

**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 RESPONDENT**

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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
AHR	Autonomous Humanoid Robots
APOSA	Assembly, Public Order and Security Act
Art	Article
CC	Constitutional Court
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons 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
Ibid.	Ibidem
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
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
Res	Resolution
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	Wrt

## TABLE OF AUTHORITIES

### Treaties, Conventions and Charters

ACHPR	<i>African Charter on Human and Peoples' Rights, adopted 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986).</i>
ACHR	<i>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).</i>
ACHR AP	<i>Additional Protocol American Convention of Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador' opened for signature 17 November 1988, (entered into force 16 November 1999).</i>
ACtHR Protocol	<i>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).</i>
ACtHR Rules	<i>Organization of African Unity (OAU), African Court of Human and Peoples' Rights Rules of Court, (entered into force on 2 June 2010).</i>
BPUFF	<i>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.</i>
CBD	<i>United Nations, Convention on Biological Diversity, opened for signature 5 June 1992, (entered into force 29 December 1993).</i>
CRPD	<i>UN General Assembly, Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, A/RES/61/106 (entered</i>



into force on 3 May 2008).

- ECHR Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953).
- Geneva Convention International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).
- ICCPR *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- ICCPR OP *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- ICESCR *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
- Rio United Nations Framework Convention on Climate Change, *Rio Declaration on Environment and Development*, (14 June 1992; 9 May 1992 preamble), 1771 UNTS 107.
- Siracusa UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, E/CN/4/1985/4 (28 September 1984).
- Stockholm UN General Assembly, *Stockholm Declaration of the United Nations Conference in the Human Environment*, adopted 17 June 1972, U.N.

Doc. A/CONF.48/14 (1972).

- TFEU European Union, *Consolidated Version of Treaty on the Functioning of the European Union*, opened for signature on 25 March 1957 (entered into force 1 January 1958).
- UDHR UN General Assembly, *Universal Declaration of Human Rights*, adopted 10 December 1948, UNGA Res 217 A (III).
- UN Reparations- UN General Assembly, *Basic Principles and Guidelines on the Right Principle to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (21 March 2006).
- UNCLOS United Nations, *Convention on the Law of Sea*, (enacted 10 December 1982, entered into force 16 November 1994).
- UNCRC United Nations, *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
- UNESCO 1970 UN Economic Social and Cultural Organization, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, (adopted 19 November 1970, entered into effect 24 April 1972).
- VCLT United Nations, *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 115 UNTS 331 (entered into force 27 January 1980).

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- CCPR-22 Human Rights Committee, *General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion)*, 48<sup>th</sup> Sess., UN Doc CCPR/C/21/Rev.1/Add.4 (30 July 1993).
- CCPR-36 Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)*, 124<sup>th</sup> Sess., UN Doc. CCPR/C/GC/18 (2 November 2018).
- CESCR-12 Committee on Economic Social and Cultural Rights, *General Comment No.12: The Right to Adequate Food (Art. 11)*, 20<sup>th</sup> Sess, UN Doc E/C.12/1999/5 (12 May 1999).
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SR Report-2017	UN Human Rights Council, <i>Joint report of the Special Rapporteur on right to food</i> , UNGA 34 <sup>th</sup> Sess., UN Doc No. A/HRC/34/48.
UNGP	United Nations Special Representative of Secretary General, <i>Guiding Principles on Business and Human Rights</i> , Doc No. HR/PUB/11/04 (2011).
Venice-Commission	European Commission for Democracy Through Law, 'Venice Commission,' <i>Guidelines on Freedom of Peaceful Assembly</i> ' 83 <sup>rd</sup> Plenary Session, Doc No. CDL-AD(2010)020, (4 Jun 2010).
WHO-2000	World Health Organisation, <i>Global initiative for the elimination of avoidable blindness, 2000</i> Doc. No. WHO/PBL/97.61 Rev 2.
WHO-GAP	World Health Organisation, <i>Universal Eye Health Global Action Plan 2014-2019</i> .

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APOSA	Assembly, Public Order and Security Act
FLB	Federal Law on Blindness
FLE	Federal Law on Education
FLP	Federal Law on Pesticides

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*Sandra*

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<i>Murad Ali</i>	<i>State of Bihar v. Murad Ali Khan, AIR 1989 SC 1.</i>
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Const-Spain

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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 Roasario 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.
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. 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. 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

UP fulfilled its responsibility of meeting international obligations and balancing competing interests without causing irreparable harm to ecology. FLP had a precautionary approach, which was limited to the '2018 cheaper version of pesticides' and was in furtherance of the general welfare of the society.

### II. CLAIM B

FLB is aimed at reducing curable blindness to make the highest standard of health available to children. It is necessary to mention that MDC itself conducted research that attests to the safety and chances of success of the AI-empowered methods used under FLB, thereby differentiating it from experimentation. Additionally, Rosario family's religious decision-making may not be rationally considered and can put the best interests of Cartalia and the unborn child in jeopardy even in non-life threatening matters.

### III. CLAIM C

FLE was brought into force post the situation of violence in public schools for the purpose of protecting the rights of learners as well as to maintain public order. Education is State regulated and hence, UP has a wide margin of appreciation while deciding upon the extent and necessity of a restriction keeping in mind the legitimate aim. FLE's provisions are limited and reasonable.

### IV. CLAIM D

The prosecution of Cartalia and her friends under APOSA was justified since the by virtue of the lack of notification the assembly had become unlawful. Notification procedures differ significantly from procedures needed for obtaining permissions.

Due to the unanticipated procession encroaching upon private residence, the carrying of threatening weapons and continuous movement despite warning there existed genuine belief about the degree of threat to the lives of individuals which justified use of force.

## PRELIMINARY OBJECTIONS

### I. Jurisdiction

Respondent submits that UP is no longer a part of the TCU and that IP has no right of secession<sup>1</sup> since it failed to prove that any grievances took place and didn't engage in alternative remedies for peaceful settlement<sup>2</sup> alongside flouting established procedures of withdrawal.<sup>3</sup>

### II. *Locus Standi* of Applicant

#### A. The Court has discretion to allow or deny access.

A plain reading<sup>4</sup> of Article 5(3) of the Protocol<sup>5</sup> contains the words 'may entitle' and 'relevant NGOs', signifying that an observer status and a declaration under Article 34(6)<sup>6</sup> do not grant automatic access to the Court. The THHRC has complete discretion to allow or deny access.<sup>7</sup> This requirement is in line with the procedural law of other HR systems.<sup>8</sup>

#### B. Applicant has no legally recognized interest before the Court, and lacks authorization to represent victims.

While the Commission has recognized the principle of *actio popularis*,<sup>9</sup> the applicant cannot rely on the same, as the principle finds no mention in the THHRC Protocol<sup>10</sup>. It has also been rejected as a principle of international law in similar contexts by the ICJ.<sup>11</sup>

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<sup>1</sup> Manley[24, 26].

<sup>2</sup> Raic[p. 332]; See also Kantagese Peoples'.

<sup>3</sup> VCLT Arts 54, 56.

<sup>4</sup> VCLT Art 31.

<sup>5</sup> ACtHR Protocol Art 5(3).

<sup>6</sup> *Id*, Art 34(6).

<sup>7</sup> Mutua[355], Udombana[829-30], *Juma*[3].

<sup>8</sup> ECHR Art 34, Wundeh Eno[229-30].

<sup>9</sup> *SERAC*[49], *Article 19*[65].

An action before the THHRC is only allowed if the applicant justifies its own legitimate, legally recognized and protected interest in initiating it and that must be independently determined by the Court in each case.<sup>12</sup> In the present case, the Applicant has only ‘consulted’ the victims<sup>13</sup> and thus, lacks ‘authorization’ and independent legal interest to access the court represent them. Thus, it does not amount to a ‘relevant’ NGO, and hence, its claim should be denied.

### III. Admissibility of claims

The ‘exhaustion rule’<sup>14</sup> is a cardinal principle of customary international law,<sup>15</sup> which allows UP to resolve claims domestically before being confronted with an international proceeding, underlining THHRC’s subsidiary<sup>16</sup> and complementary nature. Therefore, this Court may deal with such matters for which domestic remedies have been pursued and exhausted in accordance with generally recognised principles of international law.<sup>17</sup>

1. Wrt **Claim A**, if the Applicant alleges that said decisions violate the victims’ right to food, it must approach UP’s CC, as it has exclusive jurisdiction over such claims<sup>18</sup> and is capable of rectifying the alleged irregularities and violations.<sup>19</sup> The validity of FLP was not questioned before CC. Hence, local remedies that are available and effective were not exhausted.

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<sup>10</sup> ACtHR Protocol.

<sup>11</sup> *South West Africa*[47].

<sup>12</sup> *Tanganyika*[24-26].

<sup>13</sup> Facts[32].

<sup>14</sup> ACHPR Art 56(5).

<sup>15</sup> *Interhandel*[p.27], *ELSI* [50], ECHR Art 35(1), ICCPR OP Arts 2, 5(2), ACHPR Art 56(5).

<sup>16</sup> *Ilesanmi*[44]; *Scordino*[140]; *Interhandel*[25].

<sup>17</sup> ACHPR Art 56(5); *Jawara* [28/30]; *Akdivar*[65]; *Gallardo*[26].

<sup>18</sup> Facts[2].

<sup>19</sup> *Brewer-Carias*[88], *Díaz-Peña*[124-25].

2. Wrt **Claim B**, the right is subject to legitimate restrictions that are in line with UP's domestic laws<sup>20</sup> and international obligations.<sup>21</sup> The mere fact that a domestic court did not rule in favour of the applicant does not alone mean domestic remedies were unavailable or the proceedings were unfair. This Honourable Court is not a court of appeal.
3. Wrt **Claim C**, the matter was brought before the CC, but the Court has not yet made a judgment on the 'merits' of the matter.<sup>22</sup> Therefore, in the absence of a final judgement on 'substance of the situation'<sup>23</sup> by the CC, local remedies have not been exhausted. Further, the 'unverified' comments by the Chief Justice,<sup>24</sup> do not constitute the judgment of the Court, and therefore, Applicant should not be allowed to speculate on the effectiveness of domestic remedies or prospects of success.<sup>25</sup>
4. Wrt **Claim D**, the matter was not brought before the domestic courts. Recourse to ordinary courts must always be exhausted.<sup>26</sup> In any case, the State's failure to provide effective domestic remedies cannot be rashly presumed.<sup>27</sup> This must be proven through sufficient reason and evidence;<sup>28</sup> mere belief is not sufficient to exempt the applicant.<sup>29</sup>

Therefore, all claims are inadmissible.

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<sup>20</sup> Facts[22].

<sup>21</sup> Facts[6], UNCRC Art 3, CRPD Art 7(2).

<sup>22</sup> Facts[28].

<sup>23</sup> *Lassad*[8.3]

<sup>24</sup> Facts[28].

<sup>25</sup> *Velasquez Rodriguez*[62].

<sup>26</sup> *Cudjoe*[14]; *PS*[5.4].

<sup>27</sup> *Anuak*[58], *Velásquez-Rodríguez*[60], *Godínez-Cruz*[63], *Fairén-Garbí*[84].

<sup>28</sup> *See also* ACtHR Rules 34, *Escolá*[30], *Guimarães*[18].

<sup>29</sup> *Zuniga*[43], *Trindade*[134].



## MERITS

### I. FLP DOES NOT VIOLATE ROSARIO FAMILY AND OTHERS' HUMAN RIGHTS.

Respondent submits that FLP is not in violation of any fundamental human rights as [A.] FLP fulfills international obligations [A.] There exists right to nutritious food [B.] FLP is a reasonable restriction [C.] No right to repatriation [D.]

#### A. FLP fulfilled international obligations.

Every State is, by operation of the precautionary principle,<sup>30</sup> required to reduce activities<sup>31</sup> that might cause environmental damage<sup>32</sup> and might be contrary to rights of other States,<sup>33</sup> even in the absence of proof.<sup>34</sup> A ban on '2018 cheaper pesticides' was brought to fulfil international obligations customary<sup>35</sup> and otherwise<sup>36</sup> since there was an overlap between the chemical deposits and production timeline at Rosapest Inc.<sup>37</sup>

The moral differences between humans and animals shouldn't deter the safeguarding of certain 'animal rights', in a similar way to human rights.<sup>38</sup> States have recognised avian and aquatic animals as legal persons<sup>39</sup> and the CC judgment<sup>40</sup> was in the same strain.

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<sup>30</sup> *Case-17*[135].

<sup>31</sup> IUCN-2007[6-8].

<sup>32</sup> Munro[xi-xii]. CBD Art 3.

<sup>33</sup> *Corfu-Channel*[22]; *Lake-Lanoux*[285], *Facts*[12].

<sup>34</sup> *UK/ECom*[100]; *Aphama/CEU*[6]; *EFTA/Norway*[31].

<sup>35</sup> *Trail-Smelter*[1907]; *Nuclear-Tests*[4].

<sup>36</sup> UNCLOS Art 64.

<sup>37</sup> *Facts*[12].

<sup>38</sup> *Hermann* (Opinion Pinto de Albuquerque)[2].

## **B. There exists right to nutritional food.**

Individuals should have access to sufficient, safe and nutritious food free from adverse substances<sup>41</sup> that meets their dietary needs for a healthy life<sup>42</sup> in a sustainable way without hindering other human rights.<sup>43</sup> Attributing adversities to FLP is incorrect since not only had the farmers always relied on expensive pesticides prior to the '2018 cheaper pesticides' but also because reliance on hazardous pesticides is a short-term solution undermining the rights to adequate food and health for present and future generations.<sup>44</sup>

## **C. FLP is overall a reasonable restriction.**

States guarantee the right to work and trade<sup>45</sup> however the same shouldn't be granted for harmful activities in the interest of general welfare.<sup>46</sup> Limitations<sup>47</sup> may be applied if they're neither abusive nor arbitrary.<sup>48</sup> FLP is a partial limitation on specifically '2018 cheaper version of pesticides' and is prescribed by law<sup>49</sup> since it is accessible<sup>50</sup> and precise.<sup>51</sup>

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<sup>39</sup> *Karnail Singh*[79]; See also *López Ostra*[51], *Guerra*[60], *Orangutána Sandra*[2]; *Chimpanzee Cecilia* [p. 44]

<sup>40</sup> *Facts*[13].

<sup>41</sup> CESCR-12[14], Rep-1999[8].

<sup>42</sup> FAO-Guidelines[15].

<sup>43</sup> *Id.*

<sup>44</sup> SR Report-2017[2]; See also Res-1984[12], FAO-Toolbox[3.7], OHCHR-34[p. 3].

<sup>45</sup> ACHR AP Art 6, ICESCR Art 6.

<sup>46</sup> *Balram*[40].

<sup>47</sup> ACHR AP Art 5, ICESCR Art 4.

<sup>48</sup> *Artavia-Murillo*[273].

<sup>49</sup> *Islam-Ittihad*[43]; *Konaté*[131].

<sup>50</sup> *Magyar Jeti*[59]; *Karácsony*[123].

<sup>51</sup> *Muhafize*[56].

Laws aimed at environmental protection are legitimate<sup>52</sup> and guarantee the right to sustainable environment<sup>53</sup> including preservation of fauna<sup>54</sup> and form a strong link between the possible degradation of the environment and IHRL<sup>55</sup> affecting present and future generation's life.<sup>56</sup>

UP is best equipped to assess the necessity<sup>57</sup> of FLP especially for conserving and protecting the environment<sup>58</sup> as the state of marine environment depends considerably on activities carried out on land.<sup>59</sup>

Additionally, Rosapest Inc. too had a responsibility to honour the principles of IHRL when faced with conflicting requirements<sup>60</sup> as protection of ecology should take precedence over the industry.<sup>61</sup> Hence UP's precautionary approach was necessary to prevent further damage to the ecology.<sup>62</sup>

#### **D. No right to repatriation.**

The statue of MP is kept safely at a museum-cum-prayer area at Perrigma, which is better situated for access of all.<sup>63</sup> As IP constitutes a part of UP, any request for repatriation

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<sup>52</sup> *Valley*[57].

<sup>53</sup> *OC-23/17*[51]; *Sustainable Environment*[51].

<sup>54</sup> *Pulp-Mills*[262]; *O/C 23/17*[129].

<sup>55</sup> *Kawas-Fernández*[148] *OC-23/17*[47].

<sup>56</sup> *ACPHR/GC/3*[41] *CCPR-36*[62]; *Stockholm*[1]; *Rio*[1].

<sup>57</sup> *Öneryıldız*[107]; *Kimef*[58]; *D.H.*[196].

<sup>58</sup> *Depalle*[81].

<sup>59</sup> *Res-2017*[4/57].

<sup>60</sup> *UNGP*[23].

<sup>61</sup> *MC Mehta-1997*[23-25, 33,34,39].

<sup>62</sup> *SERAC* [67]; *TFEU*[191(2)]; *Rio*[15], See also *Murad Ali*[8-10]; *Tarun Bharat*[11].

<sup>63</sup> *Facts*[17].

within the State of origin doesn't arise alongside the lack of proper inventorying prior to the move.<sup>64</sup>

## **II. FLB DOES NOT VIOLATE CARTALIA ROSARIO AND HER FAMILY'S HUMAN RIGHTS.**

Respondent submits that FLB is not in violation of any fundamental human rights as FLB is reasoned and justified **[A.]** Religious decision making detrimental to health **[B.]** No arbitrary and unlawful interference with privacy and family life **[C.]** Cartalia and unborn child's best interests are paramount **[D.]**

### **A. FLB is reasoned and justified.**

The life of a child is paramount and necessarily trumps all other rights.<sup>65</sup> FLB is an accessible and foreseeable restriction<sup>66</sup> where the State had a wide margin of appreciation<sup>67</sup> thereby determining FLB as the means best suited to achieving the aim<sup>68</sup> of general welfare<sup>69</sup> and public health and interest especially in cases of the disabled.<sup>70</sup> FLB was a response to the pressing social need<sup>71</sup> of providing the highest attainable standard of children's health<sup>72</sup> while balancing competing interests.<sup>73</sup>

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<sup>64</sup> Zsuzsanna[91,07]; See also UNESCO 1970 Art 1, Art 7.

<sup>65</sup> Plastine[p. 123].

<sup>66</sup> *Sunday Times*[49].

<sup>67</sup> *Izzettin*[83]; *Latter-Day Saints*[39].

<sup>68</sup> *Dubska*[176], *Van Der Heijden*[54]; *Ireland*[207].

<sup>69</sup> ACHR Art 30, ACHR AP Art 5.

<sup>70</sup> *Ximenes Lopes*[88–90].

<sup>71</sup> *Sindicatu*[132]; *Koretsky*[55].

<sup>72</sup> UNCRC Art 24.

<sup>73</sup> *Tammer*[60]; *Pedersen*[68].

## **B. Religious decision making detrimental to health.**

Religious decision making like that of Cartalia's parents has been considered detrimental to a child's health and best interests, even in non-life-threatening cases,<sup>74</sup> it is thus, in the best interests of Cartalia and the baby that avoidable blindness be corrected.<sup>75</sup>

UP doesn't need to grant Penguistics special statuses or privileges.<sup>76</sup> Freedom of religion<sup>77</sup> and parental autonomy though important, aren't absolute<sup>78</sup> and don't confer a right to deny legislation that applies neutrally and generally<sup>79</sup> without categorical exclusions<sup>80</sup> or clear proof of discrimination.<sup>81</sup>

## **C. No arbitrary or unlawful interference with privacy and family life.**

FLB is not an arbitrary and unlawful interference with privacy<sup>82</sup> since it is vested in public interest and improving health.<sup>83</sup> Additionally, methods employed under FLB cannot be termed as experimentation since MDC itself found them to be 99% safe and 90% successful.<sup>84</sup>

The Rosario's went on till the highest court of appeal, where the facts were examined

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<sup>74</sup> *Re Sampson*[643-644], *Re Karwath*[150].

<sup>75</sup> *Auckland Healthcare Services*.

<sup>76</sup> *Religionsgemeinschaft*[92]; *Latter- Day Saints*[34]; *Astley and Francis* (1994) [p. 171].

<sup>77</sup> ICCPR Art 18, ACHR Art 12, UNCRC Art 14.

<sup>78</sup> *Eweida*[80], *Kalaç*[27].

<sup>79</sup> *Fränklin-Beentjes*[46].

<sup>80</sup> *US/Virginia*[518].

<sup>81</sup> *Philadelphial/EEL*[616].

<sup>82</sup> ACHR Art 12, UNCRC Art 16, ICCPR Art 17, CRPD Art 22.

<sup>83</sup> *Bogumil*[77].

<sup>84</sup> *Facts*[15].

comprehensively.<sup>85</sup> State interest in intervening in matters of parental choice determined by religion is stronger<sup>86</sup> because parents' unconsidered judgment deserves less deference<sup>87</sup>.

Religion derived age of maturity may not be a significant marker of adulthood<sup>88</sup> hence Cartalia's competence as a minor is fundamentally flawed<sup>89</sup> because her will isn't fully free<sup>90</sup> and is greatly influenced by her parents.<sup>91</sup> In such situations a potential source of consent might be the court's power to veto the minor's decision<sup>92</sup> and administration of medication may be done beyond refusal.<sup>93</sup>

#### **D. Cartalia and unborn child's best interest are paramount.**

The best interests of child<sup>94</sup> cover the possibility to enjoy the highest attainable standard of health,<sup>95</sup> including prevention of avoidable blindness.<sup>96</sup> The Rosario's cannot be entitled to decide against their children's health and development;<sup>97</sup> regardless of contradiction's

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<sup>85</sup> *Herrera-Ulloa*[167].

<sup>86</sup> Trahan[p. 307].

<sup>87</sup> Greenawalt[p. 799].

<sup>88</sup> Alicia Facio[p, 21,30]; Ofra[p.15-16]; See also *Kumar*[12].

<sup>89</sup> Brazier[p. 85, p. 91].

<sup>90</sup> *Re E*[224].

<sup>91</sup> Ó Néill[368-389].

<sup>92</sup> Emma[p. 4].

<sup>93</sup> *X. v. Finland* [220].

<sup>94</sup> UNCRC Art 3, 5, 14; CRPD Art 7.2, *Christian Education South Africa*[41]; *S v. M*[15, 22].

<sup>95</sup>CRC-14[1]; CESCR-14[1].

<sup>96</sup> WHO-2000[1.3]. See also WHO-GAP[6-7].

<sup>97</sup> *Elsholz*[50]; *T.P. K.M.*[71], *Ignaccolo-Zenide*[94], *Nuutinen*[128].

Cartalia and the baby's interests shall prevail.<sup>98</sup>

In the grey area of non-life-threatening yet curable afflictions majority are resolved in favour of intervention<sup>99</sup> since quality of life, as distinct from physical survival, can serve as an important deciding factor.<sup>100</sup> This is because, with blindness carries emotional, social and economic costs to the child and many of the conditions associated with blindness in children are also causes of child mortality therefore closely linked to child survival.<sup>101</sup> UP therefore assumed the position of a guarantor and undertook FLB as a special measure<sup>102</sup> for the general health and welfare of the children.

### **III. FLE DOES NOT VIOLATE THE RIGHTS OF CARTALIA AND OTHER PENGUINATICS.**

Respondent submits that FLE is not in violation of Cartalia or Penguinatics human rights as FLE is a reasonable restriction **[A.]** No violation of Right to Education **[B.]** Right to Religion and Expression are not absolute **[C.]** FLE is not discriminative **[D.]**

#### **A. FLE is a reasonable restriction.**

FLE is prescribed by law<sup>103</sup> since its sufficiently precise in defining the aims and prohibitions clearly.<sup>104</sup> Countries with similar legislations do not define the words such as

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<sup>98</sup> *Gard*[107-108].

<sup>99</sup> Adhar R and Leigh I (2005) *Religious Freedom in the Liberal State* Oxford University Press, Oxford.

<sup>100</sup> Wadlington[p. 311].

<sup>101</sup> *Clare-Vision*[p. 227].

<sup>102</sup> *Mapiripán Massacre*[p. 1685]; *Yakye Axa*[p. 1617]; *Juvenile Reeducation*[p. 1446]; *OC-17/02*[69, 103]; *Gómez-Paquiyaui Brothers*[161]; *Street Children*[146].

<sup>103</sup> *Karaduman*[p. 105-106].

<sup>104</sup> *Facts*[24].

“clothing”, “concealment” etc.<sup>105</sup> and leave them open for interpretation.<sup>106</sup> It pursues *inter alia* the legitimate aims of preventing disorder<sup>107</sup> and protecting rights and freedoms of others<sup>108</sup> in schools<sup>109</sup> and is proportionate to the aims of preservation of the conditions of public order and inclusive society motivated by “living UP in community”<sup>110</sup> making FLB necessary in a democratic society<sup>111</sup>

### **B. No violation of Right to Education.**

The right to education is not absolute as it may give rise to implicitly accepted limitations, bearing in mind that it by its very nature calls for regulation by the State.<sup>112</sup> Videos made by learners have previously fuelled protests that turned violent and have been detrimental to the interests of disabled persons<sup>113</sup> and other learners.<sup>114</sup> Hence, FLE’s limited scope<sup>115</sup> in schools with relation to covering the face has a reasonable relationship of proportionality<sup>116</sup> with the legitimate aims pursued.<sup>117</sup>

### **C. Right to Religion and Expression are not absolute.**

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<sup>105</sup> L2010-1192[1-3], L2004-228 [1-2].

<sup>106</sup> *Steel*[56]; *Olsson*[79].

<sup>107</sup> CCPR-22[8].

<sup>108</sup> *Kose*[p. 12].

<sup>109</sup> *Aktas*[p. 8-10].

<sup>110</sup> *S.A.S*[157].

<sup>111</sup> *Dakir*[54].

<sup>112</sup> *Belgian Linguistics*[p. 28]; See also *Golder*[38]; *Fayed*[65].

<sup>113</sup> *Facts*[23], Res-1975[10], CRPD Art 16.

<sup>114</sup> *Facts*[23], UNCRC Art 3.3.

<sup>115</sup> *Sonia Yaker (DO)*[9].

<sup>116</sup> *Soering*[110].

<sup>117</sup> *Palau-Martinez*[43].



States have wide margin of appreciation especially in the absence of general consensus to assess the severity of the situation as well as restrictions on attire.<sup>118</sup> FLE is unrelated to the Penguinatics affiliation to a religion and was created with discretion<sup>119</sup> post immediate assessment of the needs of the community.<sup>120</sup>

The threats to public order were pressing and substantial,<sup>121</sup> and even in the absence of violence<sup>122</sup> in the future were sufficient to necessitate the enforcement of FLE for regulating expression.

#### **D. FLE is not discriminative.**

FLE has an objective and reasonable justification<sup>123</sup> for its application. It was evident that the State faced multiple difficulties<sup>124</sup> while investigating the instances of violence and misinformation during the protests. Hence, was the least restrictive measure in the context of security and identity verification reasons.<sup>125</sup> The restriction would more so prevent any malafide misrepresentation.

### **IV. PROSECUTION UNDER APOSA AND UP AGENTS USE OF LETHAL FORCE DOES NOT VIOLATE CARTALIA ROSARIO AND HER FRIENDS' HUMAN RIGHTS.**

Respondent submits that the prosecution of Cartalia and her friends under APOSA and

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<sup>118</sup> *Dogru*[62].

<sup>119</sup> *Kjeldsen*[53], *X v. UK*[p. 27].

<sup>120</sup> *Çiftçi*p. 2].

<sup>121</sup> *Murphy*[15, 48, 54, 59].

<sup>122</sup> *Linak*[27-8].

<sup>123</sup> *Belcace*m̄[p. 3].

<sup>124</sup> *Facts*[23].

<sup>125</sup> *Mann Singh*[p. 6, 7].

use of force was not in violation of any fundamental human rights as the assembly was not lawful [A.] The assembly was reasonably restricted [B.] No RTL violations. [C.]

## **A. Assembly was not lawful.**

### **1. Notification procedure flouted.**

APOSA constitutes a notification requirement as a facilitative procedure consistent with international law.<sup>126</sup> Cartalia and her friends' procession met the criteria of a 'public assembly' since AHR's were used as a 'means' to gather for a common expressive purpose,<sup>127</sup> however it became unlawful due to a lack of notification.<sup>128</sup>

APOSA's notification procedure doesn't constitute an interference<sup>129</sup> since it enables authorities to allow for necessary preventive security measures in order to guarantee the rights and legal interests of others,<sup>130</sup> smooth conduct of any assembly, and prevent disorder.<sup>131</sup> Hence, a notification is compatible with permissible limitations laid down under ICCPR<sup>132</sup> and ACHR.<sup>133</sup>

### **2. No right of assembly on private property.**

The right of peaceful assembly does not bestow an automatic right of entry to private

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<sup>126</sup> IACHR Report-2011[137]; AComHPR-2014[p. 60]; Venice Commission[4.1]; *Kudrevičius*[147]; Const-Spain Art 21.

<sup>127</sup> Facts[29, 30].

<sup>128</sup> *Vyerentsov*[52], Facts[29].

<sup>129</sup> *Rassemblement Jurassien*[p. 119].

<sup>130</sup> *Éva*[37].

<sup>131</sup> *Berladir*[42]; See also *Lashmankin*[435].

<sup>132</sup> *Kivenmaa*[9.2].

<sup>133</sup> ACHR Art 15.

property<sup>134</sup> and UP common law prohibits assembling, protesting and demonstrating on private property.<sup>135</sup> Despite prevalent precedents, Cartalia and her friends caused the protest to march inside the Governor's private residence,<sup>136</sup> thereby adding to the unlawfulness of the assembly.

## **B. The Assembly was reasonably restricted.**

### **1. Assembly was not peaceful.**

Peaceful marches have been a common feature in UP.<sup>137</sup> The Assembly controlled by Cartalia and her friends fails the presumption of peacefulness<sup>138</sup> due to a summation of factors that indicated violent intentions<sup>139</sup>- the flouting of the notification procedure,<sup>140</sup> history of escalations,<sup>141</sup> the carrying of spears capable of causing bodily harm,<sup>142</sup> the persistent entrance into private residence<sup>143</sup> despite warnings<sup>144</sup> accompanied by incessant loud shrieking noises.<sup>145</sup>

There existed a genuine belief<sup>146</sup> that there was imminent threat to the rights and lives<sup>147</sup>

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<sup>134</sup> *Appleby*[47]; *Taranenko*[78].

<sup>135</sup> Facts[11].

<sup>136</sup> Facts[30].

<sup>137</sup> Facts[18].

<sup>138</sup> *Saghatelyan*[230-233], *Karpyuk*[198-207, 224, 234]; See also SR Report-2013[50], SR Report-2012[25], *Christian Democratic*[23].

<sup>139</sup> *Lashmankin*[402]; *Stankov*[77], *Fáber*[37]; *Cisse*[37].

<sup>140</sup> Facts[29].

<sup>141</sup> Facts[23].

<sup>142</sup> Criminal Code B-H Art 513, PAL-Bosnia Art 13.8.

<sup>143</sup> Facts[11, 18, 30].

<sup>144</sup> Venice Commission[p. 78].

<sup>145</sup> Facts[30].

<sup>146</sup> *Armani Da Silva*[248].

of individuals necessitating the use of force and denying the same would cause an unrealistic burden on law enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others.<sup>148</sup>

## **2. Prosecution under APOSA was not an interference with HR's**

Cartalia and her friends were responsible for controlling the hologram procession<sup>149</sup> and failed to display diligence by placing themselves in a situation of unlawfulness when they held a public gathering in the planned location. There was no particular urgency or compelling circumstances, which could have justified this course of action.<sup>150</sup>

The prosecution under APOSA fulfilled the test<sup>151</sup> of legality – APOSA's definition of public assembly is in consonance with international standards<sup>152</sup> and the consequences of holding one without notification<sup>153</sup> are reasonably foreseeable; legitimacy – the prosecution was made as a reasonable restriction to respect the rights of the individuals in the private residence<sup>154</sup>; as well as maintain and preserve public order<sup>155</sup> due to the possibility of escalation<sup>156</sup> and; proportionality – owing to a wide margin of appreciation,<sup>157</sup> the

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<sup>147</sup> IACHR Report-2009[118]; SR Report-2014[58, 72-73], Res-2014[10]; Res-1979 Art 3: BPUFF[9].

<sup>148</sup> *McCann*[200]; *Andronicou*[192]; *Bubbins*[138].

<sup>149</sup> Facts[31].

<sup>150</sup> *Berladir*[57], *Bukta*[35, 36].

<sup>151</sup> *Siracusa*[1B].

<sup>152</sup> *Nowak*[373].

<sup>153</sup> *Silver*[88]; *Rekvényi*[34]; *Tammer*[37]; *C-5/85*[39].

<sup>154</sup> ICCPR Art 21, ACHR Art 15, 13(2).

<sup>155</sup> *Kudrevičius*[79], *Prince*[43].

<sup>156</sup> *Chorherr*[31-33].

<sup>157</sup> *Coster*[105]; *Barraco*[42]; *Kasparov*[86].

interference was necessary, sufficient and relevant<sup>158</sup> in furtherance of legitimate aims - against any alleged HR violation.

### **C. NO RTL VIOLATION**

THHRC only covers human beings within its scope<sup>159</sup> and no RTL can be accorded to robots<sup>160</sup> and AI.<sup>161</sup>

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<sup>158</sup> *Marper*[101]; *Obote*[40].

<sup>159</sup> *Artavia Murillo*[223].

<sup>160</sup> *Robots-Personhood*[p. 824-826].

<sup>161</sup> *AI-Liability* [p. 38].

## REPARATIONS

UN Basic Principles on Reparation are mere guidelines that neither have binding force, nor create rights/obligations.<sup>162</sup>

- I. **Damages:** Claims for pecuniary or non-pecuniary damages do not stand, as the finding of a violation in itself constitutes just satisfaction.<sup>163</sup> Interferences in the form of federal laws were proportional and not causal links to alleged adversities.
- II. **Cost and Expenses:** Total legal expenses must have been incurred by the applicant and be reasonable as to quantum.<sup>164</sup>
- III. **Specific reparations:** No specific reparations<sup>165</sup> warrant just cause.

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<sup>162</sup> Buyse[p. 139].

<sup>163</sup> *Piersack*[12].

<sup>164</sup> *Bottazzi*[30].

<sup>165</sup> UN Reparations-Principle[18].

## PRAYER

Respondent humbly prays before this Court to kindly adjudge that:

1. Applicant has no *locus standi* and each of the Applicants claim is inadmissible.
2. FLP does not violate the Rosario family and others' human rights.
3. FLB does not violate Cartalia Rosario and her family's human rights.
4. FLE does not violate the rights of Cartalia and other Penguinatics.
5. The prosecution under APOSA and UP agent's use of lethal force does not violate Cartalia Rosario and her friends' human rights.

Respectfully submitted,

Counsel for the Respondent

Summary of Arguments – 273 words

Arguments – 3228 words