Case of Gonzalo Belano and 807 Other Wairan Persons

v. Republic of Arcadia

Memorial for the State

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i. Preliminary Objections

A. The Court should find Petitioner's claim inadmissible because Gonzalo Belano and the 807 other Wairan persons did not exhaust the effective and adequate domestic remedies

the other claims, remedies were not exhausted because the adequate and effective remedy for reparation of alleged administrative irregularities was not properly pursued by any of the 808 Wairans.

i. Domestic Remedies Were Not Exhausted by any of the Wairan Nationals in Relation to the Claim of a Violation of Nonrefoulement

a. The 591 Wairans that did not file a writ of amparo have not exhausted domestic remedies and their claims should be found inadmissible.

By not filing a writ of amparo, 591 Wairans failed to exhaust domestic remedies for the alleged violation of nonrefoulement and their claim should be found inadmissible. An amparo seeks to protect the fundamental rights of individuals;[39] thus, in the case of Wairans alleging that deportation would constitute an infringement of a right,[40] an amparo is an adequate legal avenue to remedy the claim of a violation of the right to nonrefoulement. For those that did submit the amparo, Arcadia suspended the deportation orders while the merits were being adjudicated.[41] If successful, the amparo would have reversed the deportation orders.[42] In addition, an examination of the merits was conducted.[43] Therefore, the amparo is also an effective tool for addressing the alleged infringement of a right.[44]

In Mariblanca Staff Wilson and Oscar E. Ceville R. v Panama, the Commission found that the petitioner who unlike the other petitioners did not file an amparo to challenge his alleged unjustified dismissal as magistrate in the Panamanian Supreme Court of Justice had not

[39] Questions, no. 10.
[40] Hypothetical, para. 20.
[41] Hypothetical, para. 28.
[42] Hypothetical, para. 28.
[43] Hypothetical, para. 28.
[44] *Velásquez-Rodríguez*, para. 68.

exhausted domestic remedies and his petition was deemed inadmissible.[45] Similarly, the 591 Wairans who did not submit a writ of amparo have not exhausted all adequate and effective domestic remedies and their claim should be found inadmissible.

b. The 217 Wairans who submitted a writ of amparo did not exhaust domestic remedies because an adequate and effective administrative remedy exists which was not pursued.

In *Mariblanca*, the Commission found that even the petitioners who did present an amparo had not exhausted domestic remedies, because another adequate and effective remedy had not been exhausted, namely an independent action for unconstitutionality.[46]

Arcadian officials clearly explained to detainees the second legal avenue: the administrative route.[47] The administrative proceeding would review an administrative decision, such as a deportation order, alleged to have been made unlawfully,[48] and would thus have been an adequate remedy for an alleged violation of the right to nonrefoulement. Since this mechanism, too, could result in the overturning of an administrative decision to deport,[49] it is an effective remedy.

The administrative remedy is not extraordinary because it is intended to review a decision, and not question a law.[50] Unlike motions for cassation, which are sometimes considered extraordinary,[51] a motion for reconsideration is not extraordinary because it consists of the review of a decision alleged to have been unlawful, within the same institution that issued the

[45] *Mariblanca Staff Wilson and Oscar E. Ceville R. v Panama*, IACHR, Petition 12.303, Report No. 89/03, para. 30-32, (22 October 2003).
[46] *Mariblanca*, para. 48.
[47] Questions, nos. 10, 50.
[48] Questions, no. 10.
[49] Questions, no. 10.
[50] *Case of Furlan and Family v Argentina* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 246, para. 27, (31 August 2012).
[51] *Velásquez-Rodríguez*, para. 69.

initial decision.[52] Since the 217 Wairains, and in fact none of the 808 Petitioners, pursued this adequate, effective and non-extraordinary remedy, their claim does not comply with the ACHR requirements regarding the exhaustion of domestic remedies, and therefore their claims should be found inadmissible.

ii. Domestic Remedies Were Not Exhausted in Relation to the Other Claims

The 808 Wairans did not pursue any domestic legal remedies for any of the other claims alleged, despite the existence of effective and adequate remedies. The amparo filed by 217 Wairans only addressed deportation and, even if successful, would not have addressed alleged violations subsequent to the deportation: the rights to life, a fair trial, judicial protection, personal liberty,

claims[57] since it did not address alleged violations of the right to personal liberty, the right to seek and be granted asylum, family unity, the best interests of the child nor equal protection.[58]

The "objective of [the] requirement [to exhaust domestic remedies] is to enable the national authorities to learn of the alleged violation of a protected right and... to have the opportunity to resolve it before it is heard by an international body[59]." However, since Arcadia never had the opportunity to address these claims domestically, they should be found inadmissible.

Additionally, in regards to the three claims the Clinic made, the action was not filed according to the requirements of Arcadian law.[60] In *Jorge Rafael Valdivia Ruiz v Peru*, the Commission found that where the petitioner had the opportunity but failed to answer nor contest a report from a domestic tribunal detailing the adoption of certain measures, his claim was inadmissible.[61] In this case, the Petitioners were made aware of their error a month after their filing and did not correct it.[62] Consequently, Arcadia could not properly adjudicate the claim since it was not properly presented.[63] Thus, the legal action does not meet the requirements of exhaustion of domestic remedies and the claims should be deemed inadmissible.

iii. Domestic Remedies Were Not Exhausted Because Exceptions Do Not Apply

Petitioners have the burden of showing that exceptions to the requirement of exhausting domestic remedies are met. The three exceptions in Article 46(2) ACHR are not met.

[57] Hypothetical, para. 32.
[58] Hypothetical, para. 32.
[59] *Luis Alberto Rojas Marín v Peru*, IACHR, Petition 446-09, Report No. 99/14 (6 November 2014); *Lassâd Aouf*, para. 8.3.
[60] Hypothetical, para. 33.
[61] *Jorge Rafael Valdivia Ruiz v Peru*, IACHR, Petition 1166-04, Report No. 43/09, para. 36-39, (27 March 2009).
[62] Hypothetical, para. 33.
[63] Hypothetical, para. 33.

Additionally, the exception in cases of indigency resulting in an inability to afford court proceedings or counsel, if counsel is necessary to secure a right, does not apply.[64]

B. The claims of the 771 unidentified persons must be dismissed because the facts do not merit flexibility, and Arcadia's right to defense has not been satisfied.

Article 50 ACHR and Article 35 of the Rules of Procedure of the Inter-American Court of Human Rights taken together establish that the report transmitted to the Court "must... identify the alleged victims." The Court

Commission provide an individualized list of alleged victims in order to protect the State's right to defense.[69] The Commission forwarded the list to the State, which did not object to the list and adjudication proceeded on merits.[70] Unlike Paraguay in *Reeducation Centre*, here, only 37 of the 808 victims were individualized.[71] Arcadia was not given a chance to object to the inclusion of the other victims since they were not individualized. Deviation from the ACHR and Rules of Procedure would threaten the right to defense, and thus the *effet utile* of Article 23 of the Rules of Procedure.[72] Consequently, these claims should be dismissed.

ii. Merits

A. Arcadia's Asylum and Refugee Status Application Procedure has not Violated Article 8, 25, or 22.7 ACHR

Article 8 ACHR provides the right to judicial protection, and Article 25 to fair trial, with respect to the right "to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions."[73] The Convention and Protocol Relating to the Status of Refugees ("Refugee Convention"), which Arcadia ratified, provides that status cannot be granted "to any person with respect to whom there are serious reasons for considering that: (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee."[74] The determination of refugee status must b on(4.1(g))-6(u)-14(20(, i)-

respective fair and competent proceedings."[75] Further, the determination of refugee status must include an assessment and decision of potential risk to the applicant's basic rights.[76]

In accordance with Articles 8, 25, and 22.7 ACHR

The National Commission for Refugees (CONARE) is the appropriate authority to determine refugee status. [84] CONARE received and considered the application of every Wairan applicant seeking recognition of refugee status in Arcadia.[85] Each Wairan underwent an objective process, submitting an application for refugee recognition, undergoing an interview at the CONARE office,[86] and a background check by the Ministry of Foreign Affairs and the Intelligence Service for refugee determination.[87] Thus, Arcadia met its obligation to make an objective determination.

iii. The Decision to Deny Refugee Status to was Duly and Expressly Founded

The Refugee Convention denies refugee status to any person for "whom there are serious reasons for considering" "has committed a serious non-political crime."[88] The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ("The Handbook")[89] states that "a capital crime or a very grave punishable act" constitute a serious non-political crime.[90]

CONARE sought out intelligence to determine whether Gonzalo Belano and 807 other Wairan applicants were eligible to receive refugee status.[91] The intelligence showed that the aforementioned applicants were *convicted* of kidnapping, extortion, murder, sexual violence, drug trafficking, human trafficking, and forcible recruitment,[92] all of which are considered "serious non-political crimes" under article 40(2) of Law on Refugees, which refers to the

[84] CONARE determines refugee status for various members of OAS states, such as Bolivia. UNHCR, "Refugee and Asylum Seekers Duties," https://help.unhcr.org/brazil/en/rights-and-duties/refugees-and-asylum-seekers-duties/
[85] Hypothetical, para. 20.
[86] Hypothetical, para. 20.
[87] Hypothetical, paras. 20 & 21.
[88] Refugee Convention Article 1(F)(b)
[89] The leading source in interpreting The Convention. *See Pacheco* FN 177.
[90] The Handbook, para. 155.
[91] Hypothetical, para. 21.
[92] Questions, no. 2.

accordance with Arcadian domestic legislation, international conventions, and after satisfying the four obligations listed above.

court also sets forth State obligations regarding seeking asylum based on Inter-American and UNHCR guidelines.[103] The latter two of these factors are relevant for asylum seekers who have been denied refugee status: (1) the denied applicant must be provided with information on how to file an appeal and granted a reasonable period to do so; and, (2) the appeal must have suspensive effects while being adjudicated.[104]

In *Pacheco*, the State "took a summary decision on the request, without hearing the applicants by an interview, hearing or other mechanism, without receiving evidence, without assessing the circumstance2n tcar other mt be ants bythout heaanton on how10(a)4(s)-11 mtstpo(i)-2(ng)10(t)b(e)4(a)4(2(hou

legal assistance and contacting their consulate.[109] Thus, Arcadia fulfilled its obligations in relation to factor (1).

Regarding the right to submit their case for review, the fact that 217 Wairans took advantage of a legal remedy shows that all Wairans had this right, whether they took advantage of the possibility or not.[110] In all 217 cases the amparo was properly adjudicated. [111] The eventual deportation of 808 Wairans was carried out only after the claims of each asylum seeker was individually examined and her application excluded based on domestic and international law.[112] Thus, Arcadia has met its obligations under (2) and (3) regarding the expulsion proceedings.

b. Arcadia met its obligations in relation to the second set of Pacheco factors because the 808 Wairans were provided information on appealing, granted a reasonable period to do so, and the deportation was suspended awaiting adjudication.

As discussed above, the Wairans received information on how to file an appeal.[113] Although the timing is unclear from the facts, at the very latest, the 808 Wairans were placed in detention before November 21, the date on which Arcadia asked for regional support to help accommodate the migrants.[114] Those who did not file an amparo were not deported until March 16, 2015,[115] meaning that at minimum they had 115 days to file an appeal. Since 217 Wairans were able to file an appeal within 81 days, 115 days was sufficient time to file an appeal.[116] Therefore,

[109] Questions, no. 50; *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99, Inter-Am. Ct. H.R., Ser. A, No. 16, (October 1, 1999).
[110] Hypothetical, para. 28.
[111] Hypothetical, para. 28.
[112] Hypothetical, para. 23.
[113] Questions, no. 50.
[114] Hypothetical, para. 26.
[115] Hypothetical, para. 27.
[116] Hypothetical, para. 28.

assistance was available[126] and 217 Wairans did exercise the remedy of amparo.[127] Thus, unlike the egregious omission by the State in Pacheco, Arcadia did in fact offer multiple remedies and the possibility of exercising them and did not violate Articles 8, 25 and 22.8.

C. Arcadia did not violate Article 24 when it instituted a specific measure to address Puerto Wairan asylum applicants because the national origin distinction was reasonable and objective.

Consequently, Arcadia established a procedure specific to Puerto Wairan asylum applications, after a meeting with the UNHCR and IOM,[133] to "provid[e] all necessary conditions and assistance to the Wairan people[,]" "in accordance with international, constitutional, and legal obligations."[134] and Arcadia's refugee recognition procedure was established in accordance with international law.[135]

The victims may argue the established procedure discriminated against Puerto Wairans because most of the asylum seekers are of African descent[136] and because of their undocumented migrant status.[137] However

D. Arcadia has not violated Article 4 in its deportation of Wairans to Tlaxcochitlan because no indirect refoulement took place, assurances were gained from Tlaxcochitlan, and the 808 Wairans presented no special distinguishing features to enable Arcadia to foresee their treatment.

In the jurisprudence of the European Court of Human Rights (ECHR),

The Commission states that before removing an asylum seeker, the State must perform an individualized assessment of the risk that the claimant's rights to due process in expulsion proceedings could be violated, and could therefore be refouled to the original country.[144]

The lower bar for this "individualized assessment" is clarified in its citation to *KRS v the United Kingdom*, in which the ECHR considered that in the absence of proof to the contrary, it must be presumed that Greece would comply with its non-refoulement obligations.[145] Additionally, the UK had satisfied the requirement of an individualized assessment, since UK border patrol was given assurances from Greek authorities that they did not refoule asylum seekers to Iran.[146] Thus, the UK was not in violation of the right to be free from torture in returning the asylum seeker to Greece.[147] In contrast, the purpose of the policy in Jt-2(2-2(o t)-2e)4(pur)3((ur)3((ur)3(T* [((y)20(, t)os)-0.]TJ

deported.[153] This was an even more individualized assessment than that which the UK undertook, because the meeting was specifically about the Wairans that had been excluded from refugee status, not Wairans in the abstract.[154] Thus, Arcadia is not in violation of Article 4 because it had no reason to believe the judicia

Arcadia asked that the Wairans specifically not be deported, rather than asking Tlaxcochitlan to respect non-refoulment in general, and received assurance in the form of the agreement.[166]

iii. In the alternative, even if indirect refoulement took place, Arcadia has not violated Article 4 in its deportation of Wairans to Tlaxcochitlan because the 808 Wairans presented no special distinguishing features to enable Arcadia to foresee their treatment, and the deportation was in the interest of preserving the Wairans right to life.

In *Vilvarajah*, the ECHR attached importance to the extensive experience of UK authorities with Sri Lankan claimants and the fact that it had examined the personal circumstances of all the claimants, when deciding that the UK had not violated the rights of Tamil asylum seekers to be free from ill-treatment by deporting them back to Sri Lanka.[173] The ECHR found that even though some of the claimants had previously been ill-treated in Sri Lanka, and were subsequently ill-treated following their deportation, "there existed no special distinguishing features in their cases that could or ought to have enabled the Secretary of State to foresee that they would be treated in this way" when returned.[174] The court held that despite belonging to an ethnic group susceptible to ill-treatment, their personal positions were no worse than any other member of the group.[175]

Similarly, here, Arcadia had experience with Wairan asylum seekers in the past: at the end of 2015, there were 18,000 refugees from Puerto Waira, and had processed thousands of Wairans under its prima facie recognition policy.[176] Thus, Arcadia has extensive experience adjudicating Wairan asylum claims. Also, as in the State in *Vilvarajah*, Arcadia examined the personal circumstances of each of the asylum seekers[177] and conducted a second review of the

[173] *Vilvarajah and Others v United Kingdom*, ECtHR, App. Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, para. 114 (30 October 1991).
[174] *Vilvarajah*, para. 112.
[175] *Vilvarajah*, para. 111.
[176] Questions, no. 43.; Hypothetical, para. 22.
[177] Hypothetical, para. 20.

circumstances of the 808 Wairans with criminal records.[178] In *Vilvarajah*, the court attached importance to the fact that this review was carried out in light of both personal circumstances and the current situation in the country of origin.[179] Likewise here, for example in Gonzalo Belano's case, Arcadia made the determination that he faced a "reasonable likelihood," rather than a "high

808 Wairans, and Wairans being called "cockroaches" or "scum."[186] Although Arcadia implemented integration policies for those recognized as refugees,[187] this public atmosphere made it unsafe for the 808 Wairans to remain in Arcadia. To protect their right to life, the decision was made to deport them to Tlaxcochitlan.[188] Thus, Arcadia followed domestic and international law in regards to determining refugee status, and made the decision to deport the 808 Wairans due to a concern for their right to life.

E. Arcadia did not violate Articles 7 or 8 ACHR in relation to the detention of the 808 Wairans because the detention was legal, non-arbitrary, information on free legal assistance and consular assistance was provided, the Wairans were heard in case, and effective remedies were available.

The ACHR provides in Article 7.1 that "every person has the right to personal liberty and security." In interpreting this right, the Court has nevertheless maintained that "in the exercise of their authority to set immigration policies, States may establish mechanisms to control the entry into and departure from their territory of individuals who are not nationals, provided that these are compatible with the standards of human rights protection established in the American Convention."[189] The Court has held that the violation of any subsection of Article 7 results in a violation of Article 7.1.[190] In *Velez Loor*, the Court considered each subsection of Article 7, in addition to certain judicial guarantees contained in Article 8, to determine that the complete lack

[186] Hypothetical, para. 24, 25.
[187] Questions, no. 40; Hypothetical, para. 25.
[188] Hypothetical, para. 27.
[189] *Vélez Loor v. Panama* (Judgment), Inter-Am. Ct. H.R. (ser. C) No. 132, para. 97 (Nov. 23, 2010); *Institución del asilo*, para. 119.
[190] *Velez*, para. 189.

subject to section 111.[198] Arcadia has not violated 7.2 because the detention was conducted in pursuant to Arcadia law.

ii. Arcadia did not violate Article 7.3 because the detention was not arbitrary.

Article 7.3 of the ACHR requires that no one be subject to arbitrary arrest or imprisonment, even if the detention is legal under domestic law.[199] Legal detention is not arbitrary if it has legitimate purpose, if it is appropriate, necessary, and proportionate.[200]

a. *The detention was not arbitrary because it pursued a legitimate purpose.*

In *Velez*, the court maintained that "preventive custody may be suitable to regulate and control irregular immigration to ensure that the individual attends the immigration proceeding or to guarantee the application of a deportation order," though it ultimately found that the criminalization of the irregular entry of the plaintiff went beyond this legitimate purpose.[201] Here, the detention had precisely the legitimate purpose stated: to ensure the appearance of the migrants at asylum proceedings, and to ensure compliance with a deportation order.[202] The Court also states that public safety could motivate a detention when there is a reasoned and objective legal basis.[203] Here, only those Wairans with criminal records indicating serious political crimes were detained.[204] Thus, there was a reasoned and objective legal basis to this rationale, particularly in comparison to the authorities in *Velez* who did not list any specific reasons the plaintiff was a security risk.[205]

[198] Hypothetical, para. 18.
[199] *Velez*, para. 165.
[200] *Velez*, para. 166.
[201] *Velez*, para. 169.
[202] Questions, no. 15.
[203] *Velez*, para. 116.
[204] Hypothetical, para. 22; Questions, no. 2.
[205] *Velez*, para. 112.

b. The Detention was not arbitrary because it was Necessary and Proportionate.

The Court defines necessary as, "indispensable for achieving the intended purpose," and proportionate as measures wherein the "sacrifice inherent in the restriction of the right to liberty is not... unreasonable compared to the advantages obtained from this restriction."[206] Here, the reasons given for the detention show that it was indispensable. Since many migrants along the southern Arcadian border had to sleep on streets, begged for money and lacked health services,[207] providing housing, food, health and other services in detention[208] meant that a lack of housing, transport, health, etc. would not prevent Wairans from attending their hearing. This likely also increased the efficiency of the proceedings.[209] The Court also values a determination of alternatives.[210] Here, Arca(i)-608 Tw 4b537aunthoii(t)-6(er)-1mlinedeac(h)-4e personsle( )-10 ofed(t)-6(an)-4

ii. Arcadia did not violate Articles 7.4 or 8 because the detained Wairans were offered information on their rights, consular contact and assistance.

Article 7.4 protects the rights of detainees to be informed of the reasons for their detention. The Court has maintained that a detainee's right to establish contact with their consulate is read in conjunction with the obligations under Article 7.4[212] as well as Article 8.2(d) of the ACHR.[213] The rights to consular assistance are: (1) the right to be informed of rights under the Vienna Convention; (2) the right to have effective access to communicate with the consular official, which involves being permitted to freely communicate and be visited by consular officials; and, (3) the right to the assistance itself.[214]

In accordance with Article 7.4 ACHR, the Wairans were informed that they were detained because they had criminal records and so not eligible for prima facie refugee status. Regarding consular assistance, the Wairans were informed of their rights during the detention and asylum process, particularly regarding contacting their consulate,[215] in accordance with 36(b)(1) of the Vienna Convention. Although the facts don't indicate that any Wairan requested consular assistance or a visit, they did have effective access to communicate with consular officials, especially since there was a telephone available in the facilities and they were able to receive visits.[216] Although no visit was made, the option to receive consular assistance was available, and was communicated from the moment of detainment.[217] Consequently, the requirements under Article 7.4 and 8.2(d) ACHR were met.

[212] *Velez*, para. 154; *Information on Consular Assistance*, para. 124; United Nations, *Vienna Convention on Consular Relations*, Article 36(1)(b) (24 April 1963).
[213] *Velez*, para. 157.
[214] *Velez*, para. 153.
[215] *Velez*, para. 153.
[216] Questions, no. 18.
[217] Questions, no. 50.

iii. Arcadia did not violate Article 7.5 ACHR because the 808 Wairans appeared before authorized officials without delay and their claims were heard case-by-case to decide on their release.

The court has established that to meet the guarantees in Article 7.5 ACHR, detainees must be taken without delay to appear in person before an officer authorized by law to carry out judicial functions.[218] "Delay" is often defined in terms of the requirements of the domestic Constitution and can be anywhere between 24 and 48 hours.[219] The officer must hear each person individually and evaluate all their explanations in order to decide whether to release the detainee.[220]

The 808 Wairans had multiple opportunities to appear before an authorized official. First, at the time of their arrest, they were immediately brought before the administrative authority before being transferred to custody,[221] and so there was no delay in this initial appearance. Second, within 45 days, each detainee's individual claims were evaluated,[222] which included a determination based on personal circumstances and a contextual analysis of the country of origin.[223] Additionally, each person was heard individually, and the determination was made that the Wairans would be released because they were to be deported.[224] Therefore, Arcadia met all the requirements of Article 7.5 ACHR.

[218] *Velez*, para. 109.
[219] *Case of Juan Humberto Sánchez v. Honduras* (Judgment), Inter-Am. Ct.3(e)4( )-10(/TT0 3-9(I)-b9617Tc 1 -2(ona).6(a m)617T CI

on him.[232] In the present case, the Wairans had access to legal assistance and representation.[233] The Court maintains that the assistance of non-governmental organizations does not replace the State's obligation to offer free counsel.[234] However, in *Velez*, the NGOs were generally present at detention centers with no indication of government support of their activities.[235] Here, Arcadian officials specifically provided information about the availability of legal services to the detainees, rather than simply tolerating the presence of NGOs, which was the approach of the State in *Velez*.[236] Arcadia, like the Court, respects the importance of free legal aid in proceedings concerning expulsion or deprivation of freedom[237] and therefore met its obligations in relation to Article 8.2(d) and (e). Finally, the Wairans were clearly notified of the reasons for their detention[238] and had the possibility of appealing the decision.[239] The fact that 217 Wairans did appeal the amparo decision indicates that the right to appeal was not illusory.[240] Therefore, the requirement under 8.2(h) was met.

F. Arcadia Did Not Violate Articles 19 and 17 ACHR in its Determination to Grant Children Refugee Status Because the Best Interest of the Child was Considered in Light of the Context

Children possess the rights established in the American Convention, in addition to the special measure "of protection required by [her] condition as a minor on the part of [her] family, society, and the state."[241] In any decision taken by the State, society or family that may curtail the right of

[232] *Velez*, para. 130.
[233] Questions, no. 47.
[234] *Velez*, para. 137.
[235] *Velez*, para. 137.
[236] Questions, no. 47.
[237] *Velez*, para. 146.
[238] Questions, no. 50.
[239] Questions, no. 50; Hypothetical, para. 28.
[240] *Velez*, para. 179.
[241] American Convention, Art. 19; *Pacheco*, para. 217; Hubing, Bridget. *International Child Adoptions: Who Should Decide What is in the Best Interest of the Family*, 15 Notre Dame J.L. Ethics & Pub. Pol'y 655 (2001).

the child, the principle of the best interest of the child must be incorporated.[242] The best interest of the child is based on the dignity of the human being, the inherent characteristics of children, and the need to foster development to expand their "potential to the full."[243]

The child has the right to be heard in any administrative proceeding affecting the child, including refugee status determination.[244] Further, the determination of refugee status for a minor invokes the right to judicial protection and due process.[245] In proceedings where a family is involved, the right of the family must be considered.[246]

The Court in *Pacheco*, found the State had violated its responsibility in Articles, 8, 25, 19, and 22.7 and as part of its reasoning emphasized the right of the child to be heard in a refugee application.[247] In *Pacheco*, the State argued that although the children of the Pacheco family did not have an individualized refugee application process, they had to be expelled with their parents so a family separation did not occur.[248] The court did not accept this "special measure of protection based on the principle of family unification"[249] argument because every child deserves a separate from their family, individualized refugee application process.[250] Thus, this Court foresaw a scenario, like the one at bar, where a child of a family's refugee application may lead to a different result than that of a family member. Unlike the State in *Pacheco* who only

[242] Convention on the Rights of the Child, Art. 3(1); *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/2002, August 28, 2002, para. 65; *Pacheco*, para. 218.
[243] *Pacheco*, para. 218.
[244] Convention on the Rights of the Child, Art. 12(1); *Pacheco*, para. 219.
[245] *Pacheco*, para. 220.
[246] *Juridical Condition and Human Rights of the Child*, Advisory Opinion, p

reviewed the application of the adult family members, the application of each Wairan child and adolescent was reviewed independently of their adult family members.[251]

Arcadia established a procedure where each individual filed an application and was then interviewed.[252] Through the interview, each child was heard and could express their interests. Through the procedure, no child or adolescent was excluded from international protection, detained, or expelled from Arcadia.[253] Therefore Arcadia met its international obligations.

The State has broad discretion in determining the best interest of the child.[254] Because Arcadia has been a migratory destination due to it sound democracy, strong public institutions, stable, a strong economy with a GDP of US$325 billion and a low, stable level of unemployment, low levels of crime and violence, and integration policies for migrants and refugees,[255] Arcadia can provide the resources to allow a child to expand their "potential to the full," therefore Arcadia did not violate Articles 17 and 19 because the decision to grant every Wairan child refugee status is justified in the best interest of the child.[256]

V. REQUEST FOR RELIEF

Based on the foregoing submissions, the respondent State of Arcadia respectfully requests this Honourable Court to:

1. Declare the Applicants' petition is inadmissible based on the conclusions in IV.A and IV.B;

2.In the alternative, to hold that Arcadia protected all the rights as established in Art. 4, 7, 8, 22.7, 22.8, 17, 19, 24, and 25 of the ACHR in conjunction with Art. 1(1) thereof with respect to Gonzalo Belano and the 807 other Wairans.

Respectfully,

The respondent State of Arcadia