

12th World Human Rights Moot

Court Competition

7-11 December 2020

Geneva, Switzerland

IN THE MATTER BETWEEN

MÉDICOS DE CARIDADE (MDC)

AND

STATE OF UNITED PERRIGMA

MEMORIAL FOR THE APPLICANT

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHR	African Court on Human and People's Rights
ACtHR	African Court of Human and Peoples' Rights Rules of Court
ACtHR Protocol	Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights
APOSA	Assembly, Public Order and Security Act
Art	Article
BI	Best Interests
CC	Constitutional Court
CESCR	Committee on Economic, Social and Cultural Rights
CIL	Customary International Law
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CwD	Children with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FIDH	International Federation for Human Rights
FLB	Federal Law on Blindness
FLE	Federal Law on Education

FLP	Federal Law on Pesticides
HR	Human Right
IACHR	Inter-American Human Rights Commission
I-ACtHR	Inter-American Court of Human Rights
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
Id.	Ibidem
IHRL	International Human Rights Law
MDC	Médicos de Caridade
MP	Mother Penguin
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
PTSD	Post-Traumatic Stress Disorder
PwD	Person with Disabilities
Res	Resolution
RHT	Right to Humane Treatment
RTL	Right to Life
RTP	Right to Privacy
SC	Supreme Court
Sec	Section
Sess	Session

SR	Special Rapporteur
THHR	Tierra-Helada Human Rights Convention
THHR Court	Tierra-Helada Human Rights Court
THHRC	Tierra-Helada Human Rights Convention
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series
UP	United Perrigma
Wrt	With respect to

TABLE OF AUTHORITIES

Treaties, Conventions and Charters

- ACHPR *African Charter on Human and Peoples' Rights, adopted 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986).*
- ACHR *American Convention of Human Rights, 'Pact of San José, Costa Rica', opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).*
- ACHR Protocol *Additional Protocol to the American Convention of Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador', OAS Treat Series No. 69 (adopted on November 17, 1988).*
- ACtHR Protocol *Organization of African Unity (OAU), Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, 10 June 1998 (entered into force 25 January 2004).*
- ACtHR Rules *Organization of African Unity (OAU), African Court of Human and Peoples' Rights Rules of Court,(entered into force on 2 June 2010).*
- BPUFF *United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba from 27 August to 7 September 1990.*
- CRPD *UN General Assembly, Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, A/RES/61/106*

	(entered into force on 3 May 2008)
ECHR	Council of Europe, <i>Convention for the Protection of Human Rights and Fundamental Freedoms</i> , opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953).
Geneva Convention	International Committee of the Red Cross (ICRC), <i>Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)</i> , 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).
ICCPR	<i>International Covenant on Civil and Political Rights</i> , opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)
ICCPR OP	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> , opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i> , adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
Oviedo Convention	<i>Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine</i> (entered into force 1 December 1999) ETS No. 164
UDHR	UN General Assembly, <i>Universal Declaration of Human Rights</i> , adopted 10 December 1948, UNGA Res 217 A (III).
UN Reparations-Principle	UN General Assembly, <i>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious</i>

Violations of International Humanitarian Law, A/RES/60/147 (21 March 2006).

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- Res-1976 UN General Assembly, *Protection and Restitution of works of art as part of the preservation and further development of cultural values*, GA Res 31/40, UN Doc A/RES/3140 (30 November 1976).
- Res-1978 UN General Assembly, *Protection, restitution and return of cultural and artistic property as part of preservation and further development of cultural values*, GA Res 33/50, UN Doc A/RES/3350 (14 December 1978).

- Res-1979 UN General Assembly, *Return or restitution of cultural property to the country of origin*, GA Res 34/64, UN Doc A/RES/3464 (29 November 1979)
- Res-1984 UN General Assembly, Food and agricultural problems, GA Res 39/166, UN Doc A/RES/39/166 (17 December 1984).
- Res-1989 UN General Assembly, *Return or restitution of cultural property to the country of origin*, GA Res 44/18, UN Doc A/RES/4418 (6 November 1989).
- Res-1995 UN General Assembly, *Return or restitution of cultural property to the country of origin*, GA Res 48/15, UN Doc A/RES/48/15 (11 November 1995).
- Res-2006 UN General Assembly, *Return or restitution of cultural property to the country of origin*, GA Res 61/52, UN Doc A/RES/6152 (16 February 2007).

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- CCPR-18 Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 37th Sess, Un Doc CCPR/C/GC/18 (10 November 1989).
- CCPR-20 Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 44th Sess, (10 March 1992).

- CCPR-22 Human Rights Committee, *General Comment No.22:Article 18(Freedom of Thought, Conscience or Religion)*,48th Sess., UN Doc CCPR/C/21/Rev.1/Add.4 (30 July 1993).
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- CESCR-14 Committee on Economic Social and Cultural Rights, *General Comment No. 14. The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd Sess, UN Doc E/C.12/2000/4 (11 August 2000)
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- CESCR-23 Committee on Economic Social and Cultural Rights, *General Comment No.23, The Right to Just and Favourable Conditions of Work(Art. 7)*, 44th Sess, UN Doc E/C.12/GC/23 (7 April 2016).
- CESCR-3 Committee on Economic Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations(Art. 2, Para. 1)*, 50th Sess, UN Doc E/1991/23 (14 December 1990).
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- FLB Federal Law on Blindness
- FLE Federal Law on Education
- FLP Federal Law on Pesticides

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- Civil-Liberties* African Commission on Human and Peoples' Rights, *Civil Liberties Organization v Nigeria*, Communication No. 101/93 (13-22 March 1995).
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- SERAC* African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Communication No. 155/96 (27 May 2002).
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- Cf. Escué-Zapata* *Case of Escué-Zapata v. Colombia (Merits, Reparations and Costs)*, I-ACtHR, Series C No. 165 (4 July 2007).

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SUMMARY OF FACTS

1. United Perrigma (UP) is a Federal Republic established by the Unity Accord of 1970, comprising of the states of Perrigma, the Isle of Penguins (IP) and Mousia, located on the Tierra-helada Continent bound by the Republic of Grootman and Wasun Republic. Post a low intensity civil war, The Unity Accord of 1970 was signed on the basis of which UP joined the Tierra-Heleda Continent Union (TCU) in 1971.
2. UP has one CC that has exclusive jurisdiction on human rights and constitutional matters that may reach it through: reference from the Supreme Courts of IP, Mousia or Perrigma or direct access for matters requiring 'urgent determination'. Since the 1970 Unity Acord, the UP's Constitution enshrines 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.

PENGUINATICS

About 66% of UP population are believers in the sky goddess while 30% of the population are Penguinatics - believers of the sea goddess, MP. Penguinatics' religious dress is known as the "Galapagos", a black and white cloak worn from the top of their heads to the ground. During the War of Independence a statue of MP was confiscated by Perrigma from IP.

ROSARIO FAMILY AND ROSAPEST INC.

The Rosario family are Penguinatics. They founded *Rosapest Inc.* that produces and sells farm pesticides. In December 2018, *Rosapest Inc.* partnered with a foreign company to produce cheaper pesticides and AHRs that are used in spraying pesticides and performing farm work. At birth, Mr and Mrs. Rosario's daughter,

Cartalia Rosario, was diagnosed with a 50 per cent risk of hereditary blindness in the upcoming years.

Médicos de Caridade

MDC is an NGO registered in Perrigma and enjoys observer status with THHR Commission.

FLP

1. 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. This was allegedly due to the cheaper pesticides produced by Rosapest Inc.
2. On 15 October 2019, the CC adjudged that the hark, though non-human has a right to clean environment, which was violated. On 30 October 2019 the Federal Government sent an instruction to *Rosapest Inc.* banning the cheaper pesticides for one season. Local farmers in IP couldn't afford expensive pesticides, and cases of severe malnutrition linked to pest plagues were reported. [SEP]
3. In March 2020, *Rosapest Inc.* approached the CC arguing that the Federal Government's provisional instruction violated IP people's right to food. The CC determined that UP's action was proportionate and reasonable. [SEP] Some Penguinatics attribute the occurrences to the statue of MP not being in IP. The Federal Government dismissed this belief when it adopted the FLP and attributed the devastation of environment to negligent human activity and banned the '2018 cheaper version of pesticides'.

FLB

1. MDC's and UP found the AI-empowered methods of curing blindness which were found to be 90% successful and 99% safe. Consequently, FLB was passed on 13 September 2019, which compels parents and health practitioners to register children with visual impairments for the aforementioned methods. On 27 December 2019, Jessy Rosario was required to register her unborn child and Cartalia for AI-empowered methods and gene therapy, respectively. The Rosario family noted its strong objections to the program.
2. The Supreme Court referred the matter to the CC, which on 16 January 2020, ruled in favour of UP Government noting that the best interests of the child take precedence. The FLP and FLB led to various protests. The protests were fuelled by videos posted by learners on social media. Sporadic cases of violence occurred in public schools.

FLE

1. The instances of violence in public schools led UP to pass the FLE which values inclusive society based on public order and safety and also prohibits hate speech and clothing that may cause or contribute to the menace of the safety or security of learners in public schools.
2. In furtherance of the FLE many schools banned students from wearing veiled Galapagos. Soon after, a video of the Minister of Education making statements about Penguinatic beliefs was put online from an unverified account.

APOSA

1. APOSA requires any person who intends to organise a “public assembly” to notify the UP Police one week in advance failing which it shall be deemed unlawful. [SEP] On the evening of 3 May 2020, Cartalia and her friends staged an unnotified hologram “procession” through AHR’s in front of the private residence of the Governor of IP. The “protestors” were dressed in Galapagos, and appeared to carry spears. The AHR’s did not enter the Governor’s private residence however the projections went through the gate which led to the police warning and thereafter shooting with live ammunition.
2. Cartalia and her friends who were watching and controlling the hologram demonstration from a remote place were subsequently diagnosed with post-traumatic stress disorder and have been charged under the APOSA for holding of an unlawful gathering.

TERRITORIAL DISPUTE WITH IP

UP left TCU 15 March 2020 following majority vote, and on 23 March 2020, IP announced its independence from UP which was recognised by 23 States of the NCU. Consequently, IP lodged its application for membership to the NCU, which is yet to be decided.

SUMMARY OF ARGUMENTS

I. Claim A

FLP imposed a permanent ban on the production of *Rosapest Inc's* cost-friendly pesticides. This led to a shortage of food production in UP, forcing people into starvation and malnutrition, as all other pesticides were very expensive. The lack of effective access to resources necessary for food production violated right to food of UP citizens. Additionally, the permanent ban on *Rosapest Inc's* violates the right to work of Monterio Rosario since he can no longer work and produce pesticides. The denial to return MP's statute violates the cultural rights of Penguinatics.

II. Claim B

The mandatory nature of treatment under FLB violated the RTP and bodily integrity of Cartalia, along with violations under CRPD. It also deprives her family from their right to family life by stopping them from making a decision in regards to their unborn child. Moreover, it denies the right of conscientious objection granted under right to religion to individuals as the treatment goes against their religious beliefs

III. Claim C

FLE had a discriminate effect on Penguinatics as it prevented pupils from wearing "Galapogas" which happens to be the religious dress of Penguinatics. This violated not only their right to religion which includes the right to wear religious dress, but also their right to expression and RTP. Additionally, it infringes the right to education of pupils from Penguinatics religion as FLE denies them access to educational institutes.

IV. Claim D

The restriction of de-facto 'notification procedure' imposed on peaceful assembly through APOSA does not conform to the international standards, and therefore, the criminal sanctions imposed under APOSA are not justified and disproportionate. Further, the use of lethal force by UP Police brings in State Responsibility as the lethal force used on 'protestors' was strictly disproportionate and violates Right to Life of Cartalia and her friends as they were diagnosed with PTSD after they saw UP Police murdering 'protestors'.

ARGUMENTS ADVANCED

PRELIMINARY ISSUES

I. Jurisdiction

Applicant submits that UP has accepted THHR Court's jurisdiction to consider violations of the THHR Convention and other international HR treaties ratified by it.¹ The claims advanced are based on violations of these treaties.²

In any event, the *compétence de la compétence* principle allows this honourable Court to determine questions as to its jurisdictional competence and determine its own jurisdictional limits.³

II. *Locus standi*

Legal standing in the THHR Court is governed by rules similar to those of the ACHPR. UP accepts the Court's competence to receive cases from NGOs like MDC,⁴ a local NGO with observer status,⁵ to directly access the court of its own accord.⁶ Thus, MDC has *locus standi* before the Court.

Furthermore, the THHR Court does not contain an additional 'victim requirement',⁷ unlike the ECtHR⁸ and the Human Rights Committee⁹ and has recognized the principle of *actio*

¹ Facts[5].

² CRC, CRPD, ICCPR, ICESCR, ACHR.

³ ACtHR Protocol Art 3(2).

⁴ Facts[5].

⁵ Facts[15].

⁶ *Tanganyika*[4], *Windridge*,[316].

⁷ *Malawi*[78], *Viljoen* [39], *Pedersen*[418], *FIDH*[73].

⁸ ECHR Art 34, *Klas*[33].

⁹ ICCPR OP Art 1, *Aumeeruddy-Cziffra* [9.2].

*popularis*¹⁰. In any case, MDC is acting in a representative capacity of all the aggrieved persons, who are direct victims of HR violations by UP.¹¹

III. Admissibility

The Court's rules of admissibility necessitate the exhaustion of applicable domestic remedies,¹² though it is not an absolute principle and is not applied automatically.¹³

Wrt **Claim A**, after the judgment of CC,¹⁴ UP's highest court of appeal,¹⁵ victims under Claim A have duly exhausted all domestic remedies. Further, FLP was adopted after the judgment of the CC,¹⁶ thus, any proceedings instituted on that claim would have no reasonable prospect of success¹⁷ in light of prevailing jurisprudence of the State's highest courts.¹⁸ Moreover, it is deemed to be an exhaustion of domestic remedy if the complaint is raised "at least in substance"¹⁹ on the basis of domestic law in national courts,²⁰ - which has been done in the present case.

Wrt **Claim B**, following the judgments of the SC and CC respectively,²¹ the victims had duly exhausted all the local remedies.

¹⁰ *Article 19*[65], *SERAC*[49].

¹¹ *Facts*[32].

¹² *ACHPR Art 56*(5); *See also ACtHR Protocol Art 6, ACtHR Rules 34, 40.*

¹³ *Ringeisen*[89], *Gherghina*[74].

¹⁴ *Facts*[16].

¹⁵ *Facts*[2].

¹⁶ *Facts*[14,16,20].

¹⁷ *Jawara* [32]; *Shumba* [57].

¹⁸ *Jessica*[49]; *Pressos*[27]; *Brough*[8.10]; *Gilberg*[6.5].

¹⁹ *Castells*[32].

²⁰ *Gäfgen*[142,144,146]; *Radomilja*[117]; *Karapanagiotou*[29]; *Marić*[53].

²¹ *Facts*[25].

Wrt **Claim C**, a claim was raised in the CC with regards to FLE and its implementation.²² With the Court's ruling that it lacked jurisdiction,²³ all domestic remedies have been duly exhausted. Moreover, there was no reasonable prospect of success²⁴ as the Chief Justice himself was of the firm view that the federal laws were to stay.²⁵

Wrt **Claim D**, victims should be exempted from exhausting domestic remedies, and be allowed to approach the Court directly since Applicants are only required to exhaust remedies that are adequate and effective;²⁶ capable of producing the result for which they were designed.²⁷ With the case being brought up against UP police,²⁸ reasonably who shall be investigating the matter, the situation renders the remedy 'illusory', and thus ineffective.²⁹ Further, reasonably presuming, this investigation by UP Police will create a climate of insecurity³⁰ that renders effective remedy a 'senseless formality'.³¹ Additionally, in cases of serious and massive violations –like, in the present case- the requirement is to be read in the light of its duty to protect HR.³² Consequently, the requirement of exhaustion need not apply literally.

²² Facts[28].

²³ *Id.*

²⁴ *Horva*[39]; *Dalia*[35].

²⁵ Facts[28].

²⁶ *Velásquez-Rodríguez*[66], *Judicial Guarantees*[24], *Jawara*[32].

²⁷ *Velásquez-Rodríguez*[64,66], *Godínez-Cruz*[67,69], *Fairén-Garbí*[88,91], *Landaeta* [22], IACtHR OC-11/90 [36]. See also *Nada*[141], *Tanganyika*[82.1], *Faraoun*[6.4].

²⁸ Facts[30,31].

²⁹ *Las-Palmeras*[58], *Juan-Humberto*[121], *Ivcher-Bronstein*[136], *Bámaca-Velásquez* 191].

³⁰ *Cañas*[31].

³¹ *Velásquez-Rodríguez*[68], *Haitians Case*[5-7]. See also *Pasqualucci*[62].

³² *Amnesty*[38,39], *Malawi*[85], *FLAG*[37], *Article 19*[71].

MERITS

I. FLP violates the Rosario family and others' HR.

States have a duty to perform its obligations as recognised under HR regime.³³ Applicant submits that FLB violates Right to Food [A.], Right to Work Freely [B.] and Cultural Rights [C.].

A. Violation of Right to Food

UP was required to provide an 'enabling environment' in which people can use their full potential to produce adequate food for themselves,³⁴ and prevent circumstances which "aggravate food security".³⁵ Right to Food was violated since Right to Food ensures freedom from starvation [1.] and general obligation to respect [2.].

1. Right to food ensures freedom from starvation

The right to food is a widely recognized HR³⁶ which ensures "the fundamental right to freedom from hunger".³⁷ States have the minimum core obligation³⁸ to "provide minimum basic resources to prevent people from starvation."³⁹ Lack of economic access to means⁴⁰

³³ Preamble, ICCPR.

³⁴ OHCHR-34[3,4], CESCR-12[15], Rep-1999[12].

³⁵ ICJ-2004[133,135].

³⁶ CESCR-12[1], UDHR Art 25, ICESCR Art 11, CRC Art 24(2), ACHR Protocol Art 12. See Also ACHPR Art 16, *Lhaka*[289], *SERAC*[64], *Civil-Liberties*[27], Art 21(India), Section 27(1)(SA), Art 227(Brazil), Langford[403].

³⁷ CESCR-12[1], Res-1984, Buckingham[285], OHCHR-34[8], Golay[80], SR Report-2006 [22].

³⁸ CESCR-12[9,10].

³⁹ FAO-Toolbox[21], CCPR-6[5].

⁴⁰ OHCHR-16[6], Schutter[5], SR Report-2001[14].

and resources required to produce one's own subsistence, such as seeds,⁴¹ amounts to denial of this right.⁴² UP failed to comply with this minimum obligation by imposition of permanent ban on use and stock-piling of cost-friendly *Rosapest Inc's* '2018 version of pesticides',⁴³ forcing people into starvation and malnutrition, thereby, violating right to food.⁴⁴ Additionally, in all such situations, RTL would also be at stake.⁴⁵

2. General Obligations to respect

Under, the "obligation to respect",⁴⁶ states are required to abstain from taking any measures that would result in preventing individuals from having access to adequate food.⁴⁷ This requires state to repeal any such legislation that prevents people from satisfying their personal food needs through their own efforts, or any measure that would deprive individuals of access to food.⁴⁸ FLP restricted people's access to cost-friendly pesticides restricting their food production.

B. Violation of Right to Work Freely

The right to be able to work is essential for human dignity.⁴⁹ Retrogressive measures taken in relation to the right to work are not permissible.⁵⁰ This includes the denial of access to

⁴¹ Golay[6].

⁴² OHCHR-34[10], FAO VG-8[16].

⁴³ Facts[20].

⁴⁴ See IACHR Res-1985[52]; *Endoris*[285], *Civil-Liberties*[27]; *Mukong*[9.3].

⁴⁵ FAO-Toolbox[21], See also CCPR-6[5], Geneva Convention.

⁴⁶ CESCR-12[2,15].

⁴⁷ SR Report-2001[27].

⁴⁸ FAO-Guidelines[20].

⁴⁹ CESCR-18[1], ICESCR Art 6, ICCPR, Art 8, ACHR Protocol, Art 6, ACPHR Art 15.

⁵⁰ CESCR-23[52].

employment or interference in the peaceful exercise of this right.⁵¹ Rosario family's right to work was severely curtailed when a permanent ban was imposed on the production of pesticides made by *Rosapest Inc.*⁵².

C. Cultural Rights

MP's Statue holds cultural and religious importance for Penguistics.⁵³ States have consistently returned such property to the country of origin; like, Britain returned the Coronation Stone to Scotland⁵⁴, Axum Obelisk to Italy⁵⁵, Vigango to Kenya,⁵⁶ and more.⁵⁷ Further, the UNGA has repeatedly called upon States to return property having cultural importance.⁵⁸

Moreover, IP, being the source nation, has the right of replevin⁵⁹ over the statue and a better title over it.⁶⁰ The non-repatriation of the statue to IP will severely curtail their cultural rights⁶¹ to enjoy their property having cultural importance.

II. FLB violates Cartalia and her family's HR

FLB makes the gene therapy treatment 'mandatory' for visually impaired children.⁶²

Applicant submits that the FLB violates IHRL[A.] and rights under CRPD [B.].

⁵¹ *Id.*

⁵² Facts

⁵³ Facts

⁵⁴ Blystone[4].

⁵⁵ Gerstenblith p. 474.

⁵⁶ Mashberg p. 3

⁵⁷ Merrill p. 567, Hoffmann p. 562.

⁵⁸ Res-1972, Res-1973, Res-1975, Res-1976, Res-1978, Res-1979, Res-1989, Res-1995, Res-2006.

⁵⁹ Merryman p. 53.

⁶⁰ Mastalir p. 1033, See Also *Autocephalous*.

⁶¹ ICESCR, Art 15, ICCPR, Art 15.

A. Violation of IHRL

FLB 'compels' Cartalia and her family to register for the visual impairment treatment⁶³ which violates several HR.⁶⁴

1. Right to Privacy

Cartalia's body is an intimate aspect of her private life.⁶⁵ "Privacy" covers aspects like her personal autonomy,⁶⁶ and right to self-determination, especially regarding medical treatment⁶⁷. Compulsory medical treatment administered against her wishes,⁶⁸ even when the refusal to accept it has fatal consequences,⁶⁹ will thus, be covered by RTP⁷⁰ and further, interferes with her right to physical integrity.⁷¹

Moreover, the term 'family life' covers the relationship between the parents and their child.⁷² States should refrain from interfering with the parents' right to be involved in the decision-making process regarding their own children.⁷³ Thus, the state infringed the RTP and family life by barring Rosario family from making decision about their unborn child and Cartalia.

⁶² Facts[22].

⁶³ Facts[22].

⁶⁴ ACHR Art 11, 12.

⁶⁵ Y.F.[33].

⁶⁶ V.C.[138], *Evans*[71], *E.B.*[43].

⁶⁷ *Pretty*[4].

⁶⁸ *G.B.*[29], *Re T*[99], *NHS*[149].

⁶⁹ V.C.[105], *Pretty*[63-65]; *Re C*, *Taylor*[12,13].

⁷⁰ Y.F.[43]; *X* [155], *Acmanne*[253]; *Association X*.[34].

⁷¹ *Storck*[143].

⁷² *Hoffmann*[32].

⁷³ Oviedo Convention, Art 6; CRC, Art 5,14.

2. Right to Religion and Conscience in conjunction with equal protection of law

Freedom of conscience includes the right to manifest one's conviction. "Convictions" are views that attain a certain level of cogency, seriousness, cohesion and importance and are more akin to "beliefs".⁷⁴ The gene therapy treatment would be against the absolute religious convictions of Cartalia's family.⁷⁵

Further, in *Bayatyan* case, punishment for conscientious objection to military service on religious grounds has been recognised as an interference with religious freedom⁷⁶. These conditions set in the case are met and hence the outcome should be transposable in the present case.

Additionally, State's failure to introduce appropriate exceptions to a rule,⁷⁷ and convict a person for the exercise of his religious freedom amounts to discrimination.⁷⁸ Therefore, even though FLB is of general application⁷⁹, it leads to serious and insurmountable conflict between the legislative obligations and Rosario family's genuinely held religious beliefs,⁸⁰ thus, amounting to indirect discrimination⁸¹ with their religious freedom.

3. Restriction is not justified

⁷⁴ *Campbell*[36].

⁷⁵ *Facts*[25].

⁷⁶ *Bayatyan*[112].

⁷⁷ *Thlimmenos*[44-47].

⁷⁸ *Id.*

⁷⁹ *D.H.*[184].

⁸⁰ *Bayatyan*[110].

⁸¹ *D.H.*[184].

Any infringement on the HR must fulfil the test of- prescription,⁸² necessity⁸³ and proportionality⁸⁴. If there are various options to achieve objective, the one which least restricts the protected right should be selected.⁸⁵

UP could have achieved its objective through other restrictive means, e.g. voluntary treatment, like that in UK,⁸⁶ which ensures the safety and respect the rights of all involved parties. Therefore, the restriction is not justified.

B. VIOLATION OF RIGHTS UNDER CRPD

1. General Principles

Obligations under CRPD comprises of general principles which forms core of t Convention.⁸⁷ These include, the respect for inherent dignity, individual autonomy, including the right to make one's own choices;⁸⁸ freedom against any distinction, exclusion or restriction on the basis of disability which has the effect of impairing enjoyment on an equal basis with others;⁸⁹ full and effective participation and inclusion in society;⁹⁰ and lastly, respect for evolving capacities of CwD.⁹¹ Therefore, by making registration for treatment mandatory, the FLB implicates a flagrant violation of the very core of the convention.

⁸² *Gorzelic*[64].

⁸³ *Buscarin*[34].

⁸⁴ *Chapman*[90].

⁸⁵ *Doğan*[150,152], *Ricardo*[96], *Shelton*[56].

⁸⁶ *Pavel*[11].

⁸⁷ Ad-Hoc Com.

⁸⁸ CRPD, Art 3(a).

⁸⁹ CRPD, Art 3(b).

⁹⁰ CRPD, Art 3(c).

⁹¹ CRPD, Art. 3(h).

2. Obligations under the Convention

The RHT given under CRPD establishes that “no one shall be subjected without his free consent to medical experimentation”⁹² which also encompasses medical treatments that are conducted without free consent of the concerned person,⁹³ since it is closely tied to right to health.⁹⁴ In the present case, not obtaining consent from Cartalia treats her as a “tragedy”.⁹⁵ Therefore, FLB is in violation of CRPD.

3. Best Interests are not the ‘only’ consideration

The use of the term ‘a primary’ implies that the BI principle is ‘not the only’ factor to be considered.⁹⁶ Other factors like children’s wishes, their emotional and physical needs, and their parents’ wishes should also be considered.⁹⁷ Any decision that does not give child’s views due weight according to their age and maturity, does not respect the possibility for the child to influence the determination of their BI.⁹⁸ Additionally, BI ‘shall be a primary consideration’ and not ‘must be the primary consideration’.⁹⁹

Anyways, the decision as to the patient’s BI should be left for the patient’s discretion.¹⁰⁰

Therefore, Cartalia’s views should be respected in the present case.

III. FLE violates the rights of Cartalia and other Penguinatics

⁹² CRPD, Art 15(1); ICCPR, Art 7.

⁹³ CCPR-20[7].

⁹⁴ CESC-14[8], *Csoma*[94].

⁹⁵ HRW[3].

⁹⁶ CRC-12[71], Hammarberg p.3.

⁹⁷ *Neulinger*[52].

⁹⁸ CRC-14[53]; CRPD Art. 7(3)

⁹⁹ *Manitoba*[82,84].

¹⁰⁰ *Burke* [90].

By implementing Sec 1(b) of FLE, UP has effectively prevented Penguinatics who are ‘victims’¹⁰¹ of the legislation from wearing their religious dress, ‘Galapogas’¹⁰². Applicants submit that wearing religious clothing is covered by IHRL [A.], the restriction under FLE is not justified [B.]. Further, it is discriminatory towards Penguinatics [C.] and violates Right to Education [D.].

A. Wearing religious clothing is covered by IHRL

Penguinatic religious laws mandate wearing ‘Galapagos’.¹⁰³ The right to wear clothes in public in conformity with one’s faith or religion is protected by right to religion.¹⁰⁴ Dress is also included among means¹⁰⁵ for dissemination of thoughts, ideas and opinions¹⁰⁶ and hence, covered by freedom of expression. Additionally, the notion of private life¹⁰⁷ covers personal choices as to an individual’s desired appearance, such as clothing.¹⁰⁸ Thus, this right is protected under IHRL.

B. The restriction is not justified

States cannot assess the legitimacy of religious beliefs.¹⁰⁹ Policies or practices impairing the right to have a religious belief through penal sanctions or restricting their access to education to compel the believers to recant their religion or belief are barred.¹¹⁰

¹⁰¹ S.A.S.[57].

¹⁰² Facts[21].

¹⁰³ *Id.*

¹⁰⁴ *Raihon*[6.2], *Eweida*[89], *Hamidović*[30].

¹⁰⁵ CCPR-22[12].

¹⁰⁶ *Palamara-Iribarne*[73], *Herrera*[109], *Ricardo*[78], *Ivcher-Bronstein*[147], *Olmedo-Bustos* [65], IACtHR OC-5/85 [31].

¹⁰⁷ *Popa*[32,33], *Sutter*[166].

¹⁰⁸ *McFeeley*[83], *Kara*[44].

¹⁰⁹ *Eweida*[81].

FLE was enacted with the purpose of creating an 'inclusive society' which has not been recognised as a legitimate aim under the Convention. Additionally, the concept of "inclusive society" and "living together" is considered to be very vague and abstract.¹¹¹ Moreover, "national security" as mentioned in preamble¹¹² is not included among the aims for which right to religion can be restricted,¹¹³ therefore, the restriction is unjustified.¹¹⁴ Further, in order to restrict a right on the basis of public safety and order, mere worries or fears are not capable of satisfying the legitimacy of the interference and it must be supported by indisputable facts,¹¹⁵ which are absent in this case as the videos circulating on Internet are fake.¹¹⁶ Absence of concrete evidence renders this interference unjustified.¹¹⁷

Arguendo, even supposing that the aims pursued were legitimate, it could be achieved by less restrictive means such as by implementing identity checks, and is hence, disproportionate to stated objective.¹¹⁸

C. FLE is discriminatory towards Penguistics

A general policy that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group and there is

¹¹⁰ CCPR-22[5], *Raihon*[6.2], *R.Singh*[8.4]; *S.M.*[9.5]; *B.Singh*[8.7].

¹¹¹ CCPR-22[8].

¹¹² *Facts*[24].

¹¹³ *Nolan*[73].

¹¹⁴ *Lachiri*.

¹¹⁵ *Smith*[89].

¹¹⁶ *Facts*[23].

¹¹⁷ *Arslan*[106].

¹¹⁸ *S.A.S.*[78].

no discriminatory intent.¹¹⁹ FLE even though neutral, had impaired the rights of Penguinatics discriminately by denying them the right to wear 'Galapogas'.

D. Violation of Right to Education

The right to education covers the parents' right to have their children educated in conformity with their religious and philosophical convictions and must be read in light of other rights.¹²⁰ The refusal to guarantee access to a school constitutes a violation of the right to education.¹²¹ FLE led to prohibition of 'Galapagos' at schools,¹²² thereby, denying access of schools to all those Penguinatics who wanted to follow their religious laws. This amounted to violation of right to education since it was made conditional and lost its essence.

IV. The prosecution under APOSA and UP agents' use of lethal force violates Cartalia Rosario and her friends' human rights.

States are required to guarantee and preserve the rights included in a Convention that they ratify.¹²³ Applicant submits that the prosecution under APOSA violates the right to peaceful assembly **[A.]**, and UP agents' use of lethal force violates RTL **[B.]**.

A. Violation of Right to Peaceful Assembly

Right to Assembly should not to be subjected to prior authorization by the authorities.¹²⁴ Under APOSA, the failure to provide a notification one week prior to assembly renders it

¹¹⁹ *D.H.*[175,184,185], *Althammer*[10.2], CCPR-18[12]..

¹²⁰ *Folgerø*[84],*Kjeldsen* [52].

¹²¹ *Belgian Linguistics*[4], *Campbell*[].

¹²² Facts[24,26].

¹²³ ICCPR, Art 6,21, ACHR Art 4,15.

¹²⁴ SR Report-2016[21].

unlawful,¹²⁵ thus making the notification requirement a 'de facto authorization' procedure. In IHRL, advance notification is not necessary,¹²⁶ and should never be turned into a de facto authorization procedure.¹²⁷ The prior notice requirement acted as a hidden obstacle to this right.¹²⁸ The failure to notify authorities of an assembly does not render it unlawful¹²⁹ and should not be subject to criminal sanctions.¹³⁰ Therefore, the prosecution of Cartalia and her friends stands unjustified and imposes a disproportionate restriction on their right.¹³¹

B. Violation of RTL

1. Violation of RTL even in case of no death

The RTL can be violated even if there is no death,¹³² since it encompasses the right not to face conditions that impede or hinder access to a decent life or existence.¹³³ Various considerations such as the degree and type of force used and the nature of the injuries, use of force by State agents which does not result in death may disclose a violation of RTL, if the behaviour of the State agents, by its very nature, puts the applicant's life at serious risk even though the latter survives.¹³⁴ The use of 'indiscriminate callous force'¹³⁵

¹²⁵ Facts[29].

¹²⁶ *Skiba*.

¹²⁷ *Rassemblement*[119], *Ziliberberg*[28], IACHR Report-2011[137].

¹²⁸ *Ataman*[38].

¹²⁹ SR Report-2012[29], IACHR Report-2011[23,137], *Novikova*[163].

¹³⁰ Venice-Guidelines[36], *Gün*[83], *Akgö*[43].

¹³¹ *Bukta*[36], *Aldemir*[47], *Biçic*[56], *Long Beach*[47], *Collins*[54].

¹³² *Rochela*[123-128], *Makaratzis*[51].

¹³³ *Yakye*[161], *Juvenile*[156], *Gómez-Paquiyaauri*[128], *Myrna*[152], *Street Children*[144]. See also *L.C.B.*[36-41], *Hristozov*[108].

¹³⁴ *Makaratzis*[55], *Soare*[108,109]; *Trévalec*[55-61].

¹³⁵ Facts[30].

was clearly indicative of behaviour and intent of the State agents to take lives, thereby violating RTL.

Additionally, States must not hinder access to the conditions that guarantee a dignified life for children,¹³⁶ who, because of their physical and emotional development, require special protection.¹³⁷ UP did not provide this special protection.

2. State Responsibility

Any exercise of public power by State agents in violation of a protected right constitutes a failure on the part of State to uphold its duty to respect set forth in Article 1(1).¹³⁸ UP had the duty to prevent its agents, i.e. UP Police from violating RTL,¹³⁹ and act as guarantor of the right to life,¹⁴⁰ which it could not ensure.

Further, the use of force can be made only when it is “absolutely necessary”¹⁴¹ and “strictly proportionate”¹⁴². The indiscriminate and excessive use of lethal force by the police violates RTL.¹⁴³ Indiscriminate firing as a means of dispersal is not authorized, even in violent crowds.¹⁴⁴ Moreover, even if the use of force complies with the requirements of

¹³⁶ *Street Children*[144]; *Juvenile*[156].

¹³⁷ *Bulacio*[138]; *Street Children*[146], *Gómez-Paquiyaui*[164], *Juvenile*[147], *Servellón-García*[133], IACTHR OC-17/02[54].

¹³⁸ *Velásquez-Rodríguez* [169,170,171], *Godínez-Cruz*[178,179,180], *Neira Alegría*[63]; *Caballero*[56].

¹³⁹ *Cf. Escué-Zapata*[40].

¹⁴⁰ *Öneryıldız*[89].

¹⁴¹ *McCann*[148], *Erdoğan*[86], *Ramsaha*[286], *Giulian*[17].

¹⁴² *McCann*[149], *Dorzema*[85].

¹⁴³ *Kukhalashvil*[157], *Güleç*[71], *Grămadă*[70], *Güneş*[and *Ataykaya*].

¹⁴⁴ BPUFF[13,14], *Simsek*[91], SR Report-2014[75], Amnesty-International[6].

necessity and proportionality, a State may be held accountable for a failure to take due precautionary measures.¹⁴⁵ Thus, UP must be held accountable for the agents' action.

V. REPARATIONS

UP is obligated to ensure observance of the Convention.¹⁴⁶ CIL¹⁴⁷ recognizes States obligation to repair violations of HR adequately.¹⁴⁸ States should implement measures to integrally compensate victims,¹⁴⁹ and ensure rehabilitation.¹⁵⁰

Reparations may modify domestic legislation in order to fit international standards.¹⁵¹

Regarding Claim A, UP must ensure sufficient access to food and situations must be restored through *restitutio in integrum*.¹⁵² Concerning Claim B and C, the laws must be amended to make the decisions voluntary and less restrictive measures should be considered. In regards to Claim D, investigation must be carried out, and the responsible people should be punished.¹⁵³ Additionally, the State must rehabilitate the victims.

VI. PRAYER

MDC humbly prays before this Court to adjudge and declare that:

1. Applicant has *locus standi* before the Court and all claims are admissible.
2. FLP violates the Rosario family and others' HR.

¹⁴⁵ *McCann*[211].

¹⁴⁶ *Valentini-Bazzano*[10].

¹⁴⁷ *Velásquez-Rodríguez II*[25].

¹⁴⁸ Reparations p. 184; *Chinchilla* [261]. UN Reparations-Principle[18].

¹⁴⁹ *Maldonado Vargas* [150]; UN Reparations-Principle[20].

¹⁵⁰ UN Reparations-Principle[21].

¹⁵¹ *Olmedo-Bustos*[XII,4], UN Reparations-Principles[23(h)].

¹⁵² *Papamichalopoulos*[34], UN Reparation-Principles[19].

¹⁵³ *Five Pensioners*[175].

3. FLB violates Cartalia Rosario's and her family's HR.
4. FLE violates the rights of Catalia and other Penguinatics.
5. The prosecution under APOSA and UP agents' use of lethal force violates Cartalia Rosario and her friends' HR.
6. Consequently, reparations must be granted.

Respectfully submitted,

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Summary of Arguments –313 words

Arguments –3273 words