

8TH NELSON MANDELA WORLD HUMAN RIGHTS MOOT COURT COMPETITION  
OHCHR, GENEVA, 18 – 20 JULY 2016

HYPOTHETICALCASE

before the

HUMAN RIGHTS COURT FOR THE CONTINENT OF HOPE

in the matter between

Pervasive Podcasts Press (TrippleP)

and

the Government of the United Sacrosombre Islands (USI)

(Version: 15 March 2016)

1. The *Kontinento de Espero* (the Continent of Hope) came about as a result of wars between different tribesmen, as groups fought for power and economic survival. Historians report that the Kingdom of Foolaughy (pronounced foo-la-fi) – later to become the Republic of Foolaughy (RF) – and the Kingdom of Sellusombre – later to become the Democratic Republic of Sellusombre (DRS) – emerged as the strongest Kingdoms after the wars of expansion that bedevilled the *Kontinento de Espero* (KE) during the early Iron Age. Several states on KE are former colonies of RF including the United Sacrosombre Islands (USI). USI gained independence from RF after the infamous Oil Wars (*Oleo Militoj*) of 1956 – 1959 after which RF finally agreed to grant USI islanders independence. Upon independence, USI immediately joined the United Nations (UN). USI has signed and ratified all international human rights treaties since becoming a UN member except, the Convention on the Elimination of All Forms of Discrimination Against Women.
2. At independence, USI adopted a federal government model. Each island of USI has its own governor, judiciary, legislature and public administration. USI's judicial structure is as follows: each island has a trial court, appellate court and a supreme court. From an island's supreme court, one can appeal to the Federal High Court of USI. The Federal High Court of USI can also be a court of first instance in cases where it has exclusive jurisdiction. From the Federal High Court, one can apply for leave to appeal to the Supreme Court of USI (the highest court). There is also the USI Constitutional Court, which has exclusive jurisdiction on human rights issues based on the Bill of Rights in USI's Constitution and international treaties. **The Bill of Rights in USI's Constitution contains the core human rights provisions like those found in the International Covenant on Civil and Political Rights (ICCPR).**
3. With the exception of USI, RF willingly granted independence to all its colonies, mainly due to RF's political ideology and foreign policy when it assumed a leading role in building the human rights system of KE. The *Homaj Rajtoj Tribunalo por la Kontinento de Espero* – Human Rights Court for the Continent of Hope (HRTKE) – is one of the bodies that make up the KE human rights system. HRTKE has jurisdiction to examine allegations of human rights violations as provided for in the KE Human Rights Convention (KEHRC), which was adopted in 1961. When USI signed and ratified KEHRC, it made a reservation to Article 4 (3) of the convention. Article 4 of KEHRC

provides that 'every human being has an inherent right to life' and in subsection 3 provides that 'pregnant women and persons under the age of 18 are immune from capital punishment.' In filing its reservation, USI noted as follows: 'USI reserves the right, subject to its domestic laws and conviction by a court of law, to impose the death penalty on anyone above the age of 16, regardless of their status or situation.' Of the 43 states on KE, 7 expressly criticised USI's reservation.

4. The rights contained in KEHRC are similar in substance to those provided for in the European Convention on Human Rights. In addition to KEHRC, the HRKTE has jurisdiction to consider violation claims based on any international human rights treaty. The Optional Protocol to KEHRC, to which USI is a party, provides that 'NGOs that are registered with HRTKE can bring claims on behalf of victims'. The admissibility requirements of HRTKE are similar to those of the African Court on Human and Peoples' Rights. NGOs must be registered with the HRTKE in order to submit cases.
5. In terms of culture, USI is a closed society, seeking to regulate issues of morality for example, through the USI Federal Criminal Code (FCC). However, FCC gives freedom to USI governors to regulate issues of adultery, homosexuality and profanity. A few USI islands like Limbradre have decriminalised homosexuality and allow same-sex marriage. Praetor Island, USI's biggest and capital island is among the islands that still criminalise homosexuality. Economically, USI largely depends on oil.
6. Commercial extraction of oil in the Sacrosombre Islands began in 1857, three years after Petrous Van Gorkom, a Foolaughy slave trader, discovered oil on one of the Sacrosombre Islands when his slave ship, *Madame Revlon*, was torn by a storm on the High Seas. Petrous was among the few survivors of the shipwreck who managed to reach the shores of Limbradre Island, the smallest island of Sacrosombre islands. Marooned on Limbradre Island for several months, Petrous discovered oil. Years later it became the monopoly of his company, Multlantische Corporatie Inc. (MCI). Since 1857, Petrous' main business became that of oil, although he continued trading in slaves until the time of his death. During the remainder of his life, he was obsessed with building another *Madame Revlon*, a slave ship named after his beloved French wife. After successfully rebuilding a replica of the ship, he still complained that nothing could be like the original *Madame Revlon*.
7. Years later, in honour of their father, Petrous' sons adopted a photograph of the original *Madame Revlon* as MCI's official logo. To avoid RF's unfriendly tax regime, MCI was and remains registered in Sellusombre. However, even after independence, MCI's operations largely remain in Limbradre. MCI is largely responsible for sponsoring the infrastructural developments in Limbradre and other islands in USI. In 1932, MCI founded the *Limbradre Universitato de Scienco kaj Teknologio* (LUST) in Limbradre, also adopting *Madame Revlon* as LUST's official logo. The teaching staff at LUST has been dominated by nationals of Foolaughy since its inception.
8. On account of unstable weather conditions in the Sacrosombre Sea since 2012, MCI operations, in particular, drilling, became mostly hazardous and claimed many lives. In addition, circumstances made extraction an expensive process, requiring new methods and technologies. As a result, MCI resorted to cutting down the wages of its employees, which left many discontented in Limbradre. Starting in late 2014, there was a wave of violent uprisings in USI with MCI security officers, allegedly backed by USI police officers, responding with water cannon against the rioters. Protesting MCI

employees and other local inhabitants of Limbradre began demanding that MCI should leave Limbradre Island.

9. At the same time, unrest began at LUST with a group of students of Limbradre origin protesting against what they perceived to be symbols of historical oppression of islanders by Foolaughians (people from Foolaughy). They argued that even though LUST became a government university in 1960, it was still controlled by MCI. In particular, they complained that the teaching staff at LUST are 'too Foolaughy' and that the continued use of *Madame Revlon* as the school logo interferes with their rights. The campaigns have since been dubbed '#MCI must Leave' and '#MadameRevlonMustFall'. In response, MCI made it clear that if the logo was abandoned, it would stop funding LUST and cancel its scholarship programme, which has largely benefited natives of Limbradre. A Special Committee set up by the USI government recommended that the MCI logo should be retained because getting rid of it would be too expensive; it would result in loss of funding; and is generally an 'unwelcome attempt to wipe history'. After the government adopted the recommendations, student protests turned violent. The students then approached the Limbradre Island Trial Court (LICT), which in turn ruled that it does not have jurisdiction over the matter since the issue involved interpretation of a USI Federal Statute on education. **The students did not pursue the matter further in the courts.**
10. Seizing the general unrest 'opportunity' in USI, the 'Limbradre Armed Forces' (LAF), an armed group of Limbradre natives, began waging a bloody campaign against the USI Government, MCI officials and LUST staff members of Foolaughy origin. LAF enlisted the help of disgruntled LUST students to provide information that was sometimes used for attacks. The leaders of '#MCI must Leave', '#MadameRevlonMustFall' and LAF held regular meetings to discuss their common grievances against the USI government. The groups however remained distinct. To obtain counter-intelligence, USI Federal Officials enlisted some students of LUST to provide them with the names of those who were providing information to LAF. Some of the named students were made to 'disappear' on various occasions. Reports by some local NGOs revealed that Foolaughy Intelligence Force (FIF) officials who work for MCI security were involved. MCI sponsored the government effort to put an end to the campaigns and was supported by some RF government officials and members of FIF with financial connections to MCI. FIF provided security services to MCI by training MCI security staff, as well as intelligence and weapons. Top officials and those who head the MCI Security Department are direct recruits of the FIF, although they are on the MCI payroll.
11. On various occasions, FIF agents helped in capturing leaders of the different campaigns **mentioned above** under what became to be known as 'Operation Oil Them UP' or simply 'Operation OTP'. It came to light that this FIF operation was proposed to Limbradre's Deputy Chief of Police who accepted it. Some top officials in the USI Federal government have accused RF of violating USI's territorial sovereignty by allowing FIF agents to spearhead Operation OTP without the consent of the USI government. The USI Minister of Home Affairs was quoted in many local newspapers saying: 'These unauthorised Foolaughy interventions in our country show that Foolaughians still think we are their colony.' Under Operation OTP, leaders of campaigns were tortured for information; oil was poured on their bodies and they were burnt alive. Meanwhile, as the conflict intensified, the USI Ministers of Security and Defence Forces made a joint public statement noting in particular that 'no mercy is going to be shown to the LAF renegades, and anyone who dares support their war

effort will become a victim of the “infamous operation.” Locals speculated that the ministers were referring to Operation OTP.

12. MCI’s alleged participation in summary executions, crimes against humanity, torture, inhumane treatment, arbitrary arrests, assault and battery, and infliction of emotional distress became the subject of the international media from **May** 2015 when Pervasive Podcast Press (TrippleP), an NGO registered both in USI and with HRTKE, published a detailed report alleging the company’s direct involvement, through financial and logistical support to USI forces. When USI Federal Agents opened cases against perpetrators, it was alleged that MCI influenced investigations through bribes, investigating agents and paying witnesses to give false testimony, **resulting in the cases being thrown out for lack of evidence.**
13. Meanwhile, TrippleP’s methods of information and data collection, especially in the wake of the demonstrations and conflict, stirred numerous controversies. TrippleP had many Facebook accounts, twitter handles and other social media accounts. Through these, it solicited videos that show individuals believed to be government or MCI officials in bribe scandals, torture, murder and other heinous acts. Videos also show some demonstration leaders gagged and their hands tied behind their backs while unidentified men wearing masks pour oil on their bodies from containers that have a *Madame Revlon* logo before setting them ablaze. The videos caused an international outcry and drew attention to USI. At one point, the USI government considered suspending the operations of MCI. The idea was however nipped in the bud when Foolaughy’s President paid a ‘diplomatic visit’ to USI to discuss the matter. Although the administrators of TrippleP received videos also showing heinous acts committed by LAF and some violent demonstrations by students, it refused to publish them arguing: ‘we will not use our resources to further the USI Government’s effort to justify its egregious acts.’ There were allegations by local police and experts that some of the videos that TrippleP published were not authentic. Rather, it was alleged that they were ‘manufactured and doctored’ by overzealous LAF sympathisers to slander the USI government. Relatives and next of kin of those who were shown being killed in the videos also complained about TrippleP’s methods of reporting. In particular that TrippleP was inconsiderate about the kind of shock and trauma suffered by victims’ relatives upon viewing the graphic images online.
14. In response to TrippleP’s publications against it, MCI asked FIF officials to gather intelligence on Adorinda Ciela – the CEO and founder of TrippleP. It was discovered that Adorinda was a lesbian woman married to Fiera Juvela, a Foolaughy national. RF allows same-sex marriages. Since the marriage was celebrated and registered in a small district in Foolaughy, Adorinda had managed to keep the marriage secret, especially back in USI. Intelligence also revealed information about the funding of TrippleP. Fiera Juvela’s company, which is registered in Foolaughy, was donating large sums of money as ‘gifts’ to Adorinda. Adorinda used part of the money to pay her employees’ wages while the remainder was used for her personal gifts. Fiera’s gifts constituted about 13% of TrippleP’s funding. Adorinda also used part of the money to pay a local celebrity who agreed to be the couple’s sperm donor. On three occasions and **between January and April 2015**, one of LAF’s leaders who is a close friend to Adorinda asked her for loans which, at a later date, were partly used for LAF operations. When MCI received this information, the CEO decided not to use it right away, hinting that the information would be used at a ‘convenient’ time. Although TrippleP’s main Office was in Limbradre, it was registered in Praetor Island and had other offices across USI islands.

15. After a terrorist attack in Sellusombre, allegedly sponsored by a bogus charity organisation, the USI Federal government enacted the *Civila Socioj Leĝo* (*Civil Society Law*) (CSL) to regulate the activities of NGOs. CSL came into force on 11 September 2015. Among other things, CSL requires that all associations be formally registered; places restrictions on foreign funding; and re-enforces anti-protest and gagging laws. Registration is mandatory for any NGO to operate and applications for registration must be approved by the relevant Minister. In relation to foreign funding, CSL requires organisations that receive more than 10% of their funding from foreign sources and working on 'issues of political significance' to apply for the special status of 'foreign agent'. In addition, they must indicate this designation in their logo, all their publications and in work they produce for public consumption. USI lawmakers justified this particular requirement as being necessary to identify organisations that promote foreign interests in the country; and for citizens to be able to judge their level of patriotism to the country as a whole, and their commitment to the communities they purportedly serve.
16. CSL also contains a 'catch all phrase' that allows the relevant Minister, in consultation with an independent committee, to shut down 'undesirable organisations'. Section 9 of CSL also empowers the relevant Minister to 'outlaw all terrorist entities masquerading as human rights or civil organisations.' Section 9 further defines 'terrorist entities' as including NGOs whose activities 'endanger peace, stability and public order or harm the national security, national unity, culture and traditions of the Sacrosombre Islands.' In the same clause, it allows the *Alta Komisararo de Police* (High Commissioner of Police) and the *Ministro de Informo kaj Propaganda* (Minister of Information and Publicity) the right to 'inspect any material whose publication may endanger public safety and national security.' Section 10 of CSL provides for the deregistration of organisations whose executive employees commit crimes in or outside USI.
17. After the enactment of CSL, the licences of four NGOs were revoked, foreign workers were deported, local staff were prohibited from travelling abroad and various organisations' bank accounts were frozen. Although the Federal Government of USI has not commented on these allegations specifically, it has insisted that 'the CSL is part of legitimate measures to curb illegal activities, funding of and money laundering by terrorist organisations such as the one that occurred in neighbouring Sellusombre'.
18. On 26 October 2015, MCI provided USI Federal Agents with the background information on Adorinda Ĉiela. The following morning, on 27 October 2015, USI Federal Agents – having obtained search warrants overnight – raided all TrippleP offices across the islands. The Federal Government sought to have TrippleP deregistered for violating various sections of CSL. The Government particularly argued that TrippleP's founder was a criminal who 'officialised her criminal acts in Foolaughy and concealed her criminal conduct from the disapproving eyes of USI Federal Government'. On the afternoon of 28 October, the USI Federal High Court granted an order under the CSL for the deregistration and closure of TrippleP. The Court noted that if TrippleP was to comply and reregister, it was to carry a logo of 'foreign agent' and its publication of videos would be subject to inspection by the Commissioner of Police prior to their publication.
19. USI Federal Police disabled all of TrippleP's social media accounts and handles. The order to deregister was given notwithstanding the fact that TrippleP's lawyer produced evidence of an earlier instruction from Adorinda, in October 2015, to file an application with the Federal High Court to address CSL issues that were affecting TrippleP.

TrippleP's lawyer also pointed to a pending case before the USI Constitutional Court that LetDo and other NGOs filed in September 2015, challenging the constitutionality of CSL. On 1 October 2015, the USI Constitutional Court announced in open court that only the complainants in the LetDo case were protected from prosecution until such time as the Constitutional Court made a ruling on the merits of the case.

20. When the constitutional case was filed, TrippleP announced that it was going to participate in the LetDo case as *amicus curiae* and subsequently filed an *amicus* brief. However, on 27 September 2015, TrippleP issued a press release, which was published in the USI Government Gazette and on its official website, noting its 'intention to join the LetDo case as a complainant'. At the time of the Federal High Court ruling in October, TrippleP had not yet joined the LetDo case as a complainant. After the judge read the ruling, counsel for TrippleP immediately made an oral application for leave to appeal to the USI Supreme Court. The application was dismissed. The judge noted that the application was poorly articulated and that, in any event, the law requires such applications to be in writing.
21. While the judge in the Federal High Court was reading the ruling on the application for leave to appeal, Adorinda received a text message from one of her informants within the USI Federal Police that an arrest warrant had been issued against her and that – for her own safety – she should leave the country immediately. She was accused and charged of treason for 'financing terror in USI to destabilise the government.' On her way to the airport, Adorinda was arrested, immediately brought before USI Federal Court, tried, convicted and sentenced to death. Adorinda's lawyer frantically tried to stop her execution by submitting to the court an affidavit signed by Adorinda's doctor stating that he successfully performed an intrauterine insemination procedure on Adorinda three days before her arrest and that there were high chances that she was pregnant. The court declined the request for a pregnancy test to be performed, reasoning that allowing such a test would 'set a dubious precedent entitling every female on death row 'the right to a pregnancy test' simply because she engaged in unprotected sex prior to conviction or sentence.' Adorinda was subsequently executed.
22. Following Adorinda's death, Fiera Juvela instructed counsel for TrippleP to file a case with the Constitutional Court of USI alleging a violation of Adorinda's rights and gross human rights violations by MCI with the acquiescence of USI. The case, cited as the *Human Rights of Adorinda and Others*, was dismissed on merits on 8 December 2015. After several meetings between Fiera, counsel for TrippleP and relatives of victims of human rights violations in Limbradre, it was decided on 3 March 2016 that TrippleP (Applicant) should approach HRTKE, alleging human rights violations by USI (Respondent). The Applicant claims the following:
  - a. USI's refusal to abandon the *Madame Revlon* seal is inconsistent with the rights of the students concerned.
  - b. The CSL is inconsistent with international law obligations of USI and the reasons given for the deregistration of TrippleP interferes with the personal rights of Adorinda Ciela and Fiera Juvela.
  - c. The execution of Adorinda Ciela was in violation of her right to life.
  - d. USI is internationally responsible for all the abductions, torture and murder of LAF leaders, students and other activists.

## Instruction

Prepare heads of arguments (memorials) for both the Applicant and the Respondent on the above four issues. Your memorials should cover the issues of HRTKE jurisdiction, TrippleP's standing before the Court, the admissibility of the four claims and the merits of the four claims.