

**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 APPLICANT

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	4
TABLE OF AUTHORITIES.....	6
SUMMARY OF FACTS	24
SUMMARY OF ARGUMENTS	26
PLEADINGS.....	28
A. ADMISSIBILITY	28
I. Humanity First (HF) fulfills <i>locus standi</i> requirements.....	28
II. The Applicant’s claims are admissible before the RHRC.....	28
a. The Applicant has exhausted all domestic remedies.....	28
b. The victim status requirements are satisfied	29
B. MERITS	30
I. PM violated the right to life of Martinez, Moto and Garaldo	30
a. Death penalty imposed on Martinez, Moto and Garaldo is not justifiable	30
1. Death penalty can only be imposed on the most serious crimes.....	30
2. In any event, Martinez did not commit crime of desertion	31
3. PM failed to ensure fair trial rights of Martinez, Moto, and Garaldo.....	32
3.1 PM violated Martinez’s right to seek pardon	32
3.2 PM violated Moto’s right to be tried without undue delay.....	33
3.3 PM violated Martinez’s right to be heard by a competent, independent and impartial tribunal	33
3.4 Garaldo’s extradition violated his right to life	34

b.	PM shall provide reparation to Martinez, Moto and Garaldo.....	35
II.	PM violated Garaldo del Junko and other victims' right to freedom from torture...	35
a.	PM failed to guarantee the right to freedom from torture	35
b.	The acts committed towards Garaldo and other victims constitute torture	36
c.	The acts committed towards Garaldo and other victims are attributable to PM.	37
d.	PM shall provide reparation to Garaldo and other victims	38
III.	PM violated Sonya and Martinez's right to found a family and related rights.....	38
a.	PM violated Sonya and Martinez's right to found a family	38
1.	Sonya and Martinez's relationship constitutes a family life	38
2.	PM violates its obligation to guarantee them right to found a family.....	39
3.	Religious marriage is not prohibited under IL.....	40
b.	PM violated Sonya and Martinez's related rights.....	41
1.	PM violated Sonya's inheritance right	41
2.	PM violated Martinez and Sonya' right to freedom of religion	41
c.	The measure undertaken by PM undermines the principle and purpose of Anti-Child Marriage Act	42
d.	PM is obliged to provide reparation to Sonya and Martinez	42
	PRAYERS FOR RELIEF	43

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
IL	International 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).
CRC	<i>Convention on the Rights of the Child</i> of 20 November 1989 (entered into force 2 September 1990).
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).
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)</i> of 11 July 2003 (entered into force 25 November 2005).
Marriage Convention	<i>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages</i> of 7 November 1962 (entered into force 09 December 1964).

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</i> of 10 June 1998 (entered into force 25 January 2004).
UDHR	<i>Universal Declaration of Human Rights</i> of 10 December 1948; UN General Assembly Resolution 217A(III).
Domestic Laws	
<u>Germany</u>	
BGB	German Civil Code, 2 January 2002.
<u>Sierra Leone</u>	
Sierra-Act	The Legitimacy Act, 28 December 1989.
<u>South Africa</u>	
RCMA	Recognition of Customary Marriages Act (RCMA), 15 November 2000.
<u>United Kingdom</u>	
MCA-1973	Matrimonial Causes Act 1973, 23 May 1973.
General Comments, Resolution & Recommendations	
A/50/44	<i>Report of the Committee against Torture, A/50/44</i> , (26 July 1995).
A/56/156	<i>Question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156</i> , (03 July 2001).
A/HRC/10/44	UN Human Rights Council, <i>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/10/44</i> , (14 January 2009).

A/HRC/11/2/Add.5.	UN Human Rights Council, <i>Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/11/2/Add.5.</i> , (28 May 2009).
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/31/37	Human Rights Council, <i>Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, A/HRC/31/37</i> , (15 January 2016).
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).
ACHPR-GC3	<i>ACHPR General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life</i> , (4-18 November 2015).
CCPR/C/21/Rev.1/Add.10	UN Human Rights Committee, <i>CCPR General Comment No. 28, CCPR/C/21/Rev.1/Add.10</i> , (29 March 2000).
CCPR/C/21/Rev.1/Add.13	UN Human Rights Committee, <i>CCPR General Comment No. 31, CCPR/C/21/Rev.1/Add.13</i> , (26 May 2004).
CCPR/C/21/Rev.1/Add.6	UN Human Rights Committee, <i>CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols</i>

	<i>thereto, or in Relation to Declarations under Article 41 of the Covenant, CCPR/C/21/Rev.1/Add.6, (04 November 1994).</i>
CCPR/C/79/Add.79	UN Human Rights Committee, <i>UN Human Rights Committee: Concluding Observations of the Human Rights Committee, Slovakia, CCPR/C/79/Add.79, (4 August 1997).</i>
CCPR/C/79/Add.85	UN Human Rights Committee, <i>Concluding observations of the Human Rights Committee Sudan, CCPR/C/79/Add.85, (19 November 1997).</i>
CCPR/C/GC/32	UN Human Rights Committee, <i>General Comment No. 32, Article 14, Right to Equality before Courts and Tribunals and to Fair Trial, CCPR/C/GC/32, (23 August 2007).</i>
CCPR-GC-20	UN Human Rights Committee, <i>CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), (10 March 1992).</i>
CEDAW-GC21	UN Committee on the Elimination of Discrimination Against Women, <i>CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 17 April 2018.</i>
E/2010/10	UN Economic and Social Council, <i>Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, E/2010/10, (18 December 2009).</i>
E/C.12/2005/4	UN Committee on Economic, Social and Cultural Rights, <i>General comment No. 16, E/C.12/2005/4, (11 August 2005).</i>
E/CN.4/1997/47	Commission on Human Rights, <i>Report of the Special Rapporteur on violence against women, its causes and</i>

	<i>consequences, Ms. Radhika Coomaraswamy, E/CN.4/1997/47, (12 February 1997).</i>
E/CN.4/1997/60	Commission on Human Rights, <i>Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, E/CN.4/1997/60, (24 December 1996).</i>
HRC//GC/6	UN Human Rights Committee, <i>General Comment No. 6, HRC//GC/6, (30 April 1982).</i>
HRI/GEN/1/Rev.9	UN Human Rights Committee, <i>General Comment No. 15, HRI/GEN/1/Rev.9, (11 April 1986).</i>
HRI/GEN/1/Rev.9(Vol.I)	UN Human Rights Committee, <i>CCPR General Comment No. 19, HRI/GEN/1/Rev.9 (Vol.I), (27 July 1990).</i>
International Cases and Communications	
<u>African Commission on Human and Peoples' Rights</u>	
Bosch	Interights and Others (on behalf of Bosch) v. Botswana, Communication No. 240/2001, November 2003.
Doebbler	Curtis Doebbler v. Sudan, Communication No. 236/2000, 11 May 2012.
Gonzalez	Gonzalez del Rio v. Peru, Communication No. 263/1987, UN Doc. CCPR/C/46/D/263/1987 (1992).
<u>European Court of Human Rights</u>	
Air	Air Canada v. The United Kingdom (Application No. 18465/91), Judgment, 05 May 1995.
Al-Adsani	Al-Adsani v. The United Kingdom (Application No. 35763/97), 21 November 2001.

Al-Nashif	Al-Nashif v. Bulgaria (Application No. 50963/99), Judgment, 20 June 2002.
Ananyev	Ananyev and Others v. Russia (Application No. 42525/07 and 60800/08), Judgment, 10 January 2012.
Bryan	Bryan v. The United Kingdom, (Application No. 19178/91), Judgment, 22 November 1995.
Chahal	Chahal v. The United Kingdom, (Application No. 22414/93), Judgment, 15 November 1996.
Chitayev	Chitayev and Chitayev v. Russia, (Application No. 59334/00), Judgment, 18 January 2007.
Díaz	Muñoz Díaz v. Spain (Application No. 49151/07), Judgment, 8 December 2009.
Dikme	Dikme v. Turkey, (Application No. 20869/92), Judgment, 11 July 2000.
Farragut	Farragut v. France, (Application No. 10103/82), Admissibility, 6 July 1984.
Findlay	Findlay v. The United Kingdom, (Application No. 110/1995/616/706), Judgment, 25 February 1997.
Gafgen	Gafgen v. Germany, (Application No. 22978/05), Judgment, 1 June 2010.
Gautrin	Gautrin and others v. France, (Application No. 38/1997/822/1025-1028), Judgment, 20 May 1998.
Henaf	Henaf v. France (Application No. 65436/01), Judgment, 27 November 2003.

Incal	Incal v. Turkey, (Application No. 41/1997/825/1031), Judgment, 09 June 1998.
Ireland	Open Door and Dublin Well Woman v. Ireland (Application No. 64/1991/316/387-388), Judgment, 23 September 1992.
Ireland	Ireland v. United Kingdom (Application No. 5310/71), Judgment, 18 January 1978.
Johannische	Johannische Kirche and Peters v. Germany (Application No. 41754/98), Admissibility, 10 July 2001.
Johnston	Johnston v. Ireland (Application No.9697/82), Judgment, 18 December 1986.
KT	K. and T. v. Finland (Application No. 25702/94), Judgment, 12 July 2001.
Kalaç	Kalaç v. Turkey (Application No. 20704/92), Judgment, 01 July 1997.
Kaya	Kaya v. Turkey (Application No. 22535/93), Judgment, 28 March 2000.
Keegan	Keegan v. Ireland (Application No. 16969/90), Judgment, 26 May 1994.
Kroon	Kroon and Others v. The Netherlands (Application No. 18535/91), Judgment, 27 October 1994.
Labita	Labita v. Italy (Application No. 26772/95), Judgment, 6 April 2000.
Marckx	Marckx v. Belgium (Application No. 6833/74), Judgment, 13 June 1979.

Moldova	Metropolitan Church of Bessarabia and Others v. Moldova (Application No. 45701/99), Judgment, 13 December 2001.
Scordino	Scordino and other v. Italy (Application No. 36813/15-1997), Judgment, 27 March 2003.
Selmouni	Selmouni v. France (Application No. 25803/94), Judgment, 28 July 1999.
Siebenhaar	Siebenhaar v. Germany (Application No. 18136/02), 03 February 2011.
Soering	Soering v. United Kingdom (Application No. 14038/88), 7 July 1989.
Tomasi	Tomasi v. France (Application No. 12850/87), Judgment, 27 August 1992.
Tsedek	Cha'are Shalom Ve Tsedek v. France (Application No. 27417/95), Judgment, 27 June 2000.
Van Kück	Van Kück v. Germany (Application No. 35968/97), Judgment, 12 June 2003.
Vernillo	Vernillo v. France (Application No. 11889/85), Judgment, 20 February 1991.
XYZ	X, Y and Z v. the United Kingdom (Application No. 21830/93), Judgment, 22 April 1997.
Yigit	Serife Yigit v. Turkey (Application No. 3976/05), Judgment, 2 November 2010.
Z	Z and Others v. United Kingdom, (Application No. 29392/95), Judgment, 10 May 2001.

Zand	Leo Zand v. Austria, (Application No. 7360/76), Report of the Commission, 12 October 1978.
<u>Human Rights Committee</u>	
Amendola	Amendola and Baristussio v. Uruguay, Communication No. 25/1978, UN Doc. CCPR/C/OP/1, (1985).
Balaguer	Balaguer Santacana v. Spain, Communication No. 417/1990, UN Doc. CCPR/C/51/D/417/1990, (15 July 1994).
Baptiste	Rudolph Baptiste v. Grenada, Case 11.743, Report N° 38/00, OEA/Ser.L/V/II.106 Doc. 3 rev. at 721 (1999).
Clifford	Clifford McLawrence v. Jamaica, Communication No. 702/1996, CCPR/C/60/D/702/1996, (26 April 1996).
Davlatbibi	Davlatbibi Shukurova v. Tajikistan, Communication No. 1044/2002, UN Doc. CCPR/C/86/D/1044/2002, (17 March 2006).
EW	E.W. et al. v. The Netherlands, Communication No. 429/1990, UN Doc. CCPR/C/47/D/429/1990, (08 April 1993).
González	González del Río v. Peru, Communication No. 263/1987, UN Doc. CCPR/C/46/D/263/1987, (06 November 1990).
Guinea	Essono Mika Miha v. Equatorial Guinea, Communication No. 414/1990, UN Doc. CCPR/C/51/D/414/1990, (10 August 1994).
Johnson	Dexter E Johnson v. Ghana, Communication No. 2177/2012, UN Doc CCCR/ C/110/D/2177/2012 (2014).

Kwok	Kwok Yin Fong v. Australia, Communication No. 1442/2005, CCPR/C/97/D/1442/2005, (23 November 2009).
Lawrence	Lawrence Chan v. Guyana, Communication No. 913/2000, UN Doc. CCPR/C/85/D/913/2000, (03 November 2005).
Lubuto	Lubuto v. Zambia, Communication No. 390/1990, UN Doc. CCPR/C/55/D/390/1990/Rev.1, (30 June 1994).
McKenzie	Cases 12.023 (Desmond McKenzie), 12.044 (Andrew Downer y Alphonso Tracey), 12.107 (Carl Baker), 12.126 (Dwight Fletcher) and 12.146 (Anthony Rose) v. Jamaica, Report N° 41/00, OEA/Ser.L/V/II.106 Doc. 3 rev. at 918 (1999).
Miguel	Miguel Angel Millan Sequeira v. Uruguay, Communication No. R1/6, 35th sess, UN Doc. A/35/40, (29 July 1980).
Mwamba	Munguwambuto Kabwe Peter Mwamba v. Zambia, Communication No. 1520/2006, UN Doc. CCPR/C/98/D/1520/2006, (2010).
Ngambi	Ngambi v. France, Communication No. 1179/2003, UN Doc. CCPR/C/81/D/1179/2003, (09 July 2004).
Pratt	Pratt and Morgan v. Jamaica, Communication No. 210/1986 & 225/1987, UN Doc. CCPR/C/35/D/225/1987, (06 April 1989).
Ramil	Ramil Rayos v. Philippines, Communication No. 1167/2003, UN Doc. CCPR/C/81/D/1167/2003, (30 July 2004).
Rawle	Mr. Rawle Kennedy v. Trinidad and Tobago, Communication No. 845/1998, CCPR/C/74/D/845/1998, (26 March 2002)

Roger	Roger Judge v. Canada, Communication No. 829/1998, UN Doc. CCPR/C/78/D/829/1998, (8 August 2003).
Sultanova	Sultanova v. Uzbekistan, Communication No. 915/2000, UN Doc. CCPR/C/86/D/915/2000, (31 March 2006).
Thompson	Eversley Thompson v. St. Vincent and the Grenadines, Communication No. 806/1998, UN Doc. CCPR/C/70/D/806/1998 (2000).
Webby	Mr. Webby Chisanga v. Zambia, Communication No. 1132/2002, UN Doc. CCPR/C/85/D/1132/2002, (2005).
Weerawansa	Weerawansa v. Sri Lanka, Communication No. 1406/2005, 17 March 2009.
<u>Inter-American Commission of Human Rights</u>	
Edwards	Edwards v. Bahamas, Report No. 48/01, 04 April 2001.
Goodman	Chad Roger Goodman v. Commonwealth of The Bahamas, Report No. 78/07, Case No. 12.265, 15 October 2007.
Mexico	Mexico, Report No. 44/96, Case No. 11.479, Admissibility, 16 October 1996.
<u>Inter-American Court of Human Rights</u>	
Baldeón-García	Baldeón-García v. Perú, Merits, Reparations and Costs, Series C No. 147, 6 April 2006.
Bámaca	Bámaca-Velásquez v. Guatemala, Merits, Series C No. 70, 25 November 2000.
Berenson-Mejía	Lori Berenson-Mejía v. Peru, Merits, Reparations and Costs, Series C No. 119, 25 November 2004.

Caesar	Caesar v. Trinidad and Tobago, Merits, Reparations and Costs, Series C No. 123, 11 March 2005.
Cantoral	Cantoral-Benavides v. Peru, Merits, Series C No. 69, 18 August 2000.
Cruz-Flores	De La Cruz-Flores v. Peru, Merits, Reparations and Coast, Series C No. 115, 18 November 2004.
García-Asto	García-Asto and Ramírez-Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Series C No. 137, 25 November 2005.
Gómez-Paquiyaauri	Gómez-Paquiyaauri Brothers v. Peru, Merits, Reparations and Costs, Series C No. 110, 08 July 2004.
Miguel-Castro	Miguel Castro Castro Prison v. Peru, Interpretation of the Judgment on Merits, Reparations and Costs, Series C No. 181, 2 August 2008.
OC-18/03	Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants, Series A No.18, 17 September 2003.
Tibi	Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Series C No. 114, 07 September 2004.
Urrutia	Maritza Urrutia v. Guatemala, Merits, Reparations and Costs, Series C No. 103, 27 November 2003.
Velasquez	Velasquez Rodriguez Case, Merits, Series C No. 4, 29 July 1988.
<u>International Court of Justice</u>	
Belguim	Belgium v. Senegal, Judgment, 20 July 2012.

<u>International Criminal Tribunal for Rwanda</u>	
Jean	The Prosecutor v. Jean-Paul Akayesu, Judgment, 01 June 2001.
Laurent	The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgment, 15 May 2003.
Musema	The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-A, Judgment and Sentence, 27 January 2000.
<u>International Criminal Tribunal for the former Yugoslavia</u>	
Anto-Furund	Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, Judgment, 10 December 1998.
Anto-Furundzija	Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-A, Judgment, 21 July 2000.
Delalic	Prosecutor v. Zejnil Delalic, Zdravko Mucic (aka "Pavo"), Hazim Delic and Esad Landžo (aka "Zenga"), Case No. IT-96-21-A, Judgment, 20 February 2001.
Dragoljub	Prosecutor v. Dragoljub Kunarac Radomir Kovac and Zoran Vukovic, Case No. IT-96-23-T& IT-96-23/1-T, Judgment, 22 February 2001.
Fatmir	Prosecutor v. Fatmir Limaj Haradin Bala Musliu, Case No. IT-03-66-T, Judgment 30 November 2005.
Kunarac	Prosecutor v. Dragoljub Kunarac Radomir Kovac and Zoran Vukovic, Case No. IT-96-23 & IT-96-2311-A, Judgment, 12 June 2002.
Kvočka	Prosecutor v. Kvočka, Case No. IT-98-30/1-T, Judgment, 2 November 2001.

Milorad	Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgment, 15 March 2002.
Mladen	Prosecutor v. Mladen Naletili, Case No. IT-98-34-A, Judgment, 3 May 2006.
Tadic	The Prosecutor v. Dusko Tadic, Case No. IT-94-1-A, 15 July 1999.
Domestic Cases	
<u>Ghana</u>	
Abadoo	Amissah-Abadoo v. Abadoo [1974] G.L.R. 110.
Antubam	Re Kofi Antubam (Decd.) [1965] G.L.R. 138.
Appiah	Re Appiah (Decd.), [1975] G.L.R. 465.
<u>Ireland</u>	
Nave	Marshall Toney Nave, et al. v. Phyllis Grindstaff Nave, No. 173 S.W.3d 766, Supreme Court, 17 October 2005.
Ryan	Gladys Ryan v. Attorney General, No. 913 P., Supreme Court [1965] IR 294.
<u>Netherlands</u>	
Bouterse	Bouterse Case, Court of Appeal of Amsterdam, 20 Nov 2000, ELRO No. AA8395, Judgment, 20 November 2000.
<u>South Africa</u>	
Daniels	Daniels v. Campbell and Others, No. ZACC 14, Constitutional Court, 11 March 2004.
Hassam	Hassam v. Jacobs NO and Others, No. ZACC 19, Constitutional Court, 15 July 2009.
<u>United States</u>	

Alfredo	Alfredo Forti and Debora Benchoam v. Carlos Guillermo Suarez-Mason, U.S. District Court for the Northern District of California - 694 F. Supp. 707 (N.D. Cal. 1988), Judgment, 25 July 1988.
Siderman	Siderman De Blake v. Republic of Argentina, 965 F.2d 699 (1992), United States Court of Appeals for the Ninth Circuit, Judgment, 22 May 1992.
UN Documents	
E/CN.4/1986/15	Nigel Rodley, <i>UN Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment</i> , UN Doc. E/CN.4/1994/31 (1994).
EGM/GPLHP/2009/EP.08	Cheryl Thomas, <i>Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries</i> , EGM/GPLHP/2009/EP.08 (19 June 2009).
Reports & Expert Opinions	
Draft Articles Commentary	International Law Commission, <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts</i> , with commentaries 2001 in 'Report of the International Law Commission on the Work of its Fifty-Third Session (23 April – 1 June and 2 July – 10 August 2001)' [2001] II(2) Yearbook of the International Law Commission 1.
Books and Articles	

Ashlyn	Ashlyn K. Kuersten, <i>Women and the law: leaders, cases, and documents</i> , (ABC-CLIO, 2003).
Buergenthal	Thomas Buergenthal & Sean D. Murphy, <i>Public International Law in a Nutshell</i> (West Academic Publishing, 2013).
David	David Weissbroadt & Cheryl Heilman, "Defining Torture and Cruel, Inhuman, and Degrading Treatment" (2011) 29 Law & InEQ. 343.
Desrues	Thierry Desrues, Juana Moreno Nieto, "The development of gender equality for Moroccan women – illusion or reality?" (2009) Vol.18 Issue1.
Erika	Erika De Wet, "The Prohibition of Torture as an International Norm of and its Implications for National and Customary Law" (2004) Vol.15 No.1.
Gaeta	Paola Gaeta, "When is the Involvement of State Officials a Requirement for the Crime of Torture?" (2008) Vol.6 Issue2.
Gasser	Hans Peter Gasser, <i>International Humanitarian Law: An Introduction</i> (Geneva: Paul Haupt Publishers, Berne, 1993).
Gegenava	Dimitry Gegenava, "Recognition of the Religious Marriage in Georgian Legislative Reality" (2015) Vol.1.
Hakimi	Monica Hakimi, "State Bystander Responsibility, The European Journal of International Law" (2010) Vol.21 No. 2.
Hamilton	Vivian E. Hamilton, "The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage" (2012) Vol.92 Issue1817.

Henkin	Louis Henkin, Sarah Cleveland, Laurence Helfer, Gerald Neuman, & Diane Orentlicher, <i>Human Rights: University Casebook Series</i> , 2nd Edition, (Foundation Press, 2009).
Hood	Roger Hood & Carolyn Hoyle, <i>The Death Penalty: A Worldwide Perspective</i> , 5th Edition, (Oxford University Press, 2015).
ICRC-Commentary	International Committee of the Red Cross, <i>Commentary on the Additional Protocols to the Geneva Conventions of 8 June 1977</i> , (Martinus Nijhoff, 1987).
Lieber	Francis Lieber, <i>Instructions for the Government of Armies of the United States</i> (Washington: Government Printing Office, 1863).
McDonnell	Mary-Hunter Morris McDonnell, Loran F. Nordgren & George Loewenstein, "Torture in the Eyes of the Beholder: The Psychological Difficulty of Defining Torture in Law and Policy" (2011) Vol.44 Issue87.
Michigan	Michigan Legal Publishing Ltd., <i>Federal Rules of Evidence, 2018 Edition</i> (2017).
Ndulo	Muna Ndulo, "African Customary Law, Customs, and Women's Rights" (2011) Vol.18 Issue1.
Nowak	Manfred Nowak, <i>UN Covenant on Civil and Political Rights: CCPR Commentary</i> 2nd Edition (Engel Publisher, 2005).
Pictet	Jean Pictet, <i>Commentary on the Geneva Conventions of August 12 1949</i> Vol.I (1952).

Ramcharan	Bertrand G. Ramcharan, <i>The Right to Life in International Law</i> (Martinus Nijhoff, 1985).
Sapir	Gidi Sapir & Daniel Statman, "Religious Marriage in a Liberal State" (2009) Vol.30 Issue6.
Schindler	Dietrich Schindler, "The different types of armed conflicts according to the Geneva Conventions and Protocols" (1989) Vol. 163.
Steinberg	Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking" (2008) Vol.28(1).
Walter	Walter Kalin & Jorg Kunzli, <i>The Law of International Human Rights Protection</i> (Oxford University Press, 2009).
WLUML	Women Living under Muslim Law (WLUML), <i>Knowing Our Rights: Women, family, laws and customs in the Muslim world</i> , (London: Women Living Under Muslim Laws, 2006).

SUMMARY OF FACTS

Death penalty imposed on Robin Martinez, Arturo Moto and Garaldo del Junko

In 2012, the Ladonya Commission investigated St. Priyah and Miyah (PM)'s former Health Minister, Arturo Moto, concerning corruption allegations and Moto was then dismissed from his position (Facts,¶6). His prosecution started only 4 years later as PM was still investigating (Facts,¶6; Clarifications,¶9). In March 2018, Moto was convicted of grand corruption with aggravating circumstances and faced death penalty (Facts,¶21). While his appeal to the Supreme Court was unsuccessful, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to PM, noting that the death penalty imposed could violate Moto's right to life (Facts,¶21). Currently, Moto's case remains under "further consultations" in PM (Facts,¶21).

In 2018, the Generals Against Narcotics and Gangs (GANGs) led by General Rodriguez Sanchez executed covert GANGs operations to capture Garaldo, while deployed as part of the UN-established Raccoonian Mission in Nehiko (Facts,¶14). Garaldo was captured, interrogated, and subsequently sent to PM for trial (Facts,¶¶14-16). After his complaint at the Constitutional Court regarding his extradition was unsuccessful, he was charged with drug and human trafficking in late February 2018 and was executed on 5 March 2018 (Facts,¶20). Before the execution, Garaldo appealed to the Constitutional Court on the violation of his freedom from torture, but it was dismissed for using foul language (Facts,¶20).

During Garaldo's interrogation, Martinez felt uncomfortable, left for some air, and later took a ferry back home (Facts,¶15). Nonetheless, he was convicted of desertion and sentenced to death by the Court of Appeals for the Armed Forces, despite all relevant mitigating circumstances, including his leadership qualities and none prior conviction (Facts,¶¶12,17&19).

Torturous treatments toward Galardo and drug and human trafficking suspects

Since 2014, General Sanchez has been accused of torturing drug and human trafficking suspects in NGO reports (Facts, ¶11). In 2013, Sonya Diaz who was trafficked and captured, reported hearing a man screamed in pain for about an hour and was threatened to have his remaining fingers crushed, where she later saw Martinez and General Sanchez came to rescue her and other girls (Facts, ¶11). Furthermore, in 2018 when Galardo was apprehended by General Sanchez and his team, General Sanchez interrogated Galardo for almost 11 hours (Facts, ¶¶14&15). He slapped Galardo's face and ordered Martinez to use tougher method and do whatever it took to obtain information (Facts, ¶15). As Martinez felt uncomfortable, he was instructed to go uphill where he heard Galardo shrieked and screamed in pain (Facts, ¶15). Martinez told his wife, Sonya, that he planned to report the torturous interrogation manner of General Sanchez which he believed was contrary to the law; nonetheless, Martinez was soon arrested and convicted of desertion (Facts, ¶17).

Sonya and Martinez's marriage

Since 2013, Sonya fell in love with Martinez for his kindness, leadership qualities, and for rescuing her (Facts, ¶¶12&13). At 23, Martinez married 17 year-old Sonya before a Sokotah religious leader in accordance with Sokotah religion (Facts, ¶12). In August 2017, they challenged the constitutionality of Article 2 of PM's Anti-Child Marriage Act which sets the minimum marriageable age at 18 (Facts, ¶12). However, the application was dismissed by the Constitutional Court as Martinez had already deceased (Facts, ¶23). Despite Sonya's requests, PM neither recognized her as Martinez's spouse nor recognized their marriage, and Martinez's body was buried without military honor by the army which was fundamentally different from Sokotah burial practice (Facts, ¶¶19&23).

SUMMARY OF ARGUMENTS

Humanity First (HF) has *locus standi* to represent the victims against St. Priyah and Miyah (PM) before the Raccoons Human Rights Court (RHRC) as HF enjoys observer status in the Raccoons human rights system and PM has accepted RHRC's competence. Applicant's claims are admissible before the RHRC since all domestic remedies were exhausted and the victims were directly affected by PM's violation of its international obligations.

Claim I: PM violated its obligations to guarantee the right to life of Robin Martinez, Arturo Moto and Garaldo del Junko by arbitrarily imposing the death penalty. First, the victims' alleged crimes of desertion, grand corruption, and drug and human trafficking are not the "most serious crimes" as defined under international human rights law. Alternatively, Martinez did not commit desertion and his acts were not associated with an armed conflict. Second, PM violated their right to life by failing to ensure procedural safeguards to their fair trial rights, including the rights to seek pardon, to be tried without undue delay, and to be heard by an impartial tribunal. PM is thus obliged to provide reparation for the victims and their families.

Claim II: PM violated customary international law and *jus cogens* norm that prohibit all forms of torture by torturing Garaldo and other drug and human trafficking suspects. The treatments toward these victims constitute torture as they 1) caused severe pain, 2) were intentionally inflicted, and 3) intended to obtain information. Furthermore, PM is legally liable for the torture committed by General Sanchez. PM is thus obliged to provide reparation to the victims and their families.

Claim III: PM violated Sonya and Martinez's right to found a family as their relationship constitutes a family life and their religious marriage shall be legally recognized. Moreover, PM violated Sonya's right to inheritance as she is entitled to Martinez's pension. PM also violated Sonya and Martinez's right to practice Sokotah religion regarding the marriage and

burial practices. PM thereby undermines the principle and purpose of Anti-Child Marriage Act and the human rights treaties it ratified and is obliged to provide reparation.

PLEADINGS

A. ADMISSIBILITY

I. Humanity First (HF) fulfills *locus standi* requirements

HF is a local non-governmental organization (NGO) with observer status¹ that enjoys the right to bring a case directly before the Raccoons Human Rights Court (RHRC).² St. Priyah and Miyah (PM) has also made a declaration accepting the competence of RHRC to hear cases.³ Thus, HF has legal standing to bring claims on the victims' behalf.

II. The Applicant's claims are admissible before the RHRC

a. The Applicant has exhausted all domestic remedies

The Applicant is required to exhaust domestic remedies before submitting the claims to the RHRC.⁴ However, such exhaustion is not required where there is no reasonable prospect of success⁵ meaning the remedy is not effective and objectively futile.⁶ The onus is on PM to prove effective domestic remedies exist.⁷

In Claim I and II, all domestic remedies have been exhausted. Martinez's claim was heard by the Court of Appeals for the Armed Forces (CAAF),⁸ the final court concerning military

¹ Facts[11].

² Protocol-ACHPR, Art.5(3).

³ Protocol-ACHPR, Art.34(6); FC[17].

⁴ ACHR, Art.46(1)(a).

⁵ Ananyev[118-9]; Johnston[44]; Ireland[47]; Keegan[39]; Scordino, p.9.

⁶ ACHR, Art.46(2); Farragut, p.186; Ananyev[118-119]; Johnston[44]; Ireland[47]; Keegan[39]; Scordino, p.9; Velasquez[64],[66],[68]; Mexico[35-37]; Vernillo[26]; Pratt[12.3].

⁷ Miguel[6].

⁸ Facts[19].

jurisdiction.⁹ Both of Garaldo's claims were heard by the Constitutional Court.¹⁰ Moto's remedy was not effective as they involved undue delay and postponement.¹¹ In Claim III, the remedy is objectively futile as the Constitutional Court dismissed Sonya's case without considering the merits of her claim.¹² In any event, claims concerning serious human rights violation relieve the Applicant from domestic remedies exhaustion.¹³ Therefore, the Applicant has exhausted domestic remedies.

b. The victim status requirements are satisfied

The enjoyment of rights must be available to all individuals within a state's territory or jurisdiction, regardless of their nationality or statelessness.¹⁴ The victims in our case are those whose human rights were violated by PM.¹⁵ Therefore, RHRC has jurisdiction to hear the Applicant's claims.

⁹ FC[15].

¹⁰ Facts[20].

¹¹ Tomasi[47]; Fillastre[5.2].

¹² Facts[23].

¹³ Flag[55].

¹⁴ ICCPR,Art.2(1); CCPR/C/21/Rev.1/Add.13,[10]; HRI/GEN/1/Rev.1,[1]; Guinea[5.1]; Amendola[7.1],[7.2].

¹⁵ EW[6.4].

B. MERITS

I. PM violated the right to life of Martinez, Moto and Garaldo

The right to life is a fundamental right of all people.¹⁶ PM, as a state party to all major UN human rights treaties,¹⁷ is required to ensure the full enforcement of the right to life for everyone within its territory and jurisdiction.¹⁸ As PM does not prohibit the use of death penalty in its legislation,¹⁹ PM violates its duties to respect and guarantee the right to life for everyone within its territory.²⁰

a. Death penalty imposed on Martinez, Moto and Garaldo is not justifiable

1. Death penalty can only be imposed on the most serious crimes

Although international law (IL) do not explicitly prohibit death penalty, it can only be imposed on the most serious crimes.²¹ Desertion, corruption with aggravating circumstances and drug and human trafficking are not considered “the most serious crimes” under IL as they do not involve intentional killing which result in wounds, extremely grave consequences, or

¹⁶ UDHR,Art.3; ICCPR,Arts.4(2),6(1); ECHR,Art.2; ACHR,Art.4; ACHPR,Art.4; HRC//GC/6,[6.1].

¹⁷ Facts[2],[4].

¹⁸ UDHR,Art.3; ICCPR,Arts.4(2),6(1); ECHR,Art.2; ACHR,Art.4; ACHPR,Art.4; HRC//GC/6[3].

¹⁹ Nowak,p.167.

²⁰ ICCPR,Art.2; HRC//GC/6,[03],[05]; Ramcharan,p.18.

²¹ ICCPR,Art.6(2).

death.²² However, PM imposed death penalty on desertion,²³ grand corruption,²⁴ and drug and human trafficking²⁵ upon Martinez, Moto and Garaldo. Thus, PM violated their right to life.

2. In any event, Martinez did not commit crime of desertion

A deserter is “a soldier who abandons his or her duty or post without permission, a pass, liberty or leave and has no intention of returning.”²⁶ In PM, death penalty may be imposed if desertion is committed during an armed conflict which PM is a party.²⁷ Armed conflicts refer to the use of hostilities between armed forces,²⁸ two or more states,²⁹ or within the territory of one state.³⁰ Internal disturbances and tensions do not form armed conflicts even if the government resorts to police forces or armed units to restore law and order.³¹

²² Luboto[7.2]; A/HRC/4/20,[39-53],[65]; A/HRC/11/2/Add.6,[84]; A/HRC/11/2/Add.5,[23]; A/HRC/10/44,[66]; Webby[7.4]; A/HRC/4/20,[53]. CCPR/C/79/Add.25,[8]; E/CN.4/1997/60,[91]; Facts[18],[20],[21].

²³ PM Military Code,§18.

²⁴ Anti-Corruption-Act,§6(2), Facts[5].

²⁵ Facts[16].

²⁶ PM-Army-Act,Art.1.

²⁷ PM-Military-Code,§18.

²⁸ Alfred,[248].

²⁹ Pictet,p.32.

³⁰ ICRC-Commentary,pp.4338-4341; Tadic[561-568]; Fatmir[84],[135-170]; Gasser,p.555; Schindler,[94-134].

³¹ Musema[248].

In our case, the exchange of fire³² between General Sanchez and his men against Garaldo's men was not an armed conflict, but an internal disturbance to fight the drug and human traffickers.³³ Martinez did not abandon his post since he went home upon completing his mission.³⁴ As Martinez did not commit desertion, PM violated his right to life by sentencing him to death.

3. PM failed to ensure fair trial rights of Martinez, Moto, and Garaldo

Imposing death penalty without respecting fair trial rights constitutes an arbitrary deprivation of life.³⁵

3.1 PM violated Martinez's right to seek pardon

Under customary international law, every person sentenced to death shall have the right to seek pardon.³⁶ Before imposing death penalty, the mitigating or aggravating factors of the defendant and the degree of seriousness of the crime should be considered.³⁷

³² Musema[248].

³³ Facts[15].

³⁴ Facts[15],[17].

³⁵ Davlatbibi[8.5]; Sultanova[7.6]; Lawrence[5.4]; Ramil[7.3]; Lubuto[7.3]; Clifford [5]; Rawle[7.3],[7.4].

³⁶ ICCPR,Art.6(4); Hood[5].

³⁷ Edwards[141-53]; Baptiste[96]; McKenzie[209]; Thompson[8.2]; Weerawansa[7.2]; Mwamba[6.3]; Johnson[7.3]; Bosch[31].

Martinez was given only a week to provide his mitigating factors.³⁸ As a devoted PM's army who had no prior conviction, Martinez should not be sentenced to death.³⁹ Thus, failing to consider Martinez's mitigating circumstances, PM violated his right to life.

3.2 PM violated Moto's right to be tried without undue delay

State violates the right to be tried without undue delay if it fails to provide the information concerning the procedural activity related to the delay, or the conduct of the judicial authorities that explains or justifies such delay.⁴⁰

Moto was dismissed from his position as a Minister since 2012, but his prosecution began only 4 years later.⁴¹ Beside claiming that they were investigating,⁴² PM failed to prove the actual procedure of the investigation during that four years. Without justification of the delay, PM violated Moto's right to life.

3.3 PM violated Martinez's right to be heard by a competent, independent and impartial tribunal

Being heard by a competent, independent and impartial tribunal is an absolute right.⁴³ The manner of appointment of judges and their term of office, the existence of safeguards against outside pressures, and the judge's appearance of independence are taken into account.⁴⁴ The tribunal is not independent if its establishment suggests an influenced

³⁸ Facts[19].

³⁹ Facts[19].

⁴⁰ ICCPR,Art.14(c); Goodman[75].

⁴¹ Facts[6].

⁴² FC[9].

⁴³ ICCPR,Art.14(1); Gonzalez[5.2]; CCPR/C/GC/32,[19].

⁴⁴ Incal[65].

outcome.⁴⁵ Whereas, impartiality happens when the judges appear to be a reasonable observer without any legitimate doubt, and their judgments are not influenced by personal bias.⁴⁶

CAAF is not independent as judges were appointed by Lady Ladonya, General Sanchez's wife.⁴⁷ Such appointment is doubtful as the case involved matters between Martinez and General Sanchez.⁴⁸ Further, Martinez's execution was authorized by CAAF which shall enjoy no power to impose death penalty under IL.⁴⁹ Thus, Martinez's right to life is violated.

3.4 Garaldo's extradition violated his right to life

Any person whose alleged crime subjects to death penalty shall not be extradited to a state where death penalty is retained.⁵⁰ Additionally, any extradition of person between PM and Nehiko must be sanctioned by a court order.⁵¹ However, no court order was issued in Garaldo case. He was sent to PM for trial where ultimately death penalty was executed.⁵² Thus, PM violated Garaldo's right to life.

⁴⁵ Zand[77].

⁴⁶ Findlay[73]; Incal[65]; Bryan[37]; Gautrin[58]; CCPR/C/GC/32,[18],[19],[21]; CCPR/C/79/Add.79,[18].

⁴⁷ Facts[19].

⁴⁸ Facts[17].

⁴⁹ ACHPR-GC3,[24]; A/HRC/27/48,[86].

⁵⁰ CCPR/C/21/Rev.1/Add.13[12]; Roger[10.6]; Kwok[9.4].

⁵¹ PM-Nehiko Extradition Treaty,Art.6(4).

⁵² Facts[16],[20].

b. PM shall provide reparation to Martinez, Moto and Garaldo

By violating Martinez, Moto and Garaldo's right to life, PM has legal obligation to provide reparation.⁵³ PM shall guarantee of non-repetition⁵⁴ and review its legislation to be compatible with human rights law regarding the abolition of death penalty. As of Moto, PM should provide him a public hearing within a reasonable time by a competent, independent and impartial tribunal.⁵⁵

II. PM violated Garaldo del Junko and other victims' right to freedom from torture

a. PM failed to guarantee the right to freedom from torture

PM is under international obligation to guarantee the right to freedom from torture⁵⁶ as it is an absolute right, a customary international laws⁵⁷ and a *jus cogens* norm.⁵⁸ Although PM is not a party to CAT,⁵⁹ it has ratified major UN conventions which ensure the right to freedom

⁵³ ICCPR,Art.2(3); ECHR,Art.13; Protocol-ACHPR,Art.26(1); ACHR,Art.25.

⁵⁴ CCPR/C/21/Rev.1/Add.13,[80].

⁵⁵ ECHR,Art.6(1).

⁵⁶ ICCPR,Art.7; ECHR,Art.3; UDHR,Art.5; ACHPR,Art.5; IACHR,Art.5, CCPR-GC-20[3]; OC-18/03,[69]; Soering[91]; Hakimi,p.350.

⁵⁷ Belgium,[97]; Lieber,p.10; Anto-Furundzija[137]; Bouterse[5.1],[5.2]; Gaeta,p.184.

⁵⁸ Cantoral[102],[103]; Urrutia[92]; Siderman[58]; Al-Adsani[100-03]; Anto-Furund[144]; Chahal[79]; Tomasi[115]; Ireland[163]; Selmouni[95]; Belgium[99]; Tibi[143]; Gómez-Paquiyaauri[111],[112]; Baldeón-García[117]; Miguel[91]; Delalic[454]; Berenson-Mejía[100]; Cruz-Flores[125]; Erika,pp.97-121; Walter,p.320; Alfredo[1531],[1541]; CCPR/C/21/Rev.1/Add.6,[10]; Labita[119].

⁵⁹ Facts[4].

from torture.⁶⁰ Torture is strictly prohibited even in public emergency threatening the nation or war, fight against terrorism or any other crimes.⁶¹ Though PM aimed to combat drug and human trafficking, PM cannot exercise physical violence against individuals for any offences they have committed.⁶² Thus, by inflicting torture on Garaldo and other victims who are suspected of drug and human trafficking, PM violated its international obligations.

b. The acts committed towards Garaldo and other victims constitute torture

Torture is established if (1) the act includes threats or severe physical or mental pain or death;⁶³ (2) the act must be intentional;⁶⁴ and (3) the act is conducted to obtain information or confession.⁶⁵ There is no threshold for severity of pain as it depends on specific circumstance of each case.⁶⁶ Permanent injury and evidences of suffering, such as wounds

⁶⁰ Facts[4].

⁶¹ Benavides[95]; Urrutia[89]; Gómez-Paquiyaauri[111]; García-Asto[222]; Caesar[59]; Berenson-Mejía[100]; Siderman,p.715; Al-Adsani,pp.100-103; Anto-Furund[144]; Chahal[79]; Tomasi[115]; Ireland[163]; Selmouni[95]; Belgium[99]; Gómez-Paquiyaauri[111-112].

⁶² Doebbler[42].

⁶³ E/CN.4/1986/15,[106],[117]; Ireland[66]; David,pp.120-21; Air,pp.290-91; David,pp.1125-26; Henaf,pp.1000; Kaya,pp.184-85; Mladen,pp.366-68; Miguel,p.8.3; A/56/156,[3],[8]; Anto-Furundzija[162]; Delalic[468]; Laurent[343]; Delalic[468-469].

⁶⁴ Anto-Furund[162]; Jean[594].

⁶⁵ Anto-Furundzija[111]; Milorad[179],[180],[184],[186]; Dragoljub[497]; Mladen[338]; Laurent[343]; Ireland[60],[163]; Cantoral-Benavides[104]; Miguel[93]; Dikme[255]; Chitayev[158].

⁶⁶ Delalic[469]; Kunarac[476].

are not the requirements for establishing torture.⁶⁷ In addition, psychological threat to torture also constitutes torture.⁶⁸

Since 2014, General Sanchez, PM's high ranking military officer,⁶⁹ tortured drug and human trafficking suspects as evidence in NGO reports and corroborated by a television documentary which Sonya was interviewed.⁷⁰ Furthermore, during Garaldo's interrogation, General Sanchez interrogated him for 11 hours, slapped him in the face, and threatened to use tougher torturing methods using whatever means until he confessed.⁷¹ As PM's acts committed toward Garaldo and other victims constitute torture, PM violated their right to freedom from torture.

c. The acts committed towards Garaldo and other victims are attributable to PM

States are legally liable for internationally wrongful acts,⁷² specifically the acts committed by its agents.⁷³ Since General Sanchez is a PM's high-ranking military officer⁷⁴ and a head of the GANGs operated in Priyah island,⁷⁵ his torturous acts inflicted on Garaldo and other drug and human trafficking suspects are attributable to PM.⁷⁶ In the event that PM claims

⁶⁷ Kvočka[148]; Kunarac[150].

⁶⁸ A/45/44,[190]; McDonnell,p.101; Gafgen[108].

⁶⁹ Facts,[7].

⁷⁰ Facts[11].

⁷¹ Facts[15].

⁷² Draft Articles,Art.2; Draft Articles Commentary,Art.2.

⁷³ Draft Articles Commentary,Art.2.

⁷⁴ Facts[7].

⁷⁵ Facts[8].

⁷⁶ Draft Articles Commentary,Art.2.

that tortures were committed by soldier from other countries,⁷⁷ PM is still obliged to respect *jus cogens* norm by inviting other countries' soldiers to torture Garaldo.⁷⁸ Therefore, PM is liable for the violation of Garaldo and other victims' right to freedom from torture.

d. PM shall provide reparation to Garaldo and other victims

For violating Garaldo and other victims' right to freedom from torture, PM is obliged to provide reparation,⁷⁹ including acknowledging the breach and providing formal apologies,⁸⁰ guaranteeing non-repetition, and ratifying CAT to safeguard the right to freedom from torture of all.⁸¹

III. PM violated Sonya and Martinez's right to found a family and related rights

a. PM violated Sonya and Martinez's right to found a family

1. Sonya and Martinez's relationship constitutes a family life

Family life is not restricted to family based on civil marriage but is extended to *de facto* relationship.⁸² The minimal requirements to establish a family includes whether the couple live together, their economic ties, and their commitment such as a regular and intense

⁷⁷ Facts[11],[15].

⁷⁸ ICCPR,Art.7; ECHR,Art.3; UDHR,Art.5; ACHPR,Art.5; IACHR,Art.5, CCPR-GC-20,[3]; OC-18/03[65-73]; Soering[91]; Hakimi,p.350.

⁷⁹ Draft Articles,Arts.31,34; Z[112].

⁸⁰ Draft Article,Art.37.

⁸¹ CCPR/C/21/Rev.1/Add.13,[80].

⁸² Protocol-ACHPR,Art.21;Ngambi[6.4]; KT[150]; Al-Nashif[112]; Marckx[31]; Keegan[44]; Kroon[30].

relationship.⁸³ Both Sonya and Martinez have no next of kin.⁸⁴ They got married based on religious ceremony before Sokotah religious leader, and lived together as allowed by Sokotah religion.⁸⁵ Furthermore, their challenge to the Constitutional Court regarding the age of marriage also reflects their commitment toward each other.⁸⁶ Though Martinez was deceased, Sonya still requested for his body.⁸⁷ Thus, Sonya and Martinez's relationship amounts to family life which PM shall legally recognize.

2. PM violates its obligation to guarantee them right to found a family

A marriage of persons before the age of 18 is allowed where such persons reach the marital capacity, meaning that they have the ability to understand the obligations arising out of marriage and voluntarily consent to marry.⁸⁸ Additionally, international practices allow person aged 16 to marry, with or without parental consent,⁸⁹ provided that his or her spouse is at the majority age.⁹⁰

In PM, Sokotah religion allows people over the age of 16 to marry.⁹¹ Though Sonya is 17 years old at the time of her marriage, she proves to possess marital capacity given that she married Martinez in accordance with Sokotah religious practice and even requested the

⁸³ Balaguer[10.2]; Kroon[30]; XYZ[36]; Al-Nashif[112]; Facts[12],[21],[23].

⁸⁴ Facts[12].

⁸⁵ Facts[12],[21],[23].

⁸⁶ Facts[12].

⁸⁷ Facts[19].

⁸⁸ CEDAW-GC21,[36]; A/HRC/31/37,[32]; Nave[III(G)]; Steinberg,p.80; Hamilton,pp.1281&1855.

⁸⁹ MCA-1973,§11(a)(ii); BGB,Art.1303.

⁹⁰ MCA-1973§11(a)(ii); BGB,Art.1303.

⁹¹ Facts[12].

Constitutional Court to consider the specific circumstances of their marriage.⁹² Moreover, Martinez married Sonya when he already reached 23 years old,⁹³ making their marriage compatible with the international practices. The requirement for parental consent is optional⁹⁴ and Sonya has given consent without being forced or oppressed to.⁹⁵ Since Sonya and Martinez's marriage is legal, PM has the obligation to protect their right to found a family.⁹⁶

3. Religious marriage is not prohibited under IL

Religious marriages are not prohibited,⁹⁷ and it depends on the will of the parties to the marriage.⁹⁸ Religious marriages and wedding ceremonies are legally recognized.⁹⁹ In any event, had PM considered the practice of Sokotah religion which allows person aged 16 to marry to be unlawful, PM has the duty to take measure to modify or eradicate such practice.¹⁰⁰ However, PM did not prohibit or restrict Sokotah religious marriage. Thus, as Sonya and Martinez had married according to Sokotah religion, their marriage shall be recognized.

⁹² Facts[23].

⁹³ Facts[12].

⁹⁴ UMCA-1973,§11(a)(ii); BGB,Art.1303.

⁹⁵ Facts[12].

⁹⁶ HRI/GEN/1/Rev.9(Vol.I),[2]; Marckx[14]; VanKück[69]; Henkin,p.328.

⁹⁷ Ashlyn,p.96.

⁹⁸ Sapir,pp.2855-2856; RI/GEN/1/Rev.9(Vol. I),[4].

⁹⁹ Gegenava,p.294; Sierra-Act,Art.1(c); EGM/GPLHP/2009/EP.08,pp.16-17;

RCMA,Art.2(1).

¹⁰⁰ CEDAW,Arts.2(f)&5; CRC,Art.24; E/CN.4/1997/47,[154].

b. PM violated Sonya and Martinez's related rights

1. PM violated Sonya's inheritance right

Women have the right to inheritance upon the death of their husbands.¹⁰¹ Even in *de facto* marital relationship, the pension is granted to the surviving partner of the deceased.¹⁰² Under PM's domestic law, "upon death of a member of the armed forces, their spouses are entitled to receive a monthly sum for the duration of their natural life."¹⁰³ PM did not differentiate spouse as being different from civil or religious marriage. As Sonya got married to Martinez through religious marriage and Martinez was deceased,¹⁰⁴ she is entitled to receive pension provided by PM. Thus, by excluding Sonya from receiving the pension, PM violated her right to inheritance.

2. PM violated Martinez and Sonya' right to freedom of religion

The right to freedom of religion is a fundamental human right.¹⁰⁵ Burying the dead constitutes an essential part of religious practice.¹⁰⁶ PM violated its obligations by interfering and not acknowledging their religious marriage.¹⁰⁷ In addition, PM did not released Martinez's body to Sonya which prevented her from bury him according to their religious practice.¹⁰⁸ Thus,

¹⁰¹ Maputo Protocol,Art.21; CCPR/C/21/Rev.1/Add.10,[26]; E/C.12/2005/4,[27];

Appiah,p.473; Abadoo; Antubam; Ndulo,p.109.

¹⁰²Díaz[66]; Yigit[85]; Daniels[35]; Hassam[38].

¹⁰³ PM Armed Forces Pension Act.

¹⁰⁴ Facts[12],[19],[23].

¹⁰⁵ UDHR,Art.18; ICCPR,Art.18(1); ECHR,Art.9(1).

¹⁰⁶ Moldova[114]; Tsedek[73],[74]; Kalaç[27]; Johannische,p.4.

¹⁰⁷ ECHR,Art.9(2); Siebenhaar[3]; Facts[19],[23].

¹⁰⁸ Facts[19].

by not recognizing their marriage and not allowing Martinez to be buried by Sokotah religion,¹⁰⁹ PM violated their right to freedom of religion.

c. The measure undertaken by PM undermines the principle and purpose of Anti-Child Marriage Act

PM is obliged to eliminate violence against women, including economic harm.¹¹⁰ PM must undertake measures, “using to the maximum extent of their resources” to guarantee Sonya’s economic welfare¹¹¹ and protect her from economic exploitation.¹¹² Sonya suffered economically given the Constitutional Court did not grant the “judicial notice” of her marriage, exempting her from receiving Martinez’s inheritance.¹¹³ Thus, PM violated its obligations to respect the principles and purposes of Anti-Child Marriage Act.

d. PM is obliged to provide reparation to Sonya and Martinez

PM’s violation of the right to found a family of Sonya and Martinez entails its responsibility.¹¹⁴ PM owes the obligation to grant judicial notice of their marriage to legally recognize Sonya as Martinez’s spouse. Sonya, as a widow, has the right to an equitable share in inheriting Martinez’s property and receiving pension from PM.¹¹⁵ PM has the obligation to review the compatibility of its legislation and Sokotah religion concerning the marriageable age.

¹⁰⁹ Facts[19],[23].

¹¹⁰ Maputo Protocol,Art.1(j).

¹¹¹ CRC,Art.4.

¹¹² Maputo Protocol,Art.3; CRC,Art.4.

¹¹³ Michigan,Rule201(C)(2); Marriage Convention,Art.2; WLUML,p.70; Desruesp.28; Facts[23].

¹¹⁴ Draft-Articles,Art.1; ECHR,Art.44; ICCPR,Art.2(3)(a).

¹¹⁵ ACHPR,Art.21.

PRAYERS FOR RELIEF

The Applicant hereby requests the Court to declare that:

A. I. The Applicant has legal standing to bring claims on the victims' behalf before the Court.

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

B. I. The Government of St. Priyah and Miyah has failed in its legal obligations to respect the right to life of Robin Martinez, Arturo Moto and Garaldo del Junko by arbitrarily imposing death penalty.

B. II. The Government of St. Priyah and Miyah's conducts of interrogation of Garaldo del Junko and other drug and human trafficking suspects violated its obligations under customary international law and *jus cogens* norm guaranteeing their right to freedom from torture.

B. III. The Government of St. Priyah and Miyah has interfered with Sonya Diaz and Robin Martinez's right to found a family and other related rights, including the right to inheritance and right to freedom of religion.

Counsel for the Applicant

Word count: 2918 words