the property involved is land,

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<sup>132</sup> Hypothetical Case at ¶ 22.

<sup>133</sup> Hypothetical Case at ¶ 22.

<sup>134</sup> Hypothetical Case at ¶ 30.

<sup>135</sup> *Palamara Iribarne v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 135, ¶ 108 (Nov. 22, 2005).

<sup>136</sup> *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 180 (Oct. 25, 2012).



the State must deliver fair compensation, return the land, or grant compensation in the form of alternative land of both equal size and quality.<sup>137</sup>

In *Yakye Axa Indigenous Cmty. v. Paraguay*,<sup>138</sup> a State failed to compensate a displaced community after dispossessing the community of its territory. Although that case dealt with an indigenous group, this Court's instruction that land carries substantial value nevertheless rings true for other communities.<sup>139</sup> In that case, the land played a significant role in, *inter alia*, the community's culinary art, customary law, dress, philosophy, and values.<sup>140</sup> In other words, the community's property contributed to a cultural "milieu" that its members could transmit from one generation to the next.<sup>141</sup> Consequently, the State's failure to adequately compensate the community for its lost property was in violation of Article 21(2).<sup>142</sup>

Here, the people of Marsili have lost not only their movable property, but also their beaches, farmland, and urban areas that have gradually been engulfed by rising seawaters.<sup>143</sup> The loss of property and subsequent natural disasters that continue to devastate the country have already led to the emigration of thousands of Marsilians,<sup>144</sup> with thousands more living in temporary camps waiting to be relocated.<sup>145</sup> Unless the country suddenly stops sinking, the loss of property could result in the extinction of the Marsilian culture. Thus, Clonalia, the cause of the destruction of property, is obligated to provide fair compensation. The State's continued failure to do so constitutes a breach of its duty under Article 21(2).

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<sup>137</sup> See *Sawhoyamaxa Indigenous Cmty. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006) (applying Article 22(2) to an indigenous community).

<sup>138</sup> Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 156 (June 17, 2005).

<sup>139</sup> See *id.* at ¶ 154.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at ¶ 156.

<sup>143</sup> Hypothetical Case at ¶¶ 23, 24, 25.

<sup>144</sup> Hypothetical Case at ¶ 25.

<sup>145</sup> Hypothetical Case at ¶ 24.

**C. Clonalia violated Candela’s Article 26 right to progressive development.**

Clonalia violated Article 26 of the American Convention because it adopted regressive measures that curtailed the “fundamental rights” of Marsili. Article 26 requires that states “adopt measures... with a view to achieving progressively... the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States [hereinafter “Charter of the O.A.S.”] as amended by the Protocol of Buenos Aires.” The Charter of the O.A.S. states, *inter alia*, that “[e]very American state has the duty to respect the rights enjoyed by every other State in accordance with international law;”<sup>146</sup> “[e]ach State has the right to develop its cultural, political, and economic life freely and naturally;”<sup>147</sup> and that “[t]he fundamental rights of States may not be impaired in any manner whatsoever.”<sup>148</sup>

This Court established in the landmark case *Acevedo Buendía et al. [Discharged and Retired Emps. of the Comptroller] v. Peru*<sup>149</sup> that adoption of regressive steps in violation of Article 26 of the Convention is actionable before this Court. “[T]here is a duty... of not adopting retrogressive steps,” which can be understood “as a prohibition to adopt measures that restrict the exercise of a right.”<sup>150</sup> The regression is actionable when economic, social and cultural rights are involved.<sup>151</sup>

In this case, Clonalia adopted “retrogressive steps” that “restrict the exercise” of Marsili’s fundamental economic, social and cultural rights. Currently, Marsili is facing devastating sea level

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<sup>146</sup> O.A.S., Charter of the O.A.S., art. 11, Apr. 30, 1948, 2 U.S.T. 2394.

<sup>147</sup> *Id.* at art. 17.

<sup>148</sup> *Id.* at art. 12.

<sup>149</sup> Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 198, ¶ 103 (July 1, 2009).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

rise that is causing a mass-exodus of its population.<sup>152</sup> The people of Marsili suffer from constant flooding and frequent salt-water intrusion into ground water supplies.<sup>153</sup> Due to disruptions to agriculture Marsili is currently unable to feed its population, and must import about 60% of all food.<sup>154</sup> Global sea level rise caused by green house gas emissions is expected to increase by more than 1.59 meters by the end of the third decade of the 21st century.<sup>155</sup> By 2025, the Republic Marsili will in all likelihood cease to exist.<sup>156</sup>

Clonalia's government refuses to recognize this serious environmental problem for which it is in large part responsible. Clonalia has the highest green house gas emissions of any nation, including 21% of historic emissions and 18% of current emissions.<sup>157</sup> Clonalia's Ministry of the Environment refuses to regulate GHGs,<sup>158</sup> and is planning on expanding its oil extraction industry in the coastal zone.<sup>159</sup> Marsili, on the other hand, is responsible for a negligible 0.4% of historic global green house gases.<sup>160</sup> Clonalia's Supreme Court decided that the Ministry of the Environment, despite its statutory function to "regulate and control the emission of any atmospheric pollutant," does not have to regulate GHG emissions.<sup>161</sup> Further, Clonalia's Supreme Court decided that national judicial law is an improper forum to regulate green house gases.<sup>162</sup> "According to [the Ministry of the Environment], the relationship between climate change and emissions of greenhouse gases, by itself, does not prove the imminence or actual presence of any

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<sup>152</sup> Hypothetical Case at ¶ 24.

<sup>153</sup> Hypothetical Case at ¶ 23.

<sup>154</sup> Hypothetical Case at ¶ 23.

<sup>155</sup> Hypothetical Case at ¶ 19.

<sup>156</sup> Hypothetical Case at ¶ 30.

<sup>157</sup> Hypothetical Case at ¶ 21.

<sup>158</sup> Hypothetical Case at ¶ 36.

<sup>159</sup> Hypothetical Case at ¶ 43.

<sup>160</sup> Hypothetical Case at ¶ 21.

<sup>161</sup> Hypothetical Case at ¶ 36.

<sup>162</sup> Hypothetical Case at ¶ 38.

risk to public health or general welfare.”<sup>163</sup> Further, Clonalia’s Foreign Ministry found that environmental issues “cannot and should not be mixed with migration issues.”<sup>164</sup>

The situation in this case demonstrates Clonalia’s “retrogressive” steps that violate Marsili’s economic, social and cultural rights as a state. As this Court held in *Discharged and Retired Emps.*, all states have fundamental rights that are inviolable and that are actionable before this Court. Clonalia’s actions impaired Marsili’s rights under the O.A.S. Charter “to develop its cultural, political, and economic life freely and naturally.” Clonalia’s reckless pollution and lack of governmental accountability have created a devastatingly precarious situation for Marsili, the “most vulnerable nation” on the planet.<sup>165</sup> Marsili’s citizens cannot freely pursue economic endeavors due to sea level rise that will within a matter of decades cause their country to disappear. Consequently, Clonalia’s wanton disregard for the wellbeing of its neighbor violates Article 26.

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<sup>163</sup> Hypothetical Case at ¶ 39.

<sup>164</sup> Hypothetical Case at ¶ 52.

<sup>165</sup> Hypothetical Case at ¶ 30.

## **REQUEST FOR RELIEF**

Based on the foregoing submissions, the Representatives for the Rural Community of Candela respectfully request that this Honorable Court declare that the Federation of Clonalia violated Articles 5, 7, 8, 13, 21, 22, and 26 in relation to Articles 1(1) and 2 of the IACHR and Article 11 of the Protocol of San Salvador. The Representatives for the Rural Community of Candela therefore respectfully petition the Court to order that the Federation of Clonalia:

1. Release the detained members of the Rural Community of Candela currently in custody.
2. Cease any deportation proceedings against the members of the Rural Community of Candela currently in the territory of Clonalia.
3. Pay fair compensation for pecuniary and non-pecuniary damages to the Rural Community of Candela.
4. Offer part of its territory for the environmental refugees that were or will be forced to relocate based on the environmental crisis in Marsili.
5. Issue a formal apology for its role in the environmental crisis in Marsili.
6. Take the necessary steps to ensure the free and full exercise of human rights in its treatment of environmental refugees and guarantee non-repetition.
7. Modify its internal legislation to address the issue of climate change.
8. Pay the costs and expenses incurred by the Representatives of the Rural Community of Candela to litigate this case.