

Clarification Questions about the Twenty-Fourth Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

- 1. Did Arcadia have any involvement in the establishment of the camps referred to in paragraph 15 of the hypothetical case?**

No, Arcadia was not involved in the establishment of the camps that were set up in the United States of Tlaxcochitlán.

- 2. Are the crimes contained in the criminal records of the 808 Wairans considered to be “serious non-political crimes” under article 40(2) of Arcadia’s Law on Refugees and Complementary Protection?**

The crimes for which the Wairans were convicted are considered “serious non-political crimes” under Arcadian domestic law and include the following: kidnapping, extortion, murder, sexual violence, drug trafficking, human trafficking, and forcible recruitment.

- 3. What was the criterion for deciding which individuals were placed in the immigration center versus the penitentiary units as discussed in paragraph 22 of the hypothetical case?**

The main criterion for determining each person’s place of detention was sex. Women were given priority to remain at the immigration detention center, while most of the men were transferred to the prisons, where they were housed in separate units so that they were not in contact with persons detained on criminal charges.

- 4. What measures were taken to preserve family unity in Arcadia?**

Please refer to the answer to question number 21.

- 5. What was the legal status of the people who were part of the caravan when they crossed the United States of Tlaxcochitlán on their way to Arcadia in July and August of 2014?**

The Wairans who were part of the caravan had no legal immigration status.

- 6. In view of the fact that Arcadia organized an extraordinary meeting with multiple government institutions at different levels as well as with agencies of the UN System after the arrival of the caravan, what measures did these officials recommend for managing this exceptional situation?**

A number of recommendations were made to the States at the meeting, including: (i) guaranteeing the right to seek and receive asylum; (ii) guaranteeing the right to non-refoulement; (iii) respecting the right to enter territory and not be refused entry at the border; (iv) implementing mechanisms to identify persons in need of international protection and special protection needs; (v) providing humanitarian assistance to persons; (vi) guaranteeing the economic, social, and cultural rights of persons.

- 7. What is the Gross Domestic Product of Arcadia?**

Arcadia’s gross domestic product for 2014 was US\$325 billion.

8. **Were any of the 808 individuals with criminal records, who were returned to Puerto Waira, separated from their families or children as a result of the refoulement?**

Please refer to the answer to question number 21.

9. **Were the 808 deported Wairans offered consular assistance or legal representation?**

The Arcadian authorities provided information leaflets to all of the Wairans informing them that they could have access to their country's consultation assistance; however, no one decided to request it. The Arcadian authorities sent the detainees a list of their rights. In addition, the authorities informed those individuals verbally and in writing that they could request legal assistance and representation and, to this end, officials provided them with a list with contact information for civil society organizations and legal clinics that could advise and represent them legally. Notwithstanding the above, the civil society organizations and legal clinics did not have the capacity to provide assistance to all of the Wairans.

10. **What remedies and procedures did the laws of the Republic of Arcadia provide for challenging the decision of exclusion from refugee status?**

The remedies available to challenge exclusion from refugee status under Arcadian law fall into two categories: administrative and constitutional.

The administrative route includes motions for reconsideration and administrative cassation. The former consists of the review of an administrative decision that is considered to have been made unlawfully or to have affected the legal interests of the person concerned. It is filed with the same authority that issued the contested decision and adjudicated by the most senior member of the institution. A motion for administrative cassation consists of challenging an administrative decision before a court specialized in the matter.

Constitutional remedies, on the other hand, seek to protect the fundamental rights of individuals and are appropriate in cases involving direct violations of the constitution and the international treaties to which the State of Arcadia is a party. These appeals include *amparo* [petition for a constitutional remedy] proceedings, which may be filed before any court, which must refer it to the competent *Amparo* Judge; and review proceedings, which are decided by the Constitutional Court of Arcadia, and are used to contest the decision of an *Amparo* Judge who denies constitutional protection, and are not subject to subsequent challenge.

Separate from the foregoing remedies, there are proceedings for the reparation of direct harm, whereby persons whose property or rights have been adversely affected by the State's irregular administrative activity may receive compensation in accordance with the provisions of the law on the matter.

11. **According to paragraph 22 of the case, 808 persons coming from Puerto Waira were detained, 490 of them in the immigration detention center and the other 318 in separate units of the penitentiary center in the border town of Pima. Under what legal provisions were the 808 persons coming from Puerto Waira deprived of their liberty?**

Wairans with a criminal record were detained on the basis of section 111 of the General Immigration Act, which provides as follows:

1. The National Migration Institute (NMI) may decide to impose custodial measures against foreigners who cannot prove their legal presence in the country in order to ensure their appearance at proceedings to determine their immigration status, to guarantee the

enforcement of an expulsion order and, on an exceptional basis, when the person is deemed to pose or may pose a threat to public safety.

2. Detention will only occur after the administrative authority has examined its appropriateness and proportionality in the specific case.

3. This provision shall apply to persons in circumstances covered by article 30 of the Law on Refugees and Complementary Protection.

12. Did the group of 808 persons excluded from recognition of refugee status include persons under 18 years of age?

Please refer to the answer to question number 21.

13. In the decision ordering the deportation of 808 migrants from Puerto Waira, did the authorities take account of possible family separation and the best interests of the children involved?

Please refer to the answer to question number 21.

14. Is there any provision in Arcadia's domestic legislation for holding refugees in immigration detention? In what cases?

Please refer to the answer to question number 11.

15. Were the 808 migrants from Puerto Waira who were detained in Arcadia guaranteed the right to communicate with the consulate of their country of origin and to be heard by a competent judge?

With regard to consular assistance, please refer to the answer to question 9.

Regarding detention, a case-by-case assessment was made and it was decided that it was necessary to hold certain individuals in custody to ensure their appearance because they had criminal records. Another factor considered was that the detainees were slated to be deported, based on the Executive Decree and because they fell within the exclusion clauses of the 1951 Convention relating to the Status of Refugees.

16. Paragraph 22 of the facts of the case states that migrants with criminal records were detained. Did these persons receive consular assistance prior to deportation in accordance with the Vienna Convention on Consular Relations and other applicable treaties in order to guarantee their human rights?

Please refer to the answer to question 9.

17. Of the 808 persons in the case who were arrested and subsequently deported, how many were in a vulnerable situation and, if so, what was their condition?

The group of 808 people deported from Arcadia consisted of 89 women and 719 adult men. No person in a situation of extreme vulnerability was excluded from international protection, detained, or expelled from Arcadia.

18. What were the conditions and treatment of migrants held in Arcadia's immigration detention centers and prisons?

During their detention, the Wairans had access to food, health services, education, and a variety of recreational activities. They were able to receive visits from family members, friends, and their legal representatives, as well as to communicate with them by telephone.

19. Would extortion be considered a serious non-political crime under Arcadian law?

Please refer to the answer to question 36.

20. Is detention for merely having a criminal record permitted under Arcadian law?

Please refer to the answer to question number 11.

21. In the process of removing the 808 people from Arcadia, was family separation confirmed, or were the children expelled along with the adults?

No child or adolescent was excluded from international protection, detained, or expelled from Arcadia. However, this resulted in some families being separated, to the extent that one of their parents or other persons or relatives responsible for their care were deported to the United States of Tlaxcochitlán. Children in this situation were placed in the care of their closest relatives in Arcadia or in the custody of the State, in Child Protection Centers (which are not detention centers) where they received food, health services, education, and recreation while waiting for relatives who could take care of them to be contacted.

22. After examining the asylum applications of persons with criminal records, Arcadia determined that 729 of the 808 cases presented a “high risk” of torture, and that the remaining 79 cases presented a “reasonable likelihood” of torture. Which statistical group did Gonzalo Belano belong to?

It was determined that Gonzalo Belano faced a “reasonable likelihood” of being subjected to torture. The Arcadian authorities made this determination based on the circumstances of his former gang membership and the contextual analysis of his country of origin, and in accordance with relevant national and international standards.

23. In President Javier Valverde’s decree ordering the deportation of persons excluded from recognition of refugee status, he announced that, failing a response and communication from other States, it would be necessary to return persons with criminal records to Puerto Waira. Does that include criminal records not containing serious non-political crimes?

No. The order was consistent with its domestic law and therefore concerned only serious crimes.

24. Was any form of legal assistance provided to Gonzalo Belano and [the Wairan] population in the State of Arcadia during the examination of the asylum application, during detention, or in the adjudication of the appeals?

The Arcadian authorities sent the detainees a list containing their rights. In addition, the authorities informed those individuals verbally and in writing that they could request legal assistance and representation and, to this end, officials provided them with a list with contact information for civil society organizations and legal clinics that could advise and represent them legally. Notwithstanding the above, the civil society organizations and legal clinics did not have the capacity to provide assistance to all of the Wairans.

- 25. What were the provisions agreed upon in the agreement between Arcadia and United States of Tlaxcochitlan with regards to the 808 asylum seekers' safety and rights as an asylum seeker?**

Please refer to paragraph 27 of the facts of the case.

- 26. What were the crimes committed by the other 807 asylum seekers and were they committed under similar circumstances to Gonzalo Belano?**

Please refer to the answer to question number 2. In addition, the crimes committed by these individuals were committed in circumstances similar to those of Mr. Gonzalo Belano.

- 27. What were the guidelines established by the Ministry of the Interior under Art 30 to deal with the massive influx of the caravan?**

The measures taken are described in paragraphs 17 and 18 of the facts of the case.

- 28. Paragraph 9 of the Hypothetical Case: It is unclear which specific instruments of the Inter-American Human Rights System have been ratified. Therefore, the following question: Which instruments of the Inter-American Human Rights System have been ratified by Arcadia?**

This information is detailed in paragraph 9 of the facts of the case.

- 29. Paragraph 22 of the Hypothetical Case: Were there any minors among the 318 people who were held in separate penitentiary units?**

Please refer to the answer to question number 21.

- 30. Paragraph 30 of the Hypothetical Case: What were the offenses listed in the criminal record of Gonzalo Belano?**

Please refer to paragraph 30 of the facts of the case.

- 31. Did the facilities where the people were incarcerated and detained comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)?**

Please refer to the answer to question number 18.

- 32. What is the highest jurisdiction in Arcadia and what are the existing criminal/administrative remedies?**

Please refer to the answer to question number 10.

- 33. With regard to the crimes committed by the 808 rejected persons, was there *res judicata* and did those individuals serve their sentences?**

Yes.

- 34. Were there any VULNERABLE PEOPLE among the deportees, such as, for instance, ethnic communities, or people who spoke a language other than Arcadian, or minors who were unaccompanied or separated from their families, or women who were pregnant, terminally ill, or disabled, or families who were separated or forced to return with the deportee? And if so, were they given special treatment in light of their condition?**

Please refer to the answer to question number 17.

- 35. What steps did Arcadia take to ensure that Tlaxcochitlán would not return the 808 deportees to Puerto Waira? In the context of these steps, is there a history of returning migrants between Arcadia and Tlaxcochitlán, similar to the situation mentioned in paragraph 27 of the hypothetical case?**

Please refer to paragraph 27 of the facts of the case.

- 36. What are the legal criteria for classifying as “very serious” the non-political offenses covered by section 40 of the Law on Refugees and Complementary Protection of Arcadia, and what is the rationale in this specific case for linking such offenses to Arcadia’s national security? If there are any regulatory provisions defining them, please describe their content as was done for paragraphs 11, 12, and 13 of the case.**

The Law on Refugees and Complementary Protection refers to the Convention relating to the Status of Refugees for the application of the exclusion clauses.

- 37. What recommendations did the IACHR make to the State of Arcadia?**

Please refer to paragraph 27 of the facts of the case.

- 38. Can we assume that all persons with criminal records who were deported from Arcadia had already served their sentences in Puerto Waira? If so, what kind of crimes had they committed, and had they been gang members?**

Please refer to the answers to questions 2 and 33.

- 39. How many women and children were among the 808 people deported from Arcadia, and how many of those deported were separated from their families because they had a criminal record?**

Please refer to the answer to question number 21.

- 40. With regard to the theme of paragraph 10, what were the integration policies that Arcadia developed for migrants and refugees?**

Public awareness and training campaigns were created for public servants and the general public to prevent discrimination and xenophobia, as well as to raise awareness about the rights of migrants and refugees. In addition, a project was created to advise people seeking employment and placement in social programs on economic, social, and cultural rights. Support was also requested from civil society organizations and international organizations to implement integration strategies in different sectors.

- 41. Did Arcadia’s law prior to the present case provide for the denial of refugee status to persons with criminal records?**

The law provides for exclusion under the terms of Article 40 (as specified in the case). Prior to this law, Arcadian legislation complied with the obligations set out in the 1951 Convention relating to the Status of Refugees and the Protocol thereto.

- 42. What was established in the agreement between Arcadia and the United States of Tlaxcochitlán in relation to how the 808 people would be treated?**

Please refer to paragraph 27 of the facts of the case.

43. How many people from Puerto Waira were recognized as refugees in Arcadia between 2012 and 2015?

Since the mid-2000s, there has been a gradual increase in the number of asylum seekers and refugees. However, from 2012 onward, the number of asylum seekers and refugees began to climb significantly. In 2012 there were 5,500 refugees, while at the end of 2015 there were 18,000 refugees.

44. What was the multisectoral response of the United Nations Agencies, noted in paragraph 17 above?

Please refer to the answer to question number 6.

45. How many of the people in the migrant caravan were recognized as refugees?

All those who were not arrested and expelled.

46. Were the crimes committed by the other 807 migrants related to the ones committed by the gangs in Waira, considering what is described in paragraph 4 of the case?

Yes. In addition, please refer to the answers to questions 2 and 26.

47. Did the migrants use the emergency legal assistance available in Arcadia, which is mentioned in paragraph 3 of the case?

The Arcadian authorities sent the detainees a list of their rights. In addition, the authorities informed those individuals verbally and in writing that they could request legal assistance and representation and, to this end, officials provided them with a list with contact information for civil society organizations and legal clinics that could advise and represent them legally. Notwithstanding the above, the civil society organizations and legal clinics did not have the capacity to provide assistance to all of the Wairans.

48. What are the stages of the *amparo* proceeding provided for under Wairan law, from the time of filing to the final first instance decision?

Please refer to the answer to question number 10.

49. With reference to paragraph 33 what are the judicial and administrative remedies available in Arcadia including what are the procedural requirements of Arcadia's law and the court that has competent authority?

Please refer to the answer to question number 10.

50. What procedures did Arcadia's law enforcement use in detaining the 808 persons who had criminal records, including whether inter alia reasons were given for the detention, were they allowed to communicate and obtain legal advice.

The authorities informed the individuals verbally and in writing that they would not be eligible for prima facie refugee status because they had criminal records and would therefore be detained and subject to ordinary asylum proceedings in accordance with the Law on Refugees and Complementary Protection. All of them were informed of their rights during the detention and asylum process,

particularly regarding the possibility of requesting free legal assistance and contacting their consulate, if they so wished. It was also explained to them that they had a number of remedies available to challenge their detention and the outcome of their asylum proceedings, if unfavorable. At the time of their arrest, they were immediately brought before the administrative authority and transferred to the places where they remained in custody.

- 51. With reference to paragraph 27, what are the details of the agreement between Arcadia and the United States of Tlaxcochitlan in particular whether the agreement contained provisions on whether those deported to Tlaxcochitlan could in turn be deported to Puerto Waira.**

Please refer to paragraph 27 of the facts of the case.

- 52. Paragraph 27 of the facts of the case states that the Ministers of Foreign Affairs and the Interior of Arcadia and the United States of Tlaxcochitlan signed an agreement. What were the (specific) obligations assumed by each of the parties with regard to the movement of the Wairans to United States territory, as well as the international protection that should be afforded to them?**

Please refer to paragraph 27 of the facts of the case.

- 53. According to paragraph 15 of the facts, “about 7000 people” arrived in Arcadia; later, paragraphs 27 and 28 indicate that 591 and 217 people, respectively, were returned to Tlaxcochitlán, for a total of 808 people returned. How many families and minors were involved in family separation processes as a result of the returns made by the State of Arcadia?**

Please refer to the answer to question number 21.

- 54. Paragraph 22 of the facts states that the Arcadian authorities identified “808 individuals with criminal records.” What type of crimes were most commonly identified as having been committed by these persons and what were the criteria for determining the seriousness of these crimes?**

Please refer to the answer to question number 2.

- 55. With regard to paragraph 28, what is Arcadia’s judicial structure? Was the motion for reconsideration ultimately adjudicated in Arcadia, or can that decision be reviewed by another court?**

Please refer to the answer to question number 10.

- 56. What does Arcadian law say about the definition of political crimes?**

It refers to international law.

- 57. Do the Puerto Waira gangs have a command structure that allows them to carry out military operations in an organized and continuous manner?**

The gangs operate in an organized manner and have leaders who oversee the multiple groups within them.

- 58. What specific crimes were committed by the 808 migrants?**

Please refer to the answer to question number 2.

59. What are serious crimes in terms of section 40 of the Law on Refugees and Complementary Protection?

Please refer to the answer to question 36.

60. Was Gonzalo Belano part of the first or second group deported to Tlaxcochitlan?

Please refer to the answer to question number 22.

61. With respect to the 217 persons mentioned in paragraph 28: Did they use or could they have used any form of State legal assistance?

Please refer to the answer to question number 24.

62. With respect to the 217 persons mentioned in paragraph 28: Is there any effective remedy that they could have used to challenge the denial of the motion for reconsideration?

Please refer to the answer to question number 10.

63. With respect to the 808 returnees: Did Arcadia warn the authorities in Puerto Waira of the risk they were exposed to upon returning to their country of origin, and/or did it take any action to guarantee and/or safeguard the rights of these individuals?

Please refer to paragraph 27 of the facts of the case.

64. Were there children among the extradited Wairans? If so, what specific legal assistance was provided to them while in custody?

No, please refer to the answer to question number 21.

65. As a sovereign State, is Puerto Waira a member of the Organization of American States, and has it accepted the jurisdiction of the Inter-American Court of Human Rights? If so, when was the ratification instrument deposited with the General Secretariat?

Yes, it accepted the jurisdiction of the Inter-American Court, and the ratification instrument was deposited in 1971.

66. Did Puerto Waira sign any deportation treaty with the United States of Tlaxcochitlán?

Only the agreement established in paragraph 27. It is important to mention that during the meetings held with the United States of Tlaxcochitlán Arcadia asked that people not be deported because of the danger they faced. In addition, Arcadia only made half of the payment promised at the beginning of the agreement and suspended the second payment once the individuals had been deported, on the grounds that the agreement between the parties had been breached.

67. How many of the 808 people returned to Puerto Waira were parents or caregivers of children who remained in the State of Arcadia?

Please refer to the answer to question number 21.

68. Is the procedure in Arcadia for recognizing persons as refugees established by law?

According to paragraphs 12 and 13 of the facts of the case, this procedure is regulated in the Law on Refugees and Complementary Protection.

69. In ruling on the merits of the writ of *amparo* and the motion for reconsideration, how did the Pima Immigration Court analyze the risk of possible deportation of the Wairans by the Republic of Arcadia and determine that one group was at “high risk” of torture and danger, and that the other group was “reasonably likely” to face torture and danger?

The courts assessed the risk of torture on a case-by-case basis, taking into account the allegations of persecution made by each individual, examining available information on the context of the country of origin, and taking into consideration relevant national and international legal provisions.

70. Is there a way for the Republic of Arcadia to develop the concept of serious crimes and non-political crimes through international or domestic legislation, or is it an abstract concept?

Please refer to the answer to question 36.

71. The Republic of Puerto Waira has a total population of 6.4 million people, 95% of whom are of African descent, the remaining 5% of whom are mixed race and white; and the majority of the people in the caravan of Wairans traveling to Arcadia were of African descent. Is there a history of racism in Arcadian society?

Discrimination exists, but the State of Arcadia has developed various measures to prevent and combat discrimination and xenophobia, including public awareness campaigns and training for public servants.

72. Of the 37 people identified in paragraph 32, how many were part of the group of 217 who filed an *amparo* action in Arcadia? Did those 217 people file individually or was it a class action?

There is no information to determine whether the 37 victims identified filed a writ of *amparo* challenging their deportation from Arcadia. However, the available information shows that all the appeals filed within the State were filed individually, while the claim for reparation of direct harm filed through the Arcadian consulate in Puerto Waira was filed jointly, according to paragraph 32 of the facts of the case.

73. Does Tlaxcochitlán have any laws concerning the processing of asylum applications, and did it ratify the main human rights treaties on the subject? If any violations of migrants’ rights have been identified in the country, was there a commitment to improve its domestic practices after the agreement was signed with Arcadia?

There is no information on this subject.

74. Did the 808 people deported to Tlaxcochitlán have the option of seeking asylum and availing themselves of the domestic courts?

There is no information on the deportation proceedings conducted in Tlaxcochitlán.

75. What crimes were the deported refugees accused of committing? What is the age of criminal and civil majority in Puerto Waira, Tlaxcochitlán and Arcadia?

Please refer to the answer to question number 2. The age of majority in all three countries is 18.

76. Is there any multilateral agreement on shared responsibility between Tlaxcochitlán, Puerto Waira, and Arcadia? If so, what are the terms of the agreement?

Please refer to paragraph 27 of the facts of the case.

77. What was the rationale for the decision to deny the writ of *amparo* filed by the 217 Wairans seeking to halt their deportation?

Please refer to the answer to question number 69.