



NELSON MANDELA
World Human Rights Moot Court Competition
Concours Mondial de Procès Simulé des Droits de l'Homme
Competencia Mundial de Derechos Humanos

2020 HYPOTHETICAL CASE

Between Médicos de Caridade and United Perrigma

Before

TIERRA-HELADA HUMAN RIGHTS COURT



1. United Perrigma (UP) is a Federal Republic comprising the states of Perrigma, the Isle of Penguins (IP) and Mousia, and is located on the east of Tierra-helada Continent. UP is bounded on the south-east by the Republic of Grootman and Wasun Republic, which were once colonies of UP. All 25 States forming part of Tierra-helada Continent are Members of the Tierra-helada Continental Union (TCU).
2. In UP's federal system, Perrigma, IP and Mousia are empowered to pass, enforce, and interpret their own laws, provided that such laws are consistent with UP's Constitution and Federal Laws. The Federal Government of UP has the power to pass Federal Laws that are binding on Perrigma, IP and Mousia. UP's Constitution contains substantive rights similar to those in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While UP has one Constitutional Court that has exclusive jurisdiction on human rights and constitutional matters, Perrigma, IP and Mousia each has its own Magistrates' Courts, High Courts and Supreme Court. The Magistrates' Courts are the lowest and the Supreme Court is the highest court of appeal on all issues other than constitutional matters. Constitutional matters can reach the UP Constitutional Court through two avenues: The Supreme Courts of Perrigma, the IP and Mousia may refer any matter giving rise to a constitutional question to the UP Constitutional Court for its final determination; and the UP Constitutional Court may allow direct access to any UP citizen in respect of any constitutional question that requires the Court's 'urgent determination'.
3. UP is a member of the United Nations (UN). Prior to 1970, Perrigma constantly claimed sovereignty over IP and Mousia. Claiming to be independent and separate nations from Perrigma, IP and Mousia over a protracted period engaged in a low-intensity civil war against Perrigma. The people of IP and Mousia have, for a long time, argued that on account of their race, culture and religious beliefs, their nations belong with other States on Natasia Continent, to the east of TC. All 30 States comprising Natasia Continent are Members of the Natasia Continental Union (NCU).
4. With the civil war having dissipated, Perrigma, IP and Mousia in 1970 signed an agreement establishing the Federal Republic of UP. The Unity Accord of 1970 stipulates as one of its primary conditions that UP "must join and remain a member of the TCU and its human rights system". Before 1970, Perrigma had resisted joining the TCU on account of its nationalistic policies. On the basis of the Unity Accord, UP joined the TCU in 1971. The TCU's functions are similar to those of the European Union. In the 1975 general elections in UP, the Nationalist Party (NP) for the first time lost political power to the Democrats of United Perrigma (DUP).
5. The TCU's human rights system is founded on the basis of the 1968 Tierra-helada Human Rights Convention (THHR Convention). The THHR Convention is similar in substance to the American Convention on Human Rights. The THHR Convention is enforced through the Tierra-helada Human Rights Court (THHR Court) whose jurisdiction "encompasses protection of human rights in Tierra-helada and extends to all cases and disputes concerning the interpretation and application of the THHR Convention and any other relevant human rights treaties ratified by the States concerned". There is also the Tierra-helada Human Rights Commission (THHR Commission) whose functions and procedures are similar to those of the African Commission on Human and Peoples' Rights. Any person or NGO enjoying observer status with the THHR Commission has legal standing before the THHR

Court. UP became a State Party to the THHR Convention in 1971 and accepted the jurisdiction of the THHR Court in 1972.

6. UP is also a State Party to all human rights treaties in the UN framework. When it ratified the Convention on the Rights of the Child (CRC) in 1993, UP made the following declaration and reservation: "UP enters a reservation with regard to the provisions of Article 1 of the CRC and does not consider itself bound by the same when it is inconsistent with UP's domestic law. Further, UP declares that Article 1 must be interpreted to the effect that a child or human being becomes such at the moment of conception". UP's Children Act sets the age of majority at 15 years. At the end of 1993, 12 Member States of the NCU objected to UP's declaration and reservation, arguing that invoking national law may cast doubt on the commitments of the reserving state to observe the object and purpose of the CRC.
7. UP's outstanding information technology (IT) and artificial intelligence (AI) industries led to its rapid economic growth and it is now recognised as a developed State. Its capital city has since been dubbed "the Silicon Valley of UP". While people in Perrigma and Mousia mainly rely on IT and AI industries, the population of IP has largely remained agro-based.
8. Monteiro Rosario is a successful farmer in IP. He retired from his earlier profession as a scientist after losing his eyesight. His wife, Professor Jessy Rosario, was born blind and is well-known for winning a swimming gold-medal in the Paralympics. She is also the author of the widely read book "Blindman's Paradise: The world as I see it" published in 2018. In an interview where she was asked what inspired her to write the book, she responded: "I was just amazed at many people's assumptions that because they have eyesight, they see the world better than me or anyone who is blind. There is an assumption that our lives are of sub-quality when compared to theirs". Mr and Mrs Rosario's daughter, Cartalia Rosario, was born on 15 July 2006. Back then, her doctors diagnosed her as having a more than 50 per cent risk of hereditary blindness in the upcoming years.
9. IP is also known for fishing tourism, which has brought millions of dollars in foreign revenue to UP. Avid deep-sea anglers from across the globe come to IP to fish the hark. IP is one of the few places in the world where the hark is found. The hark is very resilient to IP's cold maritime conditions and famous for feeding on young penguins.
10. The Rosario family founded *Rosapest Inc.* and to date remain the major shareholders. *Rosapest Inc.* is a local company based on IP that produces and sells farm pesticides. In December 2018, *Rosapest Inc.* partnered with a foreign company and since then it has been able to produce cheaper and affordable pesticides that have helped the IP community to maximise harvests. *Rosapest Inc.* has also ventured into manufacturing agricultural drones and autonomous humanoid robots (AHRs) that are used in spraying pesticides and performing other forms of farm work.
11. These AHRs have contributed to higher yields than ever seen before in IP and UP. However, they have also resulted in the loss of jobs of thousands of farm workers, and they have further caused a number of accidents. Following campaigns by labour unions in UP, the Federal Government passed laws requiring companies using AHRs anywhere in UP to pay tax and settle claims for damage resulting from the acts of AHRs, whether intentional or negligent. Some victims of AHRs-related accidents have successfully sued companies using AHRs in the courts of UP for damage caused by the AHRs. In February 2019, an

unapproved solidarity march by farm workers at the *Rosapest Inc.* headquarters turned violent when IP riot police, dispatched to the scene, could not get the farm workers to disperse from the premises. The ensuing confrontation resulted in four fatalities on the farm workers' side and four injured police officers. In a legal challenge against the state government and local police, the IP Supreme Court, reversing the High Court's decision, held that it was prohibited under UP common law to assemble, protest or demonstrate on private property.

12. Between July 2019 and June 2020, thousands of harks were found dead on the shores of IP, Mousia, Wasun Republic and the Republic of Grootman. Fishing tourism in IP dramatically declined. The stocks of other fish and sea birds such as penguins also decreased. An investigation by UP's federal authorities revealed that the harks and other animals living in the sea were dying from chemical deposits in the sea. The Federal Government, some scientists and newspapers alleged that the catastrophe was a result of the use of the cheap pesticides produced by *Rosapest Inc.*
13. In her quest to save the hark, Loneamor Salvador, a firebrand environmentalist and citizen of Perrigma, approached the Constitutional Court arguing that the Federal Government was in violation of the hark's right to a clean environment. On 15 October 2019, the Constitutional Court granted her request for direct access, and ruled in her favour, holding that "any UP citizen has a right to act on behalf of the hark. Although non-human, they have a right to a clean environment just like humans. Chemical wastes and deposits into sea violate the hark's legal rights".
14. On 30 October 2019 and claiming to follow the Constitutional Court's *Hark* judgment, the Federal Government sent a written provisional instruction to *Rosapest Inc.* "to stop production, use or distribution of the '2018 cheaper version of pesticides' for one season". Local farmers in IP could not afford other pesticides, which are only available at a higher cost – five times higher than that of *Rosapest Inc.* By the end of the season, in February 2020, local farmers' crops were devastated by pests. In March 2020, an NGO by the name of Médicos de Caridade (MDC) started reporting cases of severe malnutrition and indicated that the majority of the population of IP faced starvation. The situation was linked to the shortage of food in IP resulting from pest plagues.
15. MDC is registered in Perrigma and enjoys observer status with THHR Commission. It is staffed by local and international medical doctors with varied expertise, as well as some IT specialists and a few lawyers. The NGO has reported various cases of human rights violations in UP and has treated several victims of such violations. It also conducts research on AI-empowered methods of curing any form of blindness. One of its research reports, conducted together with the UP Federal Medical Research Council, found that these methods have a 90% chance of success and are 99% safe. On the basis of these results, the UP Federal Government registered this form of treatment in UP.
16. In March 2020, *Rosapest Inc.* approached the Constitutional Court arguing that the Federal Government's provisional instruction violated IP people's right to food. The Constitutional Court determined that *Rosapest Inc.* lacked standing to approach the Court directly, and that, in any event, UP's action was proportionate and reasonable. This decision was followed by a wave of protests in IP under the hashtags #RetainPesticides and #EndHungerGames.

17. Since the 1970 Unity Acord, the UP's Constitution guarantees freedom of religion or belief, but also enshrines in the Constitution the secular doctrine of "living UP in community", which requires respect for the minimum requirements of life in society and specifically prohibits concealing one's face in public spaces. About 66% of UP population are believers in the sky goddess, most of whom ardently defend the principle of "living UP in community". The 30% of the population is constituted by Penguinatics, while 4% follows other religions. Penguinatics are people who believe in Mother Penguin – believed to be the Goddess of the Sea. In the 12th Century, Penguinatics made a huge statue of Mother Penguin, measuring 87 meters high. During the wars of independence against Perrigma, the statue was confiscated by Perrigma from IP. In 1963, Perrigma built a special Museum to preserve the special materials used to build the statue of Mother Penguin. In the present day, part of the museum is used for daily prayers by Penguinatics who live in Perrigma. Of all the Penguinatics in UP, some 75% live in IP, about 5% in Perrigma and 20% in Mousia. Now and then, there have been protests in IP with Penguinatics demanding that the statue of Mother Penguin must be returned "home" under the hashtag #ReturnMotherPenguin.
18. UP has made significant advances on the rights of lesbians, gays, bisexual and transgender (LGBT) people over the past three decades. In 2011, the Perrigma Supreme Court by a majority of 10 judges to 1 voted in favour of the granting of marriage rights to same-sex couples on equal terms with opposite sex couples. Perrigma has a vibrant LGBT community who together with their allies organise a yearly pride march to celebrate all forms of diversity in society. These pride marches are well attended by people of all sexualities and religions in UP. Despite these advances, following the widely publicised claims of conservative politicians and religious leaders that persons in the LGBT community are recruiting children into changing their sexualities, there has over the past three years been a surge in attacks against LGBT people. Some religious leaders - especially in IP - have even called for the imposition of the death penalty on LGBT persons and the closure of organisations that support them. These comments and anti-LGBT campaigns have led to the rise in attacks in LGBT persons, including fatalities in a few instances recorded in IP and Mousia.
19. Following the Constitutional Court's *Hark* judgment, there were fierce debates and discussions in academia and political corridors on the utility of anthropomorphising the environment and non-human entities. UP's Minister of Justice appeared on national television and stated: "I don't think there is anything amiss here. In any event, how is this any worse than those who believe and worship a Penguin? It is all about our beliefs and how we think of the world. Such beliefs and thoughts are firmly protected in our Constitution".
20. Some Penguinatics firmly believe that crop failure is due to Mother Penguin not being in IP to protect her home. The Federal Government dismissed this belief when it adopted the April 2020 **Federal Law on Pesticides** (FLP). The FLP preamble reads: "The devastation to the environment and the unnecessary deaths of harks and penguins is because of negligent human activity, in particular, use of toxic pesticides. It is not because of lack of protection from Mother Penguin. Further, the Federal Government believes the Statue is better protected in the museum in Perrigma where all Penguinatics are free to visit". In article 2, FLP permanently bans "the production, stock-piling, use or distribution of the '2018 cheaper version of pesticides'". The Minister of Justice brazenly responded to a journalist's question on whether Federal Government was selfishly prioritising the life of

fish over that of humans with the following: “It’s not selfish to save fish. Instead, I do say this to you: It’s senseless to serve penguins.”

21. Penguinatics’ religious dress is known as the “Robe of the Galapagos Penguin” or simply the “Galapagos”. Fashioned and styled after the penguin-plumage, the Galapagos is an enveloping black and white cloak worn by Penguinatics from the top of their heads to the ground. According to the Penguin Book – a sacred religious text that contains Penguinatic religious laws – “when a girl becomes a woman, and when she is in the company of men or mixed company, she shall wear a Galapagos with a face veil that leaves only her eyes uncovered”. In terms of the Penguin Book, “a girl becomes a woman at the age of twelve”. Furthermore, the Penguin Book provides that soon after birth, a child should be bathed in the sea in order to meet Mother Penguin. Only after that bath is a child considered to be born and only then can the child be given a name. Cartalia Rosario and her parents are Penguinatics.
22. Following the registration of AI-empowered methods of curing blindness, on 13 September 2019 UP passed the **Federal Law on Blindness (FLB)**. FLB compels parents and health practitioners to register children with visual impairments for gene therapy or other AI-empowered methods of curing blindness.
23. The FLP and FLB led to various protests. The protests were fuelled by videos posted by learners on social media demeaning persons with disabilities, on the one hand, and making outrageous claims about the negative effects of the AI technologies, on the other. Sporadic cases of violence occurred in public schools. UP police intervened, and some injuries resulted among both learners and the police. Investigations have been difficult as the suspects involved are shown in videos wearing veiled Galapagos. The massive use of social media in the protests has also resulted in a scourge of misinformation and disinformation, as well as homophobia. There is a huge number of fake videos circulating on the internet. The Government and some NGOs have been accused of using or manufacturing such videos.
24. The circumstances in the public schools led UP to pass the Federal Law on Education (FLE). FLE’s preamble states that “the education *curricula* should prepare children for an inclusive society within which public safety, order and national security are of paramount importance”; and that “freedom of expression in schools is fundamental to foster knowledge and develop a tolerant society”. Section 1(a) of FLE provides: “Hate speech is forbidden. Section 1(b) of FLE provides: “Any use of materials, weapons or clothing that menace or contribute to the menace of the safety or security of learners in public schools is prohibited.”
25. Meanwhile, on 27 December 2019, Jessy Rosario discovered that she was pregnant. After several visits to the hospital, the doctors attending to her noted that she was going to be blessed with a baby boy but there were also high chances of hereditary blindness. They noted that Jessy was required to register for AI-empowered methods that would prevent such an eventuality for the unborn child. They also required her to register Cartalia for gene therapy. Families that can show that they cannot afford the treatment under the affordability test are admitted to the programme for free. The Rosario family noted its strong objections to the program. Monteiro argued that “their religion forbids altering Mother Penguin’s will”. “The goddess of the Sea has taught us that in our blindness, we see better than what you see”, added Jessy. The IP Supreme Court ordered the Rosario family to comply with

FLB. The Supreme Court referred the matter to the Constitutional Court which, on 16 January 2020, ruled in favour of UP Government noting that the best interests of the child take precedence. In an interview after the ruling, Cartalia said: “I don’t care if I lose my eye-sight. I would not mind being like my parents, they are my heroes! Why am I not allowed to make my own decision as a woman? Why should I be forced to undergo this medical process that causes emotional stress?”

26. Following the passing of the FLE, Cartalia’s school amended its curricula to teach all pupils and students about sexuality and rights of LGBTI people. The Head of the school explained as follows: “It ought to be easy for a pupil to understand why their friend has two dads or two mommies as parents”. Furthermore, many schools also banned students from wearing veiled Galapagos while at school. This was met with different reactions from parents, with some of them applauding while other parents – in particular, those of Penguinatic beliefs – condemning it as “Government conspiracy to corrupt innocent kids while stifling Penguinatic beliefs”. Soon after, there was a video of the Minister of Education within which she says: “Nothing sensible can come from Penguinatic imbeciles whose lives are defined by kowtowing to penguins for solutions. How can they insist on kids turning up at schools looking like penguin robbers? Our country is neglecting some serious mental health issues here. Sometimes, I feel like IP is a cancer that needs to be cut off and sunk to the bottom of the Sea, together with all those charlatan believers. Let’s finally live UP in community!”. This video was first put online on the unverified twitter handle of the Minister of Education on 20 January 2020, but subsequently it trended on social media with over 2.2 million views after an anonymous user had shared the video with the hashtag #SinkThem.
27. On 30 January 2020, after 45 years in power, DUP lost the general elections to NP. The NP Federal Government of UP – characterised by populism and its parochial nationalism – quickly changed the foreign policy of UP. By 1 March 2020, it had secured the majority vote for UP to leave the TCU which was eventually done on 15 March 2020. On 23 March 2020, IP announced its independence from UP. Within a week, IP’s independence was recognised by 23 States on the NCU. Consequently, IP lodged its application for membership to the NCU – which functions like the African Union. Although Member States of the NCU are yet to make a decision on that application, the Football Federation of the Cup of Natasian Nations accepted IP to participate in the qualifiers for the 2021 games scheduled for October 2021. IP has issued IP citizen cards and passports but have also allowed dual citizenship for those who want to maintain ties with Perrigma. UP’s Minister of Foreign Affairs has told local and international newspapers that the Federal Government is preparing a case on territorial dispute over IP to be submitted to the International Court of Justice in due course.
28. On 1 April 2020, Cartalia and her friends urgently approached the Constitutional Court arguing that FLE and its implementation in IP public schools violates several of their human rights. On 5 April 2020, the Constitutional Court ruled that given the current political situation concerning IP, it lacked jurisdiction. The ruling was also followed by an unverified and leaked recording of Chief Justice of the Constitutional Court talking to his wife wherein he says: “The students may protest all they want, but the recent Federal Laws are here to stay. They are completely spitting in the wind and, more often than not, it always come right back in your face”.

29. Cartalia and her friends – between the ages of 13 and 21 – were eager to demonstrate in front of the private residence of the Governor of IP but feared for their physical safety since the house is heavily guarded by local police. They also wanted to avoid the requirements of UP’s **Assembly, Public Order and Security Act (APOSA)**. APOSA requires any person who intends to organise a “public assembly” to notify the UP Police one week in advance. In terms of APOSA, a “public assembly” is defined as “a means a gathering in a public place of two or more persons for a common expressive purpose”. Any “public assembly” for which such notification has not been given is considered an unlawful assembly.
30. On the evening of 3 May 2020, and without notifying the UP Police, Cartalia and her friends staged a hologram “procession” in front of the private residence of the Governor of IP. The “protestors” in the holograms, dressed in Galapagos, held placards with hashtags such as #GalapagosMyReligion, #Faith4Rights, #NoDoctrinalSecularism, #StopForcedMedication, #RetainPesticides, and #ReturnMotherPenguin. Some of them also appeared to carry spears. The light beams of the holograms were from laser boxes that were held by AHRs which Cartalia borrowed from her father. Monteiro reluctantly lent them to his daughter, protesting that “this is not the work for which the company is paying tax on these AHRs”. The AHRs moved slowly towards the Governor’s house, accompanied by a shrieking noise, without entering the premises. The AHRs then projected the holograms through the wrought iron gate. The front ranks of the “protest” marched further and continued inside the premises of the Governor’s residence, with the noise waking up the entire household and alerting the police stationed at the residence. The police warned: “Any person who takes one more step will give us no choice but to shoot. We instruct you to stop the demonstration”. When the AHRs moved again, the police officers shot at the holograms with live ammunition, leaving the AHRs, which had remained outside the see-through fence, tattered in hundreds of bullets. The holograms stopped as a result. Police officers saw, after the shooting, that what they thought were humans were, in fact, holograms projected by the AHRs.
31. Cartalia and her friends who were watching and controlling the hologram demonstration from a remote place were subsequently diagnosed with post-traumatic stress disorder. They are currently being treated by doctors from MDC. One of the doctors treating Cartalia is quoted by a journalist as saying “It really didn’t matter that the students knew that it was AHRs that were being shot. They have seen police murdering real people before in their schools. To them, what happened on 3 May was equally murder, and a callous use of force”. Cartalia and her friends have been charged under the APOSA for holding of an unlawful gathering.
32. On 26 May 2020, after consultation with all the victims, MDC decided to bring a case against UP in the THHR Court and asks it to adjudicate the following:
- a) UP’s **Federal Law on Pesticides (FLP)** violates the Rosario family and others’ human rights.
 - b) UP’s **Federal Law on Blindness (FLB)** violates Cartalia Rosario’s and her family’s human rights.
 - c) UP’s **Federal Law on Education (FLE)** violates the rights of Catalia and other Penguinitics.

- d) The prosecution under the **Assembly, Public Order and Security Act (APOSA)** and UP agents' use of lethal force on 3 May 2020 violates Cartalia Rosario and her friends' human rights.

INSTRUCTION: Prepare written memorials for **MDC (Applicant)** and **UP (Respondent)** addressing jurisdiction, admissibility, merits and appropriate remedies.