

**14th World Human Rights Moot**  
**Court Competition**  
**20-27 May 2022 and 18-21 July 2022**  
**Geneva, Switzerland**

**IN THE MATTER BETWEEN**

**SEAGULL, CIOPPINO & QUEEN MELLISSA REFUGEES**

**VERSUS**

**THE REPUBLIC OF LARIDAE**

**MEMORIAL FOR THE APPLICANT**

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## LIST OF ABBREVIATIONS

AC	AC
ACHR	American Convention on Human Rights
Applicants	Named applicants in the proceedings
ArCh	Archelon Charter
AS	Admiral Seagull
CEDAW	Committee on the Elimination of Discrimination against Women
CJ	Chief Justice
CZ	Contiguous zone
DC	Dr Cioppino
FoE	Freedom of expression
GCs	Geneva Conventions

HRIW	Human Rights in International Waters
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
IHRL	International human rights law
IRL	International refugee law
LAA	Laridae Abortion Act
LAFDRA	Laridae Armed Forces Discipline and Regulation Act
LCC	Laridae Constitutional Court
LIO	Laridae Intelligence Organisation

LMP	Laridae Magistrates Court
LSC	Laridae Supreme Court
MHA	Minister for Home Affairs
ML	Maritime Law
MPA	Marine Private Army
NIAC	Non-international AC
NS	National security
QM	The Queen Mellissa
QMR	The Queen Mellissa Refugees
RC	Refugee Convention
RoP	Inter-American Commission on Human Right's Rules of Procedure
RtFT	Right to fair trial

RtH	Right to health
RtL	Right to life
RtW	Right to work
SASA	Sternidae Anti-enablers and Sanctions Act
SMoD	Sternidae Ministry of Defense
SRA	Save Refugees Association
UN	United Nations
UNHCR	UN High Commissioner for Refugees

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ACHR	African Charter of Human and Peoples' Rights (Banjul Charter), 27/06/1981
ECHR	European Convention on Human Rights, 04/11/1950
IACHR	Inter-American Convention on Human Rights, 22/11/1969
ICCPR	International Covenant on Civil and Political Rights, 16/12/1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 16/12/1996
RC	Convention and Protocol Relating to the Status of Refugees, 22/04/1954 and 4/10/1967
UNCLOS	United Nations Convention on the Law of the Sea, 10/12/1982

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GC25	General Comment No. 25 on Article 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, 12 July 1996
GC32	General Comment No. 32 on Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007
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John Clifford Wallace, 'Comparative Perspectives on the Office of Chief Justice' (2005) 38 *Cornell International Law Journal* 219

## SUMMARY OF FACTS

Laridae is a country on the Archelon Continent, most of the inhabitants of which adhere to the Arc religion. It has been subject to repeated attacks by Rhakha-Rhaka, an armed group from Sternidae on the Crocodilos Continent. Rhakha-Rhaka seek to impose their radical interpretation of the Khara religion and has attacked targets in Laridae and Sternidae in pursuit of this aim. As a result of Sternidae's alleged failure to protect Arc believers, Laridae passed SASA in 1993. SASA imposes economic sanctions on Sternidae and sanctions individuals considered to be key actors of oppression. From 1996-1999, there was an armed conflict between Laridae and the Rhakha-Rhaka, followed by an occupation by Laridae of parts of Sternidae from 1999 to 2021. After Laridae withdrew its troops from Sternidae in August 2021, Rhakha-Rhaka recommenced attacks across Sternidae on land and at sea.

AS is a former Admiral of the Laridae navy who is also a citizen of Sternidae. She is married to DC, a physician who owns a private medical practice. In summer of 2021, the couple visited Sternidae on the cruise ship QM. During this trip, AS met with GT, DC's uncle. GT is a Sternidaen politician who opposed the military occupation by Laridae and is on the SASA sanctions list due to his alleged association with Rhakha-Rhaka. During their meeting, AS and GT discussed how to influence Laridaen politicians to repeal SASA.

After Laridae soldiers departed, Rhakha-Rhaka attacked the QM in port, but were fought off by employees of MPA, a private military company which has frequently been employed by Laridae. AS and DC were at the scene and boarded the QM together with the MPA men and a large number of civilians, most of whom were *Khara*-adherent Sternidae nationals. AS took control of QM, setting sail to Laridae.

On the High Seas, the MPA men detained Cindy Smpimpinto on suspicion of being a member of the Rhakha-Rhaka. They subjected her to prolonged interrogation and acts of torture. She later discovered that she was 5 weeks pregnant as a result of alleged rape by one of the men. DC performed an abortion on her, although this was prohibited under the LAA. Smpimpinto subsequently became weak and died.

While on the High Seas, some persons onboard the QM died as a result of a missile attack by Laridae on Rhakha-Rhaka controlled boats which were attempting to capture the QM. After the QM reached Laridae's contiguous zone, it was denied entry into its territorial waters for over a week because of Laridae's fear that Rhakha-Rhaka terrorists were onboard. During this time, 48 persons died due to food, water and medicine shortages. After the QM was allowed to dock, foreigners were put in immigration camps, where families were separated, and many people were taken by the LIO for questioning and allegedly never seen again. Persons with criminal records of violence were deported back to Sternidae, after declining the alternative of being sent to Wahala. Local NGOs have brought several cases to the Laridaen courts on behalf of the refugees, but there is a significant backlog.

As a result of her association with GT, AS was charged under SASA which criminalises acting on behalf of Sternidae and aiding a sanctioned individual. She was found guilty of both of these offences, as well as offences under Laridaen maritime law, after a trial in camera in a military court and sentenced to 43 years in prison. Due to the abortion, DC was stripped of his practicing license under the LAA.



## SUMMARY OF ARGUMENTS

1. The trial and conviction of AS for offences under SASA and against Laridaen ML contravene her FoE, RtW, and RtFT. The interference of SASA with AS' FoE is not justified on the basis of NS and is disproportionate. By criminalising her compensated efforts to campaign against the sanctions regime, Laridae also violated AS' RtW. Finally, AS' conviction constituted multiple violations of her RtFT, namely: her right to a public trial, her right to be heard by an ordinary court, her right to be presumed innocent, and the prohibition on double jeopardy.
2. The cancellation of DC's practising licence is a violation of his RtW. Firstly, the limitation of his right was not determined by law. The LMC's decision to apply s.35 LAA to the High Seas was inconsistent with international law as there was no basis for prescriptive jurisdiction. In any event, the interference was disproportionate as the LAA accounting for the rights of Smpimpinto. By prohibiting abortion from 5 weeks even in cases of rape, the LAA strikes an unreasonable and arbitrary balance between protection of the foetus and the rights of the women, and so violates the right to privacy.
3. Laridae's actions both extraterritorially and within its territory also violated the human rights of the QMR. Laridae violated the human rights of the QMR in respect of (1) the events occurring on the High Seas, (2) events occurring in the CZ and (3) events occurring in Laridae. The interrogation, rape and detention of Smpimpinto by MPA, which were attributable to Laridae, violated her rights to liberty and freedom from torture. The failure to investigate constituted a further violation of her right to redress. Laridae also violated the right to life of those who died during the missile attack on the High Seas, and those who died after the QM was refused entry into Laridae territorial waters. Laridae

also violated the rights to religion, non-discrimination, liberty, privacy and protection of the family of those refugees remaining in Laridae. Finally, Laridae *refouled* the persons it deported to Sternidae contrary to IRL.

## PLEADINGS

### I. Jurisdiction

This Court has jurisdiction to hear claims based on violations of Laridae's human rights obligations.<sup>1</sup> As the claims are based on violations of the ArCh, ICCPR, ICESCR and RC this Court has jurisdiction.

### II. Locus standi

Applications can be lodged by non-governmental legal entities recognised under domestic law on behalf of victims.<sup>2</sup> Victims need not be identifiable in full<sup>3</sup> or by name.<sup>4</sup>

For **Claim A**, AS is the identified victim of SASA,<sup>5</sup> while for **Claim B**, DC is the identified victim of the LAA.<sup>6</sup>

For **Claim C**, the application is brought on behalf of QMR by nongovernmental organisations SRA and HRIW.<sup>7</sup>

QMR are identifiable according to their presence on QM during the relevant incidents. The uncertainty as to who was on board is *as a result of* Laridae's rights violations.<sup>8</sup>

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<sup>1</sup> Facts¶2; Art.43 AHRC.

<sup>2</sup> Art.23 RoP, which is similar in substance to the ArCh (Facts¶2).

<sup>3</sup> *Bravo*¶38; *Toapanta*¶13.

<sup>4</sup> *Mayan Peoples*¶27; *Peace*¶62.

<sup>5</sup> Facts¶30.

<sup>6</sup> Facts¶31.

<sup>7</sup> Facts¶28,29,33.

<sup>8</sup> Facts¶27; *Mayan Peoples*¶27; *Peace*¶62.

In respect of HRIW, in line with the principle of reasonableness<sup>9</sup> and access to justice,<sup>10</sup> standing should extend to entities who lack legal status because of administrative failures.<sup>11</sup> As HRIW is not currently recognised because of Laridae's delay in re-registration,<sup>12</sup> HRIW has standing.

### III. Admissibility

Domestic remedies must be exhausted.<sup>13</sup> This does not mean that every available avenue of redress must be pursued<sup>14</sup> and the exact substance of a claim need not be brought before national courts.<sup>15</sup> Applicants are not required to exhaust ineffective remedies.<sup>16</sup>

Regarding **Claim A**, AS appealed to the LSC.<sup>17</sup> In any event, approaching the LCC is an ineffective remedy due to bias against AS,<sup>18</sup> indicated by the CJ's statement<sup>19</sup> and AS' trial in camera.<sup>20</sup>

Regarding **Claim B**, exhaustion is not necessary where there is a well-established precedent preventing a remedy.<sup>21</sup> Due to *Kamba*,<sup>22</sup> approaching the LCC is an ineffective remedy.

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<sup>9</sup> *Sánchez* ¶66.

<sup>10</sup> Art.46(2)(a) ACHR.

<sup>11</sup> *Petruzz* ¶76; Art.23 RoP.

<sup>12</sup> Facts ¶29.

<sup>13</sup> Art.31 RoP.

<sup>14</sup> Rodríguez-Pinzón p.70; *Martínez* ¶34.

<sup>15</sup> Burgorgue-Larsen, p.139; *Chacón* ¶32.

<sup>16</sup> *Sánchez* ¶66; *Rodríguez* ¶64; *Loor* ¶37.

<sup>17</sup> Facts ¶3.

<sup>18</sup> *García* ¶¶23,26; *Lacayo* ¶77; *Cruz* ¶67.

<sup>19</sup> Facts ¶22.

<sup>20</sup> Facts ¶30; *Arciniega* ¶50; *Durand* ¶117.

<sup>21</sup> *Juvenile* ¶47.

<sup>22</sup> Facts ¶5.

Regarding **Claim C**, exhaustion is not required where there has been denial of access to remedies or unwarranted delay.<sup>23</sup> Denial occurs where the state factually impedes exhaustion.<sup>24</sup> Unwarranted delay is assessed case-by-case,<sup>25</sup> taking into account the behaviour of the state authorities and the purpose of the judicial action.<sup>26</sup>

The HRIW claim was not heard because of delays by Laridae.<sup>27</sup> As Smpimpinto died,<sup>28</sup> this delay prevents her rights being vindicated. In respect of the SRA's claims, there is evidence of administrative delays across Laridaen institutions.<sup>29</sup> As the claims are urgent requests, the five-month delay is unwarranted.<sup>30</sup> In any event, a remedy is ineffective if it has no suspensive effect.<sup>31</sup> As some of the QMR refugees have *already* been deported,<sup>32</sup> exhaustion of domestic remedies cannot be effective and Claim C is admissible.

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<sup>23</sup> Arts.31(2)(b),(c) RoP.

<sup>24</sup> Rodríguez-Pinzón, p.72; *Ballesteros*¶¶28,29; *Torres*¶10; *Loor*¶¶44-46; *ExhaustionAO*¶24.

<sup>25</sup> *Fuentes*¶68; *Barão*¶22.

<sup>26</sup> *Furlan*¶38; *Rosero*¶72; *Lacayo*¶77.

<sup>27</sup> Facts¶29.

<sup>28</sup> Facts¶24.

<sup>29</sup> Facts¶28

<sup>30</sup> Art.32(1) RoP.

<sup>31</sup> *M.K.* ¶¶142-148.

<sup>32</sup> Facts¶27.

## IV. Merits

### **CLAIM A – Laridae violated Admiral Seagull’s human rights and SASA is inconsistent with Laridae’s international obligations**

AS’ conviction by a military court for offences under SASA and Laridaen ML contravene her:

(1) FoE; (2) RtW; and (3) RtFT.

#### **1. Freedom of expression**

SASA interfered with AS’ FoE<sup>33</sup> (a) and was neither justified (b) nor proportionate (c).

##### **a. SASA interferes with freedom of expression**

Political statements deserve special protection in a democratic society,<sup>34</sup> particularly those in the furtherance of human rights issues.<sup>35</sup>

AS was campaigning for the end of sanctions that have caused humanitarian tragedy.<sup>36</sup>

SASA has the effect of prohibiting this political expression.<sup>37</sup>

##### **b. Interference not justified by national security**

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<sup>33</sup> Art.19(2) ICCPR; Art.9(2) ACHPR, which is similar in substance to the ArCh (Facts¶2).

<sup>34</sup> *Morais*¶6.8; GC25¶25; *Sendikasi*¶70.

<sup>35</sup> *Yazar*¶57.

<sup>36</sup> Facts¶12.

<sup>37</sup> *Lindon*¶159; *Cumpănă*; CoE Lobbying; *Konaté*¶167.

NS interests do not justify this limitation.<sup>38</sup> Limitation based on NS requires some demonstrable threat to the State's existence.<sup>39</sup>

No such threat has been or could be identified. Firstly, AS's mere association with GT and Sternidae does not undermine Laridae's NS.<sup>40</sup> Secondly, calling for the end of sanctions does not incite violence or terrorist activity.<sup>41</sup> Thirdly, Applicants deny the existence of *any* links between GT or Sternidae and Rhakha-Rhaka. Fourthly, the fact that AS' campaign against the SASA regime coincides with the interests of Rhakha-Rhaka cannot justify limitation.<sup>42</sup>

### **c. SASA strikes a disproportionate balance**

Furthermore, the interference was disproportionate.<sup>43</sup> Firstly, the 43-year sentence runs contrary to the principle that custodial sentences should be reserved for the most serious incitements of violence.<sup>44</sup> Secondly, the requirement to obtain a license before commencing lobbying activity makes the exercise of freedom of speech conditional on permission, undermining the basic right.<sup>45</sup>

## **2. Right to work**

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<sup>38</sup> Art.19(3) ICCPR; ACmHPR-FoE¶II.

<sup>39</sup> IACmHR-Terrorism¶277; J-Principles.

<sup>40</sup> CRP¶43; Cox¶43,44.

<sup>41</sup> *Human-Rights-Defenders*¶¶17-20; *MAA*¶102; *Good*¶¶199-200; *Leroy*¶36.

<sup>42</sup> *Kim*¶12.4.

<sup>43</sup> GC34¶¶22,34; *Konaté*¶145.

<sup>44</sup> *Konaté*¶165.

<sup>45</sup> GC37¶70.

AS enjoys the RtW,<sup>46</sup> including the right not to be arbitrarily deprived of work.<sup>47</sup> By criminalising her compensated efforts to campaign against the sanctions regime, Laridae interfered with AS' RtW. No NS justifications exist for the reasons explained above in IV.A.1.b. Furthermore, this interference was disproportionate<sup>48</sup> for the reasons in IV.A.1.c.

### 3. Right to fair trial

AS' prosecution and conviction violated her RtFT<sup>49</sup> as she was: (a) tried in camera; (b) in a military court; (c) in a biased judicial system; where (d) she was punished twice for the same acts.

#### a. Trial in camera

AS was entitled to a public trial.<sup>50</sup> This right may be restricted on the grounds of NS<sup>51</sup> only if publicly justified<sup>52</sup> and subject to review of national courts.<sup>53</sup>

Firstly, Laridae offered no justification for the denial of a public trial and this decision was made *after* the appeal to LSC and therefore not reviewed.<sup>54</sup> Secondly, the only relevant factual basis for AS' conviction under SASA was her meeting with GT,<sup>55</sup> discussion of which

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<sup>46</sup> Art.6(1) ICESCR; Art.15 ACHPR.

<sup>47</sup> *Elgak*¶130; ACmHPR-ESC¶58.

<sup>48</sup> *ZLHR*¶176.

<sup>49</sup> Art.7(1) ACHPR; Art.14ICCPR.

<sup>50</sup> Art.14(1) ICCPR; ACmHPR-FT s.A.1.

<sup>51</sup> Art.14(1) ICCPR; ACmHPR-FT s.A.2.2.

<sup>52</sup> *Chaushev*¶24; *Yam*¶¶37-43,52-6; *Husaini*¶84.

<sup>53</sup> *Janowiec*¶38.

<sup>54</sup> Facts¶30.

<sup>55</sup> Facts¶12.



triggers no security concerns. Thirdly, less restrictive means were available, for example preventing the public from viewing sensitive information.<sup>56</sup>

## **b. Trial by military court**

AS enjoys the right to be heard by a competent court.<sup>57</sup> Civilians may not be tried by military courts at all,<sup>58</sup> or only in where ordinary courts are completely unable to try the matter.<sup>59</sup> Military personnel may be tried by military courts only for offences committed in the course of their duties.<sup>60</sup>

### ***i. Offences under SASA***

AS retired from the Laridae Navy in 2020,<sup>61</sup> and no lobbying/agency relationship arose with GT or Sternidae before 13 August 2021.<sup>62</sup> Since she was a civilian at this time, trial by military court was unlawful. In any event, ordinary Laridaen courts were able to convict AS.<sup>63</sup>

### ***ii. Offence under Laridae maritime law***

The only relevant actions for convictions under ML<sup>64</sup> – sailing from Sternidae to Laridae<sup>65</sup> – occurred after AS' retirement and were unrelated to her service. In any event, recourse to

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<sup>56</sup> *Ongwen* ¶¶6-7.

<sup>57</sup> Art.7(1)(d) ACHPR; Art.14(1) ICCPR.

<sup>58</sup> *MRA* ¶62; *Koso* ¶87; *Chokepornbudsra* ¶¶57-58; *Durana* ¶117.

<sup>59</sup> *GC21* ¶22; *Petruzzi* ¶128.

<sup>60</sup> *Egypt* ¶9; *Ramírez* ¶¶115-116

<sup>61</sup> *Facts* ¶4

<sup>62</sup> *Facts* ¶12.

<sup>63</sup> See IV.3.a.

<sup>64</sup> *Facts* ¶30.

<sup>65</sup> *Facts* ¶17-26.

the use of special courts must be determined by law<sup>66</sup> and s.17(a) LAFDRA cannot apply as the maritime offences were in no way 'linked to the services which [AS] provided for Laridae Armed Force'.<sup>67</sup> AS' conviction is therefore unlawful.

### **c. Bias**

Prejudicial statements by members of the judiciary<sup>68</sup> undermine the RtFT.<sup>69</sup> Relevant factors determining whether a statement is prejudicial are the standing of the speaker<sup>70</sup> and whether it demonstrates condemnation of the accused's actions.<sup>71</sup>

The CJ, the most senior member of the Laridae judiciary, effectively called AS a traitor<sup>72</sup> by denying she was 'patriotic'.<sup>73</sup> Moreover, the CJ's statements reflect on relevant ML offences,<sup>74</sup> which are the subject of AS' trial.<sup>75</sup> Especially given the concurrent accusations of the MHA,<sup>76</sup> these evidence hostility toward AS and are prejudicial to her trial.<sup>77</sup>

### **d. Double jeopardy**

AS was punished twice under s.6(a) and (b) SASA for the same act.<sup>78</sup> This violates the prohibition on double jeopardy.<sup>79</sup>

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<sup>66</sup> GC32¶14; *Al Nashir*¶¶566-567.

<sup>67</sup> Annex B.

<sup>68</sup> *Lavents*¶¶127-128; *Popović* 8-18.

<sup>69</sup> Art.14(2) ICCPR; Art.7(1)(b) ACHPR; GC32¶30; *Tsikata*¶116; ACmHPR-FT s.N(6)(e)(2).

<sup>70</sup> *Suleiman*¶54-56

<sup>71</sup> *Khadzhiyev*¶7.10; *Gebre-Sellaise*¶193.

<sup>72</sup> *Khadzhiyev*¶7.10.

<sup>73</sup> Facts¶22

<sup>74</sup> Facts¶22

<sup>75</sup> Facts¶30.

<sup>76</sup> Facts¶21.

<sup>77</sup> *Khadzhiyev*¶7.10.

<sup>78</sup> Facts¶12.

<sup>79</sup> Art.14(7) ICCPR; ACmHPR-FT s.N6–9.

## **CLAIM B – Laridae violated Dr Cioppino’s human rights and the LAA is inconsistent with Laridae’s international obligations**

Laridae violated DC’s RtW through the application of the LAA extraterritorially and in cases of rape.<sup>80</sup>

### **1. Right to work**

DC enjoys the right not to be arbitrarily deprived of his RtW.<sup>81</sup> By cancelling his practising licence, the LMC interfered with this right. This interference was (a) not determined by law and (b) disproportionate.

#### **a. Punishment under LAA not determined by law**

Interference with the RtW must be determined by law.<sup>82</sup>

The LMC’s decision to apply s.35 LAA to the High Seas was inconsistent with international law. Prescriptive jurisdiction extends extraterritorially exceptionally,<sup>83</sup> and not in this case: Laridae was not QM’s flag state;<sup>84</sup> and the abortion was not an economic activity to which the principle of domicile<sup>85</sup> or the effects doctrine<sup>86</sup> apply. As the LAA did not apply, the interference was not prescribed by law.

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<sup>80</sup> Facts¶31.

<sup>81</sup> Art.6(1) ICESCR; Art.15 ACHPR; *Elgak*¶130; ACmHPR-ESC¶58.

<sup>82</sup> Art.4 ICESCR; *Limburg*¶48-51; *ZLHR*¶178.

<sup>83</sup> Trapp pp.360-361; *Kamminga*¶9; *Lotus* p.18-19.

<sup>84</sup> Facts¶19,24; contra *Lotus*; Churchill/Lowe p.214.

<sup>85</sup> Facts¶24; Ryngaert p.105.

<sup>86</sup> Ryngaert p.109.

## **b. LAA disproportionate**

The limitation under the LAA was also disproportionate. DC carried out Smpimpinto's abortion to protect her right to privacy.<sup>87</sup> Laridae is obligated to respect this right (*i*). Given that this right was also engaged through DC's civil punishment, the balance struck by the LAA was disproportionate (*ii*).

### ***i. Smpimpinto's rights engaged by LAA***

Where the contents of an interpretative declaration cannot be reconciled with the right in question, it has the effect of a reservation.<sup>88</sup>

Laridae's interpretative declaration of Art.17 ICCPR does not have the effect of a reservation. The 'values of the Archelon Continent's human rights system',<sup>89</sup> and in particular the AHRC, in fact *encourage* the provision of abortion in the case of rape.<sup>90</sup> Consequently, Respondent must respect Smpimpinto's right to privacy.

### ***ii. LAA strikes a disproportionate balance of competing rights***

The denial of abortion services violates the right to privacy, taken together with other rights,<sup>91</sup> where the balance struck between rights is unreasonable and arbitrary.<sup>92</sup> Particular attention

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<sup>87</sup> Art.17 ICCPR.

<sup>88</sup> ILC¶1.3.1.

<sup>89</sup> Facts¶1.

<sup>90</sup> Art.16(1) ACHPR; ACmHPR-ESC¶67(qqq); ACmHPR-WAC.

<sup>91</sup> Arts.3,6,7 ICCPR.

<sup>92</sup> *Mellet*¶7.8; ACmHPR-GC2 36; L36; *L.C.*¶8.15; GC36¶8.

should be paid to laws which force women to engage in dangerous overseas procedures that threaten their lives.<sup>93</sup>

In prohibiting abortion from five weeks even in cases of rape, the LAA does not strike an appropriate balance. Contrary to the finding of the LCC,<sup>94</sup> the foetus is not a rights-holder.<sup>95</sup> The LAA constitutes a significant limitation of Smpimpinto's and DC's rights. Firstly, the prohibition after five weeks without exception fails to protect the dignity of women who have undergone harrowing sexual violence.<sup>96</sup> Secondly, this forced Smpimpinto to seek out a dangerous procedure on the High Seas, resulting in her death.<sup>97</sup> Thirdly, the LAA perpetuates moral stigma by encouraging private individuals to petition for civil punishment of physicians.<sup>98</sup> Fourthly, the LAA has totally deprived DC of the ability to work as a physician.<sup>99</sup> This was not the least restrictive effective means.<sup>100</sup> As such, the LAA is disproportionate and the interference with DC's RtW was unlawful.

**CLAIM C – Laridae violated the human rights of the QMR and its actions are inconsistent with its international obligations.**

Laridae violated IHRL and IRL rights of the QMR refugees: on the High Seas (1); in its CZ (2); and within its territory (3).

## **1. Violations on the High Seas**

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<sup>93</sup> *Whelan*¶7.5; *Bolivia*¶9; *Jamaica*¶26; GC36¶8.

<sup>94</sup> Facts¶5

<sup>95</sup> *Queenan; Baby Boy*¶30.

<sup>96</sup> ACmHPR-GC2¶36; *VDA*; ACmHPR-ESC¶67.

<sup>97</sup> Facts¶24; *Mellet*¶7.8.

<sup>98</sup> s.35(b) LAA, Annex C; *L.C.*¶8.15

<sup>99</sup> Facts¶31.

<sup>100</sup> CDESCR-GC21¶4.

Laridae denies violation of the rights to liberty and freedom from torture (a) and the right to life (b).

**a. Rights to liberty and freedom from torture**

***i. Substantive violation***

The interrogation, rape and detention of Smpimpinto MPA violated her rights.<sup>101</sup>

Smpimpinto was within Laridae's jurisdiction at the time of the events.<sup>102</sup> The MPA exercised control and authority over Smpimpinto by detaining her in the engine room.<sup>103</sup> Moreover, the acts of the MPA are attributable because the LIO Director's statement constituted acknowledgment and adoption.<sup>104</sup> Not only did the Director approve of the MPA's actions, Laridean authorities utilised the intelligence gained to avert a Rhakha-Rhaka attack.<sup>105</sup>

The detention of Smpimpinto constituted a violation of her right to liberty.<sup>106</sup> The detention was arbitrary as it was not pursuant to a warrant or on reasonable suspicion.<sup>107</sup>

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<sup>101</sup> Arts.5,6 ACHPR; Arts.7,9 ICCPR.

<sup>102</sup> Art.2(1) ICCPR.

<sup>103</sup> *Al-Asad*¶134; GC31,¶10; *Al-Skein*¶136; Facts¶18.

<sup>104</sup> Art.11 ARSIWA; *Tehran Hostages*¶74.

<sup>105</sup> Facts¶32.

<sup>106</sup> *COHRE*¶172; *Elgak*¶106.

<sup>107</sup> ACmHPR-FR s.M(1)(b).

The interrogation of Smpimpinto, which involved sleep deprivation, simulated execution and rape,<sup>108</sup> was torture.<sup>109</sup> It was therefore a violation of her right to freedom from torture.<sup>110</sup>

***i. Procedural violation***

Laridae's failure to investigate Smpimpinto's ordeal<sup>111</sup> constituted an additional violation of her procedural right to redress as a victim of torture.<sup>112</sup> As there are reasonable grounds to suspect torture and the alleged perpetrators are within its jurisdiction, Laridaen authorities are under an obligation to investigate, regardless of where the acts took place<sup>113</sup> or any resource constraints.<sup>114</sup>

**b. Violation of right to life of QMR**

Laridae also violated the RtL of the QMR who died on the High Seas.<sup>115</sup>

***i. Substantive violation***

Respondent violated the substantive RtL of the QMR by launching hell-fire missiles, causing death. Laridae had jurisdiction over QMR because by launching missiles it exercised

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<sup>108</sup> Facts¶23.

<sup>109</sup> *Had*¶71; *COHRE*¶¶154-158; Art.1 CAT; Art.1 GC20.

<sup>110</sup> Art.5 ACHPR.

<sup>111</sup> Facts¶30.

<sup>112</sup> Art.5 ACHR; Art.7 ICCPR.

<sup>113</sup> ACmHPR-GC4¶¶25,27; *Mocanu*¶319.

<sup>114</sup> ACmHPR-GC4¶21.

<sup>115</sup> Art.4 ACHPR; Art.6 ICCPR.

personal control over them.<sup>116</sup> Alternatively, Laridae has jurisdiction over all those whose RtL is impacted by its activities in a direct and foreseeable manner.<sup>117</sup>

Any arbitrary deprivation of the RtL violates the right,<sup>118</sup> and the force employed was arbitrary<sup>119</sup> and disproportionate.<sup>120</sup>

This conclusion is not altered by the application of IHL. Firstly, there is no AC between Laridae and the Rhakha-Rhaka due to the lack of protracted armed violence between them.<sup>121</sup> Secondly, even if there was a NIAC, IHL does not displace the applicability of IHRL.<sup>122</sup> Any violation of IHL resulting in death is an arbitrary deprivation of life.<sup>123</sup> Laridae fired the missiles at small ships with civilian passengers, so that high incidental loss of life was foreseeable<sup>124</sup> and excessive in relation to any military advantage represented by recapture of the boats. As the attack was disproportionate under IHL,<sup>125</sup> the deprivation was arbitrary. Thirdly and in any event, IHL compliance of an action does not automatically mean it complies with the RtL,<sup>126</sup> as least harmful means should be employed even in conflict situations.<sup>127</sup> Laridae failed to take alternative measures such as attempting to capture Rhakha-Rhaka. Accordingly, the firing of missiles violated QMR's RtL.

## ***ii. Procedural violation***

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<sup>116</sup> Facts¶20; *Alejandro*¶25; *Carter*¶¶126,129.

<sup>117</sup> GC36¶63; OC-23/17¶101; ACmHPR-GC3¶14; Milanovic pp.209-222.

<sup>118</sup> ACmHPR-GC3¶7.

<sup>119</sup> GC36¶12.

<sup>120</sup> ACmHPR-GC3¶12. *Giuliani*¶176.

<sup>121</sup> *Tadic*¶70; Art.1(2) APII.

<sup>122</sup> *Nuclear Weapons AO*¶25.

<sup>123</sup> GC36¶64; ACmHPR-GC3¶32.

<sup>124</sup> Facts¶20. Henderson pp.207-208.

<sup>125</sup> Rule.14 ICRCSS.

<sup>126</sup> GC36¶64

<sup>127</sup> *Targeted Killings*¶40.



Laridae further violated the deceased's RtL by failing to investigate their deaths.<sup>128</sup> Laridae had jurisdiction under the 'special features' test<sup>129</sup> as it had an IHL obligation to investigate<sup>130</sup> and no other state can conduct the investigation.

## 2. Violations in Laridae's contiguous zone

Laridae also violated the RtL<sup>131</sup> and RtH<sup>132</sup> of QMR by refusing QM entry into its territorial waters.<sup>133</sup> Laridae has jurisdiction either due to the spatial control it exercises over its CZ<sup>134</sup> or due to the control it exercises over QMR's enjoyment of their RtL.<sup>135</sup> The RtL includes positive obligations<sup>136</sup> and requires Laridae to rescue individuals in distress, particularly where the vessel has a connection to its jurisdiction.<sup>137</sup> While the positive RtH under ArCh may generally be subject to progressive realisation,<sup>138</sup> the failure to provide food and care is motivated by political considerations, not costs.<sup>139</sup>

## 3. Violations in Laridae's territory

Laridae also violated the rights of the QMR on its territory.

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<sup>128</sup> ACmHPR-GC3¶14; COHRE¶147; *McCann*¶161.

<sup>129</sup> *Güzelyurtlu*¶190; *Hanan*¶135.

<sup>130</sup> *Hanan*¶137; Art.8(2)(b)(iv) Rome Statute; Rule.158 ICRCSS.

<sup>131</sup> Art.4 ACHPR; Art.6 ICCPR.

<sup>132</sup> Art.16 ACHPR; Arts.11,12 ICESCR.

<sup>133</sup> *Facts*¶7.

<sup>134</sup> Art.33(1) UNCLOS.

<sup>135</sup> GC36¶63; *Facts*¶26.

<sup>136</sup> *Câmpeanu*¶130.

<sup>137</sup> GC36¶¶26, 63; *Facts*¶¶14,16.

<sup>138</sup> *Purohit*¶74.

<sup>139</sup> *Facts*¶¶21,25.

At least some of the Sternidae national QMR are ‘refugees’ within the meaning of IRL.<sup>140</sup> QMR have a well-founded fear of persecution by Rhakha-Rhaka due to Sternidae’s failure to prevent their repeated deadly attacks on civilians.<sup>141</sup> This persecution is on the basis either of political opinion<sup>142</sup> or religious belief.<sup>143</sup> QMR could not reasonably<sup>144</sup> have sought protection in Sternidae due to Rhakha-Rhaka’s presence across Sternidae and significant territorial control.<sup>145</sup>

The persons who meet the RC definition enjoy certain rights even before recognition of status.<sup>146</sup> Additionally, all QMR, regardless of their RC status, hold IHRL rights.<sup>147</sup> Laridae violated its obligations under both IRL and IHRL.

#### **a. *Refoulement* and mass expulsion**

Firstly, Laridae *refouled* the persons it deported to Sternidae.<sup>148</sup> Those individuals with criminal records of violence are not excluded from refugee status<sup>149</sup> as it is not known whether their crimes were non-political.<sup>150</sup> The alternative of deportation to Wahala does not affect this as QMR would also have suffered religious persecution in Wahala.<sup>151</sup>

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<sup>140</sup> Art.1A(2) RC

<sup>141</sup> Facts¶1-8, 14; UNHCR-Handbook¶65.

<sup>142</sup> Facts¶14; *Ward*; UNHCR-Guidelines-1¶32; Goodwin-Gill p.119.

<sup>143</sup> Facts¶17.

<sup>144</sup> *Sheekh*¶47.

<sup>145</sup> Facts¶8.

<sup>146</sup> Goodwin-Gill p.595.

<sup>147</sup> Art.5 RC.

<sup>148</sup> Art.33 RC.

<sup>149</sup> Art.1F RC.

<sup>150</sup> Facts¶27

<sup>151</sup> UNHCR-Handbook¶54.

No exceptions apply.<sup>152</sup> In relation to the NS exemption, the state must show a very serious danger emanating from an *individual* refugee,<sup>153</sup> which Laridae has failed to do. The public order exemption also requires an individualised assessment.<sup>154</sup> Both exceptions necessitate a proportionality assessment,<sup>155</sup> which Laridae failed to apply.<sup>156</sup>

The deportations also constituted a mass expulsion of refugees in violation of ArCh,<sup>157</sup> as they occurred at least in part on the basis of the deportees' Khara beliefs.

## **b. Religion and non-discrimination**

Laridae violated the rights of QMR to religion and to non-discrimination.<sup>158</sup>

Laridae firstly violated the freedom of religion of the QMR who converted to Arc.<sup>159</sup> The conversions occurred due to coercion by Laridae.<sup>160</sup> The implication that conversion would secure preferential treatment has a coercive effect.<sup>161</sup>

There is also a violation of the non-discrimination principle,<sup>162</sup> as refugees who converted to Arc received better treatment than Khara refugees.<sup>163</sup> Such differential treatment of persons in similar situations is prohibited<sup>164</sup> as no adequate justification is given.<sup>165</sup>

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<sup>152</sup> Art.33(2) RC.

<sup>153</sup> Lauterpacht¶170.

<sup>154</sup> KNCHR p.12; UNHCR-Intervention p.9; Goodwin-Gill p.270.

<sup>155</sup> *Pushpanathan*¶73; Lauterpacht¶178.

<sup>156</sup> Facts¶20.

<sup>157</sup> Art.12(5) ACPHR; *OMCT*¶33,

<sup>158</sup> Arts.2,3,8 ACHPR; Arts.18,26 ICCPR; Arts.3,4 RC.

<sup>159</sup> Art.4 RC; Art.8 ACHPR; Art.18 ICCPR.

<sup>160</sup> Facts¶21; GC22 ¶5.

<sup>161</sup> *Hudoyberganova*¶6.2; *Ivanova*¶79.

<sup>162</sup> Art.3 RC; Arts.2,3 ACHPR, Art.26 ICCPR.

<sup>163</sup> Facts¶27.

<sup>164</sup> *Meldrum*¶96; *INTERIGHTS*¶119; GC18¶7.

<sup>165</sup> *Mamboleo*¶105; GC18¶13; *Meldrum*¶59.

### c. Right to liberty

The detention of QMR in immigration camps violated their right to liberty<sup>166</sup> and the prohibition against punishing refugees for illegal entry.<sup>167</sup> Immigration detention should not be arbitrary under IHRL<sup>168</sup> and must be necessary under IRL.<sup>169</sup> This requires that detention is closely connected to preventing unauthorised entry<sup>170</sup> and open to periodic review.<sup>171</sup> Detention of asylum seekers is generally arbitrary if it continues beyond the period necessary to record claims.<sup>172</sup>

Laridae detained all persons aboard the QM without consideration for their individual circumstance or effective opportunities for review,<sup>173</sup> and did not identify any specific NS threats allegedly posed by QMR. Detention was therefore arbitrary.

### d. Privacy and family rights

By separating families in detention, Laridae violated the QMR' rights to privacy<sup>174</sup> and protection of the family.<sup>175</sup> Family separation constitutes a disproportionate interference with the right to family life<sup>176</sup> which cannot be justified.<sup>177</sup> Even if the need to maintain safety is a

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<sup>166</sup> Art.6 ACHPR; Art.9 ICCPR.

<sup>167</sup> Art.31 RC.

<sup>168</sup> *Saad*¶¶64-66.

<sup>169</sup> Art.31(2) RC.

<sup>170</sup> *Saad*¶74; A¶9.2.

<sup>171</sup> A¶9.2; *Jama*¶149.

<sup>172</sup> *FKAG*¶¶9.2-9.4; UNHCR-DG¶34.

<sup>173</sup> *Facts*¶27.

<sup>174</sup> Art.17 ICCPR.

<sup>175</sup> Art.18 ACHPR; Art.23 ICCPR.

<sup>176</sup> *Olsson*¶59.

<sup>177</sup> *Popov*¶140.

legitimate aim, less intrusive measures could have been taken, such as by accommodating children with their mothers.<sup>178</sup>

#### **e. Enforced disappearance**

The enforced disappearance of individuals taken by interrogation by ILO<sup>179</sup> violates the RtL,<sup>180</sup> the prohibition against torture,<sup>181</sup> the right to liberty<sup>182</sup> and the safeguards for those deprived of their liberty.<sup>183</sup> Laridae has failed to establish it has fulfilled these obligations.<sup>184</sup>

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<sup>178</sup> Facts¶28.

<sup>179</sup> Facts¶27.

<sup>180</sup> Art.4 ACHPR; Art.6 ICCPR;

<sup>181</sup> Art.5 ACHPR; Art.7 ICCPR.

<sup>182</sup> Art.6 ACHPR; Art.9 ICCPR.

<sup>183</sup> Art.10 ICCPR.

<sup>184</sup> *Aoual*¶7.4; *Kjadzhiiev*¶8.3; *Timurtas*¶82.

## V. Reparations

All violations of IHRL must be adequately repaired.<sup>185</sup>

Claim A: Applicants seek an order that Admiral Seagull be retried<sup>186</sup> in a public trial before an ordinary court.

Claim B: Applicants seek the reinstatement of Dr Cioppino's practicing license.<sup>187</sup>

Claim C: Applicants seek that the Court order, under its power to issue provisional measures,<sup>188</sup> that Laridae: locate the *refouled* refugees and facilitate their return to Laridae; and take urgent measures to reunite refugee children with their parents.

## VI. Prayer for relief

Applicants pray that the Court:

- 1) Declare the claims to be admissible;
- 2) Declare that:
  - A. Admiral Seagull's prosecution and conviction violated her human rights and SASA is inconsistent with Laridae's international obligations;

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<sup>185</sup> *Gutiérrez-Soler* ¶61.

<sup>186</sup> *Sejdovic* ¶126.

<sup>187</sup> UN-Reparations-Principles ¶19.

<sup>188</sup> Facts ¶2.

B. the cancellation of Dr Cioppino's practicing license violated his human rights and the LAA is inconsistent with Laridae's obligations; and

C. Laridae violated the rights of the QMR under both IHRL and IRL.

3) Consequently, reparations must be granted.

### **Word Count**

- Summary of Arguments: 346
- Memorial: 2,972