

**10th World Human Rights Moot
Court Competition
15-20 July 2018
Geneva, Switzerland**

IN THE MATTER BETWEEN

HUMANITY FIRST

AND

GOVERNMENT OF ST. PRIYAH AND MIYAH

MEMORIAL FOR THE RESPONDENT

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	5
TABLE OF AUTHORITIES.....	7
SUMMARY OF FACTS	26
SUMMARY OF ARGUMENTS	29
PLEADINGS.....	31
A. ADMISSIBILITY	31
I. Humanity First (HF) fails to meet victim status requirements.....	31
II. The application is inadmissible before Raccoons Human Rights Court (RHRC) ..	31
a. Domestic remedies were not exhausted.....	31
b. RHRC lacks jurisdiction to hear Claim II concerning alleged violation of freedom from torture	32
B. MERITS	32
I. PM did not violate the right to life of Martinez, Moto and Garaldo	32
a. Death penalty imposed on Martinez, Moto and Garaldo is justified.....	32
b. Extradition of Garaldo did not violate his right to life.....	34
c. PM fulfills its human rights obligations by ensuring fair trial rights of Martinez and Moto.....	35
1. PM did not violate the right to be heard by a competent, independent and an impartial tribunal of Martinez.....	35
2. PM did not violate Moto’s right to be tried without undue delay.....	36
d. PM has no obligation to provide reparation	36

II. PM did not violate Garaldo and other human and drug trafficking suspects' freedom from torture.....	37
a. PM did not violate Garaldo's freedom from torture by dismissing his case.....	37
b. PM is not bound by CAT.....	37
c. In any event, the treatment towards Garaldo and other suspects do not constitute torture.....	37
1. The hearsay evidence submitted by HF is insufficient	37
2. The treatment toward Garaldo and other suspects do not constitute torture..	38
d. Alternatively, the treatment toward Garaldo and other suspects are justified	39
e. The acts committed toward Garaldo and other suspects are not attributable to PM	40
f. PM is not under obligation to provide reparation	41
III. PM did not violate Sonya and Martinez's right to found a family and related rights	42
a. PM did not violate Sonya and Martinez's right to found a family	42
1. Sonya and Martinez's marriage is illegitimate under PM Anti-Child Marriage Act	42
2. Not recognizing Sonya and Martinez's religious marriage is legitimate.....	43
3. Sonya and Martinez's relationship does not amount to family life	44
b. PM did not violate Sonya and Martinez's other related rights	45
1. PM did not violate Sonya's right to inheritance.....	45
2. PM did not violate Sonya and Martinez's right to freedom of religion.....	45

c. Alternatively, the measures taken against Sonya and Martinez’s marriage is justified.....45

d. PM is not bound to provide reparation.....46

PRAYERS FOR RELIEF48

LIST OF ABBREVIATIONS

ACHPR	African Court of Human and People's Rights
Art(s).	Article(s)
CAAF	Court of Appeals for the Armed Forces
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CR	Continent of Raccoons
ECHR	European Convention of Human Rights
EU	European Union
FC	Facts Clarifications
GANGs	Generals Against Narcotics and Gangs
GC	General Comment
HRC	Human Rights Committee
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHRL	International Human Rights Law
NGOs	Non-Governmental Organizations
PM	St. Priyah and Miyah
Raccoons Convention	Raccoons Human Rights Convention
RAMINE	Raccoonian Mission in Nehiko

RCEW	Raccoon Convention on the Empowerment of Women
RHRC	Raccoons Human Rights Court
RU	Raccoonian Union
UN Special Rapporteur	United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions
UN	United Nations
UNSC	United Nations Security Council

TABLE OF AUTHORITIES

Treaties, Conventions, Charters	
ACHPR	<i>African Charter on Human and Peoples' Rights (Banju Charter)</i> of 27 June 1981; 1520 UNTS 217, OAU Doc CAB/LEG/67/3 rev.5 (entered into force 21 October 1986).
ACHR	<i>American Convention on Human Rights, "Pact of San José, Costa Rica"</i> of 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol, 1465 adopted on 10 December 1984 (entered into force 26 June 1987).
Draft-Articles	<i>International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts</i> of November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.
ECHR	<i>European Convention on Human Rights</i> of 4 November 1950; 213 UNTS 221, ETS No. 5 (entered into force 3 September 1953).
Geneva-Convention	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 (entered into force Oct. 21, 1950).
ICCPR	<i>International Covenant on Civil and Political Rights</i> of 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

Maputo Protocol	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 11 July 2003, (entered into force 25 November 2005).</i>
Marriage-Convention	<i>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 7 November 1962, (entered into force 09 December 1964).</i>
Protocol-ACHPR	<i>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights of 10 June 1998 (entered into force 25 January 2004).</i>
UDHR	<i>Universal Declaration of Human Rights of 10 December 1948; UN General Assembly Resolution 217 A(III).</i>
VCLT	<i>Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol. 1155 adopted on 23 May 1969 (entered into force 27 January 1980).</i>
Domestic laws	
<u>New Zealand</u>	
Property Act	Property (Relationships) Act, 14 December 1976.
<u>United States</u>	
US-Code	Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing Federal or State capital crimes, 38 U.S. Code § 2411, 7 January 2011.
Victorian-Charter	Victorian Charter of Human Rights and Responsibilities, Act No. 43/2006, 25 July 2006.

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A/HRC/11/2/Add.6	UN Human Rights Council, <i>Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/11/2/Add.6</i> , 26 May 2009.
A/HRC/26/22	Human Rights Council, <i>Preventing And Eliminating Child, Early, And Forced Marriage</i> , U.N.Doc. A/HRC/26/22, 15 July 2014.
A/HRC/4/20	UN Human Rights Council, <i>Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/4/20</i> , 29 January 2007.

A/RES/36/55	UN General Assembly, <i>Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief</i> , A/RES/36/55, 25 November 1981.
CCPR-GC-20	UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992.
CCPR/C/21/Rev.1/Add.4	UN Human Rights Committee, <i>CCPR General Comment No. 22</i> , CCPR/C/21/Rev.1/Add.4, 30 July 1993.
CEDAW-21	UN Committee on the Elimination of Discrimination Against Women (CEDAW), <i>CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations</i> , 17 April 2018.
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HRI\GEN\1\Rev.1	Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), <i>Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies</i> , U.N. Doc. HRI\GEN\1\Rev.1 at 6, 1994.
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SUMMARY OF FACTS

Death sentence of Robin Martinez, Arturo Moto and Garaldo del Junko

In 2012, St. Priyah and Miyah (PM)'s former Health Minister, Arturo Moto was dismissed from his position following Ladonya Report supported by medical expert testimonies, revealing his embezzlement of nearly 17 million dollars of fund allocated for women and children's health facilities and medicine in the last 8 years, which consequently led to the deaths of over 2000 women and children (Facts, ¶¶6; Clarifications, ¶1). In March 2018, Moto was convicted of grand corruption with aggravating circumstances under PM's Anti-Corruption Act and faced death penalty (Facts, ¶¶5&21). After his appeal to the Supreme Court failed, Moto sent an urgent letter to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, claiming PM violated his right to life (Facts, ¶21). PM granted Moto's case a stay of execution (Facts, ¶21).

In 2018, the Generals Against Narcotics and Gangs (GANGs) deployed as part of the Raccoonian Mission in Nehiko (RAMINE) which General Rodriguez Sanchez was the third-in-command, carried out GANGs operations to apprehend Garaldo, an infamous drug and human trafficker operated from Nehiko (Facts, ¶¶10&14). With Nehiko's support and under PM-Nehiko Extradition Treaty, Garaldo was captured and sent to trial in PM (Facts, ¶¶14&16; Clarifications, ¶3). In late February 2018, Garaldo was convicted of drug and human trafficking with death sentence imposed after his lawyer unsuccessfully argued in PM Constitutional Court challenging his extradition (Facts, ¶20). In March 2018, Garaldo was executed with wide public support and celebration (Facts, ¶20).

General Sanchez instructed Martinez to interrogate Garaldo for information regarding the huge amount of drugs and almost a hundred of girls being trafficked (Facts, ¶15). Martinez indicated being uncomfortable and later disappeared (Facts, ¶15). While soldiers from other countries took over the interrogation, Martinez was ordered to go uphill to guard against any

intrusions by Garaldo's loyal fellows (Facts, ¶15). While going uphill, Martinez called Sonya complaining about his work and he wanted to return home, during which an armed violence occurred between GANGs and Garaldo's crews, killing three soldiers and wounding General Sanchez (Facts, ¶15). Martinez took a ferry home without permission and knowledge of General Sanchez (Facts, ¶17). Martinez was later arrested, charged with and convicted of desertion with death penalty imposed under PM Army Act (Facts, ¶¶17&19). He was executed after his appeal at the Court of Appeals for the Armed Forces failed (Facts, ¶15).

Treatments toward Garaldo, and drug and human trafficking suspects

Drug trafficking is the most serious crime in PM (Facts, ¶15). PM did not ratify the UN Convention against Torture (Facts, ¶4). Since 2013, GANGs, especially the one led by General Sanchez, have greatly succeeded in combating drug and human trafficking (Facts, ¶10). Though NGO reports accused him of torturing drug and human trafficking suspects, there is no witness or collaborated evidence proving the alleged crime beside the statement of Sonya Diaz, a human trafficking survivor (Facts, ¶11). When Garaldo was captured in 2018, he was interrogated by General Sanchez and Martinez, and soldiers from other countries were also involved (Facts, ¶15). As Garaldo was imposed death sentence for committing drug and human trafficking, he claimed for violation of his freedom from torture at the Constitutional Court where his application was considered inadmissible (Facts, ¶20).

Legal status of Sonya and Martinez's "marriage"

As PM encounters a high rate of child marriage, a minimum marriageable age was set at 18 under PM's Anti-Child Marriage Act and the Racoon Convention on the Empowerment of Women (Facts, ¶¶3&9). Just turned 17-year-old, Sonya claimed that she married Martinez before a Sokotah religious leader (Facts, ¶19). Their marriage was considered illegal, that upon the execution of Martinez, their claim challenging the constitutionality of Article 2 of

Anti-Child Marriage Act was dismissed, and Sonya was precluded from entitlement to Martinez's pension and body (Facts, ¶¶19&23). Without a spouse and next of kin, Martinez's body was buried by PM army which he always considered as his family (Facts, ¶¶12&19).

SUMMARY OF ARGUMENTS

Humanity First (HF) is forbidden from making claims on behalf of the victims since it fails to meet victim status requirement; particularly, it cannot represent the deceased. Additionally, the claims are inadmissible before the Raccoons Human Rights Court (RHRC) as domestic remedies were not exhausted and the RHRC lacks jurisdiction to hear Claim II since St. Priyah and Miyah (PM) did not ratify the UN Convention against Torture (CAT).

Claim I: PM did not violate the right to life of Robin Martinez, Arturo Moto, and Garaldo del Junko as the death penalty imposed was considered as “the most serious crimes” under PM laws and international human rights law (IHRL). Moreover, Garaldo’s extradition was in accordance with PM-Nehiko Extradition Treaty and did not violate his right to life. Additionally, PM has fulfilled its legal obligation by ensuring procedural safeguards to their fair trial rights, including the right to be tried without undue delay, and to be heard by an impartial tribunal.

Claim II: PM did not violate the right to freedom from torture of Garaldo and other drug and human trafficking suspects as dismissing Garaldo’s case did not violate his right to life and PM is not bound by CAT. In any event, the treatments towards Garaldo and other suspects did not constitute torture under IHRL. Alternatively, the measures taken were necessary and proportionate to save hundreds of lives from imminent threats and to restore the peace in PM and Nehiko. Moreover, PM shall not be liable for the interrogations conducted by other countries’ soldiers.

Claim III: Sonya Diaz is not considered as Martinez’s spouse since their marriage is inconsistent with the minimum marriageable age of 18 set by PM’s legislations, and thus illegal. Their relationship did not amount to *de facto* family life and their religious marriage was not legally recognized as it would encourage child marriage. Sonya and Martinez’s freedom of religion and Sonya’s right to inheritance were not violated. Non-recognition of

their marriage is justified as it conforms with PM's international obligations. Thus, PM is not obliged to provide reparation.

PLEADINGS

A. ADMISSIBILITY

I. Humanity First (HF) fails to meet victim status requirements

The Applicant cannot represent deceased people.¹ Only their family members can bring claims to human rights bodies.² Martinez and Garaldo were deceased, and HF failed to demonstrate that it has received specific and explicit instructions from the alleged victims or their family members.³ Therefore, the Applicant's claims concerning Martinez and Garaldo are inadmissible.

II. The application is inadmissible before Raccoons Human Rights Court (RHRC)

a. Domestic remedies were not exhausted

The Applicant is required to exhaust all domestic remedies⁴ which are available,⁵ effective⁶ in providing a prospect of success,⁷ and sufficient to redress the violations⁸ before bringing claims to the RHRC.⁹ In Claim I, the Applicant failed to bring the claim before the Constitutional Court and the case was still under "further consultations" in PM.¹⁰ In Claim II,

¹ Protocol-ACHPR, Art.3; Turkey[5].

² Zaire[5(a)].

³ Post,p.6; Aliev[44-49]; Velikova[48-52]; Valentin[104;112].

⁴ ACHR, Art.46(1)(a).

⁵ Vernillo[27].

⁶ APA[6.2].

⁷ Patiño[5.2].

⁸ Gambia[35].

⁹ ACHR,Art.46(1)(a); Protocol-ACHPR,Art.50; RL[6.4]

¹⁰ Facts[21].

the Applicant failed to resubmit the case to the Constitutional Court for adjudication given it was dismissed for using foul language.¹¹ In Claim III, the Applicant only approached the Constitutional Court regarding constitutionality of Anti-Child Marriage Act,¹² not the alleged violation of their rights. Thus, HF failed to exhaust all domestic remedies.

b. RHRC lacks jurisdiction to hear Claim II concerning alleged violation of freedom from torture

The RHRC has jurisdiction to consider violations of the Raccoons Convention and other international human rights treaties ratified by PM.¹³ However, PM did not ratify the UN Convention against Torture (CAT).¹⁴ Thus, RHRC has no jurisdiction to address Claim II.

B. MERITS

I. PM did not violate the right to life of Martinez, Moto and Garaldo

a. Death penalty imposed on Martinez, Moto and Garaldo is justified

Death penalty is not prohibited under international human rights law (IHRL) and can be imposed on “the most serious crimes”¹⁵, including desertion¹⁶, grand corruption with

¹¹ Facts[20].

¹² Facts[23].

¹³ Protocol-ACHPR,Art.3; Facts[2].

¹⁴ Facts[4].

¹⁵ ICCPR,Art.6; ECHR,Art.2; ACHR,Art.4; Makwanyane[21]; HRI/GEN/1/Rev.9(Vol.I),[6]; Peter[20].

¹⁶ Alfred,p.91;Daniel,p.1,Antonio,pp.9,41.

aggravating circumstances,¹⁷ and drug and human trafficking¹⁸. State has the discretion to determine the crimes subjected to death penalty.¹⁹ Accordingly, in PM, death penalty is imposed on desertion, grand corruption with aggravating circumstances, and drug and human trafficking.²⁰

Martinez committed desertion as he abandoned his duty without General Sanchez's permission.²¹ His absence was during war time in Nehiko²² and an armed conflict between General Sanchez and Garaldo's men, where a number of soldiers were killed and General Sanchez seriously wounded.²³

Moto, former Health Minister, embezzled nearly 17 million dollars which was allocated for improving health facilities and purchasing of special medicines for women and children.²⁴ His crime falls under aggravating circumstances where death penalty is justified because the absence of such money led to the death of over 2000 women and children.²⁵

¹⁷ ICDP, p.13,14,19,20,33.

¹⁸ ICDP, p.24-34; Patrick, p.6; Rick, p.21; William, p.3.

¹⁹ ICDP, pp.5-6; GA/SHC/3996, 2010.

²⁰ Facts [16],18],[15],[21].

²¹ PM-Army-Act, Art.1; Fact[17].

²² Facts[14].

²³ Facts[15]

²⁴ Facts[6].

²⁵ PM-Anti-Corruption, §6(2); Florida, §29-2523; Facts[6]; FC[1].

Garaldo was a cross-border criminal who transported big quantities of drugs and smuggling hundreds of girls between PM and Nehiko.²⁶ His crimes persistently and tremendously destroy thousands of innocent lives.²⁷

Thus, the death penalty imposed on Martinez, Garaldo and Moto are justified and legitimate.

b. Extradition of Garaldo did not violate his right to life

An extradition treaty cannot be withholding on the ground of death penalty.²⁸ State violates a person's right to life only if that state has abolished death penalty but still extradites that person to another state where death penalty is retained.²⁹

However, death penalty is neither abolished in Nehiko nor PM.³⁰ As Garaldo is an infamous drug and human trafficker operating between PM and Nehiko,³¹ and both states have concluded an extradition treaty,³² PM did not violate his right to life.

²⁶ Facts[10],[14].

²⁷ Facts[10],[11].

²⁸ Teuber,p.8;Shea,p.138;Roecks,p.234.

²⁹ Roger[10.6];Kwok[9.4].

³⁰ Facts[15],[16].

³¹ Facts[10].

³² FC[3].

c. PM fulfills its human rights obligations by ensuring fair trial rights of Martinez and Moto

1. PM did not violate the right to be heard by a competent, independent and an impartial tribunal of Martinez

All person is entitled to the right to a fair trial³³ and to be heard by an independent and impartial tribunal.³⁴ The appointment of judges by executive branch does not determine judge's independency.³⁵ Martinez's claim was heard by Court of Appeals for the Armed Forces (CAAF), the final court of military jurisdiction.³⁶ The independency of CAAF's seven judges remains maintained although they were appointed by Lady Ladonya.³⁷ Moreover, their appointment is upon the fixed terms of 5 years³⁸ which reflects a guarantee of independence.³⁹ Additionally, Lady Ladonya cannot remove them at her will⁴⁰ as such power falls under the authority of Judicial Service Commission (JSC).⁴¹ Hence, PM did not violate Martinez's fair trial rights.

³³ ICCPR,Art.14; ECHR,Art.6; ACHR,Art.8; ACHPR,Art.7; UDHR,Art.10.

³⁴ ICCPR,Art.14(1);ECHR,Art.6(1); ACHR,Art.8(1).

³⁵ Campbell[79]

³⁶ FC[15].

³⁷ Facts[19].

³⁸ FC[2].

³⁹ Compte[23].

⁴⁰ FC[2]

⁴¹ FC[2].

2. PM did not violate Moto's right to be tried without undue delay

The delay is reasonable is proven by factors, such as the conduct of the accused, and the seriousness of the offence where the delay does not lead to the violation of right to undue delay.⁴²

Moto had committed grand corruption with aggravating circumstances that invoked PM to look carefully into all matters and conduct in-depth investigations to reach the rightful judgement.⁴³ Thus, PM did not violate Moto's right to be tried without undue delay.

d. PM has no obligation to provide reparation

PM is obliged to provide reparation only when it breaches its international obligation.⁴⁴ PM does not owe an obligation to provide remedies to Martinez, Garaldo and Moto or their families because they are not victims. PM has the authority to punish persons according to its domestic laws and international law.

⁴² Vernillo[30];Zhang,p.41;Victorian Charter,§25(2).

⁴³ FC[9].

⁴⁴Draft-Articles,Art.31(1); Acevedo[294-295]; López[179-180]; Massacre[52],[226-227]; Berenson-Mejía[230]; Carpio-Nicolle[85]; Cruz-Flores[86],[138-139]; Urrutia[142]; Myrna[235]; Bulacio[71].

II. PM did not violate Garaldo and other human and drug trafficking suspects' freedom from torture

a. PM did not violate Garaldo's freedom from torture by dismissing his case

The communication is considered inadmissible when using foul language directed against the state concerned and its institutions.⁴⁵ PM did not prevent Garaldo from bringing his case to the Constitutional Court, but he failed to re-submit the application to the Court.⁴⁶

b. PM is not bound by CAT

Consent to be bound by a treaty is expressed through ratification or approval.⁴⁷ State parties are only bound by CAT upon ratification.⁴⁸ PM did not breach obligations under CAT since PM did not ratify CAT at the time of the alleged offence.⁴⁹ Therefore, PM has no international obligations to guarantee freedom from torture deriving from CAT.

c. In any event, the treatment towards Garaldo and other suspects do not constitute torture

1. The hearsay evidence submitted by HF is insufficient

The credibility of evidence of torture must be reached.⁵⁰ There are indicative factors such as the date and location where the alleged crimes took place.⁵¹ Additionally, the evidence

⁴⁵ Ligue[13]; Info-No.3,p.5.

⁴⁶ Facts[20].

⁴⁷VCLT,Art.14.

⁴⁸CAT,Art.27.

⁴⁹Draft-Articles,Art.13; Fact [4].

⁵⁰Ireland[161].

⁵¹Callixte[80];Facts[11].

is insufficient when the beating and violence inflicted on the victims is not apparent⁵² and was not corroborated by concrete evidence.⁵³ Proof may follow from the coexistence of sufficiently clear, strong evidence or similar undeniable presumptions of fact.⁵⁴

Sonay failed to indicate concrete and reliable evidence, saying who was the actual perpetrator that harmed other suspects as she was locked in a dark room, while no specific location and date were mentioned.⁵⁵ Furthermore, other suspects were not found with any physical or mental harm.⁵⁶ The hearsay evidence alone shall be insufficient to prove torture in this case,⁵⁷ and thus inadmissible.

2. The treatment toward Garaldo and other suspects do not constitute torture

PM is obliged to protect the right to freedom from torture.⁵⁸ However, the acts committed are not torture. Torture is established if the acts (1) cause serious pain⁵⁹ or cruel suffering⁶⁰ whether physically or mentally;⁶¹ (2) are intentional, and (3) aim for obtaining information or confession.⁶² The minimum level of severity of acts and resulted harm must be satisfied to

⁵²AV[49]; Akdeniz; Facts[15].

⁵³ AV[50].

⁵⁴ Ireland[161].

⁵⁵ Fact[11].

⁵⁶Respondent,Claim-II-[2(A)].

⁵⁷Callixte[166];Facts[11].

⁵⁸ ICCPR,Art.7; ECHR,Art.3; UDHR,Art.5; ACHPR,Art.5; CCPR-GC-20,[3]; OC-18/03[65-73]; Soering[91]; Hakimi,p.350.

⁵⁹ Milorad[64].

⁶⁰ Ireland[167];Steven[73]

⁶¹ Tshitenge[10.2]; Miango[8.2];Minanga[5.3]; AV[47].

⁶² Cakici[98];Nowak&Arthur,p.75.

constitute serious suffering.⁶³ The act of threatening does not constitute torture⁶⁴ if the victims were not found with anxiety during the interrogation session, serious physical or mental injury,⁶⁵ mutilations of wounded,⁶⁶ and severe beatings⁶⁷ which resulted in a long-term disadvantaged.⁶⁸

There were merely NGOs reports and Sonya and Martinez's statements, claiming that torture was established.⁶⁹ However, there was no evidence proving that those alleged victims suffered with serious physical injuries.⁷⁰ General Sanchez did not order Martinez to torture but to interrogate Garaldo, aiming to find out the whereabouts of drug and girls being trafficked.⁷¹ While no serious injury was proven, PM's acts toward Garaldo and other suspects do not amount to torture.

d. Alternatively, the treatment toward Garaldo and other suspects are justified

The wrongfulness of a state's agent is precluded when there is no other reasonable way of saving life⁷² or it is the ultimate way to safeguard an essential interest threatened by a grave and imminent danger.⁷³ When other means are impossible, torture is necessary and

⁶³ AV[47];Ireland[162];Selmouni[160].

⁶⁴ Debra,p.17.

⁶⁵ Tshitenge[10.2];Miango[8.2];Pell,9; Miles,p.10.

⁶⁶ Geneva-Convention,Art.3;Facts[15],[20].

⁶⁷ Zejnil[1012–1018];Facts[11],[15].

⁶⁸ Case001[619];Radislav[511–513].

⁶⁹ Facts[11].

⁷⁰ Facts[11].

⁷¹ Facts[15].

⁷² Draft-Articles,Art.24(1);Commentary-Draft-Articles,p.78.

⁷³ Draft-Articles,Art. 25(1);Commentary-Draft-Articles,p.80.

proportionate to extract information,⁷⁴ and should be employed by government agents to help prevent the death of innocents.⁷⁵

Garaldo had persistently destroyed the peace and imposed threat to civilians in PM.⁷⁶ Failure to extract information from Garaldo will cause the loss of hundreds of innocent lives that were being trafficked and polluted by drugs.⁷⁷ The interrogation of Garaldo was necessary and the only way for PM to tackle forthcoming dangers.⁷⁸ As evidenced, with the information obtained, the drugs were seized and 160 girls were successfully rescued.⁷⁹ Therefore, PM's acts toward Garaldo and other victims are justified.

e. The acts committed toward Garaldo and other suspects are not attributable to PM

A state is legally responsible for conducts committed by (1) its organ,⁸⁰ (2) persons or entities exercising governmental authority,⁸¹ and (3) its instruction, direction or control.⁸² State also has the responsibility if it assists, directs or controls or coerces another state in committing

⁷⁴ Suresh; Chahal[7981]; T&V[71]; Peers[74]; Van[48]; Aliev-1[122]; Milorad[184]; Ramush[418]; Radoslav[486].

⁷⁵ Raviv,p.137.

⁷⁶ Facts[13],[14].

⁷⁷ Facts[15].

⁷⁸ Facts[16].

⁷⁹ Facts[16].

⁸⁰ Draft-Articles,Art.4(1);Commentary-Draft-Articles,p.40.

⁸¹ Commentary-Draft-Articles,p.43;Drozd[91].

⁸² Draft-Articles,Arts.4,5,8; Brownlie,p.32-166; Caron,p.109; AV,p.261; Przetacznik,p.151; Zafiro,p.160; Stephens,p.267; Sabotage,p.84.

the act in which state has knowledge of or if committed by state would be considered an internationally wrongful act.⁸³

PM is not attributed as there is no evidence indicating PM authorized, directed or controlled Racconian Mission in Nehiko (RAMINE) to torture Garaldo.⁸⁴ Though PM provided soldiers and resources to RAMINE, its aim was solely to protect civilians in Nehiko.⁸⁵ The operation to arrest Garaldo was a covert operation, which PM did not aware of.⁸⁶ General Sanchez and other countries' soldiers were not exercising under PM's authority but RAMINE's.⁸⁷ Thus, PM is not liable for the alleged breach.

f. PM is not under obligation to provide reparation

PM is only obliged to provide reparation for its breach of international legal obligations.⁸⁸ However, as PM did not violate freedom from torture of Garaldo and other suspects, PM is under no obligation to provide reparation thereof.

⁸³Draft-Articles,Arts.16,17&18; A/37/745,p.50;Croatia,[419].

⁸⁴ Uganda[160];Bosnia[386]; Nicaragua[109-115].

⁸⁵ Facts[13].

⁸⁶ Facts[14].

⁸⁷ Facts[15];Bosnia[384].

⁸⁸Draft-Articles,Art.31(1); Acevedo-Jaramillo[294-295]; López-Álvarez[179-180]; Massacre[52],[226-227]; Berenson-Mejía[230]; Carpio-Nicolle[85-86]; Cruz-Flores[138-139]; Urrutia[142]; Myrna[235]; Bulacio[71]; CME[616].

III. PM did not violate Sonya and Martinez's right to found a family and related rights

a. PM did not violate Sonya and Martinez's right to found a family

1. Sonya and Martinez's marriage is illegitimate under PM Anti-Child Marriage Act

The right to found a family is granted upon the right to marry of an individual.⁸⁹ The right to marry is recognized when a marriage complies with a state's national laws.⁹⁰ State has discretion to determine and stipulate the minimum marriageable age under its legislation.⁹¹ A marriage concluded before 18 is a child marriage,⁹² which is a human rights violation⁹³ and shall be eliminated.⁹⁴

In PM, 18 is the minimum marriageable age.⁹⁵ Sonya and Martinez were not entitled to the right to marry as they got married when Sonya just turned 17.⁹⁶ Failing to comply with PM's laws, Sonya and Martinez's marriage is a child marriage and is illegitimate.

⁸⁹ Nowak,pp.532-3; UDHR,Art.16(3); ECHR,Art.12; ICCPR,Art.23(1).

⁹⁰ UDHR,Art.16(3-øçµm); ECHR,Art.12; ICCPR,Art.23(1); Protocol-ACHPR,Art.6; PM-Anti-Child,Art.2; CEDAW-21,[36]; E/C.12/2005/4,[27].

⁹¹ Marriage-Convention,Art.2;Marriage-Recommendation[II].

⁹² Unicef,p.6;Child-marriage,p.7.

⁹³ A/C.3/69/L.23,[PP7]

⁹⁴ A/68/53/Add.1,[III].

⁹⁵ PM-Anti-Child,Art.2; Protocol-ACHPR,Art.6; CEDAW-21,[36]; E/C.12/2005/4,[27]; Facts[9].

⁹⁶ Facts[12].

Child marriage is only allowed when mental capacity is reached⁹⁷ or a minor aged 16 with parental consent, successfully filed petition to a court based on serious grounds.⁹⁸ Requiring welfare benefits is not a serious ground.⁹⁹

Sonya does not possess mental capacity as she did not aware of the consequences upon her child marriage.¹⁰⁰ Furthermore, Sonya lacks parental and guardian consent to bring her case before the court. Sonya's ground to approach the Constitutional Court was merely to claim inheritance from Martinez, which is not a serious ground.¹⁰¹ Thus, PM did not violate their right to found a family.

2. Not recognizing Sonya and Martinez's religious marriage is legitimate

States parties are obliged to take appropriate and effective measures to eliminate harmful practices which caused human rights violation.¹⁰² States must commit themselves in modifying social and cultural patterns to conform with international standard.¹⁰³ All types of marriages must be recorded in written form and registered under national laws.¹⁰⁴ Failure to comply with these provisions renders a marriage unrecognized.

PM did not prohibit any individuals from practicing their religion if it complies with PM's

⁹⁷ HRI/GEN/1/Rev.9(Vol.I),[4].

⁹⁸ Ibid,p.301.

⁹⁹ Ibid.

¹⁰⁰ Sevastian,p.298;Facts[12],[19].

¹⁰¹ Ibid.

¹⁰² Maputo-Protoco,Art.2(1)(b).

¹⁰³ Ibid,Art.2(2).

¹⁰⁴ Ibid,Art.6(d);HRI/GEN/1/Rev.9(Vol.I),[4].

legislation. Sokotah religion practice promotes child marriage,¹⁰⁵ which is inconsistent with PM's laws. Additionally, Sonya and Martinez did not register their marriage.¹⁰⁶ Thus, PM conforms to its obligations and did not violate their right to found a family.

3. Sonya and Martinez's relationship does not amount to family life

De facto relationship defines the notion of the 'family life',¹⁰⁷ and it happens between a man and a woman who are 18 and above, live together as a couple, and are not legally married with one another.¹⁰⁸ A couple lives together is proven by the relationship duration, economic ties, and degree of their mutual commitment.¹⁰⁹ The relationship must have lasted three years and above.¹¹⁰

Sonya married at the age of 17.¹¹¹ They only lived together for less than a year.¹¹² Their marriage proposal alone is insufficient to prove their commitment since Martinez was deployed to Nehiko one month after their "marriage" and no economic ties were proven.¹¹³ Hence, Sonya and Martinez's relationship is not de facto relationship.

¹⁰⁵ Facts[12].

¹⁰⁶ Maputo-Protocol,Art.6(d).

¹⁰⁷ Al-Nashif[112].

¹⁰⁸ Property-Act[2D].

¹⁰⁹ Ibid; LP[48].

¹¹⁰ Nicola,p.819;Property-Act,4(5).

¹¹¹ Facts[12]

¹¹² Ibid.

¹¹³ Facts[12],[13].

b. PM did not violate Sonya and Martinez's other related rights

1. PM did not violate Sonya's right to inheritance

Upon the death of the husbands, their spouse is entitled to the inheritance.¹¹⁴ Pension, however, is not guaranteed when the marriage contradicts the law.¹¹⁵ As Sonya and Martinez's marriage does not comply with PM Anti-Child Marriage Act¹¹⁶, Sonya is not entitled to the sum provided by PM. Therefore, PM did not violate Sonya's right to inheritance.

2. PM did not violate Sonya and Martinez's right to freedom of religion

Though burying the dead constitutes an essential part of religious practice,¹¹⁷ the corpse could only be released to the spouse or next of kin.¹¹⁸ Additionally, military funeral honor is not granted to soldiers who commit capital crimes.¹¹⁹ Martinez's body should be released and buried by the army since he always considered the army as his family.¹²⁰ PM neither has the obligation to give his dead body to Sonya, an illegitimate "spouse" nor provide Martinez with military funeral honor when he committed desertion with death sentence.

c. Alternatively, the measures taken against Sonya and Martinez's marriage is justified

The interference by a state is justified when it complies with law, pursues a legitimate aim

¹¹⁴ Maputo-Protocol,Art.21; PM-Pension-Act; Facts[22].

¹¹⁵ Díaz[15];Yigit[58].

¹¹⁶ Respondent-Memo(III)(A)(1).

¹¹⁷ Moldova[114];Tsedek[73-74]; Kalaç[27]; Johannische,p.4.

¹¹⁸ Facts[19]; Sherman[B];Elizabeth[9];Pettigrew[21].

¹¹⁹ US-Code,§2411.

¹²⁰ Facts[12].

as determined by law and is necessary in democratic society.¹²¹ The interference must have legal basis which is accessible and foreseeable to the person concerned,¹²² and is necessary and proportionate when it balances the interest of the community and the individual's rights.¹²³

In PM's legislation, it clearly sets the minimum marriageable age at 18, which Sonya and Martinez as PM's citizens are aware of.¹²⁴ Recognizing Sonya and Martinez's marriage means promoting child marriage which would adversely affect health and wellbeing of children.¹²⁵ Taking judicial notice is upon the discretion of the Court.¹²⁶ However, it is irrelevant as it is granted only to facts of common knowledge and previously adjudicated fact.¹²⁷ Thus, non-recognition and not granting judicial notice on their marriage by PM is justified.

d. PM is not bound to provide reparation

The violation of the right to found a family by a state entails its responsibility.¹²⁸ However, PM owes no obligation to responsible for any acts because it did not violate Sonya and Martinez's rights as their marriage falls under the scope of child marriage and illegitimate.¹²⁹

¹²¹ ECHR,Art[8]; XY[23]; ABC[218].

¹²² Khan[27]; Malone[67]; Andersson[75]; Olsson[78].

¹²³ Olsson[86];Soering[87].

¹²⁴ Facts[12].

¹²⁵ Quentin,p.1,2015.

¹²⁶ Schifeling,p.600;Drummond,p.3.

¹²⁷ Sopinka[976]; Davis[982-83]; Simic[4]; Krajisnik[16]; Semanza[23]; Cosom[14-15].

¹²⁸ Draft-Articles,Art.1;ECHR,Art.44; ICCPR,Art.2(3)(a).

¹²⁹ Facts[9].

Sonya is legally precluded from receiving Martinez's inheritance. Thus, PM is not liable to provide remedy.

PRAYERS FOR RELIEF

The Government of St. Priyah and Miyah hereby requests the Court to declare that:

A. I. Humanity First lacks legal standing to bring claims on behalf of the victims, that the Court shall not hear claims brought by the Applicant.

A. II. All of the Applicant's claims are inadmissible.

B. I. The Government of St. Priyah and Miyah's imposition of death penalty on Robin Martinez, Arturo Moto and Garaldo del Junko was justified under international human rights law and did not violate its legal obligations regarding the right to life.

B. II. The Government of St. Priyah and Miyah's conduct of interrogation of Garaldo del Junko and other drug and human trafficking suspects did not violate their right to freedom from torture and was consistent with its international obligations.

B. III. The Government of St. Priyah and Miyah's non-recognition of Sonya Diaz and Robin Martinez's marriage was in accordance with its international obligations and did not violate their right to found a family and other related rights.

Counsel for the Respondent

Word count: 2998 words