

Team Number: 5

.....
RURAL COMMUNITY OF CANDELA (PETITIONER)

v.

THE FEDERATION OF CLONALIA (RESPONDENT)

MEMORIAL FOR THE STATE
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I. STATEMENT OF FACTS

In October 2013, a group of 23 families traveled by boat to the Federation of Clonalia and entered without proper immigration records.¹ Unknown to the government of Clonalia, the group of alien families, who were from Candela, a rural community of the nearby island nation of Marsili, lived and worked in Clonalia without proper immigration records for about six months.² Represented by the nongovernmental organization Climate Change Action (CCA), the alien families petitioned for recognition of the status of “environmental refugees” on January 13, 2014.³

The Republic of Marsili is located in the Pacific Ocean about 280 miles from Clonalia and consists of 16 natural atolls and one main island.⁴ Because of its unique topography, Marsili has the world’s lowest elevation, with its maximum distance above sea level a mere 2.3 meters.⁵ The main island of Theodore is home to 83% of the country’s population—or 263,300 people—and is Marsili’s economic epicenter.⁶ Despite industries of tourism, fishing, and farming, Marsili is a country of extreme poverty, with 70% of the population living on less than two dollars per day.⁷ Marsili was a part of the Federation of Clonalia until 1967, when it overwhelmingly declared independence through popular referendum.⁸

The Federation of Clonalia is composed of 34 states, six of which are home to most of the nation’s economic activity.⁹ With an economy centered around industry and coal-energy production, Clonalia has historically emitted 21% of global greenhouse gases (GHGs) and

¹ R. at ¶ 47.

² R. at ¶¶ 47-48; R. Clarifications at ¶ 24.

³ R. at ¶ 48; R. Clarifications at ¶ 13.

⁴ R. at ¶ 1.

⁵ R. at ¶ 5.

⁶ R. at ¶ 4.

⁷ R. at ¶ 7.

⁸ R. at ¶ 2; R. Clarifications at ¶ 61.

⁹ See R. at ¶ 34.

currently emits about 18%.¹⁰ About three-fourths of Marsili’s GHGs come from industry and energy production, with 88% of GHGs overall coming from the six states that contain most private industry. Of relevance to the case before the Court, Clonalia has a Congress, a president, a Ministry of the Environment of Clonalia (MEC), a Foreign Ministry (FM), and a Supreme Court.¹¹ The FM is an administrative agency with an internal judicial mechanism that operates like any other lower court proceeding—it contains its own appellate framework and petitions are ultimately reviewable by the Clonalia Supreme Court.¹²

In 1988, the United Nations created a group called Global Climate Change Group (G2C2) to provide scientific assessments to the international community to inform national public policies and legal strategies to mitigate the effects of global climate change.¹³ In 1992, G2C2 concluded that there had been an increase in global average temperatures and that it was likely that anthropogenic activities that created GHGs were the main source of climate change.¹⁴ The same report warned of gradual consequences including risks of rising sea levels and loss of biodiversity.¹⁵ Because of the 1992 G2C2 report, Clonalia and Marsili joined 98% of the international community in signing the United Nations Framework Convention on Climate Change (UNFCCC) in 1995.¹⁶ In 1997 the international community drafted the Kyoto Protocol, which demanded that only certain “historical emitters” assume specific reduction commitments.¹⁷ Clonalia decided not to ratify the Protocol because it did not take require

¹⁰ R. at ¶ 21.

¹¹ R. at ¶¶ 48, 45, 35, 52, 38.

¹² R. Clarifications at ¶ 10.

¹³ R. at ¶ 10.

¹⁴ R. at ¶ 11.

¹⁵ R. at ¶ 12.

¹⁶ R. at ¶ 13.

¹⁷ R. at ¶¶ 14-15.

commitments from *all* countries, but nonetheless committed to undertake domestic measures to reduce emissions.¹⁸

In 2014, the G2C2, which had previously found that anthropogenic GHGs were “likely” the main cause of global climate change, concluded that “scientific evidence has shown, with a certainty above 95%, that . . . climate change is happening, and its main cause is human activity, primarily the emission of greenhouse gases”¹⁹ The UN group further found that five countries produced 53% of all historical GHGs, 18% of which were produced by Clonalia.²⁰ The G2C2 also revised its estimated sea-level rise, which it made in 2007, from between .19 and .58 meters by the year 2100 to 1.59 meters by 2040.²¹

In light of the issues caused by GHGs, five Clonalia states joined the CCA in suing the MEC to compel it to regulate emissions pursuant to Clonalia law.²² The Supreme Court ultimately rejected the lawsuit in 2001 when it held that the question of regulation was not judicial but political in nature and acknowledged the MEC’s position that there was a lack of empirical evidence regarding climate change and therefore remedial action was merely discretionary.²³ The CCA filed a nullity action against the MEC’s decision in March 2012 and the Supreme Court ruled that the request was merely a reiteration of an already decided suit.²⁴

As a consequence of rising sea levels, the island of Theodore has lost over 78 square kilometers of territory and 16 kilometers of coastline—a loss of 27% and 38% respectively—since 1967.²⁵ The changes have also adversely impacted agriculture production, the economy at

¹⁸ R. at ¶ 15.

¹⁹ R. at ¶¶ 11, 16.

²⁰ R. at ¶ 21.

²¹ R. at ¶ 19.

²² R. at ¶ 36. Specifically, Article 56 of Law 34 of 1993 states that the main function of the MEC “is to regulate and control the emission of any atmospheric pollutant of any kind.”

²³ R. at 38.

²⁴ R. at 41.

²⁵ R. at ¶ 22.

large, and caused natural disasters.²⁶ In 2002, the people of Marsili elected President Nasheed Ospina, who in his inaugural speech said that his promise was to make countries emitting GHGs “pay and be made responsible for” the devastation suffered by Marsili. In 2014, the G2C2 estimated that Marsili will probably be fully submerged by 2025, which confirmed a 2012 finding of a commission of climate experts that Marsili’s disappearance was inevitable.²⁷ Seeking a legal solution, the CCA decided to represent 52 families of Candela—an area that has been affected particularly harshly—in an effort to solve the crisis.²⁸

Marsili has seen migration of around 4% of its total population per year since the mid 1990s.²⁹ As of 2010, approximately two-thirds of all migrants migrated to Clonalia.³⁰ In an effort to control future migration, Clonalia imposed a visa requirement to all Marsili nationals.³¹ In March 2012, Marsili’s president-elect Luava Ginberg began devising a strategy for a systematic migration of the islands’ inhabitants.³²

It is against this backdrop that the 23 Candela alien families sought environmental refugee status in January 2014. CCA’s refugee recognition request was based on the first article of Law 715 of 1989 in Clonalia’s Migration and Asylum Law, which states that its purpose is “to establish the system of protection of refugees and asylum seekers, 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.”³³ The fourth article of Law 715 defines the Migration and Asylum Law’s applicability as “to any

²⁶ R. at ¶¶ 23-26.

²⁷ R. at ¶ 30, 32.

²⁸ R. at ¶ 46.

²⁹ R. at ¶ 24-25.

³⁰ R. Clarifications at ¶ 11.

³¹ R. at ¶ 25.

³² R. at ¶ 32.

³³ R. at ¶¶ 48-49.

foreign person in refugee status or seeking asylum in the territory of . . . Clonalia.”³⁴ After signing the Convention on the Status of Refugees and its Additional Protocol in 1955 and 1967, respectively, it incorporated their contents into domestic legislation through the Immigration Law of 2009.³⁵

On February 28, 2014, the FM decided that the request was invalid on the basis that environmental issues could not possibly and should not be mixed with migration issues, and consequently began administrative expulsion procedures.³⁶ A week later, the FM ordered detention of the alien families, about half of which were arrested and confined in a temporary deportation facility.³⁷ The CCA appealed through the FM’s judicial process—which ends with the Clonalia Supreme Court—until all remedies were exhausted; the decision was affirmed.³⁸ In an effort to respond to the increasing prevalence of issues posed by migration like the 23 Candela families, the President of Clonalia convened a National Expert Committee (NEC) to conduct a study for the FM. The FM found that the NEC’s conclusions supported its decision and would be made public in due course, but that the Committee’s conclusions could jeopardize national security, territorial integrity, civilian lives, and the social and diplomatic security of Clonalia.³⁹ The FM’s decision to classify the NEC study as secret was upheld throughout the FM judicial process.⁴⁰

The CCA filed a petition to the Inter-American Commission on Human Rights (“Commission”) on behalf of the members of the “Rurals [sic] Community of Candela” (collectively “Petitioners”), arguing that Clonalia violated both the rights of the 23 alien families

³⁴ R. at ¶ 51

³⁵ R. at ¶ 50.

³⁶ R. at ¶ 52.

³⁷ R. at ¶ 53; R. Clarifications at ¶ 8. The other half fled or took refuge at the Marsili embassy.

³⁸ R. at ¶ 54; R. Clarification ¶¶ 10, 17.

³⁹ R. at ¶¶ 58-59.

⁴⁰ R. at ¶ 59.

who sought refugee status and the broader community affected by rising sea levels.⁴¹

Specifically, Petitioners argued that the 23 alien families were denied judicial guarantees defined in Articles 8, 22(7), 22(8), and 25 of the American Convention on Human Rights (“ACHR”) and the policies of the International Refugee Law defined by the United Nations Universal System of Human Rights.⁴² As for the broader rural community, Petitioner argued that Clonalia violated Articles 4, 5, 21, 22, and 26 of the American Convention on Human Rights in addition to Article 11 of the Protocol of San Salvador (“Protocol”) for failing to adequately curb GHG emissions.⁴³ Petitioner further argued that non-delivery of the NEC proposal violates Article 13 of the American Convention on Human Rights.⁴⁴ Clonalia responded arguing first that the Inter-American System of Human Rights does not create an obligation to grant refugee status and that even if it did have environmental obligations they extended only to its own citizens.⁴⁵ Second, Clonalia argued that this Court lacks jurisdiction *ratione materiae* to hear the case with respect to Petitioner’s claimed rights to a healthy environment and refugee status, and therefore the action is not judiciable.⁴⁶ Nonetheless, the Commission rejected the preliminary objection and declared the case admissible for purposes of examining the alleged violations of Articles 4, 5, 8, 13, 21, 22, 25, and 26 of the ACHR and Article 11 of the Protocol, and requested that this Court demand Clonalia to modify national laws, compensate the members of Candela, and offer part of its sovereign territory for environmental refugees.⁴⁷

⁴¹ R. at ¶ 61.

⁴² R. at ¶ 62.

⁴³ R. at ¶ 63.

⁴⁴ R. at ¶ 62.

⁴⁵ R. at ¶ 67.

⁴⁶ R. at ¶ 68.

⁴⁷ R. at ¶ 66.

II. JURISDICTION OF THE COURT

This Court has jurisdiction to hear this case. The Federation of Clonalia ratified the ACHR on August 1, 1978 and accepted the contentious jurisdiction of this Honorable Court on September 14, 1985.⁴⁸

III. ARGUMENT

The events that have befallen the people of Marsili are truly tragic. Through great tragedy can and should emerge great change. However, this Court is neither empowered nor institutionally capable of proclaiming such change. Even if it were, given the ongoing nature of the issues presented by climate change across the globe, its efficacy would be short-lived. As noted by the Clonalia Supreme Court, lasting change must come from capable international *political* processes, not simply creative judicial interpretation.

A. There is no Available Remedy under Article 11 of the Protocol.

The Protocol calls upon its Parties to “undertake necessary measures,” both domestically and through “international *cooperation*” to protect the rights recognized in the Protocol itself.⁴⁹ Among the rights proclaimed in the Protocol is the right to a healthy environment, which entails “protection, preservation, and improvement” thereof by Parties.⁵⁰ However, this Court cannot entertain a legal claim unless there exists some specific duty that the Petitioner can invoke. The Protocol did create duties actionable through individual petitions, but specifically did so only for select provisions.⁵¹ In practice, it is well settled that the Protocol did not create an individual right of action under Article 11, even according to the literature of the Organization of American

⁴⁸ R. at ¶ 71.

⁴⁹ See Protocol of San Salvador, art. 1 (emphasis added).

⁵⁰ See Protocol of San Salvador, art. 11.

⁵¹ See Protocol of San Salvador, art. 19(6); *compare id. with* Protocol of San Salvador art. 8(a), 13 (creating jurisdiction over “individual petitions” in the areas of trade union involvement and education).

States.⁵² Therefore, pursuant to the plain text and settled practice of the Protocol, any redress to Petitioner must come in the form articulated by the Clonalia Supreme Court: international political action.⁵³

B. Petitioners have not Exhausted Domestic Remedies.

The claims against the Federation of Clonalia pertaining to those Petitioners claiming refugee status should be dismissed because domestic remedies have not been exhausted. For a claim to be properly before the court, Article 46(1)(a) compels that remedies under domestic law be “pursued and exhausted in accordance with generally recognized principles of international law.”⁵⁴ This Court and the Commission have stated consistently that this rule is presumptive and intended to safeguard the right of the sovereign to resolve a conflict within its domestic framework before the issue is brought before an international tribunal.⁵⁵ This Article has been construed broadly to encompass any state actions that are capable of remedying the alleged harm, such as administrative orders and judicial decisions.⁵⁶ In the instant case, Petitioners failed to bring their claims before Clonalian courts following the FM’s decision, and subsequent affirmation on appeal, against them, and instead brought the case directly before the Commission and this Court.⁵⁷

In three limited circumstances, Article 46(2) permits a Petitioner who fails to exhaust domestic remedies in accordance with Article 46(1)(a) to plead his or her case. Article 46(2)(a) applies when the state’s domestic legislation “does not afford due process of law for the

⁵² See ORGANIZATION OF AMERICAN STATES, PETITION AND CASE SYSTEM: INFORMATIONAL BROCHURE (2010).

⁵³ See R. at ¶ 38.

⁵⁴ Organization of American States, American Convention on Human Rights, art. 46(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123. [Hereinafter American Convention on Human Rights].

⁵⁵ *Community of San Mateo de Huanchor v. Peru*, Case 504/03, Report No. 69/04, Inter-Am. Comm’n. H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 487, ¶ 57 (2004).

⁵⁶ *Id.*

⁵⁷ R. at ¶¶ 52, 54, and 60.

protection of the right or rights that have allegedly been violated.”⁵⁸ Article 46(2)(b) applies when the party has been denied access to remedies under domestic law or has been prevented from exhausting them.⁵⁹ Article 46(2)(c) applies when “there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.”⁶⁰ The State exerting non-exhaustion of domestic remedies must show that such remedies exist and have not been exhausted, after which the complainant bears the burden of proof that one or more of the exceptions are applicable.⁶¹

Article 46(2)(a) does not apply because the record demonstrates the existence of due process protections afforded by Clonalia’s justice system. Petitioners have been legally represented by the international NGO Climate Change Action (CCA) since their illegal entrance to Clonalia. The FM rendered a decision against Petitioners and reviewed this decision on appeal pursuant to Clonalian law, when the decision was contested. The bypassed court system should have been the next step in the process. The State’s law provides appropriate mechanisms and remedies to protect the rights allegedly violated. Furthermore, Article 46(2)(b) does not apply in the current context. The Commission has stated that this exception applies when domestic law provides remedies but the complainant is denied access to, or otherwise barred from, obtaining them; when remedies are available as a matter of law, but not as a matter of fact.⁶² Because Petitioners did not even attempt to bring their complaint before Clonalia’s courts, it cannot be said that Petitioners were effectively barred from pursuing this domestic remedy. Furthermore, this court has declared strongly that “[i]t must not be rashly presumed that a State Party to the

⁵⁸ American Convention on Human Rights, art. 46(2)(a).

⁵⁹ *Id.* at art. 46(2)(b).

⁶⁰ *Id.* at art. 46(2)(c).

⁶¹ Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion No. OC-11/90 of August 10, 1990, ¶ 41.

⁶² *Id.* at ¶ 17.

Convention has failed to comply with its obligation to provide effective domestic remedies.”⁶³

The final exception—an unwarranted delay in rendering a final judgment—clearly does not apply, once again because Petitioners did not bring their case before a domestic judicial court in the first instance. Furthermore, the promptness with which the FM rendered both a decision and an appeal is evidence that Clonalia’s courts, had they been used as required, would have rendered judgment in a timely fashion.

Because Petitioners failed to satisfy Article 46(1)(a) by exhausting the relevant domestic remedies, and because Petitioners do not qualify for any of the exemptions to this requirement under Article 46(2), the Federation of Clonalia respectfully asks that this Honorable Court dismiss the complaints against it pertaining to those Petitioners claiming refugee status.

C. Petitioners’ Complaint was not Timely Filed.

The environmental complaints made on behalf of those Petitioners still living in Candela should be dismissed because these complaints were not filed in timely fashion. Article 46(1)(b) requires that every petition be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”⁶⁴ The State respectfully maintains that the relevant date to analyze the deadline for lodging is 2011. In 2011 the Supreme Court of Clonalia rejected a suit, partially organized by the CCA, alleging a legal violation by the Ministry of Environment for failing to regulate atmospheric pollutants.⁶⁵ This judgment by the court rejected an attempt to force Clonalia to regulate and reduce its atmospheric pollutants. CCA’s latest complaint to this Court, which alleges the same environmental violations and requests similar relief, was filed on September 10, 2014, well after the six months had elapsed.

⁶³ *Godínez Cruz Case*, Judgment of January 20, 1989, Inter.-Am. Ct. H.R. (ser. C) No. 5 (1989) at ¶ 61.

⁶⁴ American Convention on Human Rights, art. 46(1)(b).

⁶⁵ Article 56 of Law 34 (1993) requires the Ministry of Environment to “regulate and control the emission of any atmospheric pollutant of any kind, that in the opinion of the entity contributes to air pollution up to a level that could put health or public welfare at risk.”

In March 2012 the CCA filed a nullity action against the Ministry of Environment for its decision not to regulate the emission of greenhouse gases. The claim was rejected in March 2014 without addressing the merits and the claim was ruled to have been finally decided in the earlier legal dispute. It is unclear from the record whether this decision falls inside or outside the six-month limit for pleading. This Court has the discretion to select a date of final judgment for the purposes of analyzing Article 46(1)(b).⁶⁶ Since the March 2012 action was dismissed as outside the competence of the administrative system because of the prior final judgment, the Federation of Clonalia respectfully requests that this Court acknowledge the 2011 Supreme Court decision. Petitioners' environmental complaints should thus be dismissed for failure to file in timely fashion as required by Article 46(1)(b).

Should this court decide that Petitioners have exhausted their domestic remedies pertaining to the refugee and asylum complaints, these complaints should still be dismissed for failure to comply with Article 46(1)(b). The FM affirmed its decision to refuse asylum on March 8, 2010. More than six months elapsed between this decision and the filing of the pleading with the Commission. As such, Petitioners' relevant complaints should be dismissed for failure to file in a timely manner.

D. The Court Cannot Require Clonalia to Recognize the Status of Individuals as Refugees Under the ACHR, let Alone Require the Allocation of Territory.

1. This Court's jurisdiction is limited to the ACHR.

This Court has wide latitude to interpret domestic and international norms, but can do so only "in light of the provisions of the Convention."⁶⁷ As a result, Petitioners seeking redress

⁶⁶ See generally *Vladimir Herzog et. al*, Petition for Admissibility, Rep. No. 80/12, Inter-Am. Comm'n. H.R., Petition 859-09, <http://www.cidh.org> (2012).

⁶⁷ See *Las Palmeras v. Columbia*, Judgment on Preliminary Objections, Inter-Am Ct. H.R. (ser. C) No. 67, ¶ 32-33 (Feb. 4, 2000) ("The result . . . will always be an opinion in which the Court will say whether or not that norm or that fact is compatible with the American Convention").

“clearly” must “refer specifically to rights protected by the Convention.”⁶⁸ Indeed, as the President of this Court has articulated, “the jurisdiction *ratione materiae* of the [Court] is limited to . . . the [ACHR].”⁶⁹ This makes this Court somewhat unique from its European and African counterparts, which have reached into a wide array of external sources of international law for their opinions.⁷⁰ Moreover, because the foundation of this limited universe of legally binding material is in the ACHR itself, limited jurisdiction *ratione materiae* is “the way it has to be.”⁷¹ Therefore, the redress Petitioner demands must stem from and consist of rights recognized by the ACHR itself.

2. This Court cannot act as a court of “fourth instance.”

This Court is further limited by the “fourth instance formula,” which stems from Article 47(b) and holds that substantive decisions of impartial and independent domestic courts are not subject to scrutiny under the Commission.⁷² Thus, if a domestic court operates within its competence and with “due judicial guarantees,” this Court cannot review that court unless a violation of the Convention is involved.⁷³ If a petition merely alleges that the domestic decision is “wrong or unjust in itself, it must be dismissed under [the fourth instance] formula.”⁷⁴

3. There is no independent right to refugee status under the ACHR.

⁶⁸ *Id.* at ¶ 34.

⁶⁹ LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY 3.05 (Rosalind Greenstein, trans., Oxford University Press, ed.) (2011).

⁷⁰ *See id.* at 63, 67.

⁷¹ *See id.* at 68 (citing ACHR Article 62(3), which confines “cases” to those “concerning the interpretation of” the ACHR).

⁷² *See Santiago Marzióni v. Argentina*, Inter-Am Ct. H.R. (ser. L) No. 39/96, ¶ 50-51 (Oct. 15, 1996).

⁷³ *See id.*

⁷⁴ *Id.* at ¶ 51.

The ACHR contains no provision *guaranteeing* asylum or the recognition of refugee status by any particular state.⁷⁵ Rather, it recognizes due process rights upon the application of status under domestic law and international conventions and contains restrictions on deportation.⁷⁶ The most this Court could possibly afford a Petitioner seeking a grant of asylum or recognition of refugee status is a mandate of *procedural* safeguards.

E. Clonalia did not Violate the Rights of Petitioners who Applied for Refugee Status.

1. Clonalia did not violate Petitioners' right to a fair trial under Article 8, nor the right to judicial protection under Article 25.

a. Clonalia was not obligated to provide Article 8(2) criminal-procedural rights to Petitioners.

This Court has recently found that “in certain [deportation] cases” the deporting country is required to provide rights that are “substantially the same as those established in paragraph 2 of Article 8.”⁷⁷ However, this case is not one of them for three reasons. First, the recent ruling in *Pacheco Tineo* concerned “an expression of the punitive powers of the state,” specifically “punitive administrative or judicial decisions” rather than non-punitive administrative powers.⁷⁸ The deportation proceeding concerned a charge of violation of the penal law of Bolivia when the Tineo family was accused of “systematic violation” of the laws, not “respecting the laws,” and “illegal action,” and was correspondingly detained in punitive police cells rather than judicial confinement.⁷⁹ In comparison, the Marsili families were placed in a temporary immigration detention center pending appeal of their case. Second, by the plain text of the ACHR, certain protections are reserved specifically persons “accused as a criminal offense,” including “a

⁷⁵ Cf. *Pacheco Tineo v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶ 127-28 (Nov. 25, 2013) (noting that the Court will analyze the minimum guarantees of due process required for expulsion).

⁷⁶ See Art. 22.

⁷⁷ See *Vélez Loor v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Cr. H.R. (ser. C) No. 218, ¶ 92-94 (Nov. 23, 2010); see also *Pacheco Tineo*, *supra* note 75, at ¶ 132.

⁷⁸ See *id.*

⁷⁹ See *id.* at ¶ 90.

presumption of innocence.”⁸⁰ Such enumerated powers for alleged criminals are incongruent with the administrative process of refugee status recognition. Third, even if this Court did decide that *all* potential deportees are entitled to *criminal* procedure, it should reconsider for the sake of its legitimacy in light of limited *ratione materie* under Article 62(3).⁸¹

b. Clonalia provided full procedural guarantees to Petitioners.

The provisions of Article 8(1) and Article 25 work in tandem to confer procedural guarantees to individuals challenging governmental action.⁸² This Court has promoted a “blending” and “interrelation, at the ontological and hermeneutical level,” between the two Articles.⁸³ Combined, the Articles create requisite minimum conditions on the validity of certain governmental action. Specifically, for the determination of their rights, the Petitioners were entitled to (1) a hearing with due guarantees by a (2) competent, independent, and impartial tribunal previously established by law and (3) effective recourse to a competent tribunal for protection of fundamental rights—whether from domestic laws or the ACHR.⁸⁴ Clonalia provided the 23 Candela families with above-the-minimum procedural guarantees, even including the rights under 8(2).

Petitioners (1) received a hearing. For the purpose of Article 8(1), a “hearing” and its due process checks is to “determin[e]” the rights of the Petitioner. The term “hearing” should not be read literally to mean an audible proceeding in every context, but rather calls upon Members to ensure fair judicial consideration of legal contentions.⁸⁵ In the context of expulsion, this means

⁸⁰ Art. 8(2).

⁸¹ Although in *Pacheco Tineo* this Court analyzed the jurisprudence of its European and African counterparts, who have recognized wider rights, those are tribunals without similar textual constraints to *ratione materie*.

⁸² See BURGORGUE-LARSEN, *supra* note 69, at 25.06.

⁸³ See *Almonacid Arellano v. Chile*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 24 (Sep. 26, 2006) (Separate Opinion of Trindade, J.).

⁸⁴ See Art. 8(1), 25.

⁸⁵ This is demonstrated by the procedures of many member states who conduct certain proceedings through only written briefs.

that member states may not summarily decide against recognition of refugee status without giving Petitioners a chance to present an argument.⁸⁶ The Record shows that the FM did give consideration to Petitioner's application, even if it found that the application had no basis in law.⁸⁷ Additionally, Petitioner was able to—and did—appeal the case through the FM's judicial process. Although the consideration did not proceed to the merits, one could hardly say that each time a complaint is dismissed for failure to state a claim that person's human rights have been violated.

The FM was (2) a competent, independent, impartial tribunal to hear the Petitioner's claims. Important to this concept, tribunal procedures must have been previously established by law rather than created *ex post facto*.⁸⁸ However, this is not to say that all claims must be heard by a politically unaccountable judiciary of general jurisdiction. Most of this Court's jurisprudence about judicial competence has concerned military tribunals.⁸⁹ In one leading case, this Court held that “[i]n a democratic state . . . the criminal military jurisdiction is to be restricted . . . to protect special juridical interests linked to the duties assigned to the armed forces”⁹⁰ Indeed, because each State “has the right and duty to guarantee its own safety” along with other policy goals, it may reserve certain types of cases for different types of courts.⁹¹ The FM not only had previously established procedures, but it was ultimately accountable to the Clonalia Supreme Court. Moreover, given the grave implications for Clonalia's national security

⁸⁶ See *Smith v. United States*, Decision of the Commission as to the Merits of Case, Inter-Am. Comm. H.R. (ser. L) No. 10.675, ¶ 163 (Mar. 14, 1997).

⁸⁷ See R. at ¶ 52. The FM must have ascertained at least that the families sought recognition as “environmental refugees” if it could articulate its reasoning—that “environmental issues cannot and should not be mixed with migration issues. See *id.*

⁸⁸ See *Castillo Petruzzi v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 52, ¶ 89 (May 30, 1999).

⁸⁹ See BURGORGUE-LARSEN, *supra* note 69, at 25.09.

⁹⁰ See *Cantoral Benavides v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 113 (Aug. 18, 2000).

⁹¹ See *Castillo Petruzzi*, *supra* note 88, at ¶ 89.

more fully analyzed *infra*, the FM could rightly restrict the reasoning for its decision. This gives Petitioners and the state an optimal balance between institutional expertise, assurance of domestic security, and politically removed oversight. The Record not only contains no indication that either the FM or the Supreme Court was biased, but actually reveals expert support for the notion that commingling of environmental and refugee law was not possible or desirable.

Petitioners' right to (3) recourse for any violation of their fundamental rights is not applicable to this case for three reasons. First, as noted *infra*, Clonalia did not violate any substantive humanitarian rights under the ACHR. Second, claims to violation of domestic rights would require this Court to act outside its *ratione materie* as a court of fourth instance. Third, under the domestic law of Clonalia only those "in refugee status or seeking asylum" are entitled to the Law of 715, and Petitioners did not qualify as either.

c. Even if Petitioners were entitled to Article 8(2) criminal-procedural rights, Clonalia did not violate them.

In *Pacheco Tineo*, this Court found that in certain circumstances "the expulsion or deportation of an alien" must be accompanied by certain procedural safeguards reserved for criminal defendants.⁹² Specifically, each person's circumstances must be assessed without discrimination, he or she must be informed of the reasons for expulsion, his or her rights, the possibility of legal assistance, and the right to "submit the case to review before the competent authority."⁹³ There is no indication that any individual was discriminated against. Even though Clonalia has a domestic policy requiring visas for Marsili citizens, none of the aliens was denied the opportunity on the basis of his or her citizenship. Given the CCA's representation of Petitioners, there is no reason to believe that they were not informed of any of the circumstances

⁹² See *Pacheco Tineo*, *supra* note 75, at ¶ 133.

⁹³ *Id.*

of their case. The families also maintained access—and continue to have access to—lawyers, free of charge.⁹⁴ Finally, Petitioners were given the opportunity to be heard and appeal the adverse judgment.

2. Clonalia did not violate the families’ rights regarding refugee status or deportation.

Petitioner’s remaining claims on behalf of Petitioners regard the freedom of movement and residence under Article 22. Specifically, Petitioner argues under 22(7) that persons are entitled “to seek and be granted asylum . . . [if they are] being pursued for political offenses or related common crimes.” Petitioner also argues under the 27(8) “non-refoulement principle” that an alien may not be deported if his right to life or personal freedom is in danger because of his racial, national, religious, social, or political identity. Simply, Petitioners fall outside the purview of Article 22.

a. Because Petitioners are not being pursued for political offenses, they are not entitled to asylum under Article 22(7).

As a judicial rather than a political body, This Court is bound to the terms of the ACHR.⁹⁵ Therefore, it is without serious question that Clonalia has not violated Article 22(7) because Petitioners are not “being pursued for political offenses or related common crimes,” a necessary condition to any increased right to asylum. Indeed, the Petitioner represents not only Petitioners but has also embarked on solving issues for the entire country of Marsili. These families are not being pursued for any crimes in Marsili; if anything, they would face crimes for irregular immigration in Clonalia.

Even if this explicit textual limitation is ignored, Petitioners are not entitled to asylum. Article 22(7) creates two sources “in accordance with” asylum must be granted: “legislation of

⁹⁴ R. Clarifications at ¶ 40.

⁹⁵ See III.C.1 of this brief, *supra*.

the state” and “international conventions.” This Court cannot rule on the domestic legislation as a “court of fourth instance,” but can assure certain minimum procedural safeguards. These arguments are addressed *supra*. The key sources of “international conventions” that underlie this provision are the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.⁹⁶ These instruments similarly require “persecution or the threat of persecution . . . based on race, religion, nationality, membership of a particular social group or political opinion.”⁹⁷ However, the Cartagena Declaration—which is not a binding agreement between states—took an expanded view of refugees, including persons fleeing because of “generalized violence,” “internal conflicts,” or other circumstances “which have seriously disturbed public order.”⁹⁸ The commonality between these international instruments and the ACHR lies in some level of systematic chaos that affects a particular group. Indeed, according to this Court in 2000, “asylum presupposes that the person seeking protection is persecuted in his or her state of origin, and is not supported by it in applying for asylum.”⁹⁹ So, because all persons in Marsili are similarly affected by rising sea levels and are working collectively to solve the problem, asylum status cannot be the solution. In short, even ignoring the ACHR’s express textual limitations, Petitioners are not entitled to asylum.

2. Because Petitioners would not be in danger because of their identity, they are not entitled to protection from otherwise legal deportation under Article 22(8).

Deportation of Petitioners would not, *because of*, their racial, national, religious, social, or political identities, place their lives or freedoms into danger. This Court has previously used

⁹⁶ See Rights and Guarantees of Children in the Context of Migration and/or in need of International Protection (American Convention on Human Rights), Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A), ¶ 74 (Aug. 19, 2014).

⁹⁷ *Id.* at ¶ 75.

⁹⁸ See *id.* at ¶ 79

⁹⁹ Recommendation on Asylum and International Crimes (Inter-American Commission on Human Rights), *Annual Report of the Inter-American Commission on Human Rights 2000* (ser. L) (Oct. 20, 2000).

“[a] literal interpretation of the wording of the article” to ascertain its meaning and must continue to do so.¹⁰⁰ Such a reading yields the predictable result that deporting certain people to their country of origin should not be categorically prohibited because of the destination’s relatively hazardous conditions.

This makes sense in practice for two reasons. First, there could be no practical way for all 317,000 Marsili inhabitants to be granted asylum or refugee status in Clonalia, which will inevitably occur if current sea-level trajectory is correct. Second, the 1951 Convention specifically enumerated an exception to refugee status for “a refugee whom there are reasonable grounds for regarding as a danger to the security of the country. . . .”¹⁰¹ The FM determined that recognizing refugee status of Petitioners threatened national security, territorial integrity, civilian lives, and the social and diplomatic security. Granting entry to 317,000 people—most of whom voted for a president who vowed to make countries like Clonalia “pay”—would exponentially increase the risk.

F. Clonalia did not Violate the Rights of the Rural Community of Candela.

1. Clonalia did not violate Petitioners’ rights under Article 4.

The State is fully compliant with Article 4, which provides that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”¹⁰² The rest of the provisions within the Article deal explicitly with capital punishment, and are clearly inapplicable to the current case.¹⁰³ These provisions, however, make clear the intended scope of Article 4: protecting all persons from arbitrary capital punishment by the state. The first sentence of

¹⁰⁰ See Advisory Opinion OC-21/14, *supra* note 96, at ¶ 215. To do otherwise would be to exceed its *ratione materie*.

¹⁰¹ Convention Relating to the Status of Refugees art. 33 ¶ 2, Apr. 22, 1954, 189 U.N.T.S. 150.

¹⁰² American Convention on Human Rights, art. 4(1).

¹⁰³ *Id.*, art. 4(2)-(6).

Article 4(1) states that “Every person has the right to have his life respected.”¹⁰⁴ Read alone, this right seems overly broad and vague to the point of being judicially ineffectual. However, when qualified by the final sentence, “No one shall be arbitrarily deprived of his life,” the meaning of the provision is clear: capital punishment of any kind may not be arbitrarily imposed.¹⁰⁵ Nothing in the record indicates that any Petitioners have been put to death, sentenced to death, or that the State’s judicial system has placed their lives in jeopardy. Therefore, the State has not violated Petitioners’ rights under Article 4.

2. Clonalia did not violate Petitioners’ rights under Article 5.

Article 5 establishes the right to humane treatment of all persons.¹⁰⁶ Clonalia has not violated Petitioners’ rights under this Article at any point during the events before this court, and Petitioners’ assertion of alleged environmental injury under the article is misguided. The text of Article 5 displays a purpose of setting basic standards for persons subject to the criminal justice system of a state. The provisions concern: torture and inhumane treatment of persons deprived of their liberty,¹⁰⁷ punishment extending only to the criminal,¹⁰⁸ special conditions of confinement for the accused adults and minors,¹⁰⁹ and the purpose of punishments consisting of the deprivation of liberty.¹¹⁰ This court has consistently reserved for Article 5 analysis cases involving the physical detention and treatment of persons in a police or military context.¹¹¹ The only provision within Article 5 that could theoretically encompass a claim of environmental harm is Article 5(1), which states that “[e]very person has the right to have his physical, mental,

¹⁰⁴ *Id.*, art. 4(1).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*, art. 5.

¹⁰⁷ *Id.*, art. 5(2).

¹⁰⁸ *Id.*, art. 5(3).

¹⁰⁹ *Id.*, art. 5(4), 5(5).

¹¹⁰ *Id.*, art. 5(6).

¹¹¹ See *Bámaca Velásquez Case*, Judgment of November 25, 2000, Inter-Am Ct. H.R. (Ser. C) No. 70 (2000) (the torture and disappearance of an accused guerilla fighter in military custody); *Moiwana Village V. Suriname*, Judgment of June 15, 2005, Inter-Am Ct. H.R., (Ser. C) No. 124 (2005) (massacre of villagers by the military).

and moral integrity respected.”¹¹² However, application to this case of this provision would run contrary to the clearly intended scope of Article 5, and the court should decline to adopt such an interpretation. Alternatively, the State respectfully submits that if this Honorable Court wishes to evaluate the interpretation of the article, rendering an advisory opinion under Article 64 would be a more appropriate context than during a contentious proceeding such as this.¹¹³

3. Clonalia did not violate Petitioners’ rights under Article 13.

Article 13 of the ACHR establishes the right to “seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”¹¹⁴ The State did not violate Petitioners’ rights under Article 13 by denying release of the portion of the National Expert Committee’s (NEC) proposal pertaining to environmental degradation. The Article clearly includes a limitation on this freedom through “subsequent imposition of liability, which shall be expressly established by law.”¹¹⁵ Justifications for limitations by the State include “respect for the rights or reputations of others,”¹¹⁶ and “the protection of national security, public order, or public health or morals.”¹¹⁷ The decision of the administrative judge to uphold the FM’s denial of the report’s release should be respected. The report’s animating question pertained to the relationship between the environment and migration as it relates to asylum. The environmental aspect cannot be separated from the refugee and asylum issues, which were properly deemed a security risk by the FM. Furthermore, on its own the environmental portion of the NEC proposal may be classified under Article 13(2). This Court has set forth criteria that must be satisfied for such a limitation

¹¹² American Convention on Human Rights, art. 5(1).

¹¹³ *Id.*, art. 64.

¹¹⁴ *Id.*, art. 13(1).

¹¹⁵ *Id.*, art. 13(2).

¹¹⁶ *Id.*, art. 13(2)(a).

¹¹⁷ *Id.*, art. 13(2)(b).

to be justified: (1) any legal restrictions must have a legitimate aim; (2) the restrictions must satisfy a compelling governmental interest, and (3) the restriction must be proportional to the legitimate ends that justified its adoption.¹¹⁸ Here, restriction has the legitimate aims of preserving national security and the economic rights of Clonaliens to be energy independent, both compelling governmental interests. The restriction itself is minimal, a simple delay in the publication of the report, and is therefore proportional. Since all criteria are met, the restriction is justified under Art 13.

4. Clonalia did not violate Petitioners' right to property under Article 21.

The Federation of Clonalia has not violated Petitioners' rights Article 21 because the State cannot be ascribed responsibility for the gradual submergence of Petitioners' lands due to climate change. Article 21 establishes the right of everyone "to the use and enjoyment of his property." While the State recognizes the situation in Marsili as tragic, this Honorable Court has never declared a breach to the right to property on the grounds of environmental harm in the international context.¹¹⁹ Although a producer of greenhouse gases, the Federation of Clonalia is one state among many that do so, and ascribing sole responsibility for the environmental situation in Marsili would be tenuous and unjust. Furthermore, Article 29(b) of the Convention states that no provision may be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party."¹²⁰ The right of the State and its citizens to energy independence, economic growth and prosperity, and national security are all directly tied into the development of natural resources. This principle is made more germane by the discovery of vast oil reserves in the State's exclusive economic exploitation zone. Curtailing

¹¹⁸ *Claude Reyes et al v. Chile*, Merits, Reparations and Costs, Inter-Am.Ct.H.R. (ser. C) No. 151 (Sept. 19, 2006), ¶ A5.

¹¹⁹ Lucas Lixinski, *Treaty Interpretation by the Inter-American Court of Human Rights: Expansion at the Service of the Unity of International Law*, 21 vol. 3 Eur. J. Int. Law 585, 596, (2010).

¹²⁰ American Convention on Human Rights, art. 29(b).

development and forcing enactment of domestic legislation is not only impermissible against a sovereign state, it would also seriously harm the body of citizens that the State is duty-bound to serve.

5. Clonalia did not violate Petitioners' rights under Article 26.

The State did not violate Article 26, which requires State Parties to “adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, 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.”¹²¹ Federal law establishes the Ministry of Environment, tasked under Article 56 of Law 34 with regulation and control of emissions of atmospheric pollutants that, in its opinion, contributes to air pollution and poses a health risk.¹²² The Ministry’s ruling on the effectiveness of various controls on greenhouse emissions is within its discretion, and should not be subject to review by citizens of another State, or this Honorable Court. The mechanisms for appropriate legislation and regulation, required by Article 26, are in place. The Charter of the Organization of American States, in addition to the provisions on economic, social, education, scientific, and cultural standards, contains numerous articles reiterating the sovereignty of each Member State. Every State retains the right to choose, without external interference, the political, economic, and social system best suited to it.¹²³ Each Member State must avoid “any intervention, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State . . . [including] its political, economic, and cultural elements.”¹²⁴ Under these general principles,

¹²¹ American Convention on Human Rights, art. 26.

¹²² Law 34 of 1994, Art. 56 (Act defining the organizational structure and functions of the Ministry of Environment).

¹²³ Organization of American States, *Charter of the Organization of American States*, Art. 3(e), 1948.

¹²⁴ *Id.*, art. 19.

foreign entities may not interfere in the political and economic processes of a Member State, Article 26 notwithstanding.

6. Clonalia did not violate Petitioners' rights under Article 11 of the Protocol.

Article 11 provides that “[e]veryone shall have the right to live in a healthy environment.”¹²⁵ It further provides that “State Parties shall promote the protection, preservation and improvement of the environment.”¹²⁶ Even if this Honorable Court finds that a lack of enforcement mechanism does not preclude adjudication of this issue, the State is in full compliance with Article 11. The Ministry of the Environment is a federal body dedicated to the purpose of preserving and improving the environment, and the NEC proposals on the subject are scheduled for release. Furthermore, it would be manifestly unjust to hold the State in violation of Article 11. All nations are responsible for the release of greenhouse gases into the environment, including all signatories of both the ACHR and the Protocol. Singling out the Federation of Clonalia would do little to promote lasting environmental justice. In addition, it is impossible to determine that the State is directly responsible for the environmental damage to Petitioners. If greenhouse gases are leading to climate change, which in turn leads to rising sea levels, which is then causing the harm to Marsili, then it is a problem caused by all nations and requires an international political solution beyond the unfair sanctioning of a single State. Therefore, the State did not violate any of Petitioners' rights under Article 11 of the Protocol.

IV. REQUEST FOR RELIEF

Wherefore Respondent requests from this Honorable Court dismissal of all Petitioners' claims both because they are procedural barred and substantively groundless.

¹²⁵ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Culture Rights, “The Protocol of San Salvador,” Inter-Am. Ct. H.R. 67, OEA/ser.L./V./II.82, doc. 6 rev. 1 (1992), art. 11.

¹²⁶ *Id.*