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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 RESPONDENT

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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	Convection on Elimination on all forms of Discrimination against Women
CSL	Civil Society Law
ECHR	European Court of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EU	European Union
FI	Republic of Foolaughy
FIF	Foolaughy Intelligence Force
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
HRTKE	Human Rights Court for the Continent of Hope
KEHRC	KE Human Rights Convection
KE	*Kontinento de Espero* (the Continent of Hope)
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
SERAC	Social Economic and Action Centre
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

Abella	*Juan Carlos Abella v Argentina*
Animal Defenders	*Animal Defenders International v United Kingdom*
Anuk	*Auk Justice Council v Ethiopia*
Article 19	*Article 19 & others v Zimbabwe*
Bámaca	*Bámaca Velásquez v Guatemala*
Coard	*Coard et al v United States*
Ergi	*Ergi v Turkey*
Domingues	*Michael Domingues v United States*
Isayeva	*Isayeva v Russia*
Jawara	*Sir Dawda Jawara v The Gambia*

Tanganyika	*Tanganyika Law Society & Other v The United Republic of Tanzania*
Yogogombaye	*Michelot Yogogombaye v the Republic of Senegal*
Faber	*Faber v Hungary*
Las Palmeras	*Las Palmeras v Colombia*
Hertel	*Hertel v Switzerland*
Giniewski	*Giniewski v France*
Vejdeland	*Vejdeland & others v Sweden*
Leroy	*Leroy v France*
Mapiripán Massacre	*Mapiripán Massacre v Colombia*
Balsytė-Lideikienė	*Balsytė-Lideikienė v Lithuania*
Begheleuri	*Begheleuri & others v Georgia*
Defrenne	*Defrenne v Sabena*
Pasko	*Pasko v Russia*

Special Symbols

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Statement of Relevant Facts

1. TrippleP is an NGO registered in Republic of Foolaughy (FI) 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 in 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 a 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.
6. Ultimately, members of a local military 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 is characterized by the enlistment 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 (FIF) 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 the state has ratified.

II. Whether the Civil Society Law (CSL) is inconsistent with international law obligations of the USI and the reasons given for the de-registration of TrippleP interferes with the personal rights of Adorinda Ciela and Fiera Juvela.

III. Whether the execution of Adorinda Ciela was a 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.

Summary of Arguments

I. The Madame Revlon seal constitutes protected speech under the KEHRC and other international treaties, and does not directly go against any underlying values of the KEHRC. Further, it does not in any way constitute harassment or a violation of the students' freedom from inhumane and degrading treatment.

II. The CSL does not go against USI's international obligations with regard to the freedom of expression. Further, the reasons for the de-registration of TrippleP do not violate Adorinda and Fiera's right to privacy and the reasons given justifiably limits the freedom of association.

III. The reservations made by USI to the death penalty provisions of the KEHRC were consistent with other treaties that it has ratified and consistent with the set criteria on reservations, making the reservations valid. The failure to grant a

pregnancy test to the applicant was further not a limitation of her right to fair trial and that being so, the execution of Adorinda further constituted a permissible limitation of her right to life.

IV. The Court lacks jurisdiction to hear the matter submitted by the applicants as they concern International humanitarian law. Alternatively, if the Court finds that it has jurisdiction, USI submits that the responsibility for gross violations of human rights are imputed to the Republic of Foolaughy.

Arguments

Statement of Jurisdiction

11. The Government of the USI accepts that this court is vested with jurisdiction since it was established under the KEHRC, which the state has ratified[1] and the violations that are alleged are under the same treaty.

Admissibility

12. The parties that may bring matters before the African Court of Human and Peoples' Rights (AfCHPR) are set out in Articles 5 (1), (2) and (3) of the Protocol to the Establishment of the AfCHPR. They include the Commission,[2] a state party that has lodged a complaint to the Commission,[3] a state Party whose citizen is a victim of human rights violation[4] and African Intergovernmental Organization (NGO).[5]
13. Article 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).
14. 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.
15. Article 34 (6) is clear that the Court shall not receive any petition under Article 5 (3) involving a State Party which has not made such a declaration.[6]

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[1] Facts ¶ 3.

[2] Article 1 (a), *Protocol* to the establishment of the African Court.

[3] Article 1 (c) Ibid.

[4] Article 1 (d), Ibid.

[5] Article 1 e, Ibid.

[6] Art 5(3) & 34 (6).

16. Indeed, as the decision in *Yogogombaye* decided, there is no jurisdiction for the court in a case where the state has not made the required declaration.[7] The very fact that the case went that far has been said to be because of blunder.[8]
17. The respondents therefore plead that the Government of the USI may not have signed this declaration and this court is therefore urged to dismiss this case at this point for want of admissibility requirements being met.
18. On the matter of the case being admissible per the principle of *forum prorogatum*, the respondent avers that a defence is yet to be argued on the merits and as such, the principle cannot apply in this case. In any event, the principle remains one rarely used by courts[9] and the Government of the USI maintains that its assumption and use here would be an undue invasion of the province of state sovereignty.
19. A petition received by the court is to be considered under Article 56 of the ACHR, and in the unlikely event that the court does not dismiss this case preliminarily on the points discussed above, the respondents argue that the applicants have failed to fulfil some of the important requirements laid out in Article 56 of the ACHR.
20. The sum of the requirements include: an indication of the authors even if they request anonymity,[10] compatibility with the present Charter,[11] non-inclusion of disparaging or insulting language directed against the State concerned and its

[7] *Yogogombaye*.

[8] Simon Weldehaimanot, 'Towards Speedy Trials: Reforming the Practice of Adjudicating Cases in the African Human Rights System' 14 *The University of Peace Law Review* (2010), 14-38.

[9] Luis G Franceschi, *The African Human Rights Judicial System*, (CSP, Newcastle Upon Tyne, 2014), 172.

[10] Article 56 (1), ACHR.

[11] Article 56 (2), *Ibid.*

institutions or to the Organisation of African Unity,[12] based on more information than news disseminated through the mass media,[13] exhaustion of local remedies, unless it is obvious that the procedure is unduly prolonged,[14] and submission within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter.[15]

21. The requirements that the respondent pleads have not been realized by the applicant include the exhaustion of local remedies, and the reliance on mass media sources. These have not been realized in the following ways:

i. Local Remedies Have Not Been Exhausted

22. Customary international law dictates that domestic remedies of an internal legal order must be exhausted before a matter is brought to an international court.[16] Thus in order for an application to be admissible, local remedies must be exhausted.

23. It has been found that State responsibility cannot be invoked where there has not been an exhaustion of local remedies.[17] This finding stems from the respect that is accorded to sovereignty and jurisdiction of foreign states to which the commission should be the last resort.[18]

24. Indeed, where the requirement of exhaustion of local remedies is enshrined in the enabling statute as it is in the ACHPR,[19] it becomes necessary to ensure that the court satisfies itself that all local remedies have been exhausted before allowing

[12] Article 56 (3), *Ibid.*

[13] Article 56 (4), *Ibid.*

[14] Article 56 (5), *Ibid*.

[15] Article 56 (6), *Ibid.*

[16] *Article 19*.

[17] *Jawara.*

[18] Ibid.

[19] Article 56 (5).

itself to seize of the matter. It is recognized that local remedies usually refers to judicial remedies.[20]

25. It is the case that the local remedies have to be 'available' as a matter of practice,[21] 'effective' in offering a reasonable prospect of success,[22] and 'sufficient' to redress the violations.[23]

26. It is urged that the court finds that TrippleP failed to exhaust local remedies. Under the first issue, for example, the students did not proceed with the matter further after the LICT rejected it.[24] It is common knowledge that the constitutional court is vested with exclusive jurisdiction on human rights matters,[25] yet the students did not pursue the alleged violations of their rights in that court and can therefore not surely claim that they have exhausted all local remedies. It has been held that where a remedy has the least likelihood of being effective then the applicant must pursue it.[26]

27. The local remedies can be said to have been 'effective' in as far as there existed an appeal system in the court systems of the USI.[27]

28. With regards to the applicants' claim on issue II, the respondents submit that the remedies provided were indeed effective, per *Jawara,* in as far as their prospect

[20] *Tanganyika.*

[21] *Vernillo.*

[22] *Patiño.*

[23] *Jawara.*

[24] Facts ¶ 4.

[25] Facts ¶ 2.

[26] *Anuk.*

[27] Facts ¶ 2.

of success[28] and that the failure of the case had more to do with a poorly articulated application and a disregard for court procedure.[29]

29. The grounds that the applicant lists as showing minimal prospects of success on Issue III are insufficient to warrant such a claim. The USI has a working court system, and upon its enactment of, the CSL itself had the capability of redressing the complainant's claims.[30]

ii. The Applicant over-relied on Mass Media Sources

30. The respondent avers that the information that TrippleP is relying on to make its claim has been collected from Facebook, Twitter and social media accounts.[31] These, by their very nature, are not the sort of serious sources that are envisaged in the Charter as being sufficient to bring a case against a state.

31. TrippleP's possible claim that it has utilised non-mass media information such as the Ministerial Statements[32] and the SCL Act is not enough to meet this criteria. The Government of the USI insists to this court that such information was the minimum and the applicants over-relied on mass media information for most of the issue

[28] Article 19; ¶ 45.

[29] Facts ¶ 20.

[30] *Article 19*.

[31] Facts ¶ 13.

[32] Facts ¶ 11.

Merits

I. USI's continued use of the *Madame Revlon* seal does not violate any of the rights of the students concerned.

A. The respondent avers that the Madame Revlon seal constitutes protected speech under the KEHRC and other international treaties, and does not directly go against any underlying values of the KEHRC.

32. Protected speech under Article 10 of the ECHR includes information and ideas that may be offensive, shocking or disturbing to the state or any sector of the population.[33] In *Faber*, the court recognized that the display of a symbol which was ubiquitous during the reign of a totalitarian regime in Hungary might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner.[34]

33. It is true that, as the applicant may argue, the respect for human dignity is a fundamental underlying value of the ECHR and speech that is directed against it is unprotected. It is, however, notable the speech itself (by its very nature) must be illicit in order to be taken as such. [35] Several decisions of the ECtHR that have found certain speech to be unprotected, but in them, the speech itself has been proven to go directly going against a fundamental value of the convention.[36]

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[33] *Hertel; Handyside; Giniewski.*

[34] *Faber.*

[35] Jean Francois Flauss, 'The European Court of Human Rights and the ECHR' 84 Indiana Law Journal, (2009) 810-812.

[36] *Vejdeland; Leroy; Balsytė-Lideikienė.*

34. The respondents posit to the court that, like the crucifix in *Lautsi*, the *Madame Revlon* seal is essentially a passive symbol that was adopted in order to honour the founder of the MCI, not as a slave-trader, but as a father. The seal, like the crucifix, cannot be deemed to have an influence on pupils comparable to that of didactic speech. Indeed, the university was founded in 1932 and for almost a third of a century has had the seal as its official logo.[37] It has, during the same period, had no direct dire effect on the students concerned.

35. The respondents therefore urge the court to find that the seal does not directly go against any of the KEHRC's underlying values, in particular human dignity. It is a passive symbol that is merely sons' tribute to their father—not for his trade in slaves, but for his fatherliness.

36. The respondents further request the court to find that per *Faber*, the standards that need to be met before speech is pronounced unprotected are very high, and the mere fact that it is offensive to a section of the population (in our case the students) cannot be sufficient ground for limitation.

B. The continued use of the Madame Revlon seal does not in any way constitute harassment or a violation of the students' freedom from inhumane and degrading treatment.

37. The respondents submit that for the court to hold that the continued use of the seal constitutes harassment would be an incorrect and risky expansion of the province of harassment.

38. As the applicants claim, it is indeed the case that harassment encompasses any conduct that is unwanted and related to the protected ground which intends to 'violate the dignity' and/ or create an environment that is 'intimidating, hostile,

[37] Facts ¶ 7.

degrading, humiliating or offensive.[38] Although not a minority, it is also true that the students of Foolaughian origin meet the definition of a 'protected group' per the ECHR.[39]

39. Nonetheless, the continued use of the Madame Revlon seal cannot fall into the realm of harassment. According to prior decisions made with regard to it, conduct that falls into the realm of harassment has been found to be direct speech and actions.[40] The Government of the USI contends that the seal is a passive symbol that has done no harm to the said students.

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

A. The right to freedom of expression has been justifiably limited under the CSL.

40. Freedom of expression is indeed guaranteed under Article 10 of the ECHR as well as Article 19 (2) and Article 19 of the UDHR. However, the freedom of expression is not an absolute right. The exercise of the right carries with it special duties and responsibilities and it may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the protection of national security or of public order (*ordre public*), or of public health or morals.[41]

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[38] Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Race or Ethnic Origin (Entry into Force 19 July 2000).

[39] Article 14 ECHR; Yussef Al Timimi 'The Protection of Vulnerable Groups and Individuals by the European Court of Human Rights,' LL.M Thesis, May 20, 2015.

[40] *Begheleuri; Defrenne.*

[41] Article 19 (3), ICCPR

41. The ECHR recognises that the freedom of expression 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, among other reasons.[42]

42. The Siracusa Principles provide that no limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the ICCPR and is in force at the time the limitation is applied.[43] Further, laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable[44] and the same shall be clear and accessible to everyone.[45]

43. The ECtHR reiterates that the expression "prescribed by law", within the meaning of Article 10 of the ECHR, requires first of all that the impugned measure should have some basis in domestic law; however, it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must be able to foresee the consequences of his or her actions, and that it should be sufficiently precise.[46]

44. The adjective 'necessary', within the meaning of Article 10 (2) of the ECHR implies the existence of a 'pressing social need' and States have a certain margin of appreciation in assessing whether such a need exists.[47] On the other hand, the doctrine of proportionality calls for striking a balance between the limitation of right and the legitimate aim being pursued. The proportionality test includes

[42] Article 10 (2), ECHR

[43] Siracusa Principle 15

[44] Ibid, 16.

[45] Ibid, 17.

[46] *Pasko.*

[47] *Animal Defenders International.*

questions such as ‘Are the means in service of the objective necessary, that is, minimally impairing of the limited right, taking into account alternative means of achieving the same objective?’ and ‘Is there a fair balance between the public interest and the private right?’[48]

45. The Federal Government of USI enacted the CSL which thus became the national legislation of general application that sought to limit the freedom of expression. Section 9 of the CSL provides that the Minister of Information and Publicity has the right to inspect any material whose publication may endanger public safety and national security. Therefore, the reasons for the limitation of the freedom of expression are for public safety and national security reasons.

46. Further, it is imperative to consider the circumstances in and around USI at the time of enactment of the CSL; there was wide public unrest following a bloody campaign by the Limbradre Armed Forces (LAF) against the government of USI, which was made worse by the controversies stirred by Tripple P’s publications, and the occurrence of a terrorist attack in a Sellusombre allegedly sponsored by a charity organisation hence the need to need the need to regulate NGO activities. Therefore, not only was the limitation provided by law, the same was also necessary.

47. Moreover, the CSL only limits the freedom of expression and does not derogate from it. The CSL does not unreasonably limit the freedom of expression as publications are still permitted but their content has to be scrutinised before the material can be disseminated to the public. Moreover, the public interest being

[48] Grant Huscroft, Bradley Miller and Gregoire Webber (eds), *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (CUS, 2014).

sought, that is, the national security and public safety, is greater than the private rights and the provisions of the CSL attempt to strike a fair balance between the two.

B. The reasons given for the de-registration of Tripple P do not interfere with the right to privacy of Adorinda Ciela and Fiera Juvela and consequently do not unduly limit their freedom of association.

a. The Government of USI did not violate Adorinda and Feira's right to privacy through the retrieval of information regarding their sexuality.

48. The right to privacy is enshrined in Article 8 of the ECHR. The same right is enunciated in the ICCPR under Article 17 as well as Article 12 of the UDHR. The concept of a right to a private life encompasses the right to control the dissemination of information about one's private life, including photographs taken covertly.[49]

49. The Government of USI did not breach Adorinda and Fiera's right to privacy through acquisition of information regarding their sexual orientation. One of the essential conditions for the international responsibility of a State is that the conduct in question is attributable to the State under international law.[50] The general rule is that the only conduct attributed to the State at the international level is that of its organs of government, or of others who have acted under the direction, instigation or control of those organs, i.e. as agents of the State.[51]

[49] Liberty, 'Article 8 Right to a private and family life', <https://www.liberty-human-rights.org.uk/human-rights/what-are-human-rights/human-rights-act/article-8-right-private-and-family-life> accessed 15 May 2016

[50] Commentary on Article 2 of ILC Draft Articles on State Responsibility

[51] Ian Brownlie, *System of the Law of Nations: State Responsibility*, (OUP, 1983, London) 132–166.

50. MCI asked FIF to collect intelligence on Adorinda Ciela, the founder of TrippleP.[52] Consequently, it was discovered that Adorinda is a lesbian, lawfully married to Fiera Juvela under the laws of the Republic of Foolaughy.[53] This information was later submitted to USI Federal Agents on 26 October 2015.[54]

51. The Government of USI did not commission MCI or FIF agents to retrieve information on Adorinda; rather the two bodies acted on their own volition. Therefore, the Government of USI did not violate Adorinda and Fiera's right to privacy.

b. Homosexuality is decriminalised in Praetor Island.

52. In any event, homosexuality is not legal in USI. Even though international law requires a State to carry out its international obligations, the processes used by a State to carry out its international obligations will vary for example, from legislation, executive and/ or judicial measures.[55] In addition, the principle of sovereignty asserts that States must be regarded as independent in all matters of internal politics and should in principle be free to determine their own fate within this framework.[56]

53. USI is a closed society that seeks to regulate issues of morality.[57] The USI Federal Criminal Code gives freedom to USI governors to regulate issues of homosexuality.[58] Limbradre Island has decriminalised homosexuality and permits

[52] Facts ¶ 14

[53] Ibid

[54] Facts ¶ 18

[55] United Nations enable, PART I. National Frameworks for the Protection of Rights of Persons with Disabilities http://www.un.org/esa/socdev/enable/comp101.htm accessed 15 May 2016.

[56] David Held, 'The Changing Structure of International Law: Sovereignty Transformed?' London School of Economics.

[57] Facts ¶ 5

[58] Ibid.

same-sex marriages, however, Praetor Island still criminalises homosexuality.[59] The fact that TrippleP was registered in Praetor Island makes the organisation itself and its executives subject to the laws that are operational in the island. It was therefore against the law that Adorinda Ciela was a lesbian and that she was married to Fiera Juvela.

c. The freedom of association was justifiably limited.

54. The ECHR provides that the freedom of association can be limited in a manner prescribed by law and that is necessary in a democratic society in the interests of inter alia national security or public safety.[60] The same is echoed by the ICCPR under Article 22 (2). The Siracusa Principle provide that all limitations shall be interpreted in the light and context of the particular right concerned.[61]

55. The Siracusa Principles interpret the term 'necessary' to imply: basis on one of the grounds justifying limitations recognized by the relevant article of the Covenant, responding to a pressing public or social need, pursuing a legitimate aim, and being proportionate to that aim.[62]

56. The Federal Government of USI enacted the CSL following a terror attack in neighbouring Sellusombre allegedly perpetrated by a bogus charity organisation.[63] Furthermore, the situation in USI was quite volatile, what with the bloody campaign waged by LAF against the government.[64] There was thus a pressing need to regulate organisations within USI so as to prevent the deterioration of the situation in USI and to prevent a breach of national security.

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[59] Ibid.

[60] Article 11, ECHR

[61] Siracusa Principle 4

[62] Siracusa Principle 10

[63] Facts ¶ 15

[64] Facts ¶ 10.

57. The principle of proportionality requires that in applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.[65] The same authority defines public safety as protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.[66] The purpose of the limitation, given the state of affairs in USI, is to maintain public safety and there no less intrusive means of maintaining the same. It is therefore the submission of the Government that the principle of proportionality has been achieved.

58. The Siracusa Principles also outline that all limitations on a right shall be provided by law.[67] The Principles also provide that such legislation shall be national law[68] and shall be clear and accessible to everyone.[69] The Federal Government enacted the CSL, which is national legislation. The same was not promulgated unlawfully, nor were its provisions rendered incapable of being understood. The provisions of the same were challenged in a court of law and a judgment given that TrippleP comply with the provisions of the CSL and consequently be registered again.

[65] Siracusa Principle 11.

[66] Ibid, 33.

[67] Ibid, 5.

[68] Ibid, 15.

[69] Ibid, 17.

III. The execution of Adorinda was a valid limitation to her right to life.

A. The reservation made was valid as it was consistent with the set criteria on formulations of reservations.

59. 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.'[70]Article 19 (c) of the VCLT outlines the criteria on which reservations may be made.[71]

60. The United Sacrosombre Islands (USI) expressly 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'[72] by stating that it reserves the right to impose death penalty on anyone above the age of 18 regardless of their situation and status.

61. Article 19 of the VCLT provides that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty;

(b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.[73]

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[70]Article 2(1) (d), *VCLT.*

[71] Article 19(c), *VCLT.*

[72] Facts ¶ 3.

[73] Article 19, *VCLT.*

62. The ECHR further outlines exceptions under Article 2 to the scope of the right to life by stating 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.'[74]

63. The respondents plead that the reservation is thus allowed by the treaty. The text and purpose of the word 'everyone' in Article 2 in principle should be interpreted as applying to life after post-natal period.[75] Thus the issue on pregnancy should not arise.

64. The only specified reservation relating to the one in question is located under Protocol No 13 of the ECHR, to which USI may not have ratified. USI acknowledges the purpose of ECHR which can be summarised as an integrated regional European system.[76] However, there lacks an established judicial organ that can interpret 'object and purpose' with a binding effect.[77] The meaning is vague and unworkable.[78] Making of reservations and disagreeing on an Article does not translate to incompatibility with the purpose of the treaty.

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[74] Article 2(1), *ECHR.*

[75] Safa Reisoglu, 'Right to Life' Journal of International Affairs (1999), 2.

[76] Preamble, *ECHR.*

[77] Isabelle Buffard & Karl Zemanek, 'The Object and Purpose of a treaty: An enigma?' 3 Austrian Review of International & European Law (1998) 342. <http://fulltext.calis.edu.cn/kluwer/pdf/13851306/3/233264.pdf>, accessed 12 May 2016.

[78] Isabelle Buffard & Karl Zemanek, 'The Object and Purpose of a treaty: An enigma?' (1998) Austrian Review of International & European Law, 342.

B. The refusal to conduct a pregnancy test was not a violation of the Right to Fair hearing

65. The Right to fair trial as contained in the ECHR states that 'everyone is entitled to fair and public hearing within reasonable time by an independent and impartial tribunal established by law.'[79]

66. Adorinda Ciela had a public hearing, fully participated in the due process, had the help of a lawyer and was given adequate opportunity to defend herself. Further, the prosecution had no obligations to conduct a pregnancy test.

67. In addition the decision was rendered by a competent court which had jurisdiction over the matter.[80]

C. The reservation made to the execution of the death penalty being applicable towards pregnant women does not go against customary International law as well as *Jus Cogens* (peremptory norms).

a. The reservation does not go against customary International Law.

68. In the unfortunate event that this court finds the reservation invalid then the respondents aver that the imposition of the death penalty does not go against customary International law or *Jus Cogens.* As per the case of *Domingues,* there are several components that are required to establish Customary International law. They include: 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

[79] Article 6(1), *ECHR.*

[80] Facts ¶ 22.

practice is required be it international law as well as it be a general acquiesces in the practice by other states.[81]

69. The practice of not carrying out the death penalty is one that has proved to be a continuation or repetition over a considerable amount of time. Although recently the death penalty on pregnant women may be illegal, many nations still have it as a practice[82] and in some countries that have made it illegal there is no way of ensuring that it is not carried out, moreover inefficiency in making sure that an executed woman is not pregnant at the time, thus showing that this act does not qualify to be customary international law as it has not yet proved to be state practice. Furthermore the death penalty has in some instances proved to be a matter that sparks off international debate but does not affect international relations due to the matter being of a countries own legislation that needs to be changed.[83]

b. The reservation does not go against *Jus Cogens* norms.

70. The standard for determining a principle of *Jus Cogens* is even more rigorous, requiring evidence of recognition of the indelibility of the norm by the international community as a whole.[84] The respondents aver that the norm being one that is valid when there is recognition by the entire community as a whole, the illegality of the death penalty cannot be then defined as *Jus Cogens* as there is still no proof that it is an agreement by the entire community as a whole.[85] Furthermore it has not proved to be a long standing practice to which it would then not be

[81] *Domingues.*

[82] 2010, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

[83] Death Penalty Information Centre <http://www.deathpenaltyinfo.org/international-perspectives-death-penalty-costly-isolation-us > accessed 16 May 2016.

[84] *Domingues.*

[85] Ibid.

considered a legally binding norm. Moreover the rule has not sufficiently developed over time for it to be considered s state practice, thus not legally binding.[86]

71. Moreover as per the facts only 7 out of the 43 states criticised the USI's reservation[87] which is not an equal representation of the entire community thus the death penalty cannot be considered *Jus Cogens* due to its lack of meeting the requirements.

D. The gravity of the crime is serious enough to justify imposition of the death penalty

72. Article 6(2) of the ICCPR states that the limitation to the imposition of the death penalty should only be for the most serious crimes.[88] Serious crimes vary from state to state and lack clear definition and agreement.[89] The accused was found guilty of financing terror in the USI with the aim of destabilising the government. A crime of treason which is serious enough to justify the death penalty.

73. In addition, the person was a flight risk (she was arrested on her way to the airport after a tip off on her possible arrest[90]) and this thus necessitated the fast tracking of the hearing.

E. The reservation adhered to the general principles justifying the limitations.

74. The Siracusa Principles explain that limitations should be interpreted strictly, in favour of the rights at issue and should not be applied in an arbitrary manner.[91]

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[86] *Gary T Graham.*

[87] Facts ¶ 3.

[88] Article 6 (2), ICCPR.

[89] William Schabas, *The Abolition of the Death Penalty: Beyond Abolition* (3ed) (CMS, 2002) 373.

[90] Facts ¶ 21.

[91] *Siracusa Principles*.

The reservation satisfies all the principles as it is just, in favour of the right at issue and compatible with the purpose of the prescribed covenant.[92]

F. The reservation made to the execution of the death penalty being applicable towards pregnant women does not go against customary International law as well as *Jus Cogens* (peremptory) norms.

a. The reservation does not go against customary International Law.

75. The respondent submit that nowhere did it state that Adorinda Ciela was confirmed as pregnant, thus there is doubt cast as to the fact that she was executed while pregnant.[93] In the unfortunate event that the court finds the reservation invalid then the respondents aver that the imposition of the death penalty does not go against customary International law or *Jus Cogens.*

76. 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.[94]

77. The practice of not carrying out the death penalty is in fact not one that has proved to be a continuation or repetition over a considerable amount of time. Although in recent times the death penalty on pregnant women can be said to

[92] *Siracusa Principles*.

[93] Facts 21.

[94] *Domingues.*

have become undesirable for many nations, many others still have it as a practice.[95]

78. In addition to all this, the death penalty has in many instances proved to be a matter that sparks off international debate and not consensus. Indeed, it has, many times, been left to a country's own legislation.[96]

79. Even in nations where it is illegal, there is no way of ensuring that it is not carried out. It is also difficult to follow through on whether an executed woman is not pregnant at the time. This thus shows that this act does not qualify under customary international law as it has not yet proved to be state practice.

b. The reservation does not go against *Jus Cogens* norms.

80. The respondents submit that the standard for determining a principle of *Jus Cogens* is even more rigorous, requiring evidence of recognition of the indelibility of the norm by the international community as a whole.[97]

81. The respondents aver that with the norm being one that is valid only when there is recognition by the entire community as a whole, the illegality of the death penalty cannot be then defined as such *Jus Cogens.* There is still no proof that it is an agreement by the entire community as a whole.[98]

82. It is further instructive that only 7 out of the 43 states criticised the USI's reservation,[99] which number can hardly be defined as a consensus of the entire community. There is therefore no doubt that the death penalty cannot be

[95] The U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 2010.

[96] Death Penalty Information Centre <http://www.deathpenaltyinfo.org/international-perspectives-death-penalty-costly-isolation-us > accessed 16 May 2016.

[97] Ibid.

[98] Ibid.

[99] Facts ¶ 3.

considered *Jus Cogens*, and for the court to find for that would require a significant and dangerous alteration of the principle.

IV. USI is not internationally responsible for all the abductions, torture and murder of LAF leaders, students and other activists.

A. It is the respondent's submission that this Court lacks the jurisdiction to adjudicate on matters submitted by the applicant as the law of armed conflict governs the circumstances.

83. This court has the jurisdiction to examine allegations of human rights violations as provided for in the KEHRC.[100] As a result, the core mandate of the court is to adjudicate on allegations of human rights violations provided for under the Convention.

84. There is no mention of the use of other international treaties and hence, the application should be limited to the Court's interpretation of its applicable law which in this case, is the KEHRC.

85. The respondent submits that the application revolves around the state's response to hostilities instigated by the LAF; an armed group of Limbradre natives who seized the opportunity availed by general unrest in the country to wage a bloody campaign against the USI Government, MCI officials and LUST staff members of Foolaughy origin.

86. The government itself acknowledges that this is an ongoing war through the joint statement made by USI Ministers of Security and Defence Forces.[101] Furthermore, the situation in USI has reached a level that has distinguished it

[100] Facts ¶ 3.

[101] Facts ¶ 11.

from other forms of violence such as riots, sporadic and isolated forms of violence.

87. There is great organisation among LAF members. There are leaders in LAF who meet regularly and employ strategy in their attacks, showing a high level of organisation. Furthermore, the conflict is referred to as a 'bloody campaign' showing that it is of great intensity. This supports the view that this is a non-international armed conflict.[102]

88. The rules governing this conduct are found in the codified Geneva Conventions.[103] The International Court of Justice's (ICJ) opinion in the *Legality of the Threat of Use of Nuclear Weapons*[104] stated succinctly that indeed, international human rights continue to apply in armed conflict and that the right not arbitrarily to be deprived of one's life applies also in hostilities but that the test of what is an arbitrary deprivation of life…falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities.

89. It is the respondent's submission that the court in this instance lacks the jurisdiction to adjudicate on matters, which are the preserve of international humanitarian law as its mandate is restricted to the interpretation of the Convention.

90. A significant judicial stance comes from the case *of Las Palmeras.*[105] In this case, the Court analysed the killings by the Colombian police and army, of people alleged to be rebels. The people, were in fact civilians who had been dressed as

[102] Facts ¶ 10.

[103] Common Article 3.

[104] *Legality of the Threat or Use of Nuclear Weapons.*

[105] *Las Palmeras.*

combatants by the military in an effort to justify its conduct. The case was referred to the Court by the Inter-American Commission, which kept with its previous jurisprudence and analysed the killings in the light of Common Article 3 of the Geneva Conventions. These killings were invariably a violation of the Article as the people were in fact, civilians. However, the Court accepted the government of Colombia's preliminary objection that the Court lacked the competence to apply international humanitarian law.[106]

91. The Court held that 'when a State is a party to the American Convention and it has accepted the contentious jurisdiction of the Court, the Court may examine the Conduct of the State to determine whether it conforms to the provisions of the Convention. The result of this operation will always be an opinion in which the Court will say whether or not that norm or that fact is compatible with the American Convention. The latter has only given the Court the competence to determine whether the acts or the norms of the States are compatible with the Convention itself, and not with the 1949 Geneva Conventions.'[107]

92. The Court hence accepted Colombia's objection that the Commission also does not have competence to apply international humanitarian law when interpreting the American Convention as State responsibility could only be based on the human rights treaty itself and not on general international law.

93. The respondent submits that despite the grave nature of the rights alleged to have been violated during the period of hostilities and it being in the interest of justice to remedy the wrongs occasioned by the violations of rights, this forum lacks the jurisdiction to effectively dispose of the matter.

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[106] Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 114.

[107] *Mapiripán Massacre.*

94. There have been various instances where different human rights treaty Courts have employed international humanitarian law, especially the provisions of the Geneva convention, which are taken into consideration as elements for the interpretation of various Conventions such as the American and European Convention[108].

95. This, the Courts have argued, is because international humanitarian law is understood as a general principle of international law. As a result of this, the Courts have argued that use of international humanitarian law is employed to further the interpretation and consequently reinforce various Articles such as those providing for the right to life and the right to freedom from torture, cruel, inhuman or degrading treatment.

96. Respecting the above, the respondent questions whether international humanitarian law could be considered as a general principle of international law.[109] The common perception is that general principles of international law find their origin in domestic legal systems.

97. There is, hence, a shared perception that since some of these general tools are commonly shared principles that can be found in the domestic systems, they can also be applied in international law.[110]

98. There is no agreement on a commonly shared principle existing in domestic systems to necessitate the application of international humanitarian law as a general principle of international law.[111] As a result, international humanitarian

[108] *Bámaca Velásquez; Coard; Abella;* Ergi*; Varnava; Isayeva.*

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

[110] Kohen M, Berénice Schramm, 'General Principles of Law,' <http://www.oxfordbibiliographies.com/view/document/obo-978019 > accessed 14 may 2016.

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

law remains a *lex specialis*, which this particular Court lacks the authority to adjudicate upon.

99. It is therefore respondent's submission that the Court stay its judgement on the issue concerning the abrogation of the rights of the members of LAF, LUST students involved and other activists, as this is a matter within the purview of a Court that can hear and adjudicate on international humanitarian law matters.

B. It is the respondent's submission that this Court lacks the jurisdiction to adjudicate on matters submitted by the applicant as the law of armed conflict governs the circumstances.

100. .The Human Rights Court for the Continent of Hope (HRTKE) has the jurisdiction to examine allegations of human rights violations as provided for in the KE Human Rights Convention (KEHRC)[112]. As a result, the core mandate of the Court is to adjudicate on allegations of human rights violations provided for under the Convention. There is no mention of the use of other international treaties and hence, the application should be limited to the Court's interpretation of its applicable law which in this case, is the KEHRC.

101. The application revolves around the State of USI's response to hostilities instigated by the Limbradre Armed Forces (LAF); an armed group of Limbradre natives who seized the opportunity availed by general unrest in the Country to wage a bloody campaign against the USI Government, MCI officials and LUST staff members of Foolaughy origin. The government itself acknowledges that this is an ongoing war through the joint statement made by USI Ministers of Security and Defence Forces.[113] Furthermore, the situation in USI has reached a level that

[112] Facts ¶ 3.

[113] Facts ¶ 11.

has distinguished it from other forms of violence such as riots, sporadic and isolated forms of violence. There is great organisation among LAF members. There are leaders in LAF who meet regularly and employ strategy in their attacks, showing a high level of organisation. Furthermore, the conflict is referred to as a "bloody campaign" showing that it is of great intensity. This supports the view that this is a non-international armed conflict.[114]

102. The rules governing this conduct are found in the codified Geneva Conventions.[115] The International Court of Justice's (ICJ) opinion in the *Legality of the Threat of Use of Nuclear Weapons*[116] stated succinctly that indeed, international human rights continue to apply in armed conflict and that the right not to be arbitrarily deprived of one's life applies also in hostilities. However, the test of what is an arbitrary deprivation of life… falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict. The Court in this instance lacks the jurisdiction to adjudicate on matters, which are the preserve of international humanitarian law as its mandate is restricted to the interpretation of the Convention.

103. A significant judicial stance comes from the Inter-American Court in the case *of Las Palmeras.*[117] In this case, the Court analysed the killings by the Colombian police and army, of people alleged to be rebels. The people, were in fact civilians who had been dressed as combatants by the military in an effort to justify its conduct. The case was referred to the Court by the Inter-American Commission, which kept with its previous jurisprudence and analysed the killings in the light of

[114] Facts ¶ 10.

[115] Common Article 3.

[116] ICJ, Legality of the Threat of Use of Nuclear Weapons Advisory Opinion,.

[117] *Las Palmeras Case*

Common Article 3 of the Geneva Conventions. These killings were invariably a violation of the Article as the people were in fact, civilians. However, the Court accepted the government of Colombia's preliminary objection that the Court lacked the competence to apply international humanitarian law[118].

104. The Court accepted Colombia's objection that the Commission also does not have competence to apply international humanitarian law when interpreting the American Convention as State responsibility could only be based on the human rights treaty itself and not on general international law.

105. Despite the grave nature of the rights alleged to have been violated during the period of hostilities and it being in the interest of justice to remedy the wrongs occasioned by the violations of rights, this forum lacks the jurisdiction to effectively dispose of the matter.

106. There have been various instances where different human rights treaty Courts have employed international humanitarian law. Provisions of the Geneva Convention, are taken into consideration as elements for the interpretation of various Conventions such as the American and European Convention[119]. This, the Courts have argued, is because international humanitarian law is understood as a general principle of international law. As a result of this, the Courts have argued that use of international humanitarian law is employed to further the interpretation and consequently reinforce various articles such as those providing for the right to life and the right to freedom from torture, cruel, inhuman or degrading treatment.

[118] See Louise Doswald- Beck, *Human Rights in Times of Conflict and Terrorism*, (OUP, 2011) 114.

[119] *Bámaca Velásquez; Coard; Abella;* Ergi*;* Varnava*; Isayeva.*

107. Respecting the above, USI questions whether international humanitarian law could be considered as a general principle of international law.[120] The common perception is that general principles of international law find their origin in domestic legal systems. There is hence, a shared perception that since some of these general tools are commonly shared principles that can be found in the domestic systems, they can also be applied in international law[121]. There is no agreement on a commonly shared principle existing in domestic systems to necessitate the application of international humanitarian law as a general principle of international law.[122] As a result, we submit international humanitarian law remains a *lex specialis*, which this particular Court lacks the authority to adjudicate upon.

C. Alternatively, if the Court finds that it has jurisdiction to hear this matter, USI submits that responsibility for the gross violations of human rights are imputed to the Republic of Foolaughy.

108. NGOs revealed that Foolaughy Intelligence Force officials (FIF) who work for MCI security were involved[123]. They spearheaded Operation Oil Them Up (OTP), which captured, tortured, burnt and murdered campaign leaders. The acceptance of the Limbradre Deputy Chief of Police of the proposal by FIF of OTP is a mere support and endorsement of the operation. Article 11 of the ILC Articles on State

[120] Louise Doswald- Beck, "Human Rights in Times of Conflict and Terrorism, (OUP, 2011) 117.

[121] Kohen M, Berénice Schramm, "General Principles of Law," accessed at http://www.oxfordbibiliographies.com/view/document/obo-978019.

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

[123] Facts ¶ 12.

Responsibility stipulates that what imputes conduct not attributable to a State is the acknowledgement and adoption of the conduct in question.[124]

109. In the case of the *United States Diplomatic and Consular Staff in Tehran*,[125] the Ayatollah Khomeini announced a policy of maintaining the occupation the Embassy and detention of the inmates as hostages for the purposes of putting pressure on the US government. The policy was a form of adoption and acknowledgment that transformed the legal nature of the situation created by the occupation of the Embassy into an act of the State of Iran. Furthermore, there was the use of phrases such as 'approval' 'endorsement', 'seal of governmental approval.' The language of "adoption" carries with it the idea that the conduct is acknowledged by the State as its own conduct.[126]

110. Unlike the situation in Tehran, USI denies having accepted the conduct of FIF agents as its own. FIF agents had already began capturing leaders of the different campaigns and the acceptance of Limbradre's Deputy Chief of Police of the proposal by FIF agents does not constitute an adoption and acknowledgement by virtue of Article 11. It is only a case of mere support and endorsement, which is not sufficient to make the conduct attributable to USI.

111. MCI is incriminated in human rights abuses that followed. These included summary executions, crimes against humanity, torture, inhumane treatment, arbitrary arrests, assault and battery and infliction of emotional distress. There has been a trend, where multi-national companies are involved in gross human rights abuses and later absolved of all wrongdoing as responsibility for these wrongful acts is imputed to the 'hosting state.'

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[124] ILC Articles on Statement of Responsibility.

[125] *United States Diplomatic and Consular Staff in Tehran*.

[126] Ibid.

112. The nationals of Foolaughy control it and the seat of management and financial control is located in RF. As a result, RF is for this reason, considered as the national state as it exercises effective nationality of the company. Compounding on this, most of the officials operating in MCI are FIF agents, who constitute an organ of the RF, imputing international responsibility of the actions of FIF agents to RF.

113. As a result, human rights abuses occasioned by FIF agents, who are at the helm of MCI impute State responsibility to RF. USI is hence, not internationally responsible for the international wrongs committed by RF. Finally, the State's inaction is attributed to coercion from the government of RF. Where USI was willing to investigate into the human rights abuses committed by MCI, the President of RF dissuaded the State from doing so.

114. Finally, the State's inaction is attributed to an coercion from the government of RF. Where USI was willing to investigate into the human rights abuses committed by MCI, the President of RF dissuaded the State from doing so. State practice lends support to the principle that a State bears responsibility for the internationally wrongful conduct of another State, which it coerces.[127]This was evidenced in the *Romano-Americana case*[128].

115. The equation of coercion with force majeure means that in most cases where article 18 is applicable, the responsibility of the coerced State will be precluded vis-àvis the injured third State. This is reflected in the phrase "but for the coercion" in subparagraph (a) of article 18. Coercion amounting to force majeure may be the reason why the wrongfulness of an act is precluded vis-à-vis the coerced State.

[127] Article 18, ILC Articles on State Responsibility.

[128] *Romano.*

Prayers

116. The respondents therefore request to find and declare that:

I. USI's refusal to abandon the Madame Revlon Seal constitutes protected speech under the ECHR, while the continued use of the seal is not in any way harassment under the ECHR.

II. The CSL Law is consistent with the international obligations of USI. The court should further adjudge that the de-registration of TrippleP did not interfere with the personal rights of Adorinda Ciela and Fiera Juvela.

III. The execution of Adorinda Ciela was a permissible violation of her right to life.

IV. USI is not internationally responsible for all the abductions, torture and murder of LAF leaders, students and other activists.