

**15th World Human Rights Moot**

**Court Competition**

**20 May to 21 July 2023**

**Geneva, Switzerland**

**IN THE MATTER BETWEEN**

**CABUDURA AND MR. LETTERS FOCUS**

**AND**

**VARANUS ISLANDS**

**MEMORIAL FOR THE RESPONDENT**

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## TABLE OF ABBREVIATIONS

ACommHPR	African Commission on Human and People's Rights
ACtHPR	African Court on Human and People's Rights
CAT	Committee against Torture
CC	Constitutional Court
CCPR	Human Rights Committee
CESCR	Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CMW	Committee on the Protection of the Rights of All Migrant Workers
CRC	Committee on the Rights of the Child
ECommHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
EDPB	European Data Protection Board
ESCR	Economic, social and cultural rights
EUEESC	European Economic and Social Committee
Focus	Mr. Letters Focus
FocusDefence	FocusDefence PLC
Guru	Chief Justice Dare Guru
HC	High Court
HR	Human Rights
HRC	Human Rights Council
IACommHR	Inter-American Commission of Human Rights

IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission
IP	Intellectual property
IT	Information Technology
KHRC	Komodoen Human Rights Court
KU	Komodoen Union
MdarahPharma	Mdarah Pharma
NGO	Non-Governmental Organisation
NZSC	New Zealand Supreme Court
OASSRExpression	Office of the Special Rapporteur on Freedom of Expression of the Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCA	Permanent Court of Arbitration
R&D	Research and development
REDESCA	Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights

SC	Supreme Court
SRCultural	Special Rapporteur in the Field of Cultural Rights
SRPeacefulAssembly	United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association
SRPrivacy	United Nations Special Rapporteur on the Right to Privacy
SRReligion	Special Rapporteur on freedom of religion or belief
SRTorture	United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
SRTransnational Corporations	Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UN&16	United Nations, IOM, ITU, OCHA, OHCHR, UNDP, UNEP, UNESCO, UNFPA, UNHCR, UNICEF, UNOPS, UPU, UN Volunteers, UN Women, WFP and WHO
UNCHR	United Nations High Commissioner for Refugees
UNCommHR	United Nations Commission on Human Rights
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
UNSG	United Nations Secretary General
UNWGBusinessHR	United Nations Working Group on Business and Human Rights

VI	Varanus Islands
WGAD	United Nations Working Group on Arbitrary Detention
WGETI	Arms Trade Treaty's Working Group on Effective Treaty Implementation
WHO	World Health Organization

## TABLE OF AUTHORITIES

### I. TREATIES AND DECLARATIONS

ACHPR	African Charter on Human and People's Rights, 01/06/1981.
ACHR	American Convention on Human Rights, 22/11/1969.
ACommHPR-FreedomofExpression	Declaration of Principles of Freedom of Expression and Access to Information in Africa, 10/11/2019.
ATT	Arms Trade Treaty, 02/04/2013.
CRSR	Convention Relating to the Status of Refugees, 28/06/1951.
CWC	Chemical Weapons Convention, 03/09/1992.
CWCVerification	Chemical Weapons Convention Verification Annex, 03/09/1992.
ECHR	European Convention on Human Rights, 04/11/1950.
ICCPR	International Covenant on Civil and Political Rights, 16/12/1966.
ICESCR	International Covenant on Economic, Social and Cultural Rights, 16/12/1966.
ILO-169-Indigenous&TribalPeople	ILO, C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), 27/06/1989.
OASCharter	Charter of the Organisation of American States, 30/04/1948.
P15CPHRFF	Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, 24/06/2013.
P1ECHR	Protocol No. 1 to the European Convention on Human Rights,

	20/03/1952.
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights, 01/01/1995.
UDHR	Universal Declaration of Human Rights, 10/12/1948.
UNCharter	United Nations Charter, 24/10/1945.
UNDRIP	United Nations Declaration on the Rights of Indigenous People, 13/09/2007.
UNESCO-Universal DeclarationBioethics HR	UNESCO, Universal Declaration on Bioethics and Human Rights, SHS/EST/BIO/06/1, SHS.2006/WS/14, 19/10/2005.
UNGA-NYDeclaration	New York Declaration for Refugees and Migrants, A/RES/71/1, 03/10/2016.
UNGA-Religion	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly, Resolution 36/55, 25/11/1981.
VCLT	Vienna Convention on the Law of the Treaties, 23/05/1969.

## II. UNITED NATIONS

### *Treaty bodies*

#### Human Rights Committee (CCPR)

CCPR-AvAustralia	CCPR-A v. Australia, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, 30/04/1997.
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CCPR-Dranichnikov	CCPR, Mrs. Olga Dranichnikov v. Australia, Communication No. 1291/2004, U.N. Doc CCPR/C/88/D/1291/2004, 20/10/2006.
CCPR-Randolph	CCPR, Ati Antoine Randolph v Togo, Communication 910/ 2000, U.N. Doc CCPR/C/79/D/910/2000, 15/12/2003.
CCPR-Shirin	CCPR, Shirin Aumeeruddy-Cziffra and 19 Other Mauritian Women v. Mauritius, Communication No. 35/1978, U.N. Doc CCPR/C/12/D/35/1978, 09/04/1981.
CCPR-GC16	General Comment No. 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, U.N. Doc HRI/GEN/1/Rev.9, 08/04/1988.
CCPR-GC27	General Comment No. 27: Article 12 (Freedom of Movement), U.N. Doc CCPR/C/21/Rev.1/Add.9, 02/11/1999.

Committee on Economic, Social and Cultural Rights (CESCR)

CESCR-GC14	General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), U.N. Doc E/C.12/2000/4, 11/08/2000.
CESCR-GC17	General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), U.N. Doc E/C.12/GC/17, 12/01/2006.
CESCR-GC26	General Comment No. 26: on Land and Economic, Social and Cultural Rights, U.N. Doc E/C.12/GC/26, 22/12/2022.

CESCR-GC3	General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), U.N. Doc E/1991/23, 14/12/1990.
CESCR-HR&IP	Human rights and intellectual property, Substantive issues arising in the implementation of the ICESCR, Statement by the Committee on Economic Social and Cultural Rights, U.N. Doc E/C.12/2001/15, 14/12/2001.

*Committee against Torture (CAT)*

CAT-Agiza	Ahmed Hussein Mustafa Kamil Agiza v. Sweden, U.N. Doc CAT/C/34/D/233/2003, 24/05/2004.
-----------	--

***United Nations organs and specialised agencies***

*International Court of Justice (ICJ)*

ICJ-ArmedActivities	Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 19/12/2005.
ICJ-EastTimor	East Timor (Portugal v. Australia), Judgment, 30/06/1995.
ICJ-MonetaryGold	Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America), Judgment, 15/06/1954.

*International Law Committee (ILC)*

ARSIWACommentary	Draft articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001.
ILC-Koskenniemi-FragmentationIL	ILC, Koskenniemi Martti, Study Group of the International Law Commission, "Fragmentation of international law: difficulties arising

	from the diversification and expansion of international law", Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, U.N. Doc UNGA A/CN.4/L.682, 13/04/2006.
--	---

Office of the High Commissioner on Human Rights (OHCHR)

OHCHR- ImpactTRIPS	UN High Commissioner for Human Rights, ECOSOC, Commission on Human Rights, The impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on human rights, Report of the High Commissioner, U.N. DOC E/CN.4/Sub.2/2001/13, 27/06/2001.
-----------------------	--

World Health Organisation (WHO)

WHO-BigData	Big data and artificial intelligence for achieving universal health coverage: an international consultation on ethics, Meeting Report, 13/10/2017.
WHO-GuidanceAI	Guidance on Ethics and governance of artificial intelligence for health, 2021.
WHO-HealthData	Health Data as a global public good – a call for Health Data Governance, 29/09/2021.
WHO- StrengtheningGlobal EmergencyPrepared nessResponse	WHO's work in health emergencies: Strengthening WHO's global emergency preparedness and response, Report by the Director-General, U.N. Doc EB148/18, 16/01/2021.

Others

UN&16-DataProtectionCOVID	Joint Statement on Data Protection and Privacy in the COVID-19 Response, 18/11/2020.
UNCommHR-Siracusa	The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc E/CN.4/1985/4, 28/09/1984.

***Special Procedures of the Human Rights Council***

SRCulturalRights-PatentPolicy,A/70/279	UNGA, Special Rapporteur in the field of cultural rights, Report on patent policy and the right to science and culture, U.N. DOC A/70/279, 04/08/2015.
SRPrivacy-A/74/277	Report of the Special Rapporteur on the right to privacy, U.N. Doc A/74/277, 05/08/2019.
SRPrivacy-A/76/220	Report of the Special Rapporteur on the right to privacy, U.N. Doc A/76/220, 23/07/2021.
SRReligion-ReligiousIntolerance	Civil and political rights, including the question of religious intolerance, Report submitted by Mr. Abdelfattah Amor, in accordance with Commission on Human Rights resolution 2001/42, Addendum, Visit to Argentina, U.N. Doc E/CN.4/2002/73/Add.1, 16/01/2002.

### III. HUMAN RIGHTS REGIONAL SYSTEMS

#### ***African Commission on Human and Peoples' Rights (ACommHPR)***

##### Decisions

ACommHPR- Article19	Article 19 V State of Eritrea, Communication No. 275/2003, Decision, 30/05/2007.
ACommHPR- EndoroisWelfareCou ncil	Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, Communication No. 276/03, Decision, 11–25/11/2005.
ACommHPR-Jawara	Jawara v. Gambia, Communication No. 147/95, 149/96, Decision, 11/05/2000.
ACommtHPR-Anuak	Anuak Justice Council v. Ethiopia, Communication No. 299/05, Decision, 25/05/2006.

#### ***African Court on Human and Peoples' Rights (ACtHPR)***

##### Contentious cases

ACtHPR-Ilesanmi	Ilesanmi v. Nigeria, Communication No. 268/2003, Decision, 11/05/2005.
ACtHPR-Mlama	Job Mlama & 2 ors v United Republic of Tanzania, Application 019/2016, Judgment, 25/09/2020.
ACtHPR-Ogiek	African Commission on Human and Peoples' Rights (Ogiek) v Kenya, Application 006/2012, Judgment, 26/05/2017.
ACtHPR- OgiekReparations	African Commission on Human And Peoples' Rights (Ogiek) v. Republic of Kenya, Application No. 006/2012 Judgment on

	Reparations, 23/06/2022.
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Advisory opinions

ACtHPR-AO-COVID	Advisory Opinion on request no. 001/2020 by the Pan African Lawyers Union (PALU) on the right to participate in the government of one's country in the context of an election held during a public health emergency or a pandemic, such as the COVID-19 crisis, 16/07/2021.
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**European Commission of Human Rights (ECommHR)**

Contentious cases

ECommHR-SmithKline	Smith Kline and French Laboratories LTD v. the Netherlands, Application No 12633/87, Decision, 04/10/1990.
ECommHR-Tugar	Tugar v. Italy, Application No. 22869/93, 18/10/1995.

**European Court of Human Rights (ECtHR)**

Contentious cases

ECtHR-Ada	Ada Rossi and Others v. Italy, Applications Nos. 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08, Decision, 16/12/2008.
ECtHR-Amuur	Amuur v. France, Application No. 19776/92, Judgment on Merits and Just Satisfaction, 25/06/1996.
ECtHR-Azzopardi	Maria Azzopardi v. Malta, Application No. 22008/20, Judgment on Merits and Just Satisfaction, 09/06/2022.

ECtHR-Barbulescu	Barbulescu v. Romania, Application No. 61496/08, Judgment on Merits and Just Satisfaction, 05/09/2017.
ECtHR-Beizaras	Beizaras and Levickas v. Lithuania, Application No. 41288/15, Judgment on Merits and Just Satisfaction, 14/01/2020.
ECtHR-Beyeler	Beyeler v. Italy, Application No. 33202/96, Judgment on Merits, Grand Chamber, 05/01/2000.
ECtHR-Biskupice	Urbárska Obec Trenčianske Biskupice v. Slovakia, Application No. 74258/01, Judgment on Merits and Just Satisfaction, 27/11/2007.
ECtHR-Broniowski	Broniowski v. Poland, Application No. 31443/96, Judgment on Merits, Grand Chamber, 22/06/2004.
ECtHR-Câmpeanu	Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, Application No. 47848/08, Judgment on Merits and Just Satisfaction, Grand Chamber, 17/07/2014.
ECtHR-Fenech	Fenech v. Malta, Application No. 19090/20, Judgment on Merits and Just Satisfaction, 01/03/2022.
ECtHR-FormerKingofGreece	The Former King of Greece and others v. Greece, Application No. 25701/94, Judgment on Merits, Grand Chamber, 23/11/2000.
ECtHR-Guiso-Gallisay	Guiso-Gallisay v. Italy, Application No. 58858/00, Judgment on Merits, 08/12/2005.
ECtHR-Hassan	Hassan v. the United Kingdom, Application No. 29750/09, Judgment on Merits, Grand Chamber, 16/09/2014.
ECtHR-Hentrich	Hentrich v. France, Application No. 13616/88, Judgment on Merits, 22/09/1994.

ECtHR-HolyMonasteries	Holy Monasteries v. Greece, Applications No. 13092/87 13984/88, Judgment on Merits and Just Satisfaction, 09/12/1994.
ECtHR-Hristozov	Hristozov and others v. Bulgaria, Applications Nos. 47039/11 and 358/12, Judgment on Merits and Just Satisfaction, 13/11/2012.
ECtHR-Ilias	Ilias and Ahmed v. Hungary, Application No. 47287/15, 21/11/2019.
ECtHR-İzzettinDoğan	İzzettin Doğan and Others v. Turkey, Application No. 62649/10, Judgment on Merits and Just Satisfaction, Grand Chamber, 26/04/2016.
ECtHR-Jahn	Jahn and Others v. Germany, Applications No. 46720/99, 72203/01, 72552/01, Judgment on Merits, Grand Chamber, 30/06/2005.
ECtHR-James	James and Others v. the United Kingdom, Application No. 8793/79, Judgment on Merits, 21/02/1986.
ECtHR-Khlaifia	Khlaifia and Others v. Italy, Application No. 16483/12, Judgment on Merits and Just Satisfaction, Grand Chamber, 15/12/2016.
ECtHR-Kokkinakis	Kokkinakis v. Greece, Application No. 14307/88, Judgment on Merits and Just Satisfaction, 25/05/1993.
ECtHR-Kopecký	Kopecký v. Slovakia, Application No. 44912/98, Judgment on Merits, Grand Chamber, 28/09/2004.
ECtHR-Koufaki	Koufaki and Adedy v. Greece, Applications No. 57665/12 57657/12, Decision, 07/05/2013.
ECtHR-Kruslin	ECtHR, Kruslin v. France, Application No. 11801/85, Judgment on Merits and Just Satisfaction, 24/04/1990.
ECtHR-Kyprianou	Kyprianou v. Cyprus, Application No. 73797/01, Judgment on Merits and Just Satisfaction, Grand Chamber, 15/12/2005.

ECtHR-LB	L.B. v. Hungary, Application No. 36345/16, Judgment on Merits and Just Satisfaction, 09/03/2023.
ECtHR-Lithgow	Lithgow and Others v. the United Kingdom, Applications No. 9006/80 9262/81 9263/81 and 4 more, Judgment on Merits, 08/07/1986.
ECtHR-Loizidou	Loizidou v. Turkey, Application No. 15318/89, Judgment (Preliminary objection), Grand Chamber, 23/03/1995.
ECtHR-MH	M.H. and others v. Croatia, Applications No. 15670/18 and 43115/18, 18/11/2021.
ECtHR-Milosevic	Milosevic v. The Netherlands, Application No. 77631/01, Decision, 19/03/2002.
ECtHR-MollaSali	Molla Sali v. Greece, Application No. 20452/14, Judgment on Merits, Grand Chamber, 19/12/2018.
ECtHR-ND	N.D. and N.T. v. Spain, Applications No. 8675/15 and 8697/15, Judgment on Merits and Just Satisfaction, Grand Chamber, 13/02/2020.
ECtHR-Nencheva	Nencheva and others v. Bulgaria, Application No. 48609/06, Judgment on Merits and Just Satisfaction, 18/06/2013.
ECtHR-OAONEftyanayaKompaniya	AO Neftyanaya Kompaniya Yukos v. Russia, Application No. 14902/04, Judgment on Merits, 20/09/2011.
ECtHR-Padalevičius	Padalevičius v. Lithuania, Application No 12278/03, Judgment on Merits and Just Satisfaction, 07/07/2009.

ECtHR-Papamichalopoulos	Papamichalopoulos and Others v. Greece (Article 50), Application No 14556/89, Judgment on Just Satisfaction, 31/10/1995.
ECtHR-Piersack	Piersack v. Belgium, Application No. 8692/79, Judgment on Merits, 01/10/1982.
ECtHR-PN	P.N. v. Germany, Application No. 74440/17, Judgment on Merits and Just Satisfaction, 11/06/2020.
ECtHR-Ponomaryovi	Ponomaryovi v. Bulgaria, Application No. 5335/05, Judgment on Merits and Just Satisfaction, 21/06/2011.
ECtHR-Pyrantienė	Pyrantienė v. Lithuania, Application No. 45092/07, Judgment on Merits, 12/11/2013.
ECtHR-R.Sz.	R.Sz. v. Hungary, Application No. 41838/11, Judgment on Merits and Just Satisfaction, 02/07/2013.
ECtHR-Roman	Roman Zakharov v. Russia, Application No. 47143/06, Judgment on Merits and Just Satisfaction, 04/12/2015.
ECtHR-S&Marper	S. and Marper v. the United Kingdom, Applications No. 30562/04 and 30566/04, Judgment on Merits and Just Satisfaction, 04/12/2008.
ECtHR-Sevdari	Sevdari v. Albania, Application No. 40662/19, Judgment on Merits and Just Satisfaction, 13/12/2022.
ECtHR-Soering	Soering v. the United Kingdom, Application No. 14038/88, Judgment on Merits and Just Satisfaction, 07/07/1989.
ECtHR-Vallianatos	Vallianatos and others v. Greece, Application No. 29381/09 32684/09, Judgment on Merits and Just Satisfaction, Grand Chamber, 07/11/2013.

ECtHR-Vaskrsić	Vaskrsić v. Slovenia, Application No. 31371/12, Judgment on Merits and Just Satisfaction, 25/04/2017.
ECtHR-Velikovi	Velikovi and Others v. Bulgaria, Applications No. 43278/98 45437/99 48380/99 & 6 more, Judgment on Merits and Just Satisfaction, 15/03/2007.
ECtHR-VonMaltzan	Von Maltzan and Others v. Germany, Applications No. 71916/01 71917/01 10260/02, Decision, Grand Chamber, 02/03/2005.
ECtHR-Vuckovic	Vuckovic and Others v. Serbia, Applications No. 17153/11 17157/11 17160/11 and 27 more, Judgment on Preliminary Objection, Grand Chamber, 25/03/2014.
ECtHR-Y	Y. v. Turkey, Application No. 648/10, Decision, 17/02/2015.
ECtHR-Zvolský	Zvolský and Zvolská v. the Czech Republic, Application No. 46129/99, Judgment on Merits and Just Satisfaction, 12/11/2002.

***Inter-American Commission of Human Rights (IACommHR)***

IACommHR- ChangBravo	Mario Roberto Chang Bravo v. Guatemala, Report No. 57/08, Petition 283-06, Inadmissibility, 24/07/2008.
IACommHR- GarcíaSaccone	Carlos García Saccone v. Argentina. Report No. 8/98, Case 11.671. 02/03/1998.
IACommHR- InternationalAbductio ns	International Abductions, United States, Report No.° 100/141, Petition N° 11.082, Inadmissibility, 07/11/2014.
IACommHR- PandemicHR	Pandemic and Human Rights in the Americas, Resolution No. 1/2020, 10/04/2020.

## ***Inter-American Court of Human Rights (IACtHR)***

### *Contentious cases*

IACtHR-ApitzBarbera	Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Judgment on Preliminary objection, Merit, Reparations and Costs, 05/08/2008.
IACtHR-BrewerCarias	Brewer Carías v. Venezuela, Judgment on Preliminary Objections, 26/05/2014.
IACtHR-ChaparroÁlvarez	Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Judgment on Preliminary Objections, Merits, Reparations, and Costs, 21/11/2007.
IACtHR-Escher	Escher v. Brasil, Judgment on Preliminary Objections, Merits, Reparations, and Costs, 06/07/2009..
IACtHR-Habbal	Habbal and others v. Argentina, Judgment on Preliminary Objections and Merits, 31/08/2022.
IACtHR-Manuela	Manuela et al. v. El Salvador, Judgment on Preliminary objections, merits, reparations and costs, 02/11/2021.
IACtHR-Mayagna(Sumo)Community	Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment on Merits, Reparations and Costs, 31/08/2001.
IACtHR-MoiwanaCommunity	Moiwana Community v. Suriname, Judgment on Preliminary Objections, Merits, Reparations and Costs, 15/06/2005.
IACtHR-NorínCatrimán	Norín Catrimán et al. (Leaders, members and activists of the mapuche indigenous people) v. Chile, Judgment on Merits,

	Reparations and Costs, 29/05/2014.
IACtHR-RosadioVillavicencio	Rosadio Villavicencio v. Perú, Judgment on Preliminary Objections,. Merits, Reparations, and Costs, 14/10/2019.
IACtHR-Saramaka	Saramaka People v. Suriname, Judgment on Preliminary Objections, Merits, Reparations, and Costs, 28/11/2007.
IACtHR-SawhoyamaxaCommunity	Sawhoyamaxa Indigenous Community v. Paraguay, Judgment on Merits, Reparations and Costs, 29/03/2006.
IACtHR-Tristán	Tristán Donoso v. Panama, Judgment on Preliminary Objection, Merits, Reparations, and Costs, 27/01/2009..
IACtHR-VelázquezRodríguez	Velázquez Rodríguez v. Honduras v. Honduras, Judgment on Merits, 29/07/1988.
IACtHR-VélezLoor	Vélez Loor v. Panama, Judgment on Preliminary Objections, Merits, Reparations and Costs, 23/11/2010.
IACtHR-YakyeAxa	Yakye Axa Indigenous Community v. Paraguay, Judgment on Merits, Reparations and Costs, 17/06/2005.
IACtHR-Yatama	Yatama V. Nicaragua, Judgment on Preliminary Objections, Merits, Reparations and Costs, 23/06/2005.

Advisory opinions

IACtHR-OC-14/94	Advisory Opinion OC-14/94, International responsibility for the promulgation and enforcement of laws in violation of the Convention (arts. 1 and 2 of the American Convention on Human Rights), 09/12/1994.
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IACtHR-OC-18/03	Advisory Opinion OC-18/03 on the Juridical Condition and Rights of Undocumented Migrants, 17/09/2003.
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#### IV. DOCTRINE

CaseyMaslen- RightToLife	Casey-Maslen, S. & Heyns, C., The Right to Life under International Law: An Interpretative Manual, 2021.
Couldry&Meijas- CostsofConnection	Nick Couldry & Ulises Meijas, The Costs of Connection: How Data Is Colonizing Human Life and Appropriating It for Capitalism, Stanford University Press, 2019.
Turing-DataJustice	The Alan Turing Institute, Advancing Data Justice Research and Practice: An Integrated Literature Review, 2022.

#### V. OTHERS

CJEU- MinisterioFiscal	Court of Justice of the European Union, Ministerio Fiscal, Case C-207/16, 02/10/2018.
CJEU-Puškár	Court of Justice of the European Union, Peter Puškár v. Finančné riaditeľstvo Slovenskej republiky and Kriminálny úrad finančnej správy, Case C-73/16, 27/09/2017.
EDPB- GuidelinesCOVID	European Data Protection Board, Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak, 21/04/2020.

EUEESC- IPActionPlan	European Economic and Social Committee, "Making the most of the EU's innovative potential. An intellectual property action plan to support the EU's recovery and resilience", COM(2020)760 final, 25/11/2020.
ICRC- GenevaCommentary	International Committee of the Red Cross, Geneva Convention (III) on Prisoners of War Commentary, 2020.
PCA-Mox	Permanent Court of Arbitration, The MOX Plant Case, Ireland v. the United Kingdom, Procedural order 3, 24/06/2003.

## **SUMMARY OF FACTS**

Varanus Islands (VI) is a developing nation of the Komodoen Continent (KC) that gained its independence in 1983. VI is a UN and Komodoen Union (KU) member and has ratified without reservation all international human rights treaties and their protocols, as well as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Additionally, it signed all UN disarmament and arms control treaties and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

In the XIX century, VI was a colony of the powerful Squamata Kingdom (SK). By order of the Queen, Father Mashayar Focus –one of the leading figures in KC colonisation–, destroyed local religions and forcefully converted locals to Christianity, as part of colonising missions. The consequences of the land dispossession that occurred during that time are still present in VI.

In 2018, Kōzō, who belongs to the indigenous Tribe of Vara –a tribe that was dispossessed of their land during VI’s colonial era–, assumed office as the new President of VI. Following wide consultations, Constitutional Amendment Number 3 was passed. This law established a land reform to repair the injustices of historic dispossessions by compulsory acquiring without compensation the lands that were stolen during colonialism.

In this context, VI compulsory acquired Focus Farm from Mr. Focus Letters, a land stolen to indigenous communities and gifted to his predecessor Father Mashayar Focus in return for forcefully converting locals to Christianity. Father Focus had destroyed sacred shrines for those who believe in the Komodo dragon god to build Letter Main Temple in that same place.

VI shares a border with Varanidae, another independent KC nation. Along this border lies the Drago-Zone, an area over which both Varanidae and VI claim ownership. This territorial dispute has been submitted to the ICJ and is currently awaiting a decision.

For decades, the Varanidae Government has been fighting armed terrorist groups inside its territory. Historically, VI sold weapons to the Governments of Varanidae and Mero but since 2018 it has ceased arms sales to nations and groups involved in armed conflicts. VI has been recognised by WGETI and 16 States as one of the few nations that has the best ATT implementation practices. Indeed, the VI Government has always required compliance with IHL when selling arms to Varanidae.

The war in Varanidae has led to a massive influx of aliens towards VI. The VI military has been forced to fight away armed groups who try to enter VI through the Drago-Zone and return potential terrorist members in order to protect its population.

Meanwhile, VI's military has provided aid and assistance to thousands of Varanideans in the Drago-Zone. In particular, the VI military provides transport and personnel for close to 1,500 Varanidean children, taking them to and from private schools along the border in order to guarantee their education.

Additionally, VI has allowed for the ICRC and other organisations to set up tents to cater for the basic needs of Varanideans and donated medical provisions to the NGOs. The VI military has even offered its own medical personnel to help take care of the sick in the Drago-Zone.

During COVID-19, Focus Pharmaceuticals approached the VI High Court for an order to compel the Government to compulsory licence MdarahVac. Focus lost the case and VI decided not to go against Mdarah Pharma, a company registered in SK.

Moreover, the applicant has locally challenged VI's arms trade policies and treatment of persons in the Drago-Zone on numerous occasions, obtaining both positive and negative results.

In response to the massive displacement of Varanideans, VI signed the VI-Mero Migration Partnership, paying for all the processing and integration costs for each relocated

person to Mero. Relocations are currently suspended since the High Court is deciding on a complaint presented by the applicant.

The UN Special Rapporteur on extreme poverty has urged VI to employ information technology and other emerging technologies to reduce poverty. In order to enforce these recommendations, in 2021, VI's Minister of Information, Science and Technology designed a VI Roadmap on Big Data, Artificial Intelligence and Emerging Technologies. The VI Government immediately issued a call for tenders to provide necessary information technology infrastructure to make the Roadmap effective. The tender was won by MdarahVision and the according contracts were celebrated between the former and the VI Government. Between 2021 and 2022, MdarahVision made extensive and visible changes to VI's infrastructure, notably improving delivery of services such as health and education. In order to do so, MdarahVision was granted necessary authorisations to access and process personal data.

## **SUMMARY OF ARGUMENTS**

### **CLAIM A**

Focus Farm's expropriation, provided by VI's Constitution, was necessary to comply with the legitimate aim of restituting lands to dispossessed indigenous peoples, considering their special relation with land and their freedom of religion. Moreover, lack of compensation was justifiable in the midst of a political regime change that repaired colonial injustices of the past such as Focus family's abusive acquisition of the property.

Additionally, compulsorily licensing MdarahVac would have been a disproportionate measure that violated the rights to property and to benefit from the protection of the moral and material interests resulting from scientific productions of one's authorship. Attacking IP would dissuade necessary scientific research and development, including pharmaceutical discoveries to ensure the right to health.

### **CLAIM B**

VI has been recognised for its excellent ATT implementation practices and consistently demands respect for IHL when selling arms. Besides, there is no indication that VI traded arms with knowledge or intention of aiding HR violations. In any case, the adverse consequences of arms trade are too remote to attract international responsibility. Further, evidence of alleged sales of chemical weapons is manifestly insufficient.

Moreover, in a context of mass influx of aliens, VI kept Varanideans in camps to prevent the infiltration of terrorists, and relocated persons to a safe third country. VI has provided them medical care and education services, guaranteeing their rights to health, life and education.

## **CLAIM C**

Data processing was proportionate and necessary for the protection of health and education in VI, which saw extensive and visible improvements. In the context of COVID-19, VI lawfully shared data in light of research into vaccines. In this way, VI prioritised the education, health and well-being of its population over individual privacy concerns. In any case, since there is no evidence to suggest that data practices caused grave effects on the alleged victims' daily life, data processing cannot be considered a violation to the right to privacy.

## **PLEADINGS**

### **JURISDICTION**

The respondent files no objections regarding this Court's jurisdiction *ratione materiae*, *temporis*, and *personae*.

However, the ICJ is yet to decide on the territorial dispute between VI and Varanidae over the Drago-Zone,<sup>1</sup> affecting VI's jurisdiction *ratione loci* in this case.

To avoid fragmentation of international law,<sup>2</sup> mutual respect should prevail between courts, since "a procedure that might result in two conflicting decisions on the same issue would not be helpful to the resolution of the dispute".<sup>3</sup>

Moreover, international courts should not decide upon matters affecting third States when they are not involved in the proceedings,<sup>4</sup> such as Varanidae.

Hence, VI requests this Court to suspend the proceedings regarding the alleged HR violations in the Drago-Zone until the ICJ's decision.

### **LEGAL STANDING**

Only victims of HR violations,<sup>5</sup> that are identified and individualised,<sup>6</sup> have legal standing before this Court. Petitioners can claim to be victims when they are actually affected.<sup>7</sup> Otherwise, the case becomes an *actio popularis*, a complaint without directly affected victims, which lacks legal standing.<sup>8</sup>

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<sup>1</sup> Facts[3]

<sup>2</sup> ILC-Kosenniemi-FragmentationIL

<sup>3</sup> PCA-Mox[28]

<sup>4</sup> ICJ-MonetaryGold[18];ICJ-EastTimor[26]

<sup>5</sup> Facts[7]

<sup>6</sup> RP/ACtHPR[40];IACtHR-OC-14/94[46];IACCommHR-ChangBravo[38]

<sup>7</sup> CCPR-Shirin[9.2];ECtHR-Vallianatos[47];ECtHR-Beizaras[76]

<sup>8</sup> CCPR-Dranichnikov[6.6];ECtHR-Câmpeanu[101];IACHR-Abductions[27]

Alleged victims were not individualised as claims were brought on behalf of the whole population supposedly affected by the alleged lack of vaccines in Claim A and the living conditions in Claim B.

Therefore, applicants have no legal standing regarding Claim B and the compulsory licensing of vaccines in Claim A.

## **ADMISSIBILITY**

Applicants must exhaust available, effective and sufficient local remedies before reaching international mechanisms,<sup>9</sup> which are subsidiary and complementary to domestic courts.<sup>10</sup> An unfavourable decision against the petitioner or doubts regarding the prospects of success do not render remedies ineffective.<sup>11</sup>

### ***Claim A***

Although the Constitutional Amendment restricts petitions concerning land acquired during colonialism,<sup>12</sup> applicants could have challenged this provision if considered contrary to international treaties,<sup>13</sup> as anyone can access the CC with allegations of IHRL violations.<sup>14</sup>

In fact, Bá Juqour approached the CC challenging Focus Farm's allocation and the matter was declared admissible,<sup>15</sup> whereas the applicant did not lodge any complaint.

As to the compulsory licence of MdarahVac, the applicants did not appeal the HC's decision,<sup>16</sup> nor they used other available remedies before the SC or CC.

Consequently, remedies have not been exhausted.

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<sup>9</sup> ACtHPR-Mulindahabi[36]; ACommHPR-Article19[45-46]; IACtHR-BrewerCarias[37]; ECtHR-Vučković[71]

<sup>10</sup> ACtHPR-Ilesanmi[44]; IACommHR-GarcíaSaccone[53]; P15CPHRFF[1]

<sup>11</sup> IACtHR-VelásquezRodríguez[67]; ECtHR-Vuckovic[74]

<sup>12</sup> Facts[32]

<sup>13</sup> VCLT[27]

<sup>14</sup> Facts[6]

<sup>15</sup> Facts[37]

<sup>16</sup> Facts[40]

### ***Claim B***

On the treatment of refugees, CABUDURA lodged more than 100 legal challenges in VI's HC. Although it won 13, it did not appeal any of the others.<sup>17</sup>

Regarding relocations, CABUDURA approached the HC only months ago. The HC issued an order suspending them and is yet to give a judgment on the merits of the case.<sup>18</sup>

Thus, effective remedies exist and have not been exhausted.

### ***Claim C***

Applicants did not lodge any petition,<sup>19</sup> whilst having effective and available remedies such as ordinary complaints before the CC. Thus, applicants have not exhausted domestic remedies.

### ***Impartiality***

Applicants may allege lack of judicial impartiality.

Nevertheless, lack of impartiality cannot be argued on general statements as an excuse not to exhaust local remedies.<sup>20</sup> Judges' personal beliefs and general opinions about a matter related to the case do not imply the absence of impartiality.<sup>21</sup> Indeed, personal or subjective impartiality should be presumed unless there is evidence to the contrary.<sup>22</sup>

Letters alleged a personal attack against him from a Judge.<sup>23</sup> The comments, however, made no reference to his person nor to his particular case, but to a personal belief. In any case, mere fears felt by applicants regarding the impartiality of judges do not exempt them from exhausting domestic remedies.<sup>24</sup>

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<sup>17</sup> Facts[23]

<sup>18</sup> Facts[28]

<sup>19</sup> Facts[45]

<sup>20</sup> ACommHPR-Article19[67];CCPR-AvAustralia[6.4];IACtHR-BrewerCarias[104-105]

<sup>21</sup> ACtHPR-Mlama[62];ACtHPR-Ajavon2020[292];BangaloreJudicialEthics[60]

<sup>22</sup> ACtHPR-Ajavon[293];IACtHR-ApitzBarbera[56];ECtHR-Kyprianou[119];ECtHR-Piersack[30]

<sup>23</sup> Facts[34]

<sup>24</sup> ECtHR-Sevdari[107]

Furthermore, applicants used VI's judicial system and won several cases,<sup>25</sup> relying on the system's impartiality.

Hence, VI's judiciary is impartial, remedies were not exhausted and the case inadmissible.

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<sup>25</sup> Facts[23;28;37]

## MERITS

### CLAIM A: THE COMPULSORY ACQUISITION OF FOCUS FARM AND THE REFUSAL TO COMPULSORILY LICENCE MDARAHVAC WERE CONSISTENT WITH IHRL

#### I. *The compulsory acquisition was a legitimate restriction to the right to property*

The right to property<sup>26</sup> allows legitimate restrictions when they (i) are lawful, (ii) have a legitimate aim, and (iii) are necessary and proportionate.<sup>27</sup>

##### a. Lawfulness

Restrictions should be based in law,<sup>28</sup> which must be accessible, precise and foreseeable in its application.<sup>29</sup>

The compulsory acquisition was provided by a Constitutional Amendment<sup>30</sup> that clearly states the grounds for its application.

##### b. Legitimate aim

Land restitution constitutes a legitimate aim since it serves the interests of the original owners and the general interest of the society as a whole.<sup>31</sup> This includes the restitution of indigenous lands.<sup>32</sup>

In this case, the restriction pursued the aim of reinstating indigenous lands stolen by colonialism.<sup>33</sup> Even if applicants allege that lands were presumably assigned to a President's relative, he belongs to Vara,<sup>34</sup> a tribe that traditionally inhabited the area.<sup>35</sup>

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<sup>26</sup> P1ECHR[1];UDHR[17]

<sup>27</sup> ECtHR-Beyeler[108-114];IACtHR-Saramaka[127];ACTHPR-Ogiek[129]

<sup>28</sup> ECtHR-Kruslin[28]

<sup>29</sup> ECtHR-GuisoGallisay[82]

<sup>30</sup> Facts[32]

<sup>31</sup> ECtHR-Padalevičius[65]

<sup>32</sup> IACtHR-SawhoyamaxaCommunity[140]

<sup>33</sup> Facts[32]

<sup>34</sup> Facts[31;35]

<sup>35</sup> Facts[2;10]

c. Necessity and proportionality

Restrictions should be indispensable to achieve the desired aim and must be the less intrusive measure.<sup>36</sup> Additionally, there must be a relationship of proportionality between the means employed and the aim sought.<sup>37</sup>

The expropriation was necessary considering the protection of indigenous and religious rights. Furthermore, the lack of compensation was proportionate.

c.i. *Rights that justify the measure's necessity*

c.i.1. *Indigenous rights*

States must recognise and restore the possession of involuntarily lost traditional lands to indigenous peoples,<sup>38</sup> considering their special relationship with territory which is the basis of their culture and their survival.<sup>39</sup> Refusal to do so must be justified by objective and reasonable grounds,<sup>40</sup> and their private possession is not enough.<sup>41</sup>

In this case, the expropriation of land was indispensable to satisfy the rights of indigenous tribes that traditionally inhabited the area.<sup>42</sup> To give them any other territory would have meant a violation of their rights.

c.i.2. *Religious rights*

The coexistence of diverse religions may require restrictions on the freedom to manifest one's religion to reconcile the rights of others.<sup>43</sup> Based on the special connection

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<sup>36</sup> IACtHR-Yatama[206]; ECtHR-OAONeftyanayaKompaniya[651-654]; ECtHR-Vaskrsić[83]

<sup>37</sup> ECtHR-James[50]; IACtHR-NorinCatriman[200]

<sup>38</sup> UNDRIP[26]; ILO-169-Indigenous&TribalePeoples[14]; CESCR-GC26[16]; IACtHR-SawhoyamaxaCommunity[127-130]; IACtHR-Mayagna(Sumo)Community[151]; IACtHR-MoiwanaCommunity[134]; ACommHPR-EndoroisWelfareCouncil[209]; ACtHPR-OgiekReparations[107-108]

<sup>39</sup> UNDRIP[25]; ILO-169-Indigenous&TribalePeoples[13]; CESCR-GC26[10]; IACtHR-YakyeAxaCommunity[131]; ACommHPR-EndoroisWelfareCouncil[241]

<sup>40</sup> ACtHPR-OgiekReparations[116]

<sup>41</sup> IACtHR-SawhoyamaxaCommunity[138]

<sup>42</sup> Facts[2]

<sup>43</sup> ECtHR-Kokkinakis[33]; ECtHR-IzzettinDoğan[106]

that indigenous peoples have to their ancestral land, freedom of religion encompasses the restitution of their traditional property.<sup>44</sup>

Considering Focus Farm had sacred sites for indigenous peoples,<sup>45</sup> the State's decision to reinstate indigenous lands was necessary to fulfil their freedom of religion. Moreover, Letter Main Temple was created upon the destruction of those indigenous holy sites,<sup>46</sup> disrespecting their sacredness.

Regarding discrimination allegations,<sup>47</sup> only differences in treatment based on an identifiable characteristic<sup>48</sup> without objective and reasonable justifications may constitute discrimination;<sup>49</sup> whilst positive discrimination reverses imbalance.<sup>50</sup> Generally applicable restrictions, without targeting a certain group,<sup>51</sup> are legitimate. The Constitutional Amendments made no distinction whatsoever since all lands illegitimately acquired during colonialism entered within its scope and aimed at repairing historical imbalances against indigenous communities.

### *c.ii. Compensation*

The right to property does not guarantee full compensation in all expropriation cases.<sup>52</sup> Lack of compensation does not make an expropriation wrongful in itself and can be justified in exceptional circumstances,<sup>53</sup> such as Germany reunification<sup>54</sup> or political or economic regime changes.<sup>55</sup> Courts should respect legislatures' judgments unless they are

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<sup>44</sup> SRReligion-ReligiousIntolerance;E/CN.4/2002/73/Add.1[112-113&150];ACtHPR-Ogiek[65]

<sup>45</sup> Facts[10]

<sup>46</sup> Facts[11]

<sup>47</sup> Facts[38]

<sup>48</sup> ECtHR-MollaSali[134]

<sup>49</sup> IACtHR-Yatama[185]

<sup>50</sup> ACommHPR-EndoroisWelfareCouncil[196];IACtHR-NorinCatrimán[201]

<sup>51</sup> ECtHR-RSz[60]

<sup>52</sup> ECtHR-Broniowski[182;186];ECtHR-Biskupice[115]

<sup>53</sup> ECtHR-FormerKingofGreece[90]

<sup>54</sup> ECtHR-Jahn[113];ECtHR-VonMaltzan[77;111-112]

<sup>55</sup> ECtHR-Kopecký[35-37];ECtHR-Broniowski[182;183];ECtHR-Zvolský[72]

manifestly ill-founded.<sup>56</sup> Moreover, it is highly relevant to the proportionality assessment if the former owner took the property due to abuse of power.<sup>57</sup>

VI's legislature, after wide consultations and a regime change,<sup>58</sup> determined that no compensation shall be paid when recovering land dispossessed during colonialism to repair indigenous rights violations.<sup>59</sup> In particular, Focus family's possession of Focus Farm was based on a colonial abuse of power.<sup>60</sup> Hence, its expropriation was proportionate.

In light of the above, the compulsory acquisition was legitimate and did not violate Letters' right to property, his freedom of religion nor the prohibition of discrimination.

## **II. *The refusal to compulsorily licence MdarahVac was consistent with IHRL***

The compulsory licence of MdarahVac<sup>61</sup> would be a disproportionate measure and imply a violation of the right to property of their owners.

Intellectual property is protected by the rights to property<sup>62</sup> and to benefit from the protection of the moral and material interests resulting from scientific productions of one's authorship.<sup>63</sup> Any measure restricting these rights should be lawful, have a legitimate aim and be necessary and proportionate.<sup>64</sup>

Particularly, proportionality demands striking an adequate balance with other HR obligations,<sup>65</sup> and weighing the protection of patent holders and the patients' interest.<sup>66</sup>

To assess this issue, it should be considered that IP has a key social function<sup>67</sup> for encouraging investments in scientific R&D, including new medical and pharmaceutical

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<sup>56</sup> ECtHR-Lithgow[121-122]; ECtHR-Azzopardi[55]

<sup>57</sup> ECtHR-Velikovi[186]

<sup>58</sup> Facts[31-32]

<sup>59</sup> Facts[10]

<sup>60</sup> Facts[10]

<sup>61</sup> Facts[40]

<sup>62</sup> P1ECHR[1]; UDHR[17]

<sup>63</sup> ICESCR[15(1)c]

<sup>64</sup> ECtHR-Beyeler[108-114]; ACtHPR-AO-COVID[76]; IACtHR-ChaparroÁlvarez[174]

<sup>65</sup> CESCRC-17[39e]

<sup>66</sup> OHCHR-ImpactTRIPS[16]

<sup>67</sup> CESCRC-HR&IP,E/C12/2001/15[4]

discoveries to facilitate better and more accessible means for the prevention, control and treatment of diseases.<sup>68</sup>

COVID-19 and other epidemics demonstrated the need to strengthen R&D to find medical countermeasures to prevent and contain outbreaks,<sup>69</sup> and thus the importance of an effective IP system that offers incentives to this research.<sup>70</sup>

Furthermore, the TRIPS does not impose an obligation to compulsorily licence vaccines,<sup>71</sup> being a means of last resort when all other options have failed.<sup>72</sup>

In this regard, restrictions on IP can bring a backlash on future scientific developments, like new vaccines, and therefore, on the right to health. Thus, VI decided to refuse to compulsorily licence as such decision would not have been proportionate.

Consequently, the refusal is consistent with IHRL.

## **CLAIM B: VI'S ARMS TRADE WAS CONSISTENT WITH IHRL AND VI DID NOT VIOLATE VARANIDEANS' HR**

### **I. *VI's arms trade was lawful***

#### **a. *VI is not responsible for alleged HR violations derived from arms transfer***

In conventional arms trade, States must prevent HR violations<sup>73</sup> by carrying out export assessments<sup>74</sup> and abstaining to provide material support when knowing that it would be used to commit IHRL or IHL violations.<sup>75</sup> State responsibility requires awareness of a particular danger and intention of aiding such violations.<sup>76</sup>

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<sup>68</sup> SRCulturalRights-PatentPolicy,A/70/279[4]

<sup>69</sup> WHO-StrengtheningGlobalEmergencyPreparednessResponse,EB148/18[7i]

<sup>70</sup> EUEESC-IPActionPlan[2]

<sup>71</sup> TRIPS[31b]

<sup>72</sup> EUEESC-IPActionPlan[12]

<sup>73</sup> ATT[principle5]

<sup>74</sup> ATT[7(1)]

<sup>75</sup> ICRC-GenevaCommentary[193]

<sup>76</sup> ILC-ARSIWACommentary[16(9)]

Particularly, in *Tugar v. Italy*, the adverse consequences of Italy's failure to regulate arms transfers to Iraq were found too remote to attract international responsibility for injuries caused by Italian anti-personnel mines.<sup>77</sup> Besides this case, HR courts have been uninvolved with the legality of arms transfers.<sup>78</sup>

In carrying out its arms trade, VI consistently demanded respect of IHL and has been commended by WGETI and 16 ATT Member States for its remarkable ATT implementation practices.<sup>79</sup> Further, there is no indication that VI carried out arms business with knowledge or intention of aiding any HR violations. Therefore, VI cannot be held responsible for alleged IHL and HR violations committed by Varanidae nor for the consequences of the Varanidean civil war.

*b. Allegations of chemical weapons transfers are manifestly ill-founded*

In cases concerning armed conflicts, single-sourced evidentiary materials must be treated with caution.<sup>80</sup> To establish the use of chemical weapons, the OPCW follows rigorous procedures which include access of an inspection team to the affected territory for sampling and interviews.<sup>81</sup>

The lack of sufficient and serious evidence to suggest that chemical weapons were allegedly provided by VI is manifest. Applicants' allegations on the transfer and use of chemical weapons are based on a single report of their own authorship.<sup>82</sup> Hence, having no indication of such rigorous procedure, the Court must dismiss these allegations.

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<sup>77</sup> ECommHR-Tugar[TheLaw-1]

<sup>78</sup> CaseyMaslen-RightToLife[15(69)]

<sup>79</sup> Facts[25]

<sup>80</sup> ICJ-ArmedActivities[61]

<sup>81</sup> CWCVerification[XI]

<sup>82</sup> Facts[24]

## II. *VI did not violate Varanidaens' HR in the Drago-Zone*

As previously stated, this Court should not decide on State responsibilities in the Drago-Zone, a territory currently under legal dispute.<sup>83</sup> However, in case this Court considers that VI has jurisdiction, the respondent offers the following subsidiary arguments.

### a. *VI's border control, detentions and relocations were lawful*

States enjoy an undeniable sovereign right to control aliens' entry, residence and expulsion from their territory<sup>84</sup> and may detain them to prevent their unauthorised entry.<sup>85</sup> In this regard, States may immediately and forcibly return aliens –including potential asylum-seekers– when they attempt an unauthorised cross *en masse* taking advantage of their large numbers.<sup>86</sup>

On account of national security and public order, States may adopt provisional measures<sup>87</sup> and remove persons who potentially threaten its community's security, regardless of persecution concerns related to non-refoulement.<sup>88</sup> A consistent pattern of gross, flagrant or massive HR violations does not suffice to determine that a particular person faces a risk to their integrity.<sup>89</sup>

Protection against collective expulsion does not guarantee the right to an individual interview.<sup>90</sup> Additionally, States may opt to remove aliens to safe third countries without examining their asylum claims as long as the other country can assess them.<sup>91</sup>

VI's military had to fight away terrorist armed groups from Varanidaes who tried to enter inland VI and presented a serious threat to national security.<sup>92</sup> To prevent their

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<sup>83</sup> Facts[3]

<sup>84</sup> ECtHR-Amuur[41]; IACtHR-Habbal[58]; CCPR-GC27[4]

<sup>85</sup> ECtHR-MH[229]; IACtHR-VélezLóor[169]

<sup>86</sup> ECtHR-ND[210]

<sup>87</sup> CRSR[9]

<sup>88</sup> CRSR[33]

<sup>89</sup> CAT-Agiza[13(3)]

<sup>90</sup> ECtHR-Khlaifia[248]

<sup>91</sup> ECtHR-Ilias[138]

<sup>92</sup> Facts[26]

infiltration amongst a mass influx of aliens from the Drago-Zone, VI kept Varanidaens in camps until their situation was analysed. Moreover, VI paid for relocation costs of hundreds of persons to Mero, a safe third country.<sup>93</sup>

Therefore, VI complied with relevant international obligations while protecting national security.

*b. Living conditions in Drago-Zone comply with IHRL*

State obligations related to ESCR are progressive and must be analysed considering economic restrictions.<sup>94</sup> States may apply differential treatment between nationals and aliens<sup>95</sup> and restrictions may be imposed on the use of resource-hungry public services such as healthcare by short term or illegal immigrants.<sup>96</sup>

The right to health does not imply that States must ensure good health nor protection against every cause of human ill health.<sup>97</sup> Preventive measures should not impose an excessive burden on authorities, more so considering the unprecedented nature of Covid-19.<sup>98</sup>

As a developing nation,<sup>99</sup> VI is unable to ensure complete access to healthcare and education services within its territory. Yet, VI's military offered medical equipment and assistance to Varanusians alongside NGOs working in the Drago-Zone.<sup>100</sup> Additionally, VI provided primary education to more than 1,500 children and guaranteed their regular transportation to and from school.<sup>101</sup> In this way, VI took steps to the maximum of its available resources to achieve the realisation of the rights to education and health in the Drago-Zone, and did not violate those rights nor the right to life.

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<sup>93</sup> Facts[28]

<sup>94</sup> CESCR-GC3[10]

<sup>95</sup> IACtHR-OC-18/03[89]

<sup>96</sup> ECtHR-Pononyari[54]

<sup>97</sup> CESCR-GC14[9]

<sup>98</sup> ECtHR-Fenech[129]

<sup>99</sup> Facts[4]

<sup>100</sup> Facts[27]

<sup>101</sup> Facts[27]

**CLAIM C: VI DID NOT VIOLATE IHRL FOR ITS AGREEMENTS WITH MDARAHVISION AND THE ALLEGED DATA COLONIALISM, EXPROPRIATION AND EXPLOITATION**

**I. VI's agreements with MdarahVision did not violate the right to privacy**

The right to privacy, that protects personal data –including health data–,<sup>102</sup> is not absolute.<sup>103</sup> States may impose restrictions when they are provided by law, pursue a legitimate aim and are necessary.<sup>104</sup>

Public authorities may interfere with privacy on legitimate grounds, including public safety, the protection of health and the rights and freedoms of others.<sup>105</sup> These purposes are broadly defined and should be interpreted with flexibility.<sup>106</sup>

Data processing was authorised by contracts between VI government and MdarahVision.<sup>107</sup> These agreements were aimed towards the development of health and education in VI,<sup>108</sup> following recommendations of the UN Special Rapporteur on extreme poverty.<sup>109</sup> They also sought to foster the investigation to develop a COVID-19 vaccine as a response to the pandemic.<sup>110</sup> Therefore, VI pursued the legitimate aims of promoting and protecting the health and education of its population.

To comply with the necessity requirement, measures must be proportional to the aim pursued.<sup>111</sup> States enjoy a margin of appreciation to strike a fair balance between competing individual and community interests.<sup>112</sup> Thus, the protection of a person's health data privacy may be outweighed by public health needs,<sup>113</sup> including for health research.<sup>114</sup>

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<sup>102</sup> ECtHR-Y[73]; IACtHR-Tristán[56]

<sup>103</sup> IACtHR-Manuela[207]

<sup>104</sup> IACtHR-Escher[116]; ECtHR-Roman[227]

<sup>105</sup> ECtHR[8(2)]; UNCommHR-Siracusa[25-37]; CCPR-GC16[7]

<sup>106</sup> ECtHR-LB[109]

<sup>107</sup> Facts[44]

<sup>108</sup> Facts[43]

<sup>109</sup> Facts[30]

<sup>110</sup> Facts[44]

<sup>111</sup> IACtHR-Manuela[219]; ECtHR-PN[69]

<sup>112</sup> ECtHR-S&Marper[112]; ECtHR-Barbulescu[112]

<sup>113</sup> ECtHR-Y[74]

<sup>114</sup> SRPrivacy-A/74/277[9(1)]

Effective responses to health crises require the collection and management of sensitive data.<sup>115</sup> Indeed, COVID-19 pandemic has required States to adopt exceptional restrictions on HR for prevention and recovery,<sup>116</sup> where data processing plays a vital role.<sup>117</sup> Hence, States may be required to transfer health data to develop vaccines, even to third countries.<sup>118</sup> Regarding scientific research into COVID-19, data controllers may be exempted from informing individuals of personal data processing when it would imply a disproportionate effort.<sup>119</sup>

Through data processing, VI lawfully prioritised the education, health and welfare of its population over privacy concerns of certain affected individuals. This measure led to the production of the first COVID-19 vaccine in KC.<sup>120</sup> Additionally, health and education delivery services in VI experienced extensive and visible positive changes in recent years.<sup>121</sup> Although applicants may allege that processing was done on a massive scale, a general scheme of data disclosure without individual analysis is not in itself problematic under IHRL.<sup>122</sup>

Hence, data processing was necessary and proportionate and did not violate the alleged victims' right to privacy.

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<sup>115</sup> SRPrivacy-A/76/220[17;81];WHO-BigData[vii]

<sup>116</sup> IACommHR-PandemicHR[3(f)]

<sup>117</sup> UN&16-DataProtectionCOVID[1]

<sup>118</sup> EDPB-GuidelinesCOVID[63]

<sup>119</sup> EDPB-GuidelinesCOVID[35;37-38]

<sup>120</sup> Facts[39]

<sup>121</sup> Facts[43]

<sup>122</sup> ECtHR-LB[130]

## **II. VI is not responsible for alleged data colonialism, expropriation and exploitation**

The applicant may allege that VI's agreements gave way to "data colonialism", which implies the collection and use of individual's data without their consent<sup>123</sup> and the continued data extraction for profit.<sup>124</sup>

Nevertheless, personal data may be processed without consent when carried out in the public interest and when appropriate and necessary for such purpose.<sup>125</sup> Big data and AI technologies based on high-quality data may bring major benefits for healthcare services and general well-being.<sup>126</sup> In any case, to amount to an interference, personal data processing must cause serious harm to the individual enjoyment of the right to privacy,<sup>127</sup> such as by producing grave effects on the alleged victim's daily life.<sup>128</sup>

As previously stated, data processing was necessary for the protection of health and education. Moreover, nothing suggests that MdarahVision or VI's government have obtained any profit from the collected data or that individuals were seriously harmed. Therefore, the collection and use of personal data without data subjects' consent did not violate the alleged victims' privacy.

### **REPARATIONS**

Considering that VI is not responsible for any alleged violations, it humbly requests this Court to award no reparations.

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<sup>123</sup> Turing-DataJustice[60]

<sup>124</sup> Couldry&Meijas-CostsofConnection[11]

<sup>125</sup> CJEU-Pušár[117]

<sup>126</sup> WHO-HealthData[1(2);1(4)];WHO-GuidanceAI[36];REDESCA-Internet[232]

<sup>127</sup> ECtHR-ML[88];CJEU-MinisterioFiscal[61-63]

<sup>128</sup> ECtHR-PN[87]

## **PRAYER FOR RELIEF**

VI prays this Court to declare that applicants' claims are inadmissible. Subsidiarily, it requests this Court to adjudge that:

1. Focus Farm compulsory acquisition did not violate Letters' HR and the refusal to compulsorily license MdarahVac was consistent with IHRL.
2. VI's arms trade and treatment of people in the Drago-Zone did not violate alleged victims' HR.
3. VI's agreements with MdarahVision did not violate the applicants' right to privacy.
4. Consequently, no reparations must be granted.

## **Word count**

Summary of arguments: 320

Pleadings: 2999