10th World Human Rights Moot

Court Competition

15-20 July 2018

Geneva, Switzerland

IN THE MATTER BETWEEN

HUMANITY FIRST

AND

THE STATE OF ST. PRIYAH AND MIYAH

MEMORIAL FOR THE RESPONDENT

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LIST OF ABBREVIATIONS

[ ]	Paragraph
ACHPR	African Commission on Human and Peoples‟ Rights
ACHR	American Convention on Human Rights
AfCtHPR	African Court on Human and Peoples Rights
AHRLR	African Human Rights Law Report
Art.	Article
CAAF	Court of Appeals for the Armed Forces
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Commission on the Elimination of Discrimination against Women
CC	Constitutional Court
CJ	Chief Justice
COF	Clarification of Facts
CR	Continent o0f Racoons
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
IJRC	International Justice Resource Centre
GANGS	Generals against Narcotics and Gangs

HF	Humanity First
MP	Military Police
NGO	Non-Governmental Organisation
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PM	St Priyah and Miyah
RAMINE	Racoonian Mission in Nehiko
RC	Racoons Convention
RU	Racoons Union
RCEW	Racoons Convention on Empowerment of Women
RHRC	Racoons Human Rights Court
SC	Supreme Court

TABLE OF AUTHORITIES

Treaties, Conventions & Charters

ACHR	*American Convention on Human Rights, "Pact of San José, Costa Rica"*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).
ACHPR	*African Charter on Human and Peoples Rights*, Adopted in Nairobi 27 June 1981, (entered into forced 21 October 1986)
GC	Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, Aug. 12, 1949, art. **3, 75 U.N.T.S. 135, 136** (entered into force Oct 21, **1950).**
CEDAW	*Convention on the Elimination of all forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13, (entered into force 3 September 1981)
CCMMAMRM	*Convention on Consent to Marriage, Minmum Age for Marriage and Registration of Marriages*, Opened for signature and ratification by General

	Assembly resolution 1763 A (XVII) of 7 November 1962, Entry into force: 9 December 1964, in accordance with article 6
ICCPR	*International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976)
ECHR	*European Convention on Human Rights,* (entered into force on 21 September 1970)
RHRC	*Raccoons Human Rights Convention of 1985*
UN Charter	United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI
VCCR	United Nations*, Vienna Convention on Consular Relations*, 24 April 1963,
VCLT	*Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 115 UNTS 331, (entered into force 27 January 1980)

International Resolutions and General Comments

General Comment No. 6	UN Human Rights Committee (HRC), CCPR *General Comment No. 6: Article 6 (Right to Life),* 30 April 1982.
General Comment No. 19	UN Human Rights Committee (HRC), *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990,
General Comment No. 20	UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992,*

Domestic Laws

Anti-Corruption Act	*Anti-Corruption Act of 2003*
Anti-Child Marriages Act	*Anti-Child Marriages Act of 2015*
Armed Forces Pension Act	*Armed Forces Pension Act*
Army Act	*St Priyah and Miyah Army Act of 1985*
Uniform Code	*St Priyah and Miyah Uniform Code of Military Justice of 1987*

Domestic Cases

South Africa

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Mthembu	*Mthembu v The State*, 2008 AHRLR 223 (SASCA 2008)

India

Bachan Singh	*Bachan Singh vs State Of Punjab* on 9 May, 1980 AIR 1980 SC 898/ 1980 CriLJ 636/ 1982 (1) SCALE 713/ (1980) 2 SCC 684/ 1983 1 SCR 145

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International Cases, Communications & Ad Hoc Tribunal Judgements

African Commission on Human and Peoples' Rights

Anuak Justice Council	*Anuak Justice Council v Ethiopia* (2006) AHRLR 97 (ACHPR 2006)
Civil Liberties Organization	*Civil Liberties Organization and Others v Nigeria* (2001) AHRLR 75 (ACHPR 2001), Communication 218/98, Civil Liberties Organisation, Legal Defence Centre and Assistance Project v Nigeria
Forum Conscience	African Commission: Forum of Conscience v. Sierra Leone, African Commission on Human and Peoples' Rights, Communication No. 223/98 [19]
Ibrahim	African Commission on Human and Peoples Rights,Dr Farouk Mohamed Ibrahim (represented

	by REDRESS) v Sudan: Communication No 386/10 13th session (25 February 2013)
Jawara	Sir Dawda K. Jawara v. The Gambia, Afr. C. H. P. R., Communication N° 147/95, at 31-32 (May 11, 2000).

African Court on Human and Peoples' Rights

Article 19	Article 19 v Eritrea (2007) AHRLR 73 (ACHPR 2007) Communication 275/2003, Article 19 v The State of Eritrea [97]

European Court on Human Rights

Buchholz	Buchholz v Germany, 7759/77 [1981] ECHR 2 (6 May 1981)
Ireland	*Ireland v. The United Kingdom* (Application no. 5310/71)
McCann	European Court on Human Rights, *McCann & others v the United Kingdom,* Grand Chamber Judgement (27 September 1995)
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Osman	*Osman v. United Kingdom* (23452/94) [1998] ECHR 101 (28 October 1998).
Pressos Compania	*Pressos Compania Naviera SA & Others v Belgium* Application No. 17848/91

Soering	*Soering v. The United Kingdom,* 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989

Inter-American Court on Human Rights

Benjamin et. Al	*Hilaire, Constantine and Benjamin et al v Trinidad and Tobago, Hilaire and Ors v Trinidad and Tobago, Merits,* reparations and costs, IACHR Series C no 9, IHRL 1477 (IACHR 2002), 21st June 2002, Inter-American Court of Human Rights [IACtHR]
Cayara	*Cayara Case (Preliminary Objections),* Inter-Am.Ct.H.R. (Ser. C) No.14 (1994), Inter-American Court of Human Rights (IACtHR), 3 February 1993
Dalia	*Dalia v. France, 154/1996/773/974,* Council of Europe: European Court of Human Rights, 19 February 1998
Fairen Garbi	*Fairen Garbi and Solis Corrales,* Judgment of March 15, 1989, IACtHR (Ser. C) No. 6 (1989)
Gordinez Cruz	*Godínez Cruz Case (Compensatory Damages), Inter-Am.Ct.H.R. (Ser. C) No. 8 (1990).,* Inter-American Court of Human Rights (IACrtHR), 21 July 1989
Judicial Guarantees	*Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 of the American Convention on

	Human Rights), *Advisory Opinion OC-9/87,* October 6, 1987, Inter-Am. Ct. H.R. (Ser. A) No. 9 (1987).
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Dinah	*Shelton Dinah, "The Jurisprudence of the Inter-American Court of Human Rights." American University International Law Review 10, no. 1 (1996): 333-372. Pg. 345*
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SUMMARY OF FACTS

St Priyah and Miyah (PM) is a federal state on the east of the Continent of Racoons and is a member of the United Nations as well as a state party to the Racoons Convention (RC) and all major international human rights law treaties except for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT).

In 2017, Robin Martinez was sentenced to death by lethal injection for the crime of desertion. The sentence was upheld on appeal by the Court of Appeal for the Armed Forces (CAAF). Dr Arturo Moto was sentenced to death for the crime of grand corruption under the Anti-Corruption Act of 2003. He duly appealed to the Supreme Court (SC) of PM which upheld the sentence. Dr Arturo Moto sent an urgent letter to the UN Special Rapporteur which led to a stay of execution, by PM.

Geraldo del Junko was convicted of drug and human trafficking committed in PM and was sentenced to death. Geraldo's lawyer argued before the Constitutional Court (CC) that the extradition was in violation of his human rights. Geraldo Del Junko was also tortured whilst in Nehiko at an outpost stationed by the Racoonian Mission in Nehiko (RAMINE).Humanity First is local Non-Governmental Organisation with observer status in the Racoons Human rights system. Humanity First (HF), subsequently published reports since 2014 in which General Sanchez was accused of torturing drug and human trafficking suspects.

Sonya Diaz and Colonel Robin Martinez married in terms of the Sokotah religion. This marriage was held by the Constitutional Court to be a legal nullity under the Anti-Child Marriages Act (ACMA) of 2015, as Sonya Diaz was below the requisite minimum age.

Humanity First duly resolved to approach the RHRC claiming that PM violated the right to life, right to freedom from torture and the right to found a family and other related rights.

SUMMARY OF ARGUMENTS

1. Respondent argues that PM did not violate the right to life of Martinez, Moto and Junko. Respondent argues that their crimes fall under "the most serious crimes" for which death penalty is justified. Martinez's actions directly resulted in the death of three soldiers. Moto's actions directly resulted in the deaths of hundreds of women and children. Junko's actions, although not resulting in physical death, is an extreme affront to women's dignity – the very essence of human life. Life is not only the physical process of breathing but the quality of that life.

2. Respondent will refute the allegation that it has violated Junko's right to freedom from torture. There is no sufficient evidence that Junko was tortured. If he was indeed tortured, the torture occurred outside the territorial jurisdiction of Respondent and there is no evidence that Respondent's nationals were involved. If indeed torture happened and nationals of PM are culpable, there is no evidence in international law in terms of state practice that the prohibition on torture is absolute.

3. Respondent will concede on some aspects of the allegations regarding Diaz and Martinez's right to found a family.

PRELIMINARY ISSUES

a. Jurisdiction of the Court

Respondent does not contest the jurisdiction of the Court in regards to the present claims.[1]

b. Admissibility of claims

Respondent submits that one of the important admissibility rules is exhaustion of local remedies.[2] This honourable Court may only deal with a matter after all domestic remedies have been pursued and exhausted in accordance with generally recognised principles of international law.[3] Respondent notes that in general, Applicant excused herself from exhausting local remedies on the basis that they are not effective, did not offer prospect of success or that no remedy was available.

From the beginning, Respondent wants to make it clear that in terms of the law, Applicant should not be allowed to speculate on the effectiveness of domestic remedies or prospects of success.[4] If domestic remedies exist, the Applicant ought to exhaust them.[5] Furthermore, the mere fact that a domestic court did not rule in favour of the Applicant does not alone mean domestic remedies are unavailable.[6] This honourable Court is not a court of appeal. Respondent now deals with each particular claim below.

First, as regards the alleged violation of the right to life of Robin Martinez, Respondent submits that while Martinez appealed to the CAAF – the subject of appeal being his conviction and sentence – his matter was not brought before the Constitutional Court of PM. There is a Constitutional Court in the Respondent State which has jurisdiction on all human

[1] Facts [2].
[2] Ibrahim [42]; Viviana [26]i
[3] IACHR, Art. 46(1)
[4] Velasquez Rodriguez [62].
[5] Ibid [60]; Fairen [84].
[6] Dinah, Pg. 345

rights violation claims.[7] The current claim *viz* Martinez is a human rights claim yet Applicant did not bring it before PM's Constitutional Court. As such, local remedies that are available and effective were not exhausted. This claim is inadmissible for lack of exhaustion of local remedies.

Second, as regards the alleged violation of the right to life of Arturo Moto, Respondent submits that the claim is inadmissible for a number of reasons. Like the case of Martinez, the case of Moto has not been brought before the Constitutional Court of PM.[8] Instead, Moto approached the UN Special Rapporteur on extrajudicial, summary or arbitrary executions – an equally competent procedure. The UN Special Rapporteur and the Respondent State are still engaged on this matter, with the Respondent State having complied with the request stay the execution of Moto. As such, it is clear that local remedies are not yet exhausted and this claim inadmissible. If this honourable Court entertains this claim, it will be effectively denying Respondent State a sovereign opportunity to address the alleged violation.[9]

Third, with regards to the alleged violation of the right to life of Junko, Respondent submits while Junko approached the Constitutional Court regarding other claims such as those relating to torture and extradition, the Constitutional Court was not approached as regards the specific claim on the right to life which Applicant has brought to this honourable Court for the first time.[10] For that reason and in relation to the alleged violation of Junko's right to life, Respondent submits that local remedies were not exhausted and the claim is inadmissible.

Fourth, in respect of the alleged violation of the right to freedom from torture of Junko, Respondent still submits that local remedies were not exhausted. In as much as Junko

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[7] Facts [3].
[8] X and Y
[9] Article 19, [77]
[10] Facts [20].

approached the Constitutional Court of PM regarding the torture claim, the Constitutional Court did not adjudicate on the merits of the matter.[11] Junko violated imported procedural rules of the Constitutional Court by using foul language in his application.[12] Junko's counsel and the Applicant have the ability to do away with the foul language and refile it in the Constitutional Court of PM so that the matter can be heard on merits. This is not a huge ask or uphill task, every court, including this honourable Court have rules of procedure that ought to be followed. For the foregoing reasons, local remedies were not exhausted and this claim is inadmissible.

Fifth and finally, in relation to the alleged violation of the right to found a family and other related rights, Respondent again submits that local remedies were not exhausted. While the matter was brought before the Constitutional Court, the Constitutional Court has not made a judgment on the matter.[13] The comments by the Chief Justice do not constitute the judgment of the Constitutional Court. Applicant should present its case to the Constitutional Court first.

All claims in this matter are inadmissible. In the unlikely event that this honourable Court finds the claims admissible, Respondent deals with the merits of the claims below.

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[11] Facts [20].
[12] Facts [20].
[13] Facts [23].

MERITS OF CLAIMS

1. ALLEGED VIOLATIONS OF THE RIGHT TO LIFE

Respondent recognises the right to life as a fundamental human rights not only protected in PM's Constitution but various international human rights law treaties to which PM is a party. Respondent further realises that the right to life is the fulcrum of all other rights and every person is protected from the arbitrary deprivation of this important right.[14]

Respondent notes that all the allegations by Applicant that there have been violations of the right to life stem from the death penalties that were imposed on Martinez, Moto and Junko.

From the beginning, therefore, Respondent submits that death penalty is a lawful form of punishment.[15] Of course, Respondent is aware that "the notion of "arbitrariness" does not only mean "against the law", but includes elements of inappropriateness, injustice, lack of predictability, unreasonableness and disproportionality[16]. As such, the question at hand is whether – for each of the person upon which the death penalty was imposed – there was arbitrariness.

a. Robin Martinez

In arguing that there have been an arbitrary deprivation of Martinez's right to life, Applicant gives six reasons. Respondent accordingly responds to the six reasons as follows:

First, Applicant argues that desertion is not part of the "most serious crimes" for which the death penalty is contemplated in terms of Article 6 of ICCPR. With all due respect, Applicant's contention is a misdirection. To begin with, there is no exhaustive list of "most

[14] Forum of Conscience [19]
[15] Schabas pg. 13-15
[16] General Comment 36, para 18.

serious crimes". Of course, the contemplated "most serious crimes" are crimes of extreme gravity that involves intentional killing.[17] In other words, a person's conduct must *result directly and intentionally in death* for death penalty to be justifiable under Article 6 of ICCPR.[18]

Before applying the law and the above interpretation to the facts, it should be first noted that the crime of desertion has been – for several centuries – a serious crime among many jurisdictions. States like the United States of America have death penalty for the crime of desertion.[19] As such, in terms of State practice, it is untrue that desertion cannot be among the "most serious crimes".

Now, applying the law to the facts, Respondent submits that Martinez's conduct resulted *directly and intentionally* in the death of three officers. He was posted to be on the look-out for Junko's armed men and to warn his crew if he saw them approaching.[20] If he did not want to do this, he could have told his superiors that he was not interested in doing that. For example, when Martinez was uncomfortable with the interrogation of Junko, he told his superior who in turn excused him. Thus, it can be inferred that Martinez had an understanding superior.[21] Yet, when he was instructed to go up-hill and be on the look-out, Martinez intentionally chose to be deceitful and treacherous.

Additionally, while in full knowledge that they were in the middle of a dangerous operation, Martinez chose to use Junko's phone to call his girlfriend Diaz.[22] As an experienced officer, Martinez was fully aware that use of an unsecured mobile phone would give away their

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[17] *Judge v Canada*, para. 10.6; *Yin Fong v Australia*, para. 9.7; *Chisanga v. Zambia*, para. 7.4; *Luboto v Zambia*, para. 7.2; *Johnson v Ghana*, para. 7.3; *Kindler v. Canada*, para. 14.3; ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 25 May 1984, para. 1; UN Report of Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 Aug. 2012, para. 35.

[18] See para 39 of UN General Comment 36.

[19] Article 85 (c) of the United States Uniform Code for Military Justice, 10 US Code para 885.

[20] Facts [15].

[21] Facts [15].

[22] Facts [15].

location. Yet, uncaring for the lives of his fellow officers and determined to talk to his girlfriend, he used the phone all the same.

Martinez's betrayal of his fellow officers is capped by the fact that after giving away their location to the enemy through use of an unsecured mobile phone, Martinez did not warn his fellow officers, he chose to save his own life and disappeared to see his girlfriend back home.

Respondent submits that it was as a direct result of the deceit, treachery, betrayal and actions of Martinez that three men lost their lives. Martinez was lawfully tried for his desertion and the punishment meted was proportionate.

There is no justification for him to have abandoned his lawful duty assigned to him – to be on the lookout for the enemy. The argument that Martinez left so that he could report General Sanchez cannot hold water. Since he was interested in calling back home, he could have used the same phone to call and report his issues with the superior. At the minimum, he could have warned his fellow officers of what he had done.

Second, another reason given by Applicant in supporting the allegation that the death penalty on Martinez was arbitrary is that his conduct did not amount to desertion. In that regard, Applicant argues that he was wrongly charged. Applicant argues that Martinez left because he could not be part to torture. To that end, Applicant argues that an army officer can only desert a lawful order or duty.

To the extent that an army officer can only desert a lawful order or duty, Respondent is agreeable. However, Martinez was not charged for not being in the interrogation room where the alleged torture was happening. Martinez was given a lawful order to be on the look-out of the enemy and to report back to his superior if he saw enemies approaching. He was

stationed up-hill. That was a lawful order, duty and post – a lawful order, duty and post that Martinez chose to desert resulting in fatalities.

Third, Applicant also argues that if Martinez indeed is guilty of desertion, such desertion did not happen in the context of an armed conflict for it to attract death penalty in terms of Section 18 of Respondent's Uniform Military Justice Act of 1987. Applicant's argument that this was a covert operation that was not part of the conflict in Nehiko is unconvincing. Even if that argument was to be accepted, the conflict between General Sanchez and Junko's men qualifies as an armed conflict because of its intensity.

Fourth, Applicant's argument that Martinez's fate should have been decided by the civilian Courts of PM does not hold water. As is clearly stated in the facts, the judges in the appeal court that heard Martinez's case are civilian judges.

Fifth, Applicant's arguments on the independence and impartiality of the courts that tried Martinez are just bald statements and not substantiated.[23] There is no evidence that courts were unduly influenced by anyone as averred by the Applicant.

Finally, as for the Applicant's argument that Respondent had not executed anyone in 28 years, that argument is of no consequence in as far as to whether or not Martinez's death penalty was arbitrary.

As should be clear from the foregoing, there was no arbitrary deprivation of the right to life of Martinez.

b. Arturo Moto

Applicant has cited two major reasons why they believe the death penalty that was imposed on Moto is arbitrary. Respondent deals with the reasons below.

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[23] Ocalan [166]

First, Applicant argues that Moto was charged with an economic crime – a crime that does not fall under the "most serious crimes" for which the death penalty is justified. Respondent humbly submits that this argument is a misdirection.

To begin with, there is no agreement in State practice that all economic crimes do not constitute "most serious crime". Depending on regions, corruption is seen as one of the most serious crimes. Other commentators have even called grand corruption a crime against humanity.

Respondent submits that ordinarily, international law is made by States. There is a huge number of States that takes corruption as a serious crime. For example, after noting that corruption was not part of the Rome Statute on international crimes, African States negotiated a Protocol on the Amendments on the Statute of the African Court of Justice and Human Rights which, in Article 28, recognises corruption as a serious crime.

China – one of the Permanent Five members of the United Nations Security Council – maintains death penalty for serious cases of corruption. Recently, former mayor, Zhang Zhongsheng, was sentenced to death by a Chinese Court for taking £120 million in bribes.[24]

Respondent argues that is folly to suppose that an economic crime cannot directly cause death. In the present case, Moto directly caused deaths of women and children as he embezzled funds that were meant to improve health facilities and purchase certain special drugs that would have prevented those deaths.[25]

As a qualified doctor, Moto knew that without those drugs people were going to die. He did not care about those who were to lose their lives. It would be nonsense upon stilts to hold that a person who intentionally kills one person can be sentenced to death and a person

[24] Didi Tang, "Chinese Mayor handed death penalty for corruption" [March 2018], The Times, available at https://www.thetimes.co.uk/article/xi-issues-first-death-penalty-in-corruption-crackdown-luliang-zhang-hongsheng-xu-maiyong-26h7zj56c
[25] COF[1]

who intentionally deprives hundreds of women and children of certain drugs – fully knowing that they would die without them – resulting in their death should escape the death penalty.

Second, as regards, Applicant's argument that Moto was not tried within a reasonable time, Respondent submits that Moto's investigations took a long time because of obvious reasons. Economic crimes committed over a long period of time are complicated and it takes a long time to collect evidence that would ensure a fair trial for the accused person. As such, the question of reasonableness of time cannot be expressed in terms of a blanket time limit which will apply in all cases, but rather must depend on the circumstances of a particular case.[26] The Court have to look at the complexity of the case.[27]

For the reasons above, Respondent submits that the death penalty imposed on Moto is in order.

c. Garaldo del Junko

Applicant refers to four major reasons why they believe that the death penalty imposed on Junko is arbitrary. Respondent deals such reasons below.

First, Applicant argued that PM Courts relied on illegally obtained evidence to convict and sentence Junko to death. In particular, Applicant refers to the alleged torture of Junko in Nehiko.

To start with, the facts on state that Junko "was convicted of drug and human trafficking committed in PM".[28] At no time is it stated in the facts that the court relied on the evidence or confessions made in Nehiko when the alleged torture occurred. Junko has been a wanted criminal in PM for a very long time, way before his capture and alleged torture in Nehiko. As such, it is reasonable to infer that there were other evidences for his crime other than that

[26] Article 19, [97]
[27] ibid
[28] Facts [20].

tainted with torture allegations. For these reasons, Applicant cannot seek to convince this court that the death sentence imposed on Junko was arbitrary on the basis that there was use of illegally obtained evidence. That claim is not supported by facts.

More so, as will be fully argued below, there is no conclusive evidence from facts that Junko was tortured. Furthermore, even if this Honorable Court was to rule that there was torture and that the evidence from such was admitted in his trial, that does not necessarily mean his conviction and sentence was arbitrary. In the case of *Gafgen v Germany*, both the Trial and Grand Chamber of the European Court for Human Rights held that the admission of evidence that was secured through torture or threats of torture in the trial of the accused did not interfere with his fair trial rights.[29]

Second, Applicant also invokes the non-refoulement principle arguing that Junko must not have been extradited to a country where he would face death penalty. Respondent respectfully submits that this argument is dead on its feet. The principle is only applicable where the country from which one is extradited from does not have the death penalty. Both Nehiko and PM have the death penalty on their statutes.

Third, Applicant's argument that PM violated its obligations in terms of the VCCR which requires that foreign nationals arrested on criminal charges to be granted access to their home-state consular[30] is also dead on its feet. Junko's nationality is unknown[31] and it was practically impossible to have notified anyone. Junko could even be a national of PM.

Fourth and finally, Applicant argued that human trafficking is not part of the "most serious crimes" because it does not involve intentional killing. Respondent urges this court not to have a restrictive interpretation of life and death. Life is more than the physical process of

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[29] *Gafgen v Germany* (2008), para 109; *Gafgen v Germany* (2010), para 187.

[30] VCCR, Art. 36
[31] Facts [10]

breathing. Life without dignity is not life worth living. A person who takes hundreds of young innocent girls as objects for sale to sexual slavery deprives them not only of the right to dignity but the right to live. Such a person is more of a murderer than the one who takes a single shot against one person.

2. ALLEGED VIOLATIONS OF RIGHT TO FREEDOM FROM TORTURE

Respondent concedes on law that the fact that PM did not ratify CAT is not of importance since the prohibition on torture is part of international customary international law that binds all nations.

Respondent makes three arguments in relation to the allegation that it violated Junko's right to freedom of torture.

First, there is no conclusive evidence that there was torture. While Martinez was told by Sanchez that he "knows the drill" that could make Junko talk, Martinez declined.[32] If by any chance, the word drill meant torture, it is clear from facts that that drill was not implemented.[33] Furthermore, Martinez's single testimony – with no other corroboration from the scene – that he heard Junko scream in pain is not conclusive evidence that Junko was being tortured. Other than torture, there are many possible explanations or causes for someone to scream in pain.

Second, in unlikely event that this Honorable Court concludes that there was indeed torture of Junko, Respondent submits that the alleged torture did not happen on the territory of PM and there is no evidence from the facts that it involved the nationals of PM. Facts clearly state that "soldiers from other countries were eventually called in and later that afternoon took over the interrogation". Up to the time Martinez and General Sanchez – citizens of PM

[32] Facts [15]
[33] Facts [15]

– were involved in the interrogation before the take-over by other nationals, nothing from the facts suggests that there could have been torture. Even the alleged screaming had not happened as yet. Actions of soldiers from other nations who were part of the RAMINE forces cannot be imputed to Respondent.[34]

Third, Respondent notes that Applicant has made the argument that the prohibition on torture is absolute. Respondent would want to submit that while it condemns torture, in international law, it is not cast in stone that prohibition of torture is absolute.

In fact, there is case law[35] from the European Court for Human Rights and arguments from renowned scholars[36] that question – as a matter of legal interpretation – the absolute nature of prohibition of torture.

It has been argued that in certain cases, torture may be justified by necessity.[37] Necessity is what underpins the protect life principle – the idea that State agents are allowed to take life in order to protect life. It does not make normative sense that while State agents can be excused for killing another human being in order to save another, necessity cannot be used if they tortured strictly to save life.

Furthermore, even though done by private persons, human trafficking and subjecting women to sexual assault is not only physical but mental torture. The question becomes, should a State be allowed an exception to torture an individual as a last resort to put a stop to the torturing of another individual? Could there be a "protect from torture principle" fashioned after the "protect life principle"? Can State agents torture if it is strictly to serve another person from being tortured? The argument that once State agents are allowed to torture for

[34] Facts [15]
[35] See *Gafgen v Germany*.
[36] See Steven Greer, "Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really 'Absolute' in International Human Rights Law?" *Oxford Human Rights Law Review*, 2015, 0, 1–37.

[37] Ben-Naftali pp. 459-465

whatever reason will slide down the slippery slope of abuse is not that strong. The same argument can be said about the leeway that is already given to the same agents to kill under the auspices of “protect life principle”.

In the present case, there were hundreds of young girls who were about to be subjected to physical and mental torture.[38] Respondent urges this Honourable Court to keep this in mind when it makes its decisions.

3. ALLEGED VIOLATIONS OF THE RIGHT TO FOUND A FAMILY

Respondent is alive to the various treaties it has signed and ratified for the protection of children, in particular the girl child. While Respondent realises that the purpose of its laws is to protect from child marriages in general, it also realises the need to protect individual rights, in particular, the rights of women.

Thus, while its laws – in particular, those that set the legal age of marriage at 18 – are not inconsistent with its international instruments and vast state practice that sets the minimum age of marriage at 18 years[39], Respondent concedes that maintaining a blanket prohibition in case of Diaz and Martinez was unreasonable and disproportionate. Respondent ought to have assessed the circumstances of Diaz and Martinez. Failure to do so presented difficulties and unjustifiable interferences with the rights of the two.

4. PRAYER

Respondent hereby requests the Court to declare that:

i. PM did not violate the right to life of Martinez, Moto and Junko.

ii. PM did not violate the right to freedom from torture of Junko.

[38] Facts [15]
[39] ACMA, Art. 2; RCEW, Art. 6(b)

iii. PM's laws are consistent with its international obligations and state practice as far as marriageable age is concerned. However, there should have been variations as far as the case of Diaz and Martinez is concerned.

5. REMEDIES AND REPARATION

Respondent commits to compensate Diaz for harm suffered, to allow her to rebury Martinez in terms of their religion and to allow Diaz to inherit Martinez's estate.

Respectfully submitted,

Counsel for the Respondent