
IN
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
SAN JOSE, COSTA RICA

Inter-American Commission on Human Rights,

Petitioner

v.

Republic of Belor,

Respondent

Blanco and others v. Republic of Belor
(New Atria Embassy Bombings Case)

MEMORIAL FOR THE PETITIONER

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STATEMENT OF FACTS

The African country of New Atria is a former colony of Belor. (Hypothetical Case [hereinafter: “H.C.”] at 1). Belor has been a member of the Organization of American States since 1948, and both are members of the United Nations. (H.C. at 1). In 1985, a segment of New Atria’s ethnic minority Corpion population joined together to form a group known as the Scorpions. (H.C. at 1). The Scorpions advocate a radical approach, seeking to sever the ties between Belor and New Atria. (H.C. at 2). Along with other concerns, the Scorpions share the belief held by many Corpions that they “cannot expect equal and impartial treatment in the judicial system” and that the majority Drune population prevents them “from participating effectively in the conduct of public affairs.” (H.C. at 2). In 2002, The U.N. Human Rights Committee expressed deep concern about the administration of justice in New Atria and reported that Corpions in New Atria could not expect equal and impartial treatment in the judicial system. (H.C. 2). Among other acts of violence, the Scorpions were responsible for the series of bombings that commenced in the mid-morning hours of June 1, 2001. (H.C. at 3). Belor condemned the bombings and vowed to crush the Scorpions and their supporters. (H.C. at 3).

The night of June 1, 2001 was witness to armed attacks by New Atrian armed forces against Scorpion members and supporters suspected of operating in Venzaar, a city neighboring New Atria’s capital. (H.C. at 3). Belor troops soon joined the conflict to assist the New Atrian forces. (H.C. at 3). During the two week battle that ensued, Belor’s armed forces captured fifty-six individuals who were transported to an abandoned fortress, known as the Citadel, located in the south of New Atria. (H.C. at 3-4). An agreement between New Atria and Belor granted Belor “control over [the] premises and security of the Citadel, as well as the authority to enact, adjudicate and enforce laws for the order and governance of the facility a

Those charged with these crimes are to be tried before a special tribunal with a panel of three retired judges and will be given the right to appeal their conviction to the Belor High Court. (H.C. at 5). The Order provides that those charged with crimes will be given a military defense attorney assigned by Belor's Minister of National Defense to assist them in their trial. (H.C. at 5). The Order sets forth special rules relating to testimony, production of evidence, publicity of the proceedings, and privileged information. (H.C. at 5). The maximum penalty that can be imposed for such crimes is death. (H.C. at 5).

Information received from the five detainees who were arbitrarily released from the Citadel reveals that some of those who continue to be detained at the Citadel were captured by Belor forces by mistake during the armed conflict at Venzaar. (H.C. at 5). Further testimony by the detainees indicates that although they never witnessed physical assault, Belor officials did use techniques to illicit information, including offering incentives such as access to books and certain foods. (H.C. at 5). The detainees also reported that Belor officials used more coercive techniques when incentives did not work. (H.C. at 5). Belor officials forced detainees to remain standing for up to eight-hour intervals and deprived detainees of sleep for as long as three days in an attempt to force detainees to reveal "favorable" information. (H.C. at 5).

Nine days after the bombings in New Atria, and in fear that similar violence would spread to Belor, the Parliament of Belor approved the Defense of Freedom Act (hereinafter: "DOFA" or "the Act"). (H.C. at 5). Section 13 of the Act states that nationals of New Atria residing within Belor or seeking to enter Belor are required to provide the Republic of Belor a record of fingerprint and photographic identification. (H.C. at 6). The Act also requires the individuals to disclose their ethnic and religious affiliation, as well as the addresses of where they reside or will be visiting in Belor. (H.C. at 6). Section 14 requires certain religious

establishments, including the Gir Temple, to provide information about their leaders, administrators, and congregation members. (H.C. at 6). This section also requires the religious establishments to furnish the government with the financial records of the establishment for the last five years. (H.C. at 6). Under Section 17 of the Act, the Department of Security and Immigration may apply for an immediate order to arrest and deport any person with a visa or other entry document if such person violates the terms of the document and if there exists reasonable grounds to believe such a person is associated with certain terrorist organizations, including the Scorpions. (H.C. at 6-7). Under this section, the court must

grant the order requested upon the presentation of a certificate by the Minister of Security and Immigration verifying the grounds upon which the order is requested, and may, in its discretion, require the person concerned to be brought before the [c]ourt prior to his or her deportation.

(H.C. 6-7). Additionally, those who are subject to deportation have no right of appeal from such an order. (H.C. 7). Finally, section 32 allows application to the General Court of Belor for an order to monitor the financial transactions or freeze financial assets of any individual or entity associated with a terrorist organization upon a showing of reasonable suspicion. (H.C. at 7).

Ferris Blanco, a dual national of New Atria and Belor, is a member of the Corpion ethnic and religious group and was involved in the activities of the Gir Temple in Haladonia, Belor. (H.C. at 8). Mr. Blanco and all other New Atrian members of the Gir Temple complied with the requirements of the Defense of Freedom Act. (H.C. at 8). On October 14, 2001, Belor officials entered the Gir Temple and in the presence of members of the congregation, seized Mr. Blanco from the Temple. After placing a black bag over Mr. Blanco's head and shackling his hands and feet, Belor soldiers removed Mr. Blanco from the Temple and transported him to an air base. (H.C. at 8). Mr. Blanco was flown to New Atria on a military plane and placed in detention in

the Citadel. (H.C. at 8). Belor forces arrested Mr. Blanco subsequent to a statement made by a Citadel detainee during an interrogation by Belor officials in the Citadel. (H.C. at 7). The detainee admitted that the information he gave relating to Mr. Blanco had come from a second-hand source. (H.C. at 7). During the effectuation of Mr. Blanco's arrest, Belor officials confiscated from the Temple blueprints of Belor Parliamentary Buildings – buildings that were never affected by terrorist activities. (H.C. at 8).

Shortly after Mr. Blanco's arrest on October 21, 2001, the government of Belor obtained an order pursuant to section 32 of the Act allowing it to monitor the financial accounts and transactions of all congregation members of the Gir Temple. (H.C. at 8). The order also granted the government permission to freeze the financial assets of the Temple while the government investigated any possible connection between the Temple and terrorist organizations. (H.C. at 8). As a result of this order, the Gir Temple was forced to close, leaving members of the congregation without access to a sacred place of worship. (H.C. at 8). Some congregation members were able to find alternative places of worship, but age or lack of transportation prevented others from being able to travel the distance required to attend these places of worship. (H.C. at 8).

Pursuant to the financial data collected from the October 21st order and from records obtained pursuant to sections 13 and 14 of the Defense of Freedom Act, Belor provided the New Atrian government with information relating to the congregation members of the Gir Temple. (H.C. at 8). In response, New Atria alerted Belor that two members of the congregation, Laura Gray and Robert Suarez, were suspected members of the Scorpion organization and had been indicted several years earlier for the abduction of a New Atrian business leader. (H.C. at 8). Upon discovering that Suarez and Gray had overstayed their six-month visitors' visas issued one

year earlier, the Department of Security and Immigration obtained arrest and deportation orders pursuant to section 17 of the Act. (H.C. at 9). The judge never provided Gray and Suarez with a hearing to determine their admissibility for refugee status after they claimed the New Atrian criminal proceedings were politically motivated. (H.C. at 9). Instead, the judge dismissed their statement, holding that they were “clearly ineligible to remain in the country.” (H.C. at 9). Following the order, Belor forces arrested Suarez and Gray and deported them to New Atria, where they were arrested and placed in the Citadel detention facilities. (H.C. at 9).

In December of 2001, Rights International filed a habeas corpus petition in the courts of Belor on behalf of Mr. Blanco and other Citadel detainees challenging the legality of their detention and the interrogation methods used by Belor officials. (H.C. at 9). Mr. Blanco also challenged the criminal investigation into his role in the embassy bombings as a violation of his right to due process and freedom from ex post facto laws. (H.C. at 9). The General Court of Belor dismissed the habeas corpus petition on behalf of the other Citadel detainees for lack of jurisdiction and dismissed Mr. Blanco’s petition, deferring instead to the military’s determination. (H.C. at 9-10). The General Court declined to consider the treatment of the detainees on the grounds that it was more appropriately dealt with under international

to privacy, property, freedom of religion, and freedom of assembly and association. (H.C. at 10). Gray and Suarez challenged their arrest and deportation as a violation of their constitutionally protected right to liberty, due process, and security of person. (H.C. at 10). They also challenged the arrest and deportation as a violation of their right to seek and receive asylum pursuant to the U.N. Convention relating to the Status of Refugees. (H.C. at 10). The General Court dismissed both actions, and upon appeal to the Higher Court, the claims were likewise dismissed. (H.C. at 10).

Following the dismissal of all claims in the domestic courts of Belor, Rights International filed a petition with the Inter-American Human Rights Commission. (H.C. at 10). The petition was received, and the Commission found all claims brought on behalf of Mr. Blanco, unnamed Citadel detainees, and named members of the Gir Temple, including Laura Gray and Robert Suarez admissible. (H.C. at 11). The Commission found violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture. (H.C. at 11). Belor indicated that it would not implement the Commission's recommendations and also informed the Commission that Mr. Blanco would be prosecuted for war crimes, crimes against humanity, and terrorism by the special tribunal for his alleged role in the June 1, 2001 bombings. (H.C. at 11). If convicted, the prosecution intends to request that the tribunal sentence Mr. Blanco to death. (H.C. at 11). Following Belor's response, the Commission thereafter referred the case to this Court, and Belor filed preliminary objections challenging the Court's jurisdiction *ratione loci* arguing that the detainees are outside the geographic region of Belor. (H.C. 12).

LEGAL ANALYSIS

ADMISSIBILITY

I. Jurisdiction

Belor has raised a preliminary objection to the Court's jurisdiction *ratione loci* with respect to the claims relating to Mr. Blanco and the other Citadel detainees. Belor asserts that the victims were located outside of Belor's territory and beyond the geographic region encompassed by the OAS.

Belor's assertion is without merit. Although the violations against Mr. Blanco and the other detainees did not occur within the technical territory of Belor, the acts were carried out by members of Belor's armed forces and supported and commanded by the Government of Belor. In addition to being defined by one's physical presence within a state, jurisdiction also "refers to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state – usually through the acts of the latter's agents abroad."¹ The bilateral agreement entered into between New Atria and Belor granted Belor "control over the premises and security of the Citadel, as well as the authority to enact, adjudicate and enforce laws for the order and governance of the facility and its inmates." The Court has jurisdiction *ratione loci* because Mr. Blanco and the other Citadel detainees were subject to the jurisdiction of Belor at the time the violations of the Convention occurred. Such exclusive and plenary control over territory is sufficient to confer jurisdiction *ratione loci*.² Furthermore, with respect to Mr. Blanco, he is a national of Belor and was unlawfully arrested *in* Belor *by* Belor armed forces.

¹ Coard et al. v. United States, Rep. No. 109/99, Inter-Am. C.H.R., Case 10.951 (1999), at para. 37 [hereinafter "Coard Case"]. See Cyprus v. Turkey, 4 Eur. H.R. Rep. 482, (1976) at para. 486, 508.

² See, e.g., Rasul v. Bush, 124 S.Ct. 2686, 2693-94 (2004).

Since their only other domestic legal recourse would be under a judicial system that has been

facts while the action is pending.”⁹ Mr. Blanco is now facing the death penalty, with his only judicial recourse being to attempt to prove his innocence to three retired judges from Belor’s High Court. His only assistance in proving his innocence is a defense lawyer assigned by Belor’s Minister of National Defense. The facts of this case satisfy the gravity and urgency required under Article 63(2). As such, provisional measures are necessary in order to avoid irreparable damage to the life and personal liberty of Mr. Blanco. We respectfully request that Belor be required to suspend the criminal proceedings against Mr. Blanco pending the determination of his complaint before the Court.

B. Provisional measures are needed to protect the lives and physical integrity of the unnamed Citadel Detainees pending the outcome of this case.

To prevent irreparable harm, it is necessary for this Court to likewise adopt provisional measures in favor of the unnamed Citadel detainees. The detainees have been incarcerated for almost four years, have been unable to contest the legality of their detentions, and have been denied their right to due process of law.¹⁰ During this time, the detainees have been subjected to impermissible interrogation methods and inhumane and degrading treatment.¹¹

Names of specific persons are not necessary in order to grant provisional measures.¹² It is quite possible to identify members of the Corpions who are being detained at the Citadel with sufficient precision, so that providing names is unnecessary.¹³ The unnamed Citadel detainees are all in the same situation of detention, and the violations concern precisely the legality of that detention. In fact, providing their names may be impossible—an indirect result of the human

⁹ Alvarez et al. Case, Provisional Measures, Order of the President of the Inter-Am. Ct.H.R. of October 11, 2001, at sixth considering clause.

¹⁰ See *infra* notes 60-74 and accompanying text (discussing Belor’s conduct violating the detainees’ personal freedom and liberty).

¹¹ See *infra* notes 81-93 and accompanying text (describing the serious violations of physical integrity that detainees are subjected to at the hands of Belor forces).

¹² Dinah Sheldon, *The Le-*

rights violations for which they seek redress. Accordingly, and in light of the extreme gravity and urgency of the situation concerning their detention and interrogation, provisional measures should be granted in favor of the unnamed Citadel detainees.

MERITS

I. Ascertaining Applicable Law

A. International humanitarian law is inapplicable in the present case.

This Court has before it novel issues pertaining to situations of armed conflict, the interaction of human rights law and international humanitarian law, and a state's ability to take measures derogating from their obligations under the Convention. For these reasons, it is necessary to ascertain the appropriate law this Court should apply to the facts of this case.

The Inter-American Commission of Human Rights, in its Report on Terrorism and Human Rights (hereinafter "Report on Terrorism"), stated that "international human rights commitments of states apply at all times, whether in situations of peace or situations of war."¹⁴ When dealing with situations of armed conflict, human rights law is not replaced by international humanitarian law.¹⁵ Rather, the two bodies of law form "an interrelated and mutually reinforcing regime of human rights protections."¹⁶ In situations where both human rights and international humanitarian law have potential application and provide distinct protections,

¹⁴ Report on Terrorism and Human Rights, Inter-Am. C.H.R. at para. 42, OEA/Ser.L/V/II.116 doc. 5 rev. 1 corr. (2002) [hereinafter "Report on Terrorism"]. Decision on Request for Precautionary Measures, *supra* note 6, at 532-33.

¹⁵ Report on Terrorism, *supra* note 14, at para. 29. Coard Case, *supra* note 1. at paras. 25, 41 (concurring opinion of Commissioner Dr. Helio Bicudo).

¹⁶ Report on Terrorism, *supra* note 14, at paras. 45, 136. Juan Carlos Abella v. Argentina, Rep. No. 55/97, Inter-Am. C.H.R., at paras. 158-60, OEA/Ser.L/V/II.98, doc. 6 rev. (1997) [hereinafter "Abella Case"]. Coard Case, *supra* note 1, at para. 39 and (concurring opinion of Dr. Helio Bicudo), at para. 21-23.

ascertainable duration on the collection of information or the tracing or freezing of financial assets, creating an indefinite and inherently prolonged infringement on rights guaranteed in the Convention.

C. Belor’s application of sections 13, 14 and 32 of the Act violates the freedom of conscience and religion guaranteed to members of the Gir Temple by Article 12 of the Convention.

Article 12 of the Convention sets forth that:

1. Everyone has the right to freedom of conscience and of religion. This right includes the freedom to maintain or to change one’s religion or beliefs
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

Under this Article, no one can be subjected to restrictive measures that affect the freedom of conscience and religion.³⁴ This right may be “subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.”³⁵ The Court has stressed that the freedom of religion is one of the foundations of democratic society and that it “constitutes a far-reaching element in the protection of the convictions of those who profess a religion and in their way of life.”³⁶

By implementing sections 13, 14, and 32 of DOFA, Belor has effectively prevented members of the Gir Temple from maintaining their religious beliefs, thus violating their freedom of religion. The arbitrary freezing of the Temple’s assets forced it to close, thus leaving many members without a sacred place to worship and to maintain their religious beliefs. The other temple is on the opposite side of the city, and many members are unable to make the commute due to age or lack of transportation. Thus, Belor’s contention that congregation members are

³⁴ American Convention, *supra* note 7, at art. 12(3).

³⁵ *Id.* at art. 12(3).

³⁶ The Last Temptation of Christ Case Judgment of Feb. 5, 2001, Inter-Am Ct. H.R. (Ser. C) No. 73 (2001) at para. 79.

open to find alternative places to worship is unfounded. Belor has taken direct measures that deprive members of a sacred place to worship, which is a violation of their Article 12 right.

Additionally, such a restriction is not justified under Article 12(3). The laws and regulations of DOFA do little to advance the interests of Belor and protect its citizens from terroristic violence. Requiring someone to reveal their religious affiliation and freezing the assets of their place of worship in order to investigate a potential connection between such place of worship and terrorist organizations results in a serious infringement of the right to freedom of religion while, simultaneously, doing little to protect interests of society. This effect is disproportionate and thus violates article 12(3) of the Convention.

Further, it has also been recognized that, “no one can be compelled to reveal his thoughts or adherence to a religion or belief.”³⁷ Both Article 13 and 14 of DOFA contravene this principle in that both provisions compel Temple members seeking entry or presence in Belor to reveal their religious affiliation, further violating their freedom of religion. Belor is therefore responsible for violations of article 12 with respect to the design and implementation of sections 13, 14, and 32 of DOFA.

D. Belor violated the Gir Temple Members’ right of assembly and freedom of association protected under Articles 15 and 16 of the Convention by passage of section 32 of the Defense of Freedom Act.

Article 15 of the Convention guarantees “the right to peaceful assembly, without arms.” The “right to associate freely” as guaranteed by Article 16 covers all dimensions of society such as the freedom to associate “for ideological, religious, political, economic, labor,

³⁷ See General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18), U.N. Human Rights Committee, 48th Sess., at 144, para. 3, CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations adopted by Human Rights Bodies*, at 144, U.N. Doc. HRI/GEN/1/Rev.5 (2001) (hereinafter referred to as United Nations Compilation of General Comments). While the general comments discuss, specifically, Article 18 of the International Covenant on Civil and Political Rights, Article 12 of the American Convention is very similar. Additionally, Belor is party to the International Covenant on Civil and Political Rights.

social, cultural, sports, or other purposes.” The exercise of these rights may be subjected to restrictions provided that they are adopted in pursuance of the law and are “necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.”³⁸ Such rights cannot be restricted at the sole discretion of governmental authorities.³⁹

With respect to the right of assembly, as outlined above, sections 13, 14, and 32 of DOFA have denied Temple members their right under the Convention to assemble peacefully, and specifically at the Temple. By freezing the assets of the Temple and rendering it bankrupt, its members have been denied their right to assemble peacefully to worship.

For similar reasons, Belor has also violated the Temple members’ freedom of association. In the Baena Ricardo et al. Case, the Court found a violation of the freedom of association, noting that the right of freedom of association is about the “basic right to constitute a group for the pursuit of a lawful goal, without the pressure or interference that may alter or denature its objective.”⁴⁰ Accordingly, Article 16 guarantees members of the Temple the basic right to constitute their religious group and to pursue their lawful goal — worshipping together. Belor’s application of the relevant provisions of the Act interferes with this right.

Furthermore, this interference cannot be justified on the basis of Article 16(2) of the Convention.⁴¹ While restrictions on the right of assembly are permissible, this is so only when “necessary in a democratic society, in the interest of national security, public safety or public

³⁸ The list of legitimate purposes is quoted from Article 16; Article 15 refers to “rights **or** freedoms of others” rather than “rights **and** freedoms of others” (emphasis added). See American Convention, *supra* note 7, at art. 15, 16.

³⁹ The Word “Laws” in Article 30 of the American Convention in Human Rights, Inter-Am. Ct.H.R., Adv. Op. OC-6/86 of May 9, 1986 (Ser. A) No. 6, paras. 22, 27.

⁴⁰ The Baena-Ricardo et al. Case, Judgment of February 2, 2001, Inter-Am. Ct.H.R. (Ser. C) No. 72 (2001), at para. 151, 156.

⁴¹ See *id.* at para. 167. Upon finding that the law at issue resulted in the interference with freedom of association for labour purposes, it then went on to examine whether that interference could be justified on the basis of Article 16(2) of the American Convention. *Id.*

order. . . .”⁴² Here, while the Act was made in conformance with the law, its provisions are not necessary in a democratic society, given the fact that it does little to advance the interests of national security.⁴³ Therefore, the measures taken violate Articles 15 and 16 of the Convention.

E. Belor violated the right to equal protection protected under Article 24 of the Convention by failing to provide the Gir Temple members with the protections necessary to exercise their rights fully and equally with other individuals.

Article 24 of the Convention provides that “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” While the right to equality afforded by Article 24 does not mean that the substantive provisions of law will be the same for everyone, the application of the law should be equal for all without discrimination.⁴⁴ This Court has set out that a difference in treatment is discriminatory when it has “no objective and reasonable justification.”⁴⁵

DOFA has no objective or reasonable justificat

assembly and property.⁴⁶ Accordingly, Belor had denied Corpions equal protection under the law.

F. Belor violated Article 22(7) of the Convention by failing to provide Laura Gray and Robert Suarez with a hearing to determine their right to seek asylum.

Article 22(7) of the Convention provides protection to those seeking asylum stating that “[e]very person has the right to seek and be granted asylum in a foreign territory.” This right has been interpreted to include “the right of an applicant to be given necessary facilities for submitting his case to the authorities concerned . . . [and to] be permitted to remain in the country pending a decision on his initial request.”⁴⁷ The Convention Relating to the Status of Refugees, to which Belor is a party, reinforces this notion, requiring the right to a hearing and an appeal prior to deportation.⁴⁸

Belor violated Article 22(7) when, upon learning of Gray and Suarez’s claim of political motivation with respect to the criminal proceedings in New Atria, it failed to afford them a hearing to determine their right to asylum and failed to grant them leave to remain in the country pending the outcome. Section 17 of DOFA specifically gives the presiding judge the discretion to require the person to be brought before the court prior to deportation. The judge who issued the deportation order, however, refused to exercise such discretion, holding instead that “they were clearly ineligible to remain in the country.” Furthermore, Belor failed to allow for an appeal of a deportation order secured under DOFA, which is itself a violation of Article 22(7) as

⁴⁶ See *supra* notes 25-43 and accompanying text (discussing the extent to which DOFA infringed upon individuals rights and freedoms protected under the American Convention).

⁴⁷ Brian Schroeter and Jeronimo Bowleg v. the Bahamas, Rep. No. 48/01, Inter-Am. H.R.C., para. 171, Case 12.068 (2001) (quoting Office of the United Nations Human Rights Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees).

⁴⁸ Convention Relating to the Status of Refugees, *entered into force* April 22, 1954, art. 32(1), 189 U.N.T.S. 150.

qualified by the Convention Relating to the Status of Refugees. Belor thus violated the provisions of Article 22(7) of the Convention.

G. Belor violated the rights guaranteed under Article 7 , 8 and 25 of the Convention by

III. Belor is responsible for violations of the Convention with respect to Mr. Blanco and unnamed Citadel detainees.

A. Belor violated Articles 7 and 25 of the Convention by failing to provide Mr. Blanco and the Citadel detainees with access to a competent court.

Article 7(5) of the Convention provides that “[a]ny person detained shall be brought promptly before a judge or other officer authorized by law.” In the Castillo-Petruzzi case, this Court held that the “36 days that elapsed between the time of detention and the date on which the alleged victims were brought before a judicial authority” violated Article 7(5) of the Convention.⁵⁰ A detained person is considered to be “brought before a judicial authority” when a court initiates proceedings against the detainee.⁵¹ Furthermore, this Court, in the Suarez Rosero case, held that when a detainee “never appeared in person before such an authority to be informed of the charges against him . . . this omission on the part of the State constitutes a violation of Article 7(5) of the Convention.”⁵²

Many detainees have been detained for almost four years, and none of them has ever appeared before a judicial authority. The detainees have never been informed of the charges against them, nor have any proceedings been initiated in the court to determine whether the detainees will be tried or released. Belor violated Article 7(5) by holding the detainees for over forty-six months during which time they were never allowed to appear in person before a judicial authority. With respect to Mr. Blanco, proceedings were only recently initiated, as Belor informed the Commission on May 6, 2004. Like the other detainees, Mr. Blanco was detained for several years before he appeared before a judicial authority. This prolonged period of

⁵⁰ The Castillo-Petruzzi Case, Judgment of May 30, 1999, Inter-Am. Ct.H.R. (Ser. C) No. 52 (1999), at para. 111.

⁵¹ The Suarez Rosero Case, Judgment of November 12, 1997, Inter-Am. Ct.H.R. (Ser. C) No. 35 (1997), at paras. 86.15, 86.27, 86.44, and 111 (stating that a case is initiated “by, for example, initiating the examining phase, issuing an order for detention, or ordering preliminary hearings for the case”).

⁵² *Id.* at para. 56.

Furthermore, the decision of the General Court of Belor to defer to the military's determination as to the legal status of Mr. Blanco violates Articles 7(6) and 25(1). This Court has recognized that Article 25(1) requires states to provide remedies which are effective and not merely illusory.⁵⁶ The remedy is ineffective when "the Judicial Power lacks the necessary independence to render impartial decisions."⁵⁷ The primary concern is the separation of powers and "attributing uniquely judicial functions to the executive branch."⁵⁸ By deferring to the governments determination as to status without undertaking an independent review, the domestic courts of Belor allowed the executive branch to exercise judicial functions. Belor was never obligated to give reasons for the detention and may prolong the detention indefinitely as long as the hostilities continue. The Court has acknowledged this situation as a violation of the separation of powers doctrine inherent in the notion of habeas corpus relief.⁵⁹ By failing to grant effective habeas corpus relief and protection from arbitrary detention, Belor has violated the rights of Mr. Blanco and the other Citadel detainees set forth under Articles 7(6) and 25(1) of the Convention.

B. Belor denied Mr. Blanco and the other Citadel detainees the right to a fair trial protected by Article 8 of the Convention.

The requirements necessary for a fair trial are set forth in part in Article 8(1):

1. Every 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.
...

The language in Article 8(1) relating to "reasonable time" is designed to prevent protracted detention and to ensure prompt disposal of any charges brought against a detainee.⁶⁰

⁵⁶ Advisory Opinion OC-9/87, *supra* note 24, at para. 24.

⁵⁷ *Id.*

⁵⁸ Advisory Opinion OC-8/87, *supra* note 23, at para. 12

⁵⁹ *Id.*

⁶⁰ Suarez-Rosero Case, *supra* note 51, para.70.

The length of time is measured from the first act of the proceeding, which is the arrest, and “ends when a final and firm judgment is delivered.”⁶¹ This Court has recognized that “a prolonged delay in itself can constitute a violation of the right to fair trial.”⁶² In the Suarez-Rosero case, this Court held that a period of fifty months was unreasonable.⁶³ The Court recognized that “this period far exceeds the reasonable time contemplated in the Convention.”⁶⁴ The continued detention of Mr. Blanco for over forty-two months and the other Citadel detainees for over forty-six months is a violation of the “reasonable time” standard of Article 8(1).

The length of detention in this case also violates an individual’s right to be presumed innocent under Article 8(2).⁶⁵ Article 8(2) states that, “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.” The Commission held that detention constitutes a violation of the presumption of innocence when such detention exceeds a reasonab

With respect to reasonable suspicion, the ECHR has held that “there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence.”⁶⁹ When reasonable suspicion is based on statements made by others in detention, such statements “must be corroborat

courts.”⁷¹ Because of the absence of minimal due process and fair trial guarantees, special tribunals are criticized, particularly when established to prosecute civilians charged with security offenses in times of emergency.⁷² Mr. Blanco, Robert Suarez, Laura Gray, and other Citadel detainees are civilians who did not participate in the fighting or other acts of violence. Nonetheless, they are subject to the jurisdiction of the special court. The special court is not a regular court of law. Those accused do not have the right to choose their own lawyer and are not entitled to the regular rules governing evidence, privilege, and the public nature of the trial. Belor has accordingly violated the provision in Article 8(1) requiring trial by a competent and impartial court previously established by law.

Finally, Belor is guilty of violating the detainees’ right to a fair trial because of the method Belor has used to interrogate the detainees. Article 8(e) recognizes “the inalienable right to be assisted by counsel.” Article 8(g) provides every person with “the right not to be compelled to be a witness against himself.” These two provisions taken together have been interpreted “to include the right to have a lawyer present for all important stages of the proceedings, particularly where the defendant is held in detention . . . [or] when giving a statement or undergoing interrogation.”⁷³ Belor is responsible for violating 8(2)(e) and (g) in light of the fact that the detainees were not entitled to have lawyers present during any interrogations. Furthermore, the method of interrogation itself is a violation of Article 8(g)

subsequently used against them.⁷⁴ Belor has therefore violated the detainees' rights to a fair trial.

C. The criminal investigation instituted against Mr. Blanco violates his right to freedom from ex post facto laws under Article 9 of the Convention.

Article 9 of the Convention provides that “[n]o one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed.” The Court has interpreted this provision to require that crimes “be classified and described in precise and unambi

sine lege prohibited under Article 9.⁷⁷ The definition of terrorism lacks certainty and universal acceptance.

physical and moral resistance.”⁸¹ “Inhuman” treatment has been recognized to include treatment that “was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.”⁸² For conduct to constitute inhuman or degrading treatment, physical injuries need not be sustained.⁸³ Psychological and moral suffering during questioning is recognized as inhuman treatment for purposes of Article 5.⁸⁴

In the interrogation context, there is a need to uncover truth and information that could potentially save lives. However, “[a]t times the price of truth is so high that a democratic society is not prepared to pay it.”⁸⁵ In its Report on Terrorism, the Commission considered the lawfulness of moderate forms of physical pressure, seeking guidance from other international authorities.⁸⁶ The European Court of Human Righ

of an individual to prolonged isolation for thirty-six days is in itself cruel and inhuman treatment.⁸⁹

Belor is guilty of violating Article 5 of the Convention because the government subjected Mr. Blanco and the other Citadel detainees to inhuman and degrading treatment similar to the unlawful treatment received by the detainee in the Castillo-Paez case. Belor shackled Mr. Blanco's hands and feet and placed a black bag over his head before removing him from the temple. T -2098J0.00.002 is gulati

The term “minor” refers to any person who has not reached the age of 18.⁹⁰ In addition to being held separate from adults, minors are entitled to maintain contact with their families, may not be imprisoned except as a last resort and only for the shortest time, and must never be held incommunicado.⁹¹

In the present case, Belor has acted in violation of Article 5(5) by failing to afford minors in its custody and control the special treatment that is required under Article 5(5). Specifically, Belor has imprisoned minors in the Citadel detention facilities who are between the ages of sixteen and eighteen. These minors have been

detainees that were released constitutes a violation of Articles 1 and 6 of the Torture Convention.⁹² In addition, Article 5 of the Convention against Torture specifically prohibits justifying the crime of torture based on states of emergency or the exigencies in the anti-terrorist struggle.⁹³ Therefore, Belor cannot justify derogation and is responsible for violations of Article 5(1), 5(2), and 5(5) of the Convention and Articles 1 and 6 of the Convention against Torture.

IV. Belor’s failure to ensure the rights and freedoms protected by the Convention constitutes a violation of Article 1(1).

Belor violated Article 1(1) of the Convention, which defines the state’s responsibilities and obligations with respect to the protection of human rights. Article 1(1) provides:

1. The States parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms

This Court has recognized that by subjecting victims to “proceedings that violated various provision of the Convention, the State failed to comply with the duty to ‘respect the rights and freedoms’” of the Convention.⁹⁴ This Court has also made clear that this obligation implies the duty of States to “prevent, investigate, and punish any violation of the rights recognized by the Convention.”⁹⁵ By denying Laura Gray, Robert Suarez, the named members of the Gir Temple, Mr. Blanco, and the unnamed Citadel detainees their fundamental rights

⁹² See Case of the Street Children, *supra* note 89, at para. 250 (finding a violation of Articles 1, 6 and when Guatemala “did not adopt any formal decision to initiate a criminal investigation”)

protected under this Convention, Belor violated provisions of this Convention, which in turn gives rise to a violation of Article 1(1).

CONCLUSION

Modern trends in warfare, which are characterized by situations involving terrorist activities, non-state actors, and prolonged periods of armed conflict, reveal the inadequacies of the present legal system and the lack of protection afforded both civilians and combatants.

2. Reinstate the rights and freedoms which members of the Gir Temple were deprived of subsequent to Belor's passage of the DOFA;
3. Provide Laura Gray and Robert Suarez the ability to seek asylum in accordance with their right under international law;
4. Grant the detainees habeas corpus relief so that a competent and independent tribunal may decide on the merits the legality of the their detention without deference to the military's determination;
5. Investigate detention facilities and interrogation methods to ensure compliance with human rights provisions guaranteed under the Convention;
6. Suspend any proceedings before the special tribunal which are in violation of the right to a fair trial or the prohibition against ex post facto laws; and
7. Take any measures this Court deems necessary to ensure the "free and full exercise" of individual human rights protected under the Convention.