



**International Migration and Refugee Law Moot Court**

**VU Amsterdam**

**Migration Law Clinic**

**2019**

Answers to the questions of clarification



## Introduction

In this document you find the answers to the questions raised by the teams participating in the moot court competition. The questions and answers are organised per theme:

1. Questions relating to the **legal framework**;
2. Questions relating to **procedural rules**;
3. Questions relating to **interview circumstances**;
4. Questions relating to **the oral round** at the Vrije Universiteit in Amsterdam

All questions are mentioned in this document. However, questions which are identical or very similar are answered in coherence.

### 1. Questions relating to the legal framework

- ❖ What **bodies of law** are we allowed to rely on?
- ❖ Are we confined to the Refugee Convention, ICCPR, and UN Convention against Torture?
- ❖ Is the State of Caraiba only bound by the Refugee Convention, the ICCPR and the **UN Convention against Torture** (as specified in paragraph 2 of the heading "Information about Caraiba"), or also by other international treaties such as the **Cartagena Declaration**?
- ❖ Has Caraiba signed up to and ratified the **1967 refugee protocol** and any other human rights instruments, other than the three mentioned in the factsheet?
- ❖ Does the ratification by Caraiba of the 'Refugee Convention' (as specified in paragraph 2 of the heading "Information about Caraiba") mean that it is a party to both the 1951 Convention Relating to the Status of Refugees, as well as the **1967 Protocol Relating to the Status of Refugees**?

*The State of Caraiba is (only) bound by the following treaties, which are relevant to the asylum case of Yago Alvares Moreno: the Refugee Convention (the 1951 Convention and its 1967 Protocol), the International Covenant of Civil and Political Rights and the UN Convention against Torture. This means that you can only directly rely on these treaties in your written pleadings. Caraiba is not bound by the Cartagena Declaration. We decided to use these treaties only, because it creates (as much as possible) a level playing field for all moot court teams, who come from different regions of the world.*

- ❖ Does Caribbean law provide for the consideration or binding nature of **Inter-American Court of Human Rights jurisprudence**, through its constitution; national legal precedent; or subjugation under the jurisdiction of the Inter-American Court of Human Rights?

*Caraiba is not bound by the Inter-American Court of Human Rights jurisprudence.*

- ❖ Are we permitted to use regional, national, international cases?

*You are allowed to use international, regional or national cases in order to interpret the Refugee Convention, the International Covenant of Civil and Political Rights and/or the UN Convention against Torture. If you use regional or national instruments or case law, they must be clearly referenced and translated into English (see Moot Court Rules para 4.1).*

- ❖ Can we have access to the **Aliens Act of the Republic of Caraiba**, specifically article 35?

*Art. 35 of the Aliens Act of Caraiba states as follows:*

*A residence permit may be granted to a person who:*

- is a refugee in the meaning of the 1951 Refugee Convention*
- has made plausible that there are substantial grounds for believing that s/he would be in danger of being subjected to torture, or to cruel, inhuman or degrading treatment or punishment.*

## **2. Questions relating to procedural rules**

- ❖ Does the **lodging of an appeal** before the Caraiban Administrative Court of First Instance has **suspensive effect**, meaning that any **removal actions** do not continue during the time in which the court considers the case?

*Yes, the appeal before the Caraiban Administrative Court of First Instance has automatic suspensive effect.*

- ❖ Is the **government bound by their Decision of 10th January 2019** on the asylum application of Yago Alvares Moreno day, in particular in relation to the facts deemed as credible and the reasons for the refusal of the application?

*The Government is not bound by the grounds for refusal stated in the decision. However, if they invoke other grounds for deeming the asylum account not credible or refusing the application, these must be based on the interview or other facts stated in the case. You cannot make up a ground for refusal.*

- ❖ Is it possible under Caraiban Law to grant **other forms of complementary protection** to asylum seekers?

*No, Article 35 of the Aliens Act (see above on this page) provides for the only two grounds on which an asylum permit may be granted.*

- ❖ Is the asylum procedure in the State of Caraiba regulated in domestic law and is a right to **subsidiary protection** recognized therein?

*Article 35 of the Aliens Act (see above on this page) provides for the two grounds on which an asylum permit may be granted. The asylum procedure in Caraiba is laid down in the Aliens Act.*

- ❖ Is **migration detention** established in Caraiba's domestic law and if so, what are the **conditions under which one who is not legally present** in the territory may be detained?

*Migration detention is based on Article 65 of the Aliens Act which provides that a migrant, who does not have legal stay in Caraiba may be detained:*

- ....
- in order to determine the elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant*
- ....
- ....

- ❖ It's mentioned that the judgment is pronounced by the **Administrative Court of First Instance and can be appealed on points of law** before the High Administrative Court of Caraiba (page 2, information about Caraiba), but on the page 10 we see that the decision has been taken by Ministry of Home Affairs. What is the relation between them?

*The decision on the asylum claim is taken by the **Ministry of Home Affairs** (in our case the decision of 10 January 2019). The first instance court is the **Administrative Court of First Instance**. This court will assess Yago Alvares Moreno's appeal against the decision of the Ministry of Home Affairs and this is also the court you are writing the written pleadings for. If the Administrative Court of First Instance rejects the appeal, Yago Alvares Moreno can appeal this judgment before the second instance court, the **High Administrative Court** on points of law (but we are not that far yet).*

### **3. Questions relating to the circumstances of the case**

- ❖ To what extent can we **rely on the current political situation in Venezuela** (i.e. the reaction of Mr. Maduro as a result of the recognition by numerous third countries of Mr. Guaido' as the legitimate President of Venezuela) to substantiate our arguments?
- ❖ Can we make our arguments and written pleadings based on the **current and real situation of Venezuela**?
- ❖ Should we treat the case relating to facts as reported in time or regarding to the **daily news**?

*The situation in Venezuela is uncertain and may substantially change during the period of the moot court competition. For the written pleadings you may use recent country of origin*

*information and developments in support of your argumentation. We will consider this issue again for the oral round and may decide, if the situation in Venezuela is escalating (further), that no new (country of origin) information may be used after the date of 4 March 2019. We will inform you about that as soon as the selection of 12 teams has been made.*

- ❖ Could we **bring up things not explicitly mentioned in the case factsheet**, such as diplomatic assurances or witnesses (for example)?

*No, you should stick to the facts as provided in the information sheets. You cannot 'invent' new facts, such as diplomatic assurances or witnesses etc.*

- ❖ On which date was the **Applicant's passport (re)issued**?

*The passport was issued on 3 August 2015.*

- ❖ Page four of the Case indicates that an interpreter was present at the interview, was the interview conducted in english, and if so may it be presumed that **english is the national language of Caraiba**?

*Yes, English is a national language of Caraiba.*

- ❖ What is the **content and nature of the applicant's music**?

*He plays music, which is known as 'Nueva Canción'.*

- ❖ If the Colectivos allegedly took Moreno's phone and computer; how does he have **videos to submit the immigration department**, is he just accessing the ones already posted on instagram?

*Yes, he has access to the videos he put online before the phone and computer were taken by the colectivos.*

- ❖ It says the decision to reject Mr Moreno was based on his statement, documents, COI and **other information relating to his statement**. What was this other information?

*This is the standard text of the asylum decision. The decision is based on all the information provided in the case materials and country of origin information.*

- ❖ Did **Moreno's wife lose her asylum status** when she left the Dominican Republic and returned to Venezuela?

*Mr. Alvares Moreno does not know whether she still has the asylum status. The Immigration Service did not investigate this.*

- ❖ From page 9 of the materials, when did the **police ask Moreno's wife** where he was? Was it at the time his wife filed the police report, or did they reach out to her later for a follow-up and ask her then?

*They asked about him when his wife filed the police report.*

- ❖ Are the **videos of the protests** still published on Moreno's social media accounts?

*Yes they can still be accessed online, he did not remove them from the internet.*

- ❖ Alvaro Moreno is a fisherman, how can he have a leading role of a party? Is he a **part of any political party**?

*He is not part of any political party. He did state that he had a leading role in the protests.*

- ❖ What was the **status of Alvares Moreno** during the dates between 19 October 2018 and 20 December 2019? Where he was during the dates? What was he doing? Was he in detention? Although he signed a letter that he won't leave the country, how he traveled to Caraiba?

*He was staying in detention, waiting for his asylum interview. He travelled to Caraiba by plane, with his own passport.*

- ❖ What are the **circumstances of the detention** of the applicant? Where is he detained exactly?

*He is detained in a migration detention centre in Paradaiso. Since the case is about the rejection of the asylum claim, and not on the detention measure, we will not provide information on the detention conditions.*

#### **4. Questions relating to the oral round at the VU Amsterdam:**

- ❖ What **formalities do we need to follow in court**, such as modes of address to the judge?

*We will provide you with more detailed information about the oral rounds later on.*