

8th World Human Rights Moot Court

Competition 18-20 July 2016

Geneva, Switzerland

IN THE MATTER BETWEEN

PERVASIVE PODCASTS PRESS (TRIPPLEP)

AND

THE GOVERNMENT OF THE UNITED SACROSOMBRE ISLANDS (USI)

MEMORIAL FOR THE APPLICANT

Table of Contents

List of Abbreviations	v
Index of Sources/ Authorities	viii
International and Regional Conventions and Treaties	viii
Cases from International and Regional Courts and Tribunals	ix
International Court of Justice	ix
African Commission on Human and Peoples' Rights	x
European Court of Human Rights.....	x
Inter-American Court of Human Rights.....	xii
International Tribunal for the Former Yugoslavia	xiii
Books/ Chapters in Books	xiii
Journal Articles	xiv
General Comments, Declarations and Guidelines.....	xv
EU Reports, Directives and Council of Europe	xvii
Statement of Relevant Facts	xviii
Questions Presented	xix
Summary of Arguments.....	xx

Arguments	xxi
Statement of Jurisdiction	xxi
Admissibility.....	xxii
A. All the local remedies have been exhausted	xxv
B. The Application was not exclusively based on mass media information	xxvi
Merits.....	1
I. USI’s refusal to abandon the Madame Revlon Seal is inconsistent with the rights of the students concerned	1
A. The continued use of the seal represents a glorification of slavery: an act that goes against one of the fundamental underlying values of the KEHRC—the respect for human dignity, and therefore constitutes unprotected speech.	1
B. The continued use of the seal constitutes harassment and falls under a violation of the freedom from inhumane and degrading treatment.....	4
II. The Civil Society Law (CSL) is inconsistent with international law obligations of USI	5
A. The provisions of the CSL do not amount to a permissible limitation of the right to freedom of expression under the KEHRC.....	5
B. The reasons given for the deregistration of TrippleP interfere with the right to privacy of Adorinda Ciela and Fiera Juvela and consequently unduly limit their freedom of association	10
C. The reasons given for the de-registration of TrippleP amounted to discrimination.....	13
III. The execution of Adorinda was an impermissible limitation of her right to life.	15
A. The reservation made was invalid as it is inconsistent.	15

B. The reservation is inconsistent with the set criteria on formulations of reservations thus making it invalid.....	16
C. The refusal to grant a pregnancy test to Adorinda Ciela was a violation of the Right to Fair Trial which is a non-derogable right, effectively making the sentence arbitrary.	21
D. The limitation is a violation of the principles relating to the justification of limitations	21
V. USI is internationally responsible for the abductions, torture and murder of Limbradre Armed Forces (LAF) leaders, students and other activist.....	22
A. The State of USI has an international obligation to ensure, secure and respect the rights provided for under the Convention of those within its jurisdiction, but failed to do so, hence violating the KEHRC.....	23
B. There is imputability of responsibility to the State of USI of the acts committed under Operation Oil Them Up (OTP).....	26
VI. Prayers.....	31

List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AfCHPR	African Court on Human and People's Rights
AHRLR	African Human Rights Law Reports
CEDAW	Convention on Elimination on all forms of Discrimination against Women
CERD	Committee on Elimination of Racial Discrimination
CSL	Civil Society Law
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
EU	European Union
FI	Republic of Foolaughy
FIF	Foolaughy Intelligence Force
HRTKE	Human Rights Court for the Continent of Hope
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICL	International Law Commission
KE	<i>Kontinento de Espero</i> (The Continent of Hope)
KEHRC	KE Human Rights Convention
LAF	Limbradre Armed Forces

LICT	Limbradre Island Trial Court
LUST	Limbradre Universitato de Scienco kaj Teknologio
MCI	Multlantische Corporatie Inc
OTP	Operation Oil Them Up
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Conventions on Rights of the Child
USI	United Sacrosombre Islands
VCLT	Vienna Convention on the Law of Treaties

Case Abbreviations

<i>Abella</i>	<i>Juan Carlos Abella v Argentina</i>
<i>Article 19</i>	<i>Article 19 & others v Zimbabwe</i>
<i>Bámaca</i>	<i>Bámaca Velásquez v Guatemala</i>
<i>Barcelona Traction</i>	<i>Barcelona Traction, Light & Power Company Ltd (Belgium v Spain)</i>
<i>Belilos</i>	<i>Belilos v Switzerland</i>
<i>Benjamin Tobago</i>	<i>Hilaire, Constantine & Benjamin et al v Trinidad and Tobago</i>
<i>Blasic</i>	<i>Prosecutor v Tihomir Blasic</i>
<i>Burden</i>	<i>Burden v United Kingdom</i>
<i>Cantoral Benavides</i>	<i>Cantoral Benavides v Peru</i>
<i>Coard</i>	<i>Coard et al v United States</i>
<i>Cumhuriyet</i>	<i>Cumhuriyet Halk Partisi v Turkey</i>
<i>Darfur Relief</i>	<i>Darfur Relief and Documentation v Sudan</i>
<i>Djibouti</i>	<i>Djibouti v France</i>

<i>Dudgeon</i>	<i>Dudgeon v United Kingdom</i>
<i>Erbakan</i>	<i>Erbakan v Turkey</i>
<i>Ergi</i>	<i>Ergi v Turkey</i>
<i>González</i>	<i>González et al (Cotton Field) v Mexico</i>
<i>Gordínez</i>	<i>Gordínez Cruz v Honduras</i>
<i>Handyside</i>	<i>Handyside v United Kingdom</i>
<i>Harvest Sheen</i>	<i>Harvest Sheen Ltd & another v The Collector of Stamp Revenue</i>
<i>Isayeva</i>	<i>Isayeva v Russia</i>
<i>Issa</i>	<i>Issa v Turkey</i>
<i>Jawara</i>	<i>Sir Dawda K.Jawara v The Gambia</i>
<i>Lautsi</i>	<i>Lautsi v Italy</i>
<i>Leander</i>	<i>Leander v Sweden</i>
<i>Loizidou</i>	<i>Loizidou v Turkey</i>
<i>Mapiripan</i>	<i>Mapiripán Massacre v Colombia</i>
<i>Media Rights</i>	<i>Media Rights Agenda & Constitutional Rights Project v Nigeria</i>
<i>Moustaquim</i>	<i>Mostaquim v Belgium</i>
<i>Mouta</i>	<i>Mouta v Portugal</i>
<i>Ndong Bee</i>	<i>Ndong Bee & others v Equatorial Guinea</i>
<i>Ocalan</i>	<i>Ocalan v Turkey</i>
<i>Pretty</i>	<i>Pretty v United Kingdom</i>
<i>Rantsev</i>	<i>Rantsev v Cyprus and Russia</i>
<i>Reid</i>	<i>Reid v Jamaica</i>
<i>Ricardo</i>	<i>Baena-Ricardo et al v Panama</i>
<i>Salvador</i>	<i>Salvador Commercial Company v Salvador</i>

<i>Seurot</i>	<i>Seurot v France</i>
<i>Thompson</i>	<i>Thompson v Oklahoma</i>
<i>Todorova</i>	<i>Todorova v Bulgaria</i>
<i>Toonen</i>	<i>Toonen v Australia</i>
<i>Vajnav</i>	<i>Vajnav v Hungary</i>
<i>Varanava</i>	<i>Varanava & others v Turkey</i>
<i>Velásquez</i>	<i>Velásquez Rodríguez v. Honduras</i>
<i>Yogogombaye</i>	<i>Yogogombaye v the Republic of Senegal</i>
<i>Zimbabwe</i>	<i>Zimbabwe Human Rights NGO Forum v Zimbabwe</i>

Special Symbols

¶ Paragraph

Index of Sources/ Authorities

Page No.

International and Regional Conventions and Treaties

African Charter of Human and Peoples' Rights 'The Banjul Charter' (1520 UNTS 217) (Conclusion 27 June 1981, Entry into Force 21 October 1986)	xix
Convention for the Protection of Human Rights and Fundamental Freedoms 'The European Convention on Human Rights' (213 UNTS 222) (Conclusion 11 April 1950, Entry into Force 3 September 1953)	1,2,3,4,5,6,7,10, 12,14,17, 18,19,20,27,28,

30

International Covenant on Civil and Political Rights (999 UNTS 171) xviii,
(Conclusion 16 December 1966, Entry into Force 23 March 1976) 6,8,10,12,14,16,
18,20

Protocol 6 to the European Convention for the Protection of Human 24
Rights and Fundamental Freedoms concerning the Abolition of Death
Penalty (ETS 114) (Conclusion 28 April 1983, Entry into Force 3
January 1985)

Protocol to the African Charter on Human and Peoples' Rights on the
Establishment of the African Court on Human and Peoples' Rights xx, xxii
(OAU/LEG/MIN/AFCHPR/PROT.1 rev.2) (Conclusion 6 October
1998, Entry into Force 25 January 2005)

Cases from International and Regional Courts and Tribunals

International Court of Justice

Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) 6
(ICJ Reports 3) (5 February 1970)

Djibouti v France (136/ 2008) (4 June 2008) xxii

United Nations Human Rights Committee

Reid v Jamaica (250/1987) (20 July 1990) 18

Toonen v. Australia (488/1992) (30 March 1994) 14

African Commission on Human and Peoples' Rights

Media Rights Agenda & Constitutional Rights Project v Nigeria
(105/93, 128/94, 130/94 & 152/96) (31 October 1998) 10

Sir Dawda K. Jawara v The Gambia (147/ 95 & 149/ 96) (11 May
2000) ii, xxiii

Darfur Relief and Documentation v Sudan (30/ 2005) (25 November
2009) ii

Article 19 & others v Zimbabwe (305/ 05) (24 November 2010) xxiii

Zimbabwe Human Rights NGO Forum v Zimbabwe (245/ 2002) (15
May 2006) ii

African Court on Human and Peoples' Rights

Michelot Yogombaye v the Republic of Senegal (001/2008) (15
December 2009) xxi

European Court of Human Rights

Handyside v United Kingdom (5493/ 72) (7 December 1976) 2

Dudgeon v United Kingdom (7525/ 76) (22 October 1981) 12

<i>Leander v Sweden</i> (9248/ 81) (26 March 1987)	9
<i>Belilos v Switzerland</i> (10328/83) (29 April 1988)	36
<i>Moustaquim v Belgium</i> (12313/ 86) (18 February 1991)	4
<i>Loizidou v Turkey</i> (40/1993/435/514) (23 February 1995)	13
<i>Ergi v Turkey</i> (23818/ 94) (28 July 1998)	27
<i>Mouta v Portugal</i> (33290/ 96) (21 December 1999)	15
<i>Pretty v. United Kingdom</i> (2346/02) (29 April 2002)	1
<i>Ocalan v Turkey</i> (46221/99) (12 March 2003)	18
<i>Seurot v France</i> (42264/ 98) (18 May 2004)	2
<i>Issa v Turkey</i> (31821/ 96) (16 November 2004)	23
<i>Isayeva v Russia</i> (57950/ 00) (24 February 2005)	27
<i>Erbakan v Turkey</i> (59405/ 00) (7 June 2006)	2
<i>Burden v United Kingdom</i> (13378/ 05) (28 April 2008)	5

<i>Vajnav v Hungary</i> (33629/ 06) (8 July 2008)	3
<i>Varanava & others v Turkey</i> (16073/90)(18 September 2009)	27
<i>Rantsev v. Cyprus and Russia</i> (25965/04) (7 January 2010)	1
<i>Todorova v Bulgaria</i> (37193/ 07) (25 March 2010)	4
<i>Lautsi v Italy</i> (30814/ 06) (18 March 2011)	3
<i>Cumhuriyet Halk Partisi v Turkey</i> (19920/ 13) (29 February 2012)	13
Inter-American Court of Human Rights	
<i>Velásquez Rodríguez v. Honduras</i> (Ser: C 4) (29 July 1988)	22, 27
<i>Gordínez Cruz v Honduras</i> (Ser: C 8) (20 January 1989)	20, 21
<i>Juan Carlos Abella v Argentina</i> (Ser: L 95) (18 November 1997)	27
<i>Coard et al v United States</i> (Ser: C 99) (29 September 1999)	27
<i>Cantoral Benavides v Peru</i> (Ser: C 69) (August 18 2000)	30
<i>Baena-Ricardo et al v Panama</i> (Ser; C 104) (2 February 2001)	xix

<i>Bámaca Velásquez v Guatemala</i> (Ser :C 91) (22 February 2002)	27
<i>Mapiripán Massacre vs Colombia</i> (Ser: C 122) (15 September 2005)	30
<i>González et al (Cotton Field) v Mexico</i> (Ser: C 205) (16 November 2009)	20,21
<i>Benjamin et. al v Trinidad and Tobago</i> (Ser: C 94) (11 November 1997)	xix
International Tribunal for the Former Yugoslavia	
<i>Prosecutor v Tihomir Blasic</i> (IT-95-14-AR108bis) (18 July 1997)	xix
National Courts	
Hong Kong	
<i>Harvest Sheen Ltd & another v The Collector of Stamp Revenue</i> (1997) 4 HKTC 750	11
Books/ Chapters in Books	
Bertrand Ramcharan, <i>The Right to Life in International Law</i> (MNP, 2006, Leiden)	19
Christopher McCrudden, 'In Pursuit of Human Dignity: An Introduction to Current Debates' in Christopher McCrudden (ed), <i>Understanding</i>	1

Human Dignity (OUP 2014, London)

Frans Viljoen, *International Human Rights Law in Africa*, (OUP, 2012, London) xxii

Louise Doswald- Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP 2011, London) 20, 21, 23, 25, 27, 28

Philip Alston & Ryan Goodman, *International Human Rights*, (OUP, 2013, London) 15

William Schabas, *War Crimes and Human Rights: Essays on the death penalty, justice and accountability* (CMP 2008, London) 18

Journal Articles

Anne Bayefsky and Joan Fitzpatrick, 'International Law in the United States Courts: A Comparative Perspective' (1992) Michigan International Law Journal 6

Catherine Dupre, 'Human Dignity and the Withdrawal of Medical Treatment: A Missed Opportunity' (2006) European Human Rights Law Review 1

Dan Hammer, 'Allowing Genocide? An analysis of Armed Activities on the Territory of the Congo, Jurisdictional Reservations, and the' xxi

Legitimacy of the International Court of Justice' (2007) Minnesota Journal of International Law	
Doron Schultziner, Guy Carmi, 'Human Dignity in National Constitutions: Functions, Promises and Dangers' (2014) American Journal of Comparative Law	2
Isabelle Buffard & Karl Zemanek, 'The Object and Purpose of a treaty: An Enigma?' (1998) Austrian Review of International & European Law	18
Tom Antowiak, 'Remedial Approaches to Human Rights Violations' (2008) Columbia Journal of Transnational Law	29
Vincent Poliot, 'Forum Prorogatum before the International Court of Justice: the Djibouti v France Case' (2008) Hague Justice Journal	xxii
General Comments, Declarations and Guidelines	
Basic Principles on the Right to a Remedy & Reparation for Victims of Gross Violations of Human Rights and Gross Violations of International Humanitarian Law (United Nations General Assembly A/60/147, 2005)	30
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally	7

Recognized Human Rights and Fundamental Freedoms (Adopted by General Assembly resolution 53/144 of 9 December 1998)	
Guidelines on the Protection of Human Rights Defenders (OSCE Office for Democratic Institutions and Human Rights, 2014)	7, 10
Human Rights Committee General Comment 31, 'Nature of the General Legal Obligation on the State Parties to the Covenant,' 29th March 2004	21
International Law Commission Draft Articles on State Responsibility	24
United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 20 on Non-Discrimination in relation to Economic, Social and Cultural Rights, 2009	15
United Nations Declaration on Human Rights (General Assembly Resolution 217 A(III)) (December 10 1948)	2, 6, 10, 14
United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (UN Doc E/CN4/1985/4) (28 September 1984)	8, 19
Vienna Declaration, World Conference on Human Rights (UN Doc. A/CONF.157/23; 32 ILM 1661) (June 25 1993)	1, 16, 17

Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, March 2007 15

EU Reports, Directives and Council of Europe

Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Race or Ethnic Origin (Council Directive 2000/43/EC) (19 July 2000) 4

European Commission Report on the Discrimination of Children in Roma (October 2014) 4, 5

Other Documents

Archivio del Ministero degli Affari esteri italiano 45

Office of the High Commissioner for Human Rights, Human Rights Defenders: Protecting the Right to Defend Human Rights Fact Sheet No. 29 6

Statement of Relevant Facts

1. TrippleP is an NGO registered in Republic of Foolaughy (RF) but operative in United Sacrosombre Islands (USI). USI is an independent country constituted of several islands and having in place a federal system of government. Multlantische Corporatie Inc (MCI) is an oil company operational in USI but whose ownership vests in nationals of RF.
2. There has in recent times existed tense state of affairs in USI between TrippleP on the one hand, and the Federal Government alongside MCI on the other. The genesis of the strife in USI is traceable to operational difficulties in the affairs of MCI, an oil drilling company that was forced to cut workers' wages, the majority of whom were nationals of USI. There have been gross violations of human rights in the subsequent political upheavals and conflicts.
3. The oil drilling operations in USI began when Petrous Van Gorkom, a slave trader who was marooned on the islands and subsequently discovered oil. The business later became the monopoly of his company, MCI.
4. Unstable weather conditions in 2012 occasioned operational difficulties in the business of MCI and the wages of workers were cut as a result of the rising cost of production. The subsequent unrest morphed into violent uprisings after MCI security officers responded with more repressive methods to quell the protests.
5. As result of these developments, a new narrative was adopted towards the end of 2014 by students at *Limbradre Universitato de Scienco kaj Teknologio* (LUST) who viewed the slave ship logo used to identify the school as a symbol of historic oppression (depicting slavery). The gravity of the allegation is further compounded by the fact that LUST has been controlled-in terms of senior membership and management- by MCI. The relevant demands were thus that the logo be removed. MCI in turn threatened to retaliate by withdrawing its financial support of LUST. It is

the latter consideration that led a Special Committee appointed by the Government to consider the issue and ultimately conclude that the logo would have to subsist. Students of LUST consequently approached the Limbradre Island Trial Court (LICT) which ruled that it lacked the jurisdiction over the matter. The students did not pursue the matter further in courts.

6. Ultimately, members of an armed group, The Limbradre Armed Forces (LAF), began a bloody campaign against USI, MCI and the staff of LUST who were nationals of Foolaughy. This phase of the conflict was characterized by the enlisting of some students of LUST by the USI Federal Government for counter-intelligence as well as numerous forcible disappearances. Reports by local NGOs reveal that Foolaughy Intelligence Force officials who were supported by MCI were involved in these offences. Accordingly therefore, the argument made has been that these officials, though recruited by the FIF, they were on MCI's payroll.
7. These FIF agents were consequently involved in different engagements famously known as 'Operation Oil Them Up (OTP)' in a bid which had been endorsed by Limbradre's Deputy Chief of Police with the aim of capturing the leaders of different campaigns.
8. Subsequent reports by TrippleP detailing gross human rights violations precipitated the enactment of a controversial law named the Civil Society Law (CSL).
9. During proceedings challenging the CSL, Ms. Adorinda was accosted, arrested, and later executed after a sham trial.

Questions Presented

10. The questions before this honourable court are the following:

- I. Whether the United States of Sacrosombre (USI)'s refusal to abandon the *Madame Revlon* seal is inconsistent with the rights of the students concerned according to the KEHRC and other treaties that USI has ratified.
- II. Whether the Civil Society Law (CSL) is inconsistent with the international law obligations of the USI, as per the KEHRC and the treaties that it has ratified, and whether the reasons given for the de-registration of TrippleP interfere with the personal rights of Adorinda Ciela and Fiera Juvela.
- III. Whether, according to treaties entered into and other international law principles that bind the USI, the execution of Adorinda Ciela was a permissible violation of her right to life.
- IV. Whether the USI is internationally responsible for the abductions, torture and murder of Limbradre Armed Forces (LAF) leaders, students and other activists according to international law.

Summary of Arguments

- I. The continued use of the *Madame Revlon* seal represents a glorification of slavery: an act that goes against one of the fundamental underlying values of the KEHRC—the respect for human dignity, and therefore constitutes unprotected speech. Additionally, the continued use of the seal constitutes harassment and is a violation of the freedom from inhumane and degrading treatment.
- II. The provisions of the CSL do not amount to a permissible limitation of the right to freedom of expression under the KEHRC. Moreover, the reasons given for the de-registration of TrippleP interfere with the right to privacy of Adorinda Ciela and Fiera Juvela and consequently unduly limit their freedom of association. Finally, the reasons given for the de-registration of TrippleP amounted to discrimination under the ICCPR and KEHRC.

- III. The reservations made by USI to the death penalty provisions of the KEHRC were inconsistent with other treaties that it has ratified and inconsistent with the set criteria on reservations, making the reservations invalid. The failure to grant a pregnancy test to the applicant was further a limitation of her right to fair trial and that being so, the execution of Adorinda further constituted an impermissible limitation of her right to life.
- IV. The State of USI is, according to the ILC Articles on State Responsibility as read with the Geneva Convention on the Law of Armed Conflict, responsible for the acts committed under Operation Oil Them Up (OTP).

Arguments

Statement of Jurisdiction

11. This Honourable Court has the jurisdiction to hear Human Rights violation claims based on the provisions of the KEHRC ratified by the state¹ as well as other international human rights treaties.² The claims advanced are based on the violation of these treaties. Additionally, the *competence de la competence* principle allows the Court to determine its own jurisdictional limits.³

12. When ruling on its *compétence de la compétence*, the International Criminal Tribunal (ICTY) for the former Yugoslavia stated that:

‘In finding that the International Tribunal has the competence to determine its own jurisdiction, the Appeals Chamber has adopted a similar approach. It recognized that such competence is part of the incidental or inherent jurisdiction of any judicial tribunal and, in particular,

¹ Facts ¶ 3.

² Facts ¶ 1.

³ *Benjamin; Ricardo*.

‘it is a necessary component in the exercise of the judicial function and does not need to be expressly provided for in the constitutive documents...although this is often done.’⁴

Admissibility

13. As per the admissibility rules set out in the facts, NGOs registered under the HRTKE can bring claims on behalf of the victims.⁵ The facts further provide that admissibility requirements of the HRTKE are similar to those of the AfCHPR.⁶ Information on parties that may bring matters before the African Court of Human and Peoples’ Rights (AfCHPR) is set out in Articles 5 (1), (2) and (3) of the Protocol to the African Charter on Human and Peoples’ Rights (AfCHPR) on the Establishment of the African Court on Human and Peoples’ Rights (ACHR). They include the Commission,⁷ a state party that has lodged a complaint to the Commission,⁸ a state Party whose citizen is a victim of human rights violation⁹ and African Intergovernmental Organization and a Non-Governmental Organisation.¹⁰

14. Article 5 (3) of the same Protocol then gives direction that the Court may entitle the relevant NGOs with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34 (6).

15. Article 34 (6) then states that ‘at the time of the ratification of the Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases.’ Article 34 (6) states that the Court shall not receive any

⁴ *Blasic*.

⁵ Facts ¶ 4.

⁶ Facts ¶ 4.

⁷ Article 1 (a), *Protocol to the African court*.

⁸ Article 1 c, *Protocol to the African Court*.

⁹ Article 1 (d), *Protocol to the African Court*.

¹⁰ Article 5 (3), *Protocol to the African Court*.

petition under Article 5 (3) involving a State Party which has not made such a declaration.¹¹

16.' It seems at first that the determination in *Yogogombaye* means there is no jurisdiction for the court in a case where the state has not made the required declaration. The USI *may not* have made such a signed declaration and this at first instance seems to disallow TrippleP from bringing matters before the HRTKE.

17. There is, however, the doctrine of *forum prorogatum*, which may be understood as acceptance of the jurisdiction of an international court by the state after the seizure of the court by another state or an individual.¹² In it, effective participation in proceedings by addressing the merits is viewed as an implicit assumed acceptance of jurisdiction.¹³ Indeed, where there is no formal signed declaration as per the provisions of 34 (6) then there must be 'an unequivocal indication on the part of the state to accept jurisdiction seen in the formation of a defence on the merits.'¹⁴ An 'unequivocal indication' is what is mentioned as effective participation, where the respondent assumes an active role in the case proceedings.

18. The separate opinion in *Yogogombaye* suggested that the state party (Senegal) could have limited itself to indicating that a signed declaration had not been made and consequently the court had no jurisdiction over the matter. Its willingness to defend the case, however, was assumed to be a declaration and thus propagated it jurisdiction.¹⁵

¹¹ Article 5(3) & 34 (6).

¹² Separate opinion of Judge Fatsah Oruergouz, *Yogogombaye*.

¹³ *Yogogombaye*.

¹⁴ See Hammer, 'Allowing Genocide? An analysis of Armed Activities on the Territory of the Congo, Jurisdictional Reservations, and the legitimacy of the International Court of Justice' 16 *Minnesota Journal of International Law*, 496-524.

¹⁵ *Ibid*.

19. Moreover, as per the judgement in *Djibouti*,¹⁶ *forum prorogatum* may be assumed when there is an absence of restriction on matters brought before an international court yet there is unequivocal consent on the jurisdiction of the court to preside over the matter.¹⁷

20. The applicants in this case therefore urge the court to find that the respondents' preparation of a defence to the communication filed signifies willingness and thus there can be assumed jurisdiction of the court to preside over the matter and in order to enhance access to justice, this court should allow itself to play as far reaching a role as possible.¹⁸

This petition fulfils all admissibility requirements under ACHR

21. A Petition accepted by this court is to be examined under Article 56 of the ACHR, which provision lists requirements that need to be further fulfilled in order for a matter to be admissible.¹⁹

22. Such requirements include: an indication of the authors even if they request anonymity,²⁰ compatibility with the present Charter,²¹ non-inclusion of disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,²² a basis on more information than news disseminated through the mass media,²³ exhaustion of local remedies,²⁴ unless it is obvious that the procedure is unduly prolonged, and submission within a

¹⁶ *Djibouti*.

¹⁷ Vincent Poliot, 'Forum prorogatum before the International Court of Justice: the Djibouti v France Case' 3 *Hague Justice Journal* 2008, 7.

¹⁸ Frans Viljoen, *International Human Rights Law in Africa*, (OUP, 2012, London) 426-427.

¹⁹ Article 6, *Protocol to the African Court*.

²⁰ Article 56 (1), *ACHR*.

²¹ Article 56 (2), *ACHR*.

²² Article 56 (3), *ACHR*.

²³ Article 56 (4), *ACHR*.

²⁴ Article 56 (5), *ACHR*.

reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter.²⁵

23. The Applicant asserts that all the requirements have been met and the two particularly contentious ones, have not been realized in the following ways:

A. All the local remedies have been exhausted

24. It has been held that domestic remedies of a legal character are to be ‘available’ as a matter of practice where the complainant has no impediments,²⁶ is ‘effective’ in offering a reasonable prospect of success,²⁷ and ‘sufficient’ to redress the violations.²⁸

25. TrippleP approached the HRTKE after exhausting all local remedies as is required. Issue I was taken before the LICT court which disavowed jurisdiction²⁹ while issue II one was taken to the Federal High Court, the Constitutional Court and even a final appeal to the Supreme Court was dismissed.³⁰ Issue III alleging a contravention of Adorinda Ciela’s Right to Life was taken before the Constitutional Court³¹ which has the exclusive jurisdiction on such Human Rights issues.³²

26. Consequently, in the absence of a further avenue for judicial recourse, the Applicants submit that they indeed exhausted all local remedies.

27. The applicants plead that in the unlikely event that they did not exhaust local remedies, they are not—as a matter of practice—required to exhaust the local

²⁵ Article 56 (6), *ACHR*.

²⁶ *Jawara*.

²⁷ Article 19; ¶ 46; *Jawara*.

²⁸ *Ibid*.

²⁹ Facts ¶ 9.

³⁰ Facts ¶ 19 & 20.

³¹ Facts ¶ 22.

³² Facts ¶ 2.

remedies available³³ when the remedies are themselves not effective in offering a reasonable prospect of success³⁴ and/ or are insufficient to redress the human rights violations.³⁵

28. The decision by LICT that it had no jurisdiction with regard to Issue I³⁶ meant that the matter was not pursued further in any USI court as the remedy being sought could not be ascertained to be effective in offering a reasonable prospect of success on account of the findings of the Special Committee set up by the USI Government. Neither can the same be said for Issue III on account of enactment of the CSL.

29. As regards to issue IV, the students had enough reason to believe that the local remedies provided, although available, were ineffective since in the cases taken to court on the same, investigations were influenced through bribes and cases thrown out for lack of evidence.³⁷

B. The Application was not exclusively based on mass media information

30. Communications based on mass media are not admissible before the court.³⁸ It is averred that apart from mass media sources such as social media³⁹ and local newspapers,⁴⁰ the information was sourced from ministerial statements⁴¹ as well as the CSL Act. The existence of other such sources of information grants means that

³³ *Vernillo*.

³⁴ *Patino*.

³⁵ *Ibid*.

³⁶ Facts ¶ 9.

³⁷ Facts ¶ 12.

³⁸ Article 56.

³⁹ Facts ¶ 13.

⁴⁰ *Ibid*.

⁴¹ Facts ¶ 11.

this requirement has been satisfied by the applicants⁴² since they did not only rely on mass media sources.

31. In any event, as was held by the African Commission, the important question the court ought to concern itself with is not the source of the information per se but the veracity of the information.⁴³ The Applicants invite this court to interrogate the veracity of the information brought before it rather than dismiss it on any mere claim that it was disseminated through mass media

⁴² *Sudan; Zimbabwe.*

⁴³ *Jawara.*

Merits

I. USI's refusal to abandon the Madame Revlon Seal is inconsistent with the rights of the students concerned

A. The continued use of the seal represents a glorification of slavery: an act that goes against one of the fundamental underlying values of the KEHRC—the respect for human dignity, and therefore constitutes unprotected speech.

32. The recognition of inherent human dignity has long been accepted as the foundation for the respect accorded to human rights. The Vienna Declaration states in its preamble that 'all human rights derive from the dignity and worth inherent in the human person'⁴⁴ and while human dignity is not expressly mentioned in the ECHR or the treaties of the EU, its importance has been reiterated in the case law of both the ECtHR and the European Court of Justice (ECJ) where it has been stated to be 'the very essence' of the ECHR.⁴⁵ In addition to this, human dignity is the founding principle of several constitutions in the world.⁴⁶

33. The enterprise of slavery has incontestably been shown to be abhorrently wrong based on one fundamental concept—that it deprives individuals of their dignity and their rights as human beings.⁴⁷ Slavery degrades individuals by treating them as chattel, as property that can be bought and sold, as individuals that are considered to be less than human. It is for this reason that the Freedom from Slavery itself is

⁴⁴ Vienna Declaration, World Conference on Human Rights (June 25 1993).

⁴⁵ *Pretty*.

⁴⁶ Catherine Dupre, *Human Dignity and the Withdrawal of Medical Treatment: A Missed Opportunity*, *European Human Rights Law Review*, 2006, 678, 687–693.

⁴⁷ *Rantsev*; Christopher McCrudden, 'In Pursuit of Human Dignity: An Introduction to Current Debates' in Christopher McCrudden (ed), *Understanding Human Dignity*, Oxford University Press, London, 6.

absolute, and is contained in almost all international and regional treaties and conventions,⁴⁸ and in an abounding number of constitutions worldwide.⁴⁹

34. The Freedom of Expression is protected in the ECHR⁵⁰ and such protection been taken to encompass information and ideas that shock, offend and disturb any sector of the State or population.⁵¹ Nevertheless, speech that spreads, incites, promotes or justifies hatred based on intolerance is not protected under the ECHR.⁵²

35. It has been held that any speech that is directed against the ECHR's underlying values is not protected by Article 10 of the ECHR,⁵³ and two approaches are provided for by the ECHR when the court is dealing with cases alleging unprotected speech. The first approach is that of exclusion from the protection of the Convention⁵⁴ where the information and ideas in question amount to unprotected speech and negate the fundamental values of the Convention. The second is the approach of setting restrictions on protection, provided where the speech in question, although not unprotected speech, is not apt to destroy the fundamental values of the Convention.⁵⁵

36. It is now settled law that symbols also constitute speech⁵⁶ and may have a consequence on human rights; The court has held, for instance, that a crucifix is a sign which, whether or not it is accorded in addition a secular symbolic value, undoubtedly refers to Christianity. It also held that prescribing the presence of

⁴⁸ UDHR; ACHR; UNCRC, ECHR.

⁴⁹ Doron Schultziner, Guy Carmi, 'Human Dignity in National Constitutions: Functions, Promises and Dangers,' 6-7.

⁵⁰ Article 10, ECHR.

⁵¹ *Handyside*.

⁵² *Erbakan*.

⁵³ *Seurot*.

⁵⁴ Article 17, ECHR.

⁵⁵ Article 10, ECHR.

⁵⁶ *Vajnav*.

crucifixes in state schools confers on the country's majority religion preponderant visibility in the school environment although eventually, it concluded that such a crucifix on a wall is an essentially passive symbol and cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities.⁵⁷

37. The applicant avers that the *Madame Revlon* is known to have been a slave ship⁵⁸ and that its continued use by the USI amounts to justification and glorification of what it is known for—slavery.

38. The court is further urged to take the seal as being symbolic speech and examine it in that light. Considering that speech is unprotected when it is contrary to one of the ECHR's underlying values, the court is moved to see that the glorification and justification of slavery goes against one of the most cardinal underlying values of the ECHR (and almost every human rights treaty for that matter)—the belief in inherent human dignity.

39. Moreover, the fact that LUST is a state university means that, per *Lautsi*, the use of the *Madame Revlon* seal confers upon its primary message—the justification and glorification of slavery—preponderant visibility in the school environment. And unlike the crucifix in *Lautsi*, the seal is not a passive symbol without any influence on students, as has been shown by their reaction to its continued use.⁵⁹ As a result, the court is urged to find that the continued use of the *Madame Revlon* seal by the USI is an act that constitutes unprotected speech under the ECHR.

⁵⁷ *Lautsi*.

⁵⁸ Facts ¶ 6.

⁵⁹ Facts ¶ 9.

B. The continued use of the seal constitutes harassment and falls under a violation of the freedom from inhumane and degrading treatment.

40. The freedom from discrimination is assured under Article 14 of the ECHR, which proscribes discrimination based on any ground including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status⁶⁰ and it is now accepted that discrimination does not have to be direct. In indirect discrimination, conduct or criteria exists which appears fair, but unjustly prejudices a party.

41. Harassment has been defined by the EU Commission Race Directive as any conduct that is unwanted and related to the protected ground⁶¹ which intends to 'violate the dignity' and/ or create an environment that is 'intimidating, hostile, degrading, humiliating or offensive.'⁶² Unlike direct and indirect discrimination, harassment requires no comparator to be proven.⁶³

42. The ECHR has previously dealt with harassment implicitly, deciding it under protections such as the freedom from inhumane and degrading treatment and the right to a fair trial⁶⁴ and in tandem with Article 14 of the ECHR. The Equal Treatment Authority has also found, for example, that the constant threatening of Roma children with, upon misbehaviour, referral to the 'Hungarian Guard' a violent nationalist group, created a fearful and intimidating atmosphere, and this was harassment.⁶⁵

⁶⁰ Article 14, ECHR.

⁶¹ Article 14 ECHR.

⁶² Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Race or Ethnic Origin (Entry into force 19 July 2000).

⁶³ European Commission Report on the Discrimination of Children in Roma (Published October 2014); *Mostaquim*.

⁶⁴ *Todorova*.

⁶⁵ European Commission Report on the Discrimination of Children in Roma (Published October 2014).

43. For the general defence for harassment to be acceptable, it is required that the alleged conduct be objective and reasonable, pursuing a legitimate aim and be proportionate to the aim.⁶⁶

44. The Applicants submit from the foregoing that the continued use of the *Madame Revlon* seal constitutes conduct and this conduct is unwanted based on the students' reaction.⁶⁷ Despite knowledge of the origins of the seal, the state has continued to use it. This conduct cannot be defended on any basis of reasonability, objectivity or as being pursuant to a reasonable aim.

45. The conduct can only then be taken to be done with the intention of creating a degrading environment whether patently or latently. This has an effect the students of Limbradre origin, who are the relatives of the victims of slavery and who constitute a protected group as per Article 14 of the ECHR. The Court should, as a result, find that the continued use of the *Madame Revlon* seal is a representation of harassment and thus a violation of the freedom from inhumane and degrading treatment.

II. The Civil Society Law (CSL) is inconsistent with international law obligations of USI.

A. The provisions of the CSL do not amount to a permissible limitation of the right to freedom of expression under the KEHRC

46. Freedom of expression is guaranteed under Article 10 of the ECHR. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of

⁶⁶ *Burden*.

⁶⁷ Facts ¶ 9.

frontiers.⁶⁸ The ICCPR includes information imparted either orally, in writing or in print, in the form of art or through any other media of an individual's⁶⁹ choice under this freedom.

47. These provisions are echoed in Article 19 of the UDHR and the United States has cited the same, among other Articles, as among the fundamental rights to which all individuals are entitled.⁷⁰ The affirmations of the UDHR can bind States on the basis of custom within the meaning of paragraph 1 (b) of Article 38 of the ICJ Statute.⁷¹ They constituted a codification of customary law or because they have acquired the force of custom through a general practice accepted as law.⁷²

48. The realisation of the freedom of expression without arbitrary limitation is important to all but more important to human rights defenders. "Human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights.⁷³

49. Human rights defenders investigate, gather information regarding and report on human rights violations.⁷⁴ Freedom of expression is the foundation on which the work carried out by human rights defenders is grounded.⁷⁵ Nonetheless, policies, legislation and procedures described as 'security' measures are sometimes applied in such a way as to restrict the work of human rights defenders and sometimes target the defenders themselves.⁷⁶

⁶⁸ Article 10, ECHR.

⁶⁹ Article 19 (2), *ICCPR*.

⁷⁰ Anne Bayefsky and Joan Fitzpatrick, 'International Human Rights Law in United States Courts: A Comparative Perspective' (1992) *Michigan International Law Journal*.

⁷¹ Separate Opinion of Ammon J, *Barcelona Traction*.

⁷² *Ibid*

⁷³ Human Rights Defenders: Protecting the Right to Defend Human Rights Fact Sheet No. 29.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*.

⁷⁶ *Ibid*.

50. Article 6 (b) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms states that everyone has the right, individually and in association with others to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.

51. Under the Guidelines for the Protection of Human Rights Defenders, States should review legislation concerning freedom of expression and should repeal or amend any provisions that do not comply with relevant international human rights standards, such as those that impose undue restrictions for reasons of national security, public order and public health or morals beyond what is permissible under international standards.⁷⁷

52. Freedom of expression is not an absolute right. The ECHR recognises that it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, among other reasons.⁷⁸

53. The Siracusa Principles provide that limitations on the exercise of human rights shall be provided for by national law of general application which is consistent with the ICCPR.⁷⁹

54. It further provides that national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force⁸⁰ but the

⁷⁷ Article 42 Guidelines on the Protection of Human Rights Defenders.

⁷⁸ Article 10 (2), ECHR.

⁷⁹ Siracusa Principle 15.

⁸⁰ Siracusa Principle 29.

same cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.⁸¹

55. In addition, national security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.⁸² Public safety, on the other hand, means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.⁸³

56. The systematic violation of human rights undermines true national security and may jeopardize international peace and security.⁸⁴ A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.⁸⁵

57. The Government of USI enacted the CSL which under Section 9 allows the High Commissioner of Police and the Minister of Information and Publicity the right to inspect any material whose publication may endanger public safety and national security.⁸⁶

58. The CSL was enacted following a terror attack allegedly sponsored by a bogus charity organisation in Sellusombre.⁸⁷ The legislation also comes in the wake of civil unrest as a result of MCI cutting down its workers' wages, LUST continued use of the Madame Revlon logo and the subsequent 'Operation Oil Them Up'. TrippleP

⁸¹ Ibid 30.

⁸² Ibid 31.

⁸³ Ibid 33.

⁸⁴ Ibid 32.

⁸⁵ Ibid.

⁸⁶ Facts ¶ 16.

⁸⁷ Facts ¶ 15.

has been very instrumental in highlighting various human rights violations perpetrated by the Government of USI through the dissemination of videos.⁸⁸

59. The ECtHR recognised the public's right to receive information and the right to access to information.⁸⁹ The latter right was said to basically prohibit a government from restricting a person from receiving information that others wish or may be willing to impart to him.⁹⁰

60. USI enacted the CSL using the guise of national security following the terror attack in Sellusombre and through provisions of the CSL, the government of USI placed limitations on the freedom of expression, citing national security and public order reasons.

61. Siracusa Principle 30 states that national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order. The terror attack in Sellusombre was an isolated threat to USI's national security while the domestic unrest constitutes a merely local threat to law and order.

62. In *Media Rights Agenda*, it was held that to allow national law to have precedence over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law and any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.⁹¹ Moreover, a limitation may never have as a consequence that the right itself becomes illusory.⁹²

⁸⁸ Facts ¶ 8,9,11 &13.

⁸⁹ Freedom of expression in Europe, Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing, Human Rights files, No. 18 page 75.

⁹⁰ *Leander*.

⁹¹ *Media Rights*.

⁹² *Ibid*.

63. Thus, Section 10 of the CSL is inconsistent with USI's international obligations as the circumstances surrounding its enactment are isolated cases and therefore the pretext of national security does not suffice.

B. The reasons given for the deregistration of TrippleP interfere with the right to privacy of Adorinda Ciela and Fiera Juvela and consequently unduly limit their freedom of association.

64. The right to privacy is enshrined in Article 8 of the ECHR. The same right is guaranteed under Article 17 of the ICCPR as well as Article 12 of the UDHR.

65. The Guidelines on the Protection of Human Rights Defenders provide that states have a duty to refrain from any unlawful or arbitrary interference with the privacy, family life, home or correspondence of human rights defenders, including with their electronic communications, and to protect them from such interference by others through legislative and other measures.⁹³

66. Any interference with privacy, family, home or correspondence must be provided for by law, necessary to achieve a legitimate aim in accordance with international human rights standards and proportionate to that aim.⁹⁴

67. The Government of USI deregistered TrippleP on grounds that its founder 'was a criminal who officialised her criminal acts on Foolaughy.'⁹⁵ This is in reference to the sexual orientation of Adorinda Ciela and her marriage to Fiera Juvela. Information on the same was obtained through intelligence gathered by FIF officials, on request by MCI.⁹⁶

⁹³ Article 85.

⁹⁴ Ibid.

⁹⁵ Facts ¶ 18.

⁹⁶ Facts ¶ 14.

68. The order granted by the USI Federal High Court for the de-registration of TrippleP, under the CSL, does not meet the requisite threshold for the limitation of Adorinda and Fiera's right to privacy.

69. In as much as Section 10 of the CSL provides for the deregistration of organisations whose executive employees commit crimes in or outside USI such limitation – in the case of Adorinda and Fiera – is neither necessary nor proportionate.⁹⁷

70. The Hong Kong High Court has held that a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.⁹⁸

71. There is no national legislation that criminalises same-sex relations but USI governors have the power to regulate issues of homosexuality.⁹⁹ However, Limbradre Island has decriminalised homosexuality while Praetor Island still criminalises the same.¹⁰⁰

72. The attempt to regulate the activities of organisations ventures into the sphere of the private lives of Adorinda Ciela and Fiera Juvela thus occasioning discrimination. The ECtHR held that discrimination in the criminal law regarding consenting relations between same-sex adults in private was contrary to the right to respect for private life in Article 8 of the ECHR.¹⁰¹

73. The Government of USI has not established a nexus between the sexual orientation of Adorinda and Fiera and any criminal activities which can be carried out through TrippleP.

⁹⁷ Facts ¶ 16.

⁹⁸ *Harvest Sheen Ltd.*

⁹⁹ Facts ¶ 5.

¹⁰⁰ *Ibid.*

¹⁰¹ *Dudgeon.*

74. Further, the deregistration of TrippleP as a result of the sexual orientation is neither necessary as there is no legitimate aim being sought nor a proportionate means of limiting the right to privacy.
75. The Government of USI thus does not meet the requisite threshold of limitation of the right to privacy and therefore the-deregistration of TrippleP is not a justifiable limitation of the same.
76. In addition, the limitation of the right to privacy, in this case, consequently limits Adorinda and Fiera's freedom of association. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¹⁰²
77. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public safety or public order (*ordre public*).¹⁰³
78. Any restrictions on free association must have their basis in law of the state constitution or parliamentary act.¹⁰⁴ Such restrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them.¹⁰⁵
79. Proportionality should be considered as the basis of a number of factors, including: The relationship (relevance) between the nature of the restriction and its purpose and whether there are any less restrictive means available for the fulfilment of the stated purpose in light of the facts.¹⁰⁶ A limitation is deemed to be necessary if it pursues a legitimate aim, such as public safety.¹⁰⁷

¹⁰² Article 11, ECHR.

¹⁰³ Article 2, ICCPR.

¹⁰⁴ *Cumhuriyet*.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Loizidou*.

80. While the purported limited on the freedom of association is provided for in legislation sanctioned by the USI Federal Government, the same legislation is not uniformly applicable. The CSL notably targets persons engaged in same-sex relations as opposed to the general populace.

81. In addition, the Federal Government of USI enacted the CSL to safeguard national security and public safety. However, the same government has not provided a nexus between the limitation of the right to privacy and consequently the freedom of association and the legitimate aims being sought. Moreover, there are less intrusive means of interfering with the aforementioned right and freedom, such as requiring licencing and registration and setting reasonable criteria for the same.

82. The Federal Government of USI therefore does not meet the conjunctive criteria of limitation of limitation of rights – legitimacy, proportionality and necessity. The CSL does not apply uniformly and significantly disadvantages one class of persons and neither is the means used proportionate. Thus, the Government of USI has impermissibly limited the freedom of association of Adorinda Ciela and Fiera Juvela.

C. The reasons given for the de-registration of TrippleP amounted to discrimination.

83. The ECHR prohibits discrimination on any ground¹⁰⁸ while the ICCPR provides that all persons have the right to recognition everywhere as a person before the law.¹⁰⁹ It further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹¹⁰

¹⁰⁸ Article 14, ECHR.

¹⁰⁹ Article 16, ICCPR.

¹¹⁰ Article 26, ICCPR.

84. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.¹¹¹ The same is guaranteed under Article 7 of the UDHR.

85. Although sexual orientation is not expressly mentioned as a prohibited ground of discrimination, the respective treaty bodies have interpreted the covenants as including sexual orientation and gender identity within the scope of the open-ended lists of grounds.¹¹²

86. The UN Committee on Economic, Social and Cultural Rights explains that the State Parties should ensure that a person's sexual orientation is not a barrier to realising Covenant rights.¹¹³ The ECtHR confirmed in that sexual orientation is a discrimination ground covered by Article 14 of the Convention.¹¹⁴

87. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.¹¹⁵

88. TrippleP was deregistered on account of Adorinda Ciela's sexual orientation. Section 10 of the CSL provides for the deregistration of organisations whose executive employees commit crimes in or outside USI and in light of this provision, the Federal Government sought to have TrippleP de-registered as Adorinda was a lesbian who had legalised her marriage to Fiera in Foolaughy, where same-sex marriages are legal.

¹¹¹ Ibid.

¹¹² *Toonen*.

¹¹³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 on Non-Discrimination in relation to Economic, Social and Cultural Rights, 2009, ¶ 32.

¹¹⁴ *Mouta*.

¹¹⁵ Principle 2, Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, March 2007.

89. The deregistration of TrippleP as a result of the founders sexual orientation amounts to a distinction and a consequent exclusion based on sexual orientation and the same amounts to discrimination.¹¹⁶

III. The execution of Adorinda was an impermissible limitation of her right to life.

A. The reservation made was invalid as it is inconsistent.

90. A reservation to a treaty is described as a, 'unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.'¹¹⁷ Article 19(c), of the VCLT outlines the criteria on formulations of reservations.¹¹⁸

91. Article 2(1) of the ECHR further provides that: 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.'¹¹⁹

92. The United Sacrosombre Islands (USI) made reservations to Article 4(3) of the KEHRC which provides that, 'pregnant women and persons under the age of 18 are immune from capital punishment'¹²⁰ by stating that it reserves the right to

¹¹⁶ Philip Alston & Ryan Goodman, *International Human Rights*, (OUP, 2013, London) 220-232.

¹¹⁷ Article 2(1 d), *VCLT*.

¹¹⁸ *Ibid*, Article 19(c).

¹¹⁹ Article 2(1), *ECHR*.

¹²⁰ Facts ¶ 3.

impose death penalty on anyone above the age of 18 regardless of their situation and status.¹²¹

93. However the Government of USI failed to make a reservation on Article 6(5) of the ICCPR which provides that, 'sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.'¹²²

94. USI is a member of the United Nations and has ratified all treaties with the exception of the Convention on Elimination of All forms of Discrimination against Women (CEDAW).¹²³ Ratification is a show of willingness to comply with the law. The reservation is inconsistent thus losing its meaning as the limitation still stands.

B. The reservation is inconsistent with the set criteria on formulations of reservations thus making it invalid.

95. Article 19(c) of the Vienna Conventions on the Law of Treaties provides, 'In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.'¹²⁴

96. Objectively, the essence of the ECHR is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms.¹²⁵

97. The purpose which is to improve the legal protection of the human rights of individuals is thus not to be undermined.¹²⁶ Unlike other conventions, the purpose

¹²¹ Facts ¶ 3.

¹²² Article 6(5), *ICCPR*.

¹²³ Facts ¶ 1.

¹²⁴ Article 19(c), *VCLT*.

¹²⁵ Preamble, *ECHR*.

¹²⁶ Schabas William, *War Crimes and Human Rights: Essays on the death penalty, justice and accountability* (CMS, 2008).

is specific yet complex; to create an increasingly integrated European System.¹²⁷ This purpose is in turn linked to an integrated European system in which authoritative bodies may render binding decisions, particularly of the convention at issue.¹²⁸ With 7 states expressly criticising the reservation, the purpose of the convention can be said to be under siege.

98. In *Belilos*, it was held that a certain reservation made by Switzerland was invalid as it was incompatible with the purpose and the object of the treaty.¹²⁹ This was notwithstanding the fact that no nation had challenged the Swiss Declaration.

99. This reservation undermines the effective implementation of the covenant thus weakening the respect for obligations by State Parties¹³⁰ it is thus invalid.

C. The execution of pregnant women by the USI goes against *Jus Cogens* (peremptory) norm as well as Customary International law.

a) The death penalty on pregnant women is a violation of a peremptory norm.

100. Peremptory norms or *Jus Cogens* refer to principles of International law which are so fundamental that no nation may ignore them or attempt to contract out of them through treaties.¹³¹ The ILC that, 'it is not the form of a general rule of International law but the particular nature of the subject-matter with which it deals that may, in the opinion of the Commission, give it the character of *Jus Cogens*,¹³²

¹²⁷ Article 19-23, *VCLT*.

¹²⁸ Isabelle Buffard & Karl Zemanek, 'The Object and Purpose of a treaty: An enigma?' 3 *Austrian Review of International & European Law*, 1998, 342.

¹²⁹ *Belilos*.

¹³⁰ Schabas William, *War Crimes and Human Rights: Essays on the death penalty, justice and accountability* (CMS, 2008) 893.

¹³¹ Lori Edwards, "Critique of the Juvenile Death Penalty in the United States: A Global Perspective" ,*Duquesne University law Review*, Winter, 2004 Version 6

¹³² 2nd book of the ICL (1966) 247.

showing that the subject of the matter being the death penalty on pregnant women which is one of International law makes it a peremptory norm to which the USI is bound to. As per the *Dominguez* case, a *Jus Cogens* norm derives its status from fundamental values held by the International Community. It would thus be appropriate to assert that there is implicit acceptance by the international community to which it is binding.¹³³ The applicants further submit that this is an *erga omnes* norm which forms part of *Jus Cogens*.¹³⁴ An *erga omnes* obligation is one which a state owes the international community,¹³⁵ if it so be a fundamental value that is held by the community but not the state itself.¹³⁶

101. Non-derogative norms bind the international community as a whole, irrespective of protest, recognition or acquiescence.¹³⁷ The standard for determining a principle of *Jus cogens* is more rigorous, requiring evidence of recognition of the indelibility of the norm by the international community as a whole.¹³⁸ This can occur where there is acceptance and recognition by a large majority of states, even if over dissent by a small number of states.¹³⁹ Thus despite the dissenting states in the USI's reservation¹⁴⁰ the facts still stand that the carrying out of the death penalty on pregnant women is a violation of a *Jus Cogens* norm despite their affiliations.

¹³³ Frans Viljoen, *International Human Rights law in Africa*(2007) 22

¹³⁴ Rafael Nieto-Naiva "International peremptory norms (*Jus Cogens*) and *International Humanitarian Law*", 14.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ ¶ 49 *Dominngues*.

¹³⁸ J. Sztucki, *Jus Cogens and the Vienna Convention on the Law of Treaties*, (1974), pp. 35, 165

¹³⁹ ¶ 50 *Dominngues*.

¹⁴⁰ ¶ 3 Facts.

D. The death penalty on pregnant women goes against Customary international law

103 International law is the law of general practice and that which is accepted by law otherwise what is known as *opinion juris*.¹⁴¹ As per the case of *Domingues* there are several components that are required to establish customary international law, to wit: a concordant practice among states with reference to a type of situation falling within the domain of international relations, a continuation or repetition of practice over a considerable amount of time, a concept that the practice is required be it international law as well as it be a general acquiesces in the practice by other states.¹⁴²

104. State practice as per the requirement for a norm to be considered as customary international law is interpreted to mean government conduct in regard to that custom, such as state legislation, treaties and other international instruments to which views about customary laws may be inferred.¹⁴³

105. The *Graham* case¹⁴⁴ which involved the executing of a minor who had committed a double homicide, was a further development of the *Domingues* case to show state practice must be one that is of acceptance cross political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards.¹⁴⁵ Showing that despite the USI's

¹⁴¹ Icj statute art 38

¹⁴² *Doiningues* ¶145.

¹⁴³ *Dominingues* ¶147.

¹⁴⁴ *Gary .T. Graham v USA*

¹⁴⁵ *Graham v USA* ¶185.

affiliations it is bound to a *Jus Cogen* norm that carrying out the death penalty of pregnant women is in fact illegal.

106. One can infer as per the definition of state practice that the carrying out of the death penalty on women goes against customary international law as there are several international instruments in which some the USI has ratified which prohibit such a practice. Such as article 5 of the ICCPR which state that the death penalty cannot be carried out on pregnant women, protocol 13 to the convection for the protection of Human rights and fundamental freedoms, concerning the abolition of the death penalty in all circumstances¹⁴⁶ protocol 6 to the International Covenant on Civil and Political Rights aiming at the abolishment of the death penalty¹⁴⁷ and lastly the Maputo protocol to the African Charter on Human and Peoples' rights on the Rights' of Women in Africa¹⁴⁸ among others.

107. Furthermore, the continued practice of the abolishment of the death allows it to be viewed as customary international law as it befits one of the requirements outlined in the *Domingues* case. This is the condition that it be the repetition of a practice for a considerable amount of time seen in the number of nations that have abolished the death penalty on pregnant women.¹⁴⁹ Showing that this is practice that is in contravention of customary international law. More importantly the death penalty is a situation seen in the domain of International relations due to the open criticism of other nations towards one that has imposed the death penalty on pregnant women.¹⁵⁰

¹⁴⁶ Art 1 of the protocol.

¹⁴⁷ Art 1(2) of the protocol.

¹⁴⁸ Art 1 (g) of the protocol to the Women Rights' charter.

¹⁴⁹ Ibid

¹⁵⁰ ¶ 3 Facts.

E. The refusal to grant a pregnancy test to Adorinda Ciela was a violation of the Right to Fair Trial which is a non-derogable right, effectively making the sentence arbitrary.

108. The Right to fair trial as contained in the ECHR states that ‘everyone charged with a criminal offence has the following minimum rights: to have adequate time and facilities for the preparation of his defence.’¹⁵¹

109. The case of *Reid* expounds on the failure to provide a legal aid lawyer, the trial transcript or interpreter. All this was found to be in contravention to Article 14(3b) of the ICCPR, which is similar in wording to Article 3(6b) of the ECHR.

110. *Ocalan* emphasised on the unfairness of exercising capital punishment based on a violation of the right terming it as ‘inhuman treatment.’¹⁵² The facts reveal that despite the defence’s frantic effort to submit an affidavit from a doctor in order to request for a pregnancy test, the court dismissed the request in avoidance of setting a ‘dubious precedence of the right to a pregnancy test.’ It was a violation of the right to fair trial.¹⁵³ In addition, it is clear that the process was too rushed.

F. The limitation is a violation of the principles relating to the justification of limitations

111. The Siracusa Principles state that no limitation should be applied in an arbitrary manner.¹⁵⁴ Further, the scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.¹⁵⁵

¹⁵¹ Article 6(3b), *ECHR*.

¹⁵² *Ocalan*.

¹⁵³ Facts ¶ 21.

¹⁵⁴ Siracusa Principles.

112. The decision made was an arbitrary one that was rushed by the court¹⁵⁶ and the death penalty, especially on a pregnant woman, was undesirable since it undermined the purpose to improve the legal protection of the human rights of individuals.¹⁵⁷

113. The applicant therefore asks this court to find that the reservation made by USI was invalid and the state should thus be bound by the ECHR as though the reservation was never made.

V. USI is internationally responsible for the abductions, torture and murder of Limbradre Armed Forces (LAF) leaders, students and other activists.

114. USI is responsible for the violation of the rights to liberty and security of the person, the rights of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the rights of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, and the rights of persons to life following the abductions, torture **and** murder of LAF leaders, students and other activists.

115. The ECHR provides for the right to life, the prohibition of torture, the right to liberty and security and the right to a fair trial under Articles 2, 3, 5 and 6 respectively. Article 1 makes it the responsibility of State parties to secure these rights and freedoms as stipulated under the Convention to everyone within their jurisdiction.

¹⁵⁵ Ibid.

¹⁵⁶ See more here: Bertrand Ramcharan, *The Right to Life in International Law* (MNP, 2006) 223.

¹⁵⁷ William Schabas, *War Crimes and Human Rights: Essays on the death penalty, justice and accountability* (CMS, 2008) 907.

116. These rights are also provided for within the ICCPR under Articles 6, 7, 9, 10 and 14 respectively. The ICCPR further states that ‘each State Party to the present Convention undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Convention.’¹⁵⁸ Violation of these rights within the jurisdiction of a State Party constitutes a breach of an international obligation on its part.¹⁵⁹

117. The applicant submits that USI is internationally responsible for the grave violations to the rights of the students, activists and leaders of LAF as a result of the following three submissions.

A. The State of USI has an international obligation to ensure, secure and respect the rights provided for under the Convention of those within its jurisdiction, but failed to do so, hence violating the KEHRC.

118. Students, leaders and other activists were within the territory and hence jurisdiction of USI. Limbradre is an island within USI.¹⁶⁰ The responsibility of a State for human rights towards persons within its jurisdiction is a concept enshrined in many human rights treaties.

119. As a consequence, most treaty bodies have in effect, come up with the same formula for describing the term ‘Jurisdiction.’¹⁶¹ In addition to a State’s national territory, there will be jurisdiction for persons or areas over which a State has ‘effective control.’ The United Nations Human Rights Committee (HRC) has, for

¹⁵⁸ Article 2, ICCPR.

¹⁵⁹ Louise Doswald- Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP 2011) 32; *Gordínez, González*.

¹⁶⁰ Facts ¶ 5.

¹⁶¹ See Louise Doswald- Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 12-13.

instance, stated that 'A State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party.'¹⁶²

120. USI had an international obligation to respect and ensure to those under its jurisdiction, the rights contained under the KEHRC. The students and activists whose rights were violated were not only within the territorial jurisdiction of USI but also within its effective authority and control.

121. The applicant submits that the obligation to 'ensure' implies a duty of State Parties to organise the governmental apparatus and in general all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.¹⁶³

122. A consequence of this obligation, the State must prevent, investigate and punish any violation of the right recognised under the Convention and where possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.¹⁶⁴

123. The failure to take measures to ensure or secure the rights, amounts to omissions by the State of USI. Conduct attributable (internationally wrongful acts) to the State can consist of actions or omissions. This is explained in the ILC Articles on State Responsibility under Article 2.¹⁶⁵

124. The commentary under paragraph (4) emphasises that no difference in principle exists between the two. In the case of *United States Diplomatic and Consular Staff in Tehran*,¹⁶⁶ the ICJ concluded that the responsibility of the Islamic Republic of

¹⁶² Human Rights Committee General Comment 31, 'Nature of the General Legal Obligation on the State Parties to the Covenant,' 29th March 2004.

¹⁶³ *Gordínez, González*.

¹⁶⁴ Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 32.

¹⁶⁵ Section 4, ILC Articles on State Responsibility.

¹⁶⁶ *United States Diplomatic and Consular Staff in Tehran*; *Velásquez Rodríguez*.

Iran was entailed by the inaction of its authorities, which failed to take appropriate steps in circumstances where these steps were evidently called for.

125. In this case, the USI government is still responsible where the State failed to act following the activities of the FIF and MCI, who carried out gross violations to the leaders of different campaigns despite the fact that it retained effective control over the territory and effective authority over the persons present such that it could have effectively halted the violations as they occurred.

126. MCI's activities constituted gross violations of human rights. There were summary executions, crimes against humanity, torture, inhumane treatment and other violations which the government lacked the will to halt, evidenced following the diplomatic visit by the President of Foolaughy.¹⁶⁷

127. The case of *Issa*¹⁶⁸ reveals that where an area is under a State's overall control, then violations of person's rights within the area would fall under that State's jurisdiction. USI cannot argue that it did not have control over the individuals (effective authority) or that it lacked control over the area merely because it had to respond to acts of resistance.¹⁶⁹

128. Indeed, USI cannot refrain from its international obligations to protect, respect and fulfil the rights of its citizens. There was no action taken by the State to prevent the actions of these non-state actors even though it retained the capacity to, hence, imputing the responsibility of breach on the State of USI.

¹⁶⁷ Facts ¶¶ 12 & 13.

¹⁶⁸ *Issa*.

¹⁶⁹ See Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 16.

B. There is imputability of responsibility to the State of USI of the acts committed under Operation Oil Them Up (OTP)

129. It is a rule of customary international law on State responsibility that the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State and whatever its character as an organ of the central Government or of a territorial unit of the State.¹⁷⁰

130. This is found in the ILC Articles on State Responsibility under Article 4(1). Article 4(2) of the same further stipulates that an organ includes any person or entity, which has that status in accordance with the internal law of the State.

131. The Limbradre Deputy Chief of Police is a person acting in accordance with the internal law of USI. It is said that he accepted OTP, which had been proposed by the FIF.¹⁷¹ His acceptance of the operation that violated the rights of many of the campaign leaders who were tortured for information, burnt and murdered imputes State responsibility onto USI.

132 One may think that the Limbradre Deputy Chief of Police simply acknowledged the conduct as its own. However, Article 11 use the phrase, 'acknowledges and adopts'. This phrase intends to exclude cases of mere support or endorsement. The Deputy Chief of Police accepted the proposal of OTP from FIF agents. By virtue of accepting the proposal, the Deputy Chief of Police did not merely accept an on-going operation but rather consented to its instigation. In this sense, the State did not acknowledge and adopt an ongoing conduct as per article 11 of the ILC Articles as it was involved from its creation.

¹⁷⁰ Section 6, Chapter 2, ILC Articles on State Responsibility.

¹⁷¹ Facts ¶ 11.

133. International law recognises the principle of unity of the State, which entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international responsibility.¹⁷²
134. It is a well-established rule of international law that a State cannot hide behind the stratification of government for the purposes of avoiding responsibility for a wrongful act.¹⁷³
135. The ILC Articles on State Responsibility emphasize, as was done in the *Salvador Commercial Company* case, that reference to a State organ in article 4 is intended in the most general sense and that it extends to organs of government, regardless of the classification, exercising whatever functions and at whatever level in the hierarchy, including those at provincial or even local level.¹⁷⁴
136. Hence, despite the fact that the Limbradre's Deputy Chief of Police exercises limited territorial power, the Draft Articles show that even this exercise of power at a local level is sufficient to invite State responsibility as there is no distinction made between legislative, executive or judicial organs.
137. His acceptance of the inhumane operation OTP imputes responsibility to the State of USI for violations of rights. As a result, the State of USI is internationally responsible for the violations of rights as a result of OTP. It is the applicant's submission that the statement offered by the USI Minister of Home Affairs is a broad and general statement from which no governmental stance can be inferred.¹⁷⁵

C. The USI violated the of right to life and the right to freedom from torture, inhuman or degrading treatment or punishment of LAF

¹⁷² Section 4, Chapter 2, ILC Articles on State Responsibility.

¹⁷³ Section 7, Chapter 2, ILC Articles on State responsibility.

¹⁷⁴ *Salvador Commercial Company*.

¹⁷⁵ Facts ¶ 11.

soldiers and supporters who were tortured, made to disappear, subjected to cruel and inhuman treatment and murdered.

138. The applicant submits that the government supplied corroborated evidence of their involvement in violation of the rights above, when USI Ministers of Security and Defence Forces issued a joint statement noting that no mercy shall be shown to LAF renegades and that anyone who supports their war would become a victim of the infamous operation.

139. It is the applicant's submission that there was existence of an armed conflict in Limbradre between LAF and the government of USI, in which LUST students were involved by LAF as informants.¹⁷⁶ We recognise that this invokes the application of international humanitarian law in tandem with international human rights law as the latter, applies at all times, including during military occupation and armed conflict.¹⁷⁷

140. State responsibility is imputed to the Republic of Foolaughy for gross violations of human rights of persons in USI. There are reports on the involvement of Foolaughy Intelligence Force who work for MCI, performed OTP and were involved in the gross violations perpetrated against the citizens of USI by MCI.

141. Article 7 of the ILC Articles on State responsibility states that: 'The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.'

142. This article relates to acts performed by 'state organs' or by persons or entities empowered to exercise elements of governmental authority.¹⁷⁸ Foolaughy

¹⁷⁶ Facts ¶ 10.

¹⁷⁷ Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 5.

¹⁷⁸ Article 7, ILC Articles on State Responsibility.

Intelligence Forces (FIF) is a state organ and its actions, even in USI, are imputed to the Republic of Foolaughy (RF). Following its involvement in gross violations of rights of the citizens of USI, it imputes international responsibility for these wrongful acts to RF.

143. As a result, regardless of whether the actions of FIF are mandated by RF or not, international law imputes responsibility to RF. The rule evolved in response to the need for clarity and security in international relations.

144. Despite early equivocal statements in diplomatic practice and by arbitral tribunals, State practice came to support the proposition, articulated by the British Government in response to an Italian request, that 'all Governments should always be held responsible for all acts committed by their agents by virtue of their official capacity.' As the Spanish Government pointed out that 'if this were not the case, one would end by authorising abuse, for in most cases there would be no practical way of proving that the agent had or had not acted on orders received.'¹⁷⁹

145. The *Caire* case¹⁸⁰ illustrates this best. It involved the killing of a French national by two Mexican officers, who, after failing to extort money, took him to the local barracks and shot him. It was held that the two officers had involved the responsibility of the State, since they had used means placed at their disposal on account of that status. The same was held by the Inter-American Court in *Velásquez*.¹⁸¹

146. It is the applicant's submission that FIF agents were cloaked in official authority while performing these acts that were in breach of international obligations hence imputing responsibility to RF.

¹⁷⁹ *Archivio del Ministero degli Affari esteri italiano.*

¹⁸⁰ 25th Year Book Law Commission, UNRIAA, (Sales No. 1952.V.3), vol. V 516.

¹⁸¹ *Velásquez.*

147. However, despite RF's involvement, the hostilities do not become an internationalized armed conflict but rather, remain a non-international armed conflict as RF does not wage war against the established government of USI but rather, against the rebelling forces.¹⁸²

148. The text of the ECHR does not make direct mention of the use of other international treaties.¹⁸³ However, the ECtHR has employed language and overtly used international humanitarian law as a further interpretation of Article 2 of the Convention in light of the general principles of international law, including the rules of international humanitarian law, which play an indispensable and universally accepted role in mitigating savagery and inhumanity of armed conflict.¹⁸⁴

149. This has especially been done through application of Common Article 3 of the Geneva Convention, which sets out the accepted practice of Contracting Parties to conflicts not of an international character occurring in their territory.¹⁸⁵ The Article stipulates that violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture shall be prohibited. This is with regards to persons not taking active part in hostilities, including those placed 'hors de combat' by detention.

150. Leaders of LAF were captured, tortured for information and murdered by being burnt alive.¹⁸⁶ By virtue of being captured, it indicates that they were placed 'hors de combat.' Subsequent actions by the State under the OTP which had been accepted by the Deputy Chief of Police of Limbradre and hence imputed to the State, constituted gross violations of their rights by virtue of Common Article 3(1).

¹⁸² Getrude C , "Defining Armed Conflict in International Law,"

<<http://www.studentpulse.com/articles/508/defining-armed-conflict-in-international-humanitarian-law#header2page1> > accessed 16 May 2016.

¹⁸³ Louise Doswald- Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 115.

¹⁸⁴ *Varanava*.

¹⁸⁵ Common Article 3 of the Geneva Conventions; *Bámaca; Coard; Abella; Ergi; Isayeva*.

¹⁸⁶ Facts ¶ 11.

151. The applicant submits that court has the jurisdiction to use international humanitarian law, Common Article 3 in particular, to help interpret Article 2 (on the right to life) and Article 3 (on prohibition of torture) of the ECHR.

152. This was stated in the case of *Varnava*, where the Court held that it used international humanitarian law to help interpret Article 2 and not applying or finding a violation of international humanitarian law as such.¹⁸⁷ 'It is evident,' the Court stated, 'that the obligations under the Geneva Conventions, with the degree of detail that they have, are a convenient way of adding content to the rather brief provision of Article 2 of the ECHR.'¹⁸⁸

153. It is our submission that this Court should employ the same strategy to give full effect to the provision of the right to life, freedom from torture and cruel and inhuman treatment under the KEHRC. The obligations in the Geneva Conventions undermine any attempt by a government involved in hostilities to argue that imposing such extensive positive obligations in the right to life is unrealistic in such contexts and hence, reinforce the rights provided for under the Convention.

VI. Prayers

154. The applicant prays that this Court adjudges and declaration the following:

- (i) That the United States of Sacrosombre (USI)'s refusal to abandon the Madame Revlon seal is inconsistent with the rights of the students concerned;
- (ii) That the CSL is inconsistent with international law obligations of the USI and that the reasons given for the de-registration of TrippleP interfere with the personal rights of Adorinda Ciela and Fiera Juvela;

¹⁸⁷ See Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 117.

¹⁸⁸ *Varnava*.

- (iii) That the execution of Adorinda Ciela was a permissible violation of her right to life and finally;
- (iv) That the USI is internationally responsible for the abductions, torture and murder of Limbradre Armed Forces (LAF) leaders, students and other activists.

149. As a consequence, the court should be alive to the exigencies of justice,¹⁸⁹ and the respondents therefore pray that the USI Government undertakes reparations as a necessary corollary of its breach of an international obligation and in accordance with principles of state responsibility,¹⁹⁰ in the following forms:

150. The victims of the human rights violations be compensated for the harm occasioned them, compensation which should aim to return them to the position they would have been if the violations had not occurred, as established in *Chorzow Factory (Jurisdiction)* as *restitution in integrum*.

151. The USI Government undertake guarantees of non-repetition of the gross human rights violations.

152. The relatives of the victims of the human rights violations should similarly be compensated for the shock, trauma and emotional distress occasioned by the violations as in *Cantoral Benavides*.¹⁹¹

153. An order for investigation of the violations to attach personal responsibility to those found culpable as in the case of *Mapiripan Massacre*.¹⁹²

¹⁸⁹ Tom Antowiak, 'Remedial Approaches to Human Rights Violations' (2008) Columbia Journal of Transnational Law, 407-415.

¹⁹⁰ Article 1, ILC Articles on State Responsibility.

¹⁹¹ *Cantoral Benavides*.

¹⁹² *Mapiripan*.

154. Finally, the Court make such orders as may be necessary, to ensure the just satisfaction of the victims of the detailed violations, as provided for by Article 41 of the ECHR and according to relevant international law.¹⁹³ They may include:

- (a) Effective measures for cessation of continuing violations;
- (b) Verification of facts and full public disclosure to the extent it does not cause further harm;
- (c) Searches for the whereabouts of victims;
- (d) Official declarations and public apologies to restore the victims' dignity;
- (e) Juridical and administrative sanctions against perpetrators;
- (f) Commemorations and tributes;
- (g) Inclusion of accurate accounts of violations in local education through International Human Rights and International Humanitarian Law manuals.

¹⁹³ Principle 22, Basic Principles on the Right to a Remedy & Reparation for Victims of Gross Violations of Human Rights and Gross Violations of International Humanitarian Law (UNGA A/60/147, 2005).

