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

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**Inter-American Commission on Human Rights,**

Petitioner

v.

**Republic of Belor,**

Respondent

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

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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 and its inmates.” (H.C.



at 4). The agreement also provided Belor's armed forces with immunity from civil and criminal processes in New Atrian courts. (H.C. at 4). The countries agreed that the bilateral agreement would last through the duration of the conflict with the Scorpions. (H.C. at 4).

Men and women alike between the ages of sixteen and sixty-three, who were captured by Belor's armed forces, are forcibly detained together in the Citadel. (H.C. at 4). The detainees are nationals of New Atria or other third countries. (H.C. at 4). The Belor government has denied the detainees privileged status and the protections afforded by the Third and Fourth Geneva Conventions. (H.C. at 4). Because Belor maintains that the detainees were captured during armed conflict, Belor claims the right to hold the detainees until the cessation of the conflict with the Scorpions. (H.C. at 4).

On June 27, 2001, after the fifty-six individuals had been detained in Venzaar and the armed conflict shifted into a northern province of New Atria, Belor issued an Order establishing a tribunal in New Atria and setting forth the crimes under which the Citadel detainees are to be prosecuted. (H.C. at 4-5). Among the crimes defined are crimes against humanity, war crimes, and acts of terrorism. (H.C. at 4-5). The crime of terrorism is defined in the Order as:

- (a) any act that provokes, creates, or maintains a state of anxiety, alarm, or fear in the population or in a sector thereof;
- (b) any act:
  - (i) against the life, health or personal security of any person; or
  - (ii) against the security of public buildings, roads, or means of communication, power or of transport of any type,
  - (iii) using arms, explosive materials, or any other means capable of causing damage or grave disturbance of the public peace, international relations, or the security of society;
- (c) any act or omission that constitutes a crime under an anti-terrorism treaty to which Belor is a party. . . .

(H.C. 4-5).

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 humanitarian law. (H.C. at 10). The habeas corpus petition was dismissed upon appeal to the High Court of Belor. (H.C. at 10).

Subsequently, Rights International filed two constitutional claims on behalf of all New Atrian members of the Gir Temple and on behalf of Suarez and Gray individually. (H.C. at 10). The New Atrian members challenged the constitutionality of sections 13 and 14 of DOFA as a violation of their right to privacy, freedom of religion, and equality before the law. (H.C. at 10). They also challenged section 32 of the Act as a violation of their constitutionally protected right

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."<sup>1</sup> 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*.<sup>2</sup> Furthermore, with respect to Mr. Blanco, he is a national of Belor and was unlawfully arrested *in* Belor *by* Belor armed forces.

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<sup>1</sup> 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.

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

For these reasons, the Court has jurisdiction *ratione loci* to hear the claims of Mr. Blanco, Laura Gray, Robert Suarez, and the other Citadel detainees.

## II. Exhaustion of Remedies

Pursuant to Article 46 of the Convention and Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights, the petitioners have exhausted all domestic remedies. Domestic remedies are considered exhausted when the petitioners have appealed their case at each level in the hierarchy of domestic courts and have been unable to obtain an effective result.<sup>3</sup>

The domestic remedies were exhausted with respect to Gray, Saurez, and the Gir Temple. The petitions filed on their behalf went through the entire judicial process. Both actions were dismissed, first by the General Court and then, subsequently, on final appeal by the High Court. Therefore, all domestic legal remedies with respect to their petitions have been exhausted.

Likewise, Mr. Blanco and the Citadel detainees have exhausted all domestic remedies. This Court has specified that only those domestic remedies which are “adequate” in a specific case need be exhausted. A domestic remedy is adequate only if it is suitable to address the infringement of the specific legal right allegedly violated.<sup>4</sup> Furthermore, the remedy must also be effective, meaning that it is capable of producing the anticipated result.<sup>5</sup>

The detainees are not required to exhaust remedies in the New Atrian judicial system, since any such available remedy would be inadequate and ineffective. The U.N. Human Rights Committee has expressed deep concern about the administration of justice in New Atria and has stressed that Corpions do not receive equal and impartial treatment in their judicial system.

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<sup>3</sup> Jose Eduardo Acurso v. Argentina, Rep. No. 2/03, Inter-Am. C.H.R., at para. 28, Petition 11.306 (2003).

<sup>4</sup> The Velasquez-Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct.H.R. (Ser. C) No.4 (1988), at para. 64.

<sup>5</sup> *Id.* at para. 66.



Since their only other domestic legal recourse would be under a judicial system that has been observed to be unfair and unequal, its inadequate and ineffective remedies do not have to be pursued in order to comply with Article 46. Furthermore, neither Mr. Blanco nor the detainees are required to exhaust remedies under international law, since such remedies would likewise be ineffective. Such laws leave Mr. Blanco and the other detainees entirely to the unfettered discretion of the Belor government. The rights and protections to which they may be entitled under international or domestic law cannot be said to be an effective judicial remedy.<sup>6</sup>

In light of the issues addressed above, and pursuant to Article 46 of the Convention and Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights, the petitioners have exhausted all domestic remedies.

### **PROVISIONAL MEASURES**

The Court is empowered under Article 63(2) of the Convention to grant provisional measures when necessary to avoid irreparable harm to persons.<sup>7</sup> Here, provisional measures are crucial in order to avoid irreversible harm to Mr. Blanco and the unnamed Citadel detainees. The facts of this case meet the standard established by this Court to show the need for the protections requested.<sup>8</sup>

#### **A. Provisional measures are necessary to avoid irreparable damage to Mr. Blanco's right to a fair trial under the Convention.**

The purpose of provisional measures in international human rights law is to preserve the rights of the parties in dispute “by ensuring that the future merits judgment is not harmed by their

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<sup>6</sup> See Decision on Request for Precautionary Measures, Inter-Am. C.H.R. (Detainees at Guantanamo Bay, Cuba), 41 I.L.M. 532 (2002).

<sup>7</sup> American Convention on Human Rights, O.A.S. Off. Rec. OEA/Ser.L/V/II.23 doc. 21, rev. 6 (1979), art. 63 [hereinafter “American Convention”].

<sup>8</sup> The *prima facie* standard of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons” has been applied many times by this Court. See, *inter alia*, Peace Community of San Jose de Apartado Case, Provisional Measures, Order of the President of the Inter-Am. Ct.H.R. of October 9, 2000, at fourth considering clause.

facts while the action is pending.”<sup>9</sup> 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.<sup>10</sup> During this time, the detainees have been subjected to impermissible interrogation methods and inhumane and degrading treatment.<sup>11</sup>

Names of specific persons are not necessary in order to grant provisional measures.<sup>12</sup> 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.<sup>13</sup> 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

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<sup>9</sup> 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.

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

<sup>11</sup> 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).

<sup>12</sup> Dinah Sheldon, *The Legal Status of the Detainees at Guantanamo Bay: Innovative Elements in the Decision of the Inter-American Commission on Human Rights*, 23 H.R.L.J. 13, 14-16 (2003).

<sup>13</sup> See *id.*

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."<sup>14</sup> When dealing with situations of armed conflict, human rights law is not replaced by international humanitarian law.<sup>15</sup> Rather, the two bodies of law form "an interrelated and mutually reinforcing regime of human rights protections."<sup>16</sup> In situations where both human rights and international humanitarian law have potential application and provide distinct protections,

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<sup>14</sup> 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.

<sup>15</sup> 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).

<sup>16</sup> 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.

Article 29(b) of the Convention requires the application of the treaty provision that provides the higher standards and “best safeguards the rights of individuals.”<sup>17</sup>

International humanitarian law generally affords victims of armed conflicts greater protection than that provided in the human rights provisions of the Convention.<sup>18</sup> That is not the case here where Belor has denied the detainees POW status. Without the application of human rights provisions, the detainees would be left with only the protections set forth under Article 75 of Protocol I of the Geneva Conventions.<sup>19</sup> In the present case, international human rights law thus provides the higher standard of protection and better safeguards the rights of the individual.<sup>20</sup> Moreover, the present case deals with armed conflict over a prolonged period of time and without a definite end. The Commission has recognized “that situations of this nature are not clearly addressed by existing international law.”<sup>21</sup> Accordingly, international humanitarian law does not afford adequate protection, and the Court should therefore apply the human rights provisions as they are set forth in the Convention.

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<sup>17</sup> Coard Case, *supra* note 1, at para. 42. Abella Case, *supra* note 16, at paras. 164-65. Report on Terrorism, *supra* note 14, at para. 45. Article 29(b) of the American Convention provides that “[n]o provision of this Convention shall be interpreted as . . . restricting . . . any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.” American Convention on Human Rights, *supra* note 7, art. 29(b). A similar provisions exists under Article 75(8) of the Protocol Additional (No. 1) to the Geneva Conventions of August 12, 1949), which states that “[n]o provision of this Article may be construed as limiting or infringing any other more favorable provision granting greater protection, under any applicable rules of international law.” Protocol Additional (No. I) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *entered into force* Dec. 7, 1978, art. 75(8), 16 I.L.M. 1391, 1423[hereinafter “Protocol I to the Geneva Conventions”].

<sup>18</sup> Report on Terrorism, *supra* note 14, at para. 159.

<sup>19</sup> Protocol I to the Geneva Conventions, *supra* note 17, art 75.

<sup>20</sup> Compare generally American Convention, *supra* note 7, with Protocol I to the Geneva Convention, *supra* note 17.

<sup>21</sup> Report on Terrorism, *supra* note 14, at para. 146.

**B. Belor may not derogate from any of the human rights provisions under the Convention.**

The Convention allows states to derogate from certain provisions during emergency situations. Article 27(1) of the Convention states that “[i]n times of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention.”<sup>22</sup> However, in the present case, Belor did not fulfill the procedural requirements for derogation under Article 27(3) and may in no event deny protection of the non-derogable rights under Article 27(2).

Belor is not entitled to take measures derogating from the Convention because it has not met the procedural requirements under Article 27(3). Article 27(3) provides that states must inform the Secretary General of the OAS of the provisions that will be suspended, the reasons for suspension, and the date upon which the suspension will take effect. Belor never officially declared a state of emergency, nor did it inform the requisite authority of its decision to suspend any obligations under the Convention. Accordingly, Belor is not entitled to derogate from any provisions in the Convention.

In any event, Belor’s right to suspend human rights provisions is restricted by the language of Article 27(2), which prohibits states from suspending certain non-derogable rights. Among the enumerated rights in Article 27(2) are Article 5 (Right to Humane Treatment), Article 9 (Freedom from Ex Post Facto Laws), and Article 12 (Freedom of Conscience and Religion). This Court has also held that the rights protected by Articles 7(6) and 25(1) are not subject to derogation. The Court stated that “the legal remedies guaranteed in Articles 7(6) and 25(1) of the Convention may not be suspended because they are judicial guarantees essential for

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<sup>22</sup> See Carlos Molero Coca et al. v. Peru, Rep. No. 49/00, Inter-Am. C.H.R., at para. 72, OEA/Ser.L/V/II.106 doc. 3 rev. (1999) (defining provisions necessary to derogate from obligations under the American Convention).

the protection of the rights and freedoms whose suspension Article 27(2) prohibits.”<sup>23</sup> In addition, this Court determined that states may not derogate from the rights protected under Article 8 of the Convention, even during emergency situations.<sup>24</sup>

Belor did not satisfy the procedural requirements of Article 27(3). Even if Belor argues that it met such requirements, Belor is still bound at all times by the non-derogable rights enumerated both in Article 27(2) and by this Court. Therefore, the victims in this case are entitled to the full human rights protections secured by the Convention.

## **II. Belor violated the rights of Laura Gray, Robert Suarez, and named members of the Gir Temple protected under the Convention.**

### **A. Belor violated the Gir Temple members’ right to property by freezing the assets of the Gir Temple.**

The Convention recognizes that “[e]veryone has a right to the use and enjoyment of his property.”<sup>25</sup> The Court has defined “property” to include intangible objects, such as financial assets.<sup>26</sup> Moreover, the right to property can be both an individual and a group right.<sup>27</sup>

Applying these principles, the freezing of the Temple’s assets and the closure of the Temple violated the congregation members’ group right to property. Section 32 of the Act, in

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<sup>23</sup> Habeas Corpus in Emergency Situations (Articles 27(2), 25(1) and 7(6) American Convention on Human Rights), Inter-Am. Ct.H.R., Adv. Op. OC-8/87 of Jan. 30, 1987 (Ser. A) No. 8, para 44 [hereinafter “Advisory Opinion OC-8/87”]. The Commission has recognized that governmental abuse is most likely to occur “during long periods of incommunication, during which the prisoner lacks the legal means and remedies to assert his rights.” 1986 Annual Report of Commission, *cited in* Advisory Opinion OC-8/87, para 36.

<sup>24</sup> Judicial Guarantees in States of Emergency (Articles 27(2), 25, and 8 of the American Convention on Human Rights), Inter-Am. Ct.H.R., Adv. Op. OC-9/87 of Oct. 6, 1987, Ser. A, No. 9 (1987), at para. 38 [hereinafter “Advisory Opinion OC-9/87”] The Court held that “the principles of due process of law cannot be suspended in states of exception insofar as they are necessary conditions for the procedural institutions regulated by the convention to be considered judicial guarantees.” Advisory Opinion OC-9/87, para 30.

<sup>25</sup> American Convention, *supra* note 7, at art. 21(1).

<sup>26</sup> Case of Ivcher-Bronstein v. Peru, Judgment of February 6, 2001, Inter-Am. Ct.H.R. (Ser. C) No. 75, para. 122.

<sup>27</sup> U.N. Declaration of Human Rights, G.A. Res. 217(III), 3rd Sess., 183rd mtg., art 17(1) (1948); African Charter on Human and Peoples’ Rights, *entered into force* Oct. 21, 1986, O.A.U. Doc. CAB/LEG/67/3rev.5, 21 I.L.M. 58 (1982), art. 21.

application and effect, stripped the Temple of its financial assets, thus denying its members of their right to use and enjoy the Temple and its financial assets.

Admittedly, restrictions on the use or enjoyment of property may be necessary in the general interest to effectively investigate and deter criminal activity and, thereby, entail no duty to compensate. However, the circumstances of each case must still be evaluated for proportionality and necessity.<sup>28</sup> In the present case, section 32 of DOFA is unproportional and unnecessary. While states may have some latitude in enacting strategies that target assets believed to be connected to terrorist activities, any actions taken must have an objective and reasonable basis in fact or evidence.<sup>29</sup> In fact, the provisions of DOFA specifically require Belor to have reasonable suspicion before it takes measures to freeze or seize financial assets.

Belor maintains that the members' right to property was restricted for reasons of public interest—specifically, to fight “terrorism.” However, deprivation of the right to property is not justified here because there is no established, or even reasonably suspicious, connection between the assets seized and terrorist activities. The order was granted before such reasonable suspicion was established. Belor froze the Temple's assets “pending an investigation into possible financial ties” with terrorism – not because such ties already existed. Therefore, the purpose of section 32 as applied to the Temple has no reasonable basis in fact or evidence. Mere optimism that a terrorist connection can be established does not justify depriving the congregation members of their right to property under the Convention.

**B. Belor violated the right to privacy under Article 11 of the Convention by arbitrarily interfering with the private lives of the members of the Gir Temple.**

Article 11(1) of the Convention provides that “[e]veryone has the right to have his honor respected and his dignity recognized.” Article 11(2) further provides that “[n]o one may be the

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<sup>28</sup> Raimondo v. Italy, 18 Eur. H.R. Rep. 237 (Ser. A) (1994), at para. 30.

<sup>29</sup> See Report on Terrorism, *supra* note 14, at para. 370.

object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence.” The fundamental objective of Article 11 is to protect the individual against arbitrary interference by public officials.<sup>30</sup> The European Court of Human Rights (ECHR) has recognized that individuals may have vital privacy interests in personal information gathered by the state concerning their status or activities.<sup>31</sup>

Belor’s application of sections 13, 14 and 32 of DOFA violated the Article 11 privacy rights of the Temple and its named members. Among other information, section 13 of DOFA requires members of the Gir Temple to reveal their ethnic and religious affiliation, their address of residence and employment, and, if visiting, the itinerary of all places to be visited. Additionally, section 14 of the Act requires the Gir Temple to supply Belor with names and addresses of all its leaders, administrators and congregation members, as well as five years worth of financial records. In effect, sections 13 and 14 disrespect the honor and dignity of the Temple members in violation of Article 11(1) and arbitrarily interfere with their private lives in violation of Article 11(2).

In the Inter-American system, states are to conduct initiatives affecting the right to privacy in compliance with prevailing norms and principles governing such a right.<sup>32</sup> This includes ensuring that the collection and use of personal information is clearly authorized by law in order to protect against arbitrary or abusive interference with privacy interests.<sup>33</sup> DOFA lacks adequate safeguards which would prevent abusive interference into privacy interests. There are no strict conditions with regard to the implementation of the surveillance of information and assets, or with regard to the processing of information obtained. Further, the Act provides no

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<sup>30</sup>X and Y v. Argentina, Rep. No. 38/96, Inter-Am. C.H.R., at para. 91, Case 10.506 (1996).

<sup>31</sup> See, e.g., Gaskins v. United Kingdom, 12 Eur. H.R. Rep. 36 (Ser. A) (1989), at para. 49.

<sup>32</sup> See Report on Terrorism, *supra* note 14, at para. 371.

<sup>33</sup> Klass v. Germany, 2 Eur. H.R. Rep. 214 (Ser. A) (1978), at paras. 50-60; Malone v. United Kingdom, 7 Eur. H.R. Rep. 14 (Ser. A) (1984), at paras. 66-68.



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.<sup>34</sup> 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.”<sup>35</sup> 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.”<sup>36</sup>

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

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<sup>34</sup> American Convention, *supra* note 7, at art. 12(3).

<sup>35</sup> *Id.* at art. 12(3).

<sup>36</sup> 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.”<sup>37</sup> 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,

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<sup>37</sup> 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.”<sup>38</sup> Such rights cannot be restricted at the sole discretion of governmental authorities.<sup>39</sup>

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.”<sup>40</sup> 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.<sup>41</sup> 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

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<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> *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. . . .”<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> This Court has set out that a difference in treatment is discriminatory when it has “no objective and reasonable justification.”<sup>45</sup>

DOFA has no objective or reasonable justification and is, therefore, discriminatory in violation of Article 24. The legitimate purpose asserted by Belor in enacting and applying DOFA was its concern that the “violence that had plagued New Atria would spread to Belorean society.” Its application has resulted in disparate treatment of individuals of Corpion religion. Furthermore, the provisions in no way advance legitimate government interests. The Act cannot justify the extreme infringement upon Corpions’ rights of privacy, religion, association,

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<sup>42</sup> See American Convention, *supra* note 7, at art. 15.

<sup>43</sup> See *supra* notes 28,29 and accompanying text (discussing the disproportionality and ineffectiveness of DOFA provisions).

<sup>44</sup> William Andrews v. United States, Rep. No. 57/96, Inter-Am. C.H.R., Case 11.139 (1999), at para. 173, *citing* Article 26 of the International Covenant on Civil and Political Rights which provides: “All persons are equal before the law... [i]n this respect, the law shall prohibit any discrimination... on any ground such as race, colour, sex, language, religion... .”

<sup>45</sup> Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Inter-Am. Ct.H.R., Adv. Op. OC-4/84 of Jan. 19, 1984, (Ser. A) No. 4, at para. 56.

assembly and property.<sup>46</sup> 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.”<sup>47</sup> 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.<sup>48</sup>

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

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<sup>46</sup> 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).

<sup>47</sup> 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).

<sup>48</sup> 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 arbitrarily arresting and detaining Ms. Gray and Mr. Suarez pursuant to section 32 of the Defense of Freedom Act.**

Articles 25 and 7 of the Convention provide the right to personal liberty and judicial protection. Article 8 sets forth the standards for due process and a fair trial. Section III, which follows, provides a detailed discussion as to Belor's obligations to respect these fundamental rights. Gray and Suarez are being imprisoned along with the other detainees, have likewise been denied access to prompt and effective recourse to a competent court, and are subject to the jurisdiction of the special tribunal, as are Mr. Blanco and the other detainees. For these reasons and the reasons further elaborated in Section III, Belor's conduct violates the rights of Laura Gray and Robert Suarez protected by Articles 7, 8, and 25 of the Convention.

Specifically with respect to Article 8(2), Belor violated Gray and Suarez's right to presumed innocence. As discussed further in Section III, this right is predicated upon the relationship between reasonable suspicion and length of detention.<sup>49</sup> Under this analysis, the longer the detention, the more evidence is required to justify it. Belor forces have detained Gray and Suarez in the Citadel detention facilities for forty-five months based on the fact that they are suspected members of the Scorpion group and were indicted eight years ago for their alleged role in the kidnapping of a New Atrian business leader. There is no evidence that Gray and Suarez participated in the bombings or pose any other threat that would justify their prolonged detention in the Citadel. Belor has therefore violated Gray and Suarez's right to be presumed innocent.

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<sup>49</sup> See *infra* notes 50-74 and accompanying text (analyzing Belor's conduct which violated the rights secured to Mr. Blanco and the other Citadel detainees under Articles 7, 8, and 25 of the American Convention).

**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.<sup>50</sup> A detained person is considered to be “brought before a judicial authority” when a court initiates proceedings against the detainee.<sup>51</sup> 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.”<sup>52</sup>

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

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

<sup>51</sup> 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”).

<sup>52</sup> *Id.* at para. 56.

detention clearly violates the standard that this Court set in both the Castillo-Petruzzi case and the Suarez-Rosero case. The Court should therefore find that Belor violated Article 7(5) of the Convention.

Articles 7(6) and 25(1) of the Convention set forth the provisions governing a detained individual's right to petition for habeas corpus relief. Article 7(6) provides that "[a]nyone who is deprived of his liberty shall be entitled to recourse to a competent court in order that the court may decide without delay on the lawfulness of his arrest." Article 25(1) states that "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights."

This Court has held that the writ of habeas corpus is "a judicial remedy designed to protect personal freedom or physical integrity against arbitrary detentions."<sup>53</sup> This remedy is ineffective "when the Judicial Power lacks the necessary independence to render impartial decisions . . . or in any other situation that constitutes a denial of justice, as when there is an unjustified delay in the decision."<sup>54</sup> In the Suarez-Rosero case, this Court agreed with the Commission that a fourteen and a half month delay between the date on which the appeal was filed and the final decision is unreasonable.<sup>55</sup>

Belor violated the Citadel detainees' right to seek habeas corpus relief from a competent tribunal because of the unreasonable delay in initiating the proceeding. The courts of Belor declined to render a decision as to the legality of the Citadel detainees' detention. Thus, a final decision has never been reached. The detainees have already experienced a delay in excess of forty-six months, and the clock continues to run. This clearly violates the unreasonable standard as recognized by the Court in the Suarez-Rosero case.

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<sup>53</sup> Advisory Opinion OC-8/87, *supra* note 23, at para. 33.

<sup>54</sup> Advisory Opinion OC 9/87, *supra* note 24, at para 24.

<sup>55</sup> Suarez-Rosero Case, *supra* note 51, at para. 66.



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.<sup>56</sup> The remedy is ineffective when "the Judicial Power lacks the necessary independence to render impartial decisions."<sup>57</sup> The primary concern is the separation of powers and "attributing uniquely judicial functions to the executive branch."<sup>58</sup> 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.<sup>59</sup> 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.
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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.<sup>60</sup>

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

<sup>57</sup> *Id.*

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

<sup>59</sup> *Id.*

<sup>60</sup> 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.”<sup>61</sup> This Court has recognized that “a prolonged delay in itself can constitute a violation of the right to fair trial.”<sup>62</sup> In the Suarez-Rosero case, this Court held that a period of fifty months was unreasonable.<sup>63</sup> The Court recognized that “this period far exceeds the reasonable time contemplated in the Convention.”<sup>64</sup> 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).<sup>65</sup> 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 reasonable period of time and is not based on a valid justification.<sup>66</sup> The Commission has determined that a valid justification includes “the existence of a reasonable suspicion that the accused has committed an offense, the danger of flight, the need to investigate, the possibility of collusion, the risk of pressures on witnesses, and the preservation of public order.”<sup>67</sup> Suspicion that the detainee has committed a crime is not a factor, but rather is a necessarily element.<sup>68</sup>

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<sup>61</sup> *Id.* at para. 70-71.

<sup>62</sup> The Hilaire, Constantine and Benjamin et al. Case, Judgment of June 21, 2002, Inter-Am. Ct.H.R. (Ser. C) No. 94 (2002), at para. 145. Report on Terrorism, *supra* note 14, at para. 234.

<sup>63</sup> Suarez-Rosero Case, *supra* note 51, para. 73-74.

<sup>64</sup> *Id.* at 73. See Labita v. Italy, App. No. 26772/95, at para. 149, 165, available at <http://www.echr.coe.int> (April 6, 2000) (holding that a delay of thirty-one months was not reasonable).

<sup>65</sup> Report on Terrorism, *supra* note 14, at para. 123.

<sup>66</sup> Jorge Luis Bronstein Case, *supra* note 26, para. 12.

<sup>67</sup> Report on Terrorism, *supra* note 14, at para. 123. See Jorge Luis Bronstein Case, *supra* note 26, para. 26-38. See Labita v. Italy, *supra* note 64, at para. 152-54.

<sup>68</sup> *Id.* at 26-27.

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.”<sup>69</sup> When reasonable suspicion is based on statements made by others in detention, such statements “must be corroborated by other evidence . . . [and] become less relevant with the passage of time, especially where no further evidence is uncovered during the course of the investigation.”<sup>70</sup>

Belor did not have reasonable suspicion to apprehend Mr. Blanco nor the other detainees and continues to lack the required basis for prolonged detention. Belor apprehended Mr. Blanco based solely on a statement obtained from a Citadel detainee, who had been subjected to interrogation by Belor forces in the Citadel. Subsequent to his arrest, the only information Belor obtained against Mr. Blanco included blueprints of Belor’s Parliament Buildings – buildings which were never the subject of an attack. Furthermore, information from the detainees who were released reveals that some detainees had not participated in the fighting and were arrested by mistake. Therefore, there is no objective evidence to show that the detainees have committed any offense. Given the length of time Belor has held Mr. Blanco and the detainees and given Belor’s lack of reasonable suspicion, Belor is acting in violation of the presumption of innocence provided for in Article 8(2).

Belor has acted in further violation of the rights protected under Article 8 by the establishment of a special tribunal to prosecute the detainees. The language in Article 8(1) requiring “a competent, independent, and impartial tribunal” has been interpreted to prohibit “the creation of special courts or tribunals that displace the jurisdiction belonging to the ordinary

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<sup>69</sup> *Labita v. Italy*, *supra* note 64, at para. 155.

<sup>70</sup> *Id.* at para. 158-59.

courts.”<sup>71</sup> 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.<sup>72</sup> 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.”<sup>73</sup> 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) because it seeks to elicit statements through coercion from the detainees that may be

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<sup>71</sup> Report on Terrorism, *supra* note 14, at para. 230. The Castillo-Petruzzi Case, Judgment of May 30, 1999, Inter-Am. Ct.H.R. (Ser. C) No. 52 (1999), at para. 129 [hereinafter “Castillo-Petruzzi Case”].

<sup>72</sup> Report on Terrorism, *supra* note 14, para. 230.

<sup>73</sup> Report on Colombia, Inter-Am. C.H.R., at Ch. V, para. 97, OEA/Ser.L/V/II/102, doc. 9 rev. 1 (1999). See Report on Terrorism, *supra* note 14, para. 237.

subsequently used against them.<sup>74</sup> 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 unambiguous language that narrowly [define] the punishable offense.”<sup>75</sup> When deciding on the legality of a Peruvian law that penalized the crime of terrorism, the Commission held that Peru’s definition of terrorism was “totally abstract and inaccurate . . . with a patent lack of clarity, using very inexact terms.”<sup>76</sup> In the June 27, 2001 Order, Belor defined terrorism in provisions (a) and (b) in almost exactly the same terms that Peru used to define terrorism in the provision that the Commission ruled invalid. Therefore, the Court in this case should find that the way in which Belor defined terrorism is imprecise and ambiguous and is a violation of Article 9 of the Convention.

While subsection (c) of the Order is defined in more precise terms with reference to other international treaties relating to terrorism, subsection (c) violates the notion of *nullum crimen*

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<sup>74</sup> The Cantoral-Benavides Case, Judgment of August 18, 2000, Inter-Am. Ct.H.R. (Ser. C) No. 69 (2000), at para. 132.

<sup>75</sup> *Id.* at para. 121. See Carlos Molero Coca Case, *supra* note 22, at para. 90.

<sup>76</sup> Carlos Molero Coca Case, *supra* note 22, at para. 88-90. Peru defined the crime of terrorism as: [A]n act aimed at ‘provoking, creating, or maintaining anxiety alarm, and fear in the public, or a sector thereof; making attempts to harm the life, body, health, freedom, and safety of the individual, or property, the security of public buildings, modes and means of communication and transportation of any kind, electric towers and power lines, power plants, or any other facility or service, through the use of weapons or explosive devices or substances, or any other means capable of inflicting damage or seriously disrupting the peace or adversely affecting international relations or the security of society and the State.’

*Id.*

*sine lege* prohibited under Article 9.<sup>77</sup> The definition of terrorism lacks certainty and universal acceptance.<sup>78</sup> Because of the ambiguity surrounding the definition of terrorism, one who had taken part in the bombings would not have known whether the particular act was a condemned terrorist attack or an exercise of the lawful right of self-determination and liberation.<sup>79</sup> The punishable acts under the June 27, 2001 Order cannot “properly be held to have been violations of international law when committed” and therefore, violate the notion of *nullum crimen sine lege*.<sup>80</sup> The Court should find that Belor acted in violation of Article 9 by charging Mr. Blanco with the crime of terrorism as it is defined in the June 27, 2001 Order.

**D. Belor violated its international obligations under the American Convention and the Inter-American Convention to Prevent and Punish Torture as a result of its treatment of the Citadel detainees.**

**1. Violation of Article 5(1) and 5(2)**

Article 5 of the Convention sets forth the standard of conduct with respect to the treatment of detainees. Article 5 provides that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. . . .

“Degrading” punishment or treatment is “characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his

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<sup>77</sup> See THE UNITED NATIONS WAR CRIMES COMMISSIONS, LAW REPORTS OF TRIALS OF WAR CRIMINALS v. 6, 41-42 (1997 William S. Hein & Co., Inc.) [hereinafter “Trials of War Criminals”] (stating that the doctrine of *nullum crimen sine lege* is not violated when the crime is well established and properly defined as a crime under international law).

<sup>78</sup> Compare International Convention for the Suppression of the Financing of Terrorism, *opened for signature* Jan. 10, 2000, 39 I.L.M. 270, 271 art. 2(1)(b) (defining terrorism as an “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or compel a government or an international organization to do or to abstain from doing any act”), with Alexandra V. Orlova & James W. Moore, “Umbrellas” or “Building Blocks”?: *Defining International Terrorism and Transnational Organized Crime in International Law*, 27 Hous. J. Int’l L. 267, 287-89 (Winter 2005) (citing 22 U.S.C. § 2656f(d) (2005) which defines terrorism as “premeditated politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience”).

<sup>79</sup> See Orlova & Moore, *supra* note 78, at 277.

<sup>80</sup> See TRIALS OF WAR CRIMINALS, *supra* note 77, at 41-42.

physical and moral resistance.”<sup>81</sup> “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.”<sup>82</sup> For conduct to constitute inhuman or degrading treatment, physical injuries need not be sustained.<sup>83</sup> Psychological and moral suffering during questioning is recognized as inhuman treatment for purposes of Article 5.<sup>84</sup>

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.”<sup>85</sup> In its Report on Terrorism, the Commission considered the lawfulness of moderate forms of physical pressure, seeking guidance from other international authorities.<sup>86</sup> The European Court of Human Rights and the United Nations Human Rights Committee have held that prolonged standing and deprivation of sleep for long periods of time constitute inhuman and degrading treatment.<sup>87</sup> In the Castillo Paez case, this Court held that the act of arresting a person and placing him in the trunk of a car was a violation of the inherent dignity of the person.<sup>88</sup> This Court recognized in the Velasquez-Rodriguez case that subjection

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<sup>81</sup> The Loayza-Tomayo Case, Judgment of September 17, 1997, Inter-Am. Ct.H.R. (Ser. C) No. 33 (1997), at para 57 (quoting Case of Ireland v. the United Kingdom, 2 Eur. H.R. Rep. 25 (Ser. A) (1978) [hereinafter “Ireland v. U.K.”]).

<sup>82</sup> Labita v. Italy, *supra* note64, at para. 120.

<sup>83</sup> Report on Terrorism, *supra* note14, at para 159.

<sup>84</sup> Loayza-Tomayo Case, *supra* note 81, at para. 57.

<sup>85</sup> Supreme Court of Israel: Judgment Concerning the Legality of the General Security Service’s Interrogation Methods, 38 I.L.M. 1471 (Sept. 6, 1999), at p. 1481, 1484 [hereinafter “Supreme Court of Israel Case”].

<sup>86</sup> Report on Terrorism, *supra* note 14, at para. 162-69 (citing cases by the European Court of Human Rights).

<sup>87</sup> *Id.* at para. 162 (citing cases by the United Nations Human Rights Committee and Ireland v. U.K., *supra* note 81, at p. 79-80).

<sup>88</sup> The Castillo-Paez Case, Judgment of November 3, 1997, Inter-Am. Ct.H.R. (Ser. C) No. 34 (1997), at, para. 66.

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

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. There is also evidence in the record to prove that Belor subjected the Citadel detainees to forced standing for up to eight-hour intervals and deprived the detainees of sleep for lengthy periods of up to three days. These practices have been recognized as unlawful by this Court and by human rights courts in other jurisdictions.

Belor is also responsible for violations of Article 5 because Belor held the detainees incommunicado with no contact with the outside world for almost four years. This incommunicado detention is well in excess of the thirty-six day period held as a violation in the Suarez-Rosero case and is in itself a violation of the Article 5 prohibition against inhuman and degrading punishment.

## **2. Violation of Article 5(5)**

Article 5(5) sets forth specific provisions for the treatment of children.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

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<sup>89</sup> Velasquez-Rodriguez Case, *supra* note 4, para. 187. *See* Suarez Rosero Case, *supra* note 51, at para. 91. Castillo-Petruzzi, *supra* note 50, at para. 197. The Case of the Street Children, Judgment of November 19, 1999, Inter-Am. Ct.H.R. (Ser. C) No. 63 (1999), at para. 164. Cantoral-Benavides Case, *supra* note 74, at para. 83. The Fairen-Garbi and Solis-Corrales Case, Judgment of March 15, 1989, Inter-Am. Ct.H.R. (Ser. C) No. 6 (1989), at para. 149. Report on Terrorism, *supra* note 14, at para. 161. Human Rights Committee of the International Covenant on Civil and Political Rights: Decision with regard to Communication of Valentini de Bazzano, 19 I.L.M. 133, 138 (January 1980).



The term “minor” refers to any person who has not reached the age of 18.<sup>90</sup> 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*.<sup>91</sup>

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 held *incommunicado* for a period exceeding forty-six months in the same detention facilities as the adult detainees. They have been afforded neither specialized tribunals nor a speedy process. Belor denied the minor detainees appropriate treatment and therefore, is responsible for violating Article 5(5).

### **3. Violations of Article 1 and 6 of the Inter-American Convention to Prevent and Punish Torture**

Given that the treatment and punishment received by the Citadel detainees is cruel, inhuman, and degrading, Belor’s acts constitute a violation of Article 1 and 6 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention Against Torture”). States are required under Article 1 to “undertake to prevent and punish torture in accordance with the terms of this Convention.” Article 6 states that “States Parties . . . shall take effective measures to prevent and punish [ ] cruel, inhuman, or degrading treatment or punishment within their jurisdiction.” Failure on the part of Belor to investigate and take measures to protect the Citadel detainees following the statements that were made by the

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<sup>90</sup> Case of the Street Children, *supra* note 89, at para. 188. See U.N. Convention on the Rights of the Child, U.N. Doc. A/RES/44/49 (1990), art. 1.

<sup>91</sup> Report on Terrorism, *supra* note 14, at para. 171. See U.N. Convention on the Rights of the Child, *supra* note 90, art. 37; Second Report on the Situation of Human Rights in Peru, Inter-Am. C.H.R. Ch. VIII, Section E, para. 23, OEA/Ser.L/V/II.106, doc. 59 rev. Ch. VIII (2000).

detainees that were released constitutes a violation of Articles 1 and 6 of the Torture Convention.<sup>92</sup> 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.<sup>93</sup> 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 his 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.<sup>94</sup> 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.”<sup>95</sup> By denying Laura Gray, Robert Suarez, the named members of the Gir Temple, Mr. Blanco, and the unnamed Citadel detainees their fundamental rights

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<sup>92</sup> 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 into the alleged perpetration of the crime of torture, neither did they investigate it in the practice”). See also Declaration on the Protection of All Persons from Being Subjected to Torture Treatment or Punishment, G.A. Res. 3452, U.N. GAOR, 30th Sess., 2433rd mtg., art. 8 (1975) (stating that “[a]ny person who *alleges* that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment . . . shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned”) (emphasis added); *Labita v. Italy*, *supra* note 64, at para. 131.

<sup>93</sup> *Loayza-Tomayo Case*, *supra* note 81, at para. 57. *Cantoral-Benavides*, *supra* note 74, at para. 95. Report on Terrorism, *supra* note 14, at para. 166. *Labita v. Italy*, *supra* note 64, at para. 119. *Selmouni v. France*, App. No. 25803/94, available at <http://www.echr.coe.int> (July 28, 1999), at para. 95. *Tomasi v. France*, App. No. 12850/87, available at <http://www.echr.coe.int> (August 27, 1992), at para. 115.

<sup>94</sup> *Castillo-Petrucci*, *supra* note 50, at para. 206.

<sup>95</sup> *Velasquez-Rodriguez*, *supra* note 4, at para. 166.

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.<sup>96</sup> It is incumbent upon this Court to do its part to conform the existing framework of legal protections to the realities of modern times. In light of the Court’s recognition of “the growing demand for the protection of fundamental rights and freedoms,” the Court should hold Belor to the highest standard of human rights protection envisioned by the Convention to ensure that states do not infringe upon individual rights and freedoms in their desperate struggle to prevent and punish terrorism. As a consequence, this Court should find that Belor’s conduct violated the specified provisions of the American Convention and the Convention Against Torture.

**WORD COUNT:** 7,496

## **REQUEST FOR RELIEF**

Petitioner respectfully requests this Court to declare the instant case admissible and find Belor in violation of Articles 1, 5, 7, 8, 9, 11, 12, 15, 16, 21, 22, 24, and 25 of the American Convention and violations of Articles 1 and 6 of the Convention Against Torture. In light of the foregoing violations, the Petitioner requests that this Court adopt provisional measures to ensure the safety and physical integrity of the Citadel detainees and order the State of Belor to:

1. Refrain from taking measures that derogate from its obligations under the Convention;

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<sup>96</sup> Report on Terrorism, *supra* note 14, at para. 146. Advisory Opinion OC-8/87, *supra* note 23, at para. 36 (recalling “the realities that have been the experience of some of the peoples of this hemisphere in recent decades, particularly disappearances, torture and murder committed or tolerated by some governments”). Report on Terrorism, *supra* note 15, at para. 146.

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.