

2018 Nelson Mandela World Human Rights Moot Court Competition

Hypothetical Case

1. St. Priyah and Miyah (PM) is a federal island state on the east coast of the Contiente di Raccoons (Continent of Raccoons (CR)) and is a member of the United Nations (UN). The CR earned its name in 1420 when an explorer, Bosco Duvet, was asked by King Lob Benkulah III of the Kingdom of Aragon to report on his trip to the southern lands. In the conclusion of his report, he stated: “Your Majesty, everything is majestic in the southern lands, until you meet the raccoons. There are too many of them and they can make your life miserable”. From then, the southern lands were called CR by both the foreigners and the natives.
2. CR is made up of 49 states who are all member states to the Raccoonian Union (RU), which functions like the European Union. PM is a member of the RU. CR’s human rights system is based on the Raccoons Human Rights Convention of 1985 (Raccoons Convention). The Raccoons Convention is similar in substance to the European Convention on Human Rights (excluding the Protocols thereto). The Raccoons Convention establishes the Raccoons Human Rights Court (RHRC) whose admissibility requirements correspond to those of the Inter-American Court of Human Rights. The RHRC has jurisdiction to consider violations of the Raccoons Convention and other international human rights treaties ratified by the states concerned. Legal standing before RHRC is similar to that before the African Court of Human and Peoples’ Rights.
3. PM is the richest state on CR. Its two islands – Priyah and Miyah – are famous for their stunning beaches and turquoise-coloured waters. In addition to visiting the country’s beautiful villages, vineyards and farms, many tourists visit PM for its rich culinary offering of fresh seafood and local products. Besides the fear that the raging wars in the country of Nehiko, PM’s immediate neighbour on mainland CR, may spill over to the two islands, it is safe for tourists to visit PM. Nevertheless, notwithstanding the positive features of PM, there are concerns over issues of corruption, a high rate of child marriage, as well as persistent human trafficking and drug trafficking to and from the islands. PM has two High Courts, one in Priyah and another in Miyah. There is also a Supreme Court and a Constitutional Court, both located in Priyah. The Constitutional Court has jurisdiction over all claims of human rights violations.
4. PM ratified the Raccoons Convention and is party to all major UN human rights treaties except the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In addition to its ratification of the International Covenant on Civil and Political Rights in 1970, St. Priyah and Miyah is also party to the First Optional Protocol to the ICCPR, which it accepted in 1979.
5. Her Majesty Lady Ladonya Sanchez, the 24th president of PM, is the first female president of any country on CR. She was elected for her second presidential term in office in 2016. A stern feminist, human rights activist and qualified lawyer, Lady Ladonya rose

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to fame when she won several Constitutional Court cases on women's rights. She won the "Human Rights Lawyer of the Year" award from the CR Human Rights NGO Coalition. Before becoming President, Lady Ladonya was the Minister of Gender Affairs of PM. While serving under her predecessor, Lady Ladonya was part of the Parliament that voted unanimously in favour of the adoption of the Anti-Corruption Act of 2003. Section 6 of the Act criminalises "grand corruption", which is defined as "a crime against humanity by a high-level official to his or her own benefit at the expense of the population as a whole, which causes serious and widespread harm to individuals and society". Section 6(2) of the Act provides that "capital punishment may be imposed on a person convicted of grand corruption where there are aggravating circumstances".

6. Lady Ladonya also led the Ladonya Commission – a special governmental commission that investigated the corruption allegations against the then Minister of Health, Dr. Arturo Moto, and the impact of such corruption. Paragraph 215 of the 2011 Ladonya Commission Report states as follows: "For a period spanning over 8 years, Dr. Arturo Moto embezzled nearly 17 million dollars – funds that were allocated for the improvement of health facilities and the purchase of certain special drugs for women and children. As a result, hundreds of women and children died. It is reasonable to conclude that those deaths could have been prevented had those drugs been made available." Following the Report, Moto was in 2012 dismissed from his position as Health Minister. However, his prosecution on a charge of "grand corruption" only started 4 years later.
7. During her first presidential campaign in 2012, Lady Ladonya condemned the abuse of women in PM, promising to put in place measures that would enhance their protection. She was supported by her husband, General Rodriguez Sanchez, a high-ranking military officer whose support and influence by all accounts had a positive influence on her campaign. After her election as President, Lady Ladonya immediately set out to deal with child marriages, human and drug trafficking. Through the Ministry of Defence and the Ministry of the Interior, she established special squads to deal with criminal gangs involved in drug and human trafficking. At the same time, under pressure from foreign donors, the country is considering voting in favour of the bi-annual resolution in favour of a moratorium on the death penalty in the General Assembly of the United Nations.
8. The special squads comprise of special forces from the army and police led by experienced army generals. The squads are known as the Generals Against Narcotics and Gangs (GANGs). When GANGs were formally constituted in 2013, President Ladonya remarked that their primary purpose was to "eliminate drug lords and their counterparts who see it fit to poison the youth and sell the bodies and souls of the poor women of St. Priyah and Miyah". General Rodriguez Sanchez was appointed to lead one of the GANGs that operates on Priyah island.
9. As a legislative measure to deal with the prevalence of child marriages, PM in 2014 acceded to the Raccoon Convention on the Empowerment of Women (RCEW). The

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RCEW is similar in substance to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The accession was followed by the enactment of the Anti-Child Marriages Act in 2015. In terms of Article 2 of the amended Act, “the minimum age of marriage for men and women shall be 18 years”.

10. Since 2013, GANGs squads have been largely successful in their fight against human and drug trafficking, with the GANGs squad led by General Rodriguez Sanchez more successful than any other. It has completed many raids, arrested many drug lords and has rescued many women from the clutches of human traffickers. General Sanchez has, nevertheless, noted the difficulties in combating cross-border drug and human trafficking especially for culprits operating from the conflict-ridden state of Nehiko. One such culprit is Garaldo del Junko, a drug lord operating from Nehiko who has succeeded in trafficking hundreds of girls from PM. The nationality of Garaldo remains unknown as his name does not appear in the population or criminal records of either Nehiko or PM.
11. Since 2014, NGO reports were published, in which General Sanchez was accused of torturing drug and human trafficking suspects. In 2017, a survivor of human trafficking, Sonya Diaz, appeared in a television documentary entitled “*By all means necessary*”. The documentary was produced by Humanity First – a local NGO with observer status in the Raccoons human rights system. She explained that in 2013 – when she was only 13 years old – she and 28 other girls were kept for weeks in a dark room and raped repeatedly. Part of the record of the documentary reads as follows: “We were only untied to eat, not something nice, but just something to keep us alive. Each day we would hear footsteps and 4 or 5 girls would be loaded on a truck and that is the last we would see them. One day we heard a lot of shooting outside. When it died down, a man was screaming in pain. I heard another man shout: ‘*Tell me where they are, or I am going to crush all your remaining fingers*’. We tried to scream so that they could hear us, but our mouths were gagged. After about an hour of listening to the man who was screaming in agony outside, the door finally opened. That is the first time I saw Colonel Robin Martinez. He had blood all over his hands. Someone who sounded like his superior said: ‘*Martinez, get them all out, be gentle, they are traumatised*’. I later learnt that this person was Martinez’s boss, General Rodriguez Sanchez.” At that point, the interviewer asked Sonya if she was concerned that their captors may have been tortured, to which she replied: “If only you can fully understand what we went through you would not ask that question, those animals deserve whatever came their way”.
12. Sometime after the rescue, Sonya Diaz and Colonel Robin Martinez fell in love. Martinez had joined the army when he was 16 years old. At the time he rescued Sonya and others, he had at 19 years old already been recognised for his leadership qualities. As an orphan with no known next of kin, he considered the army his family and grew up to be a devout religious young man. In addition to seeing Martinez as her hero, Sonya fell in love with his kindness and realised that they both believed in the Sokotah religion. On his 23rd birthday, Martinez proposed marriage to Sonya. Just having turned 17 years old, Sonya

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accepted. In terms of the Sokotah religion, a man and a woman cannot live together unless and until they are married. Furthermore, Sokotah religious practices allow anyone above the age of 16 to marry. In August 2017, Sonya and Martinez approached the Constitutional Court of PM challenging the constitutionality of Article 2 of the Anti-Child Marriages Act. The hearing date was set for 27 March 2018.

13. Meanwhile, in September 2017, following a massacre of civilians in Nehiko, the United Nations Security Council (UNSC) passed Resolution 2018, authorising the “Raccoonian Union and other Member States that have notified the Secretary-General to take all necessary measures to protect civilians under attack or threat of attack in Nehiko”. The Raccoonian Union established and deployed the Raccoonian Mission in Nehiko (RAMINE) with a total of seven participating states. PM was one of the participating states. Each participating state contributed soldiers and resources. The Government of Nehiko promised to cooperate with RAMINE.
14. As part of RAMINE, PM, while interested in restoring peace and protecting civilians in Nehiko, saw it as an opportunity to deal with cross-border human trafficking from within Nehiko. General Sanchez and his team were consequently deployed as part of the soldiers that joined RAMINE. Sanchez was appointed as third-in-command of the RAMINE forces. While fighting the war and protecting civilians in Nehiko, Sanchez and his crew were simultaneously to carry out covert GANGs operations. Three weeks after deployment in Nehiko, there was a tip-off that Garaldo del Junko was going to transport a huge quantity of drugs and smuggle around a hundred girls from PM to Nehiko, and from Nehiko to a number of onward destinations. A high alert was put out and through the help of Nehiko special forces, Garaldo was apprehended on the day his “package” arrived in Nehiko.
15. Garaldo was taken to a remote RAMINE outpost for interrogation. General Sanchez, together with Colonel Martinez, interrogated Garaldo for almost 11 hours but he did not tell them anything. In fact, he kept laughing, telling them that his “boys” would soon come to set him free. He even spat at General Sanchez, telling him that with each passing minute, his drugs and the girls would be halfway across the globe to fetch his price. In anger, General Sanchez slapped Garaldo in the face before storming out of the room. As he headed for the door, he said: “Martinez, you know the drill, toughen it up, let this worthless piece of garbage [he used a different word] crack! Whatever it takes! We cannot waste time while his men are getting closer. Find out where they are.” At that point, Martinez indicated that he was uncomfortable and needed some air. He disappeared. Soldiers from other countries were eventually called in and later that afternoon took over the interrogation. Martinez was instead instructed to go uphill to be on the lookout for possible intrusions by Garaldo’s “boys” or other rebel groups loyal to him. As he went up the hill, he heard Garaldo shriek in pain, his screams echoing across the mountain. At that point, Martinez called Sonya from a cell phone he took from Garaldo. He complained to her as follows: “This is not what I signed up for, I feel like a

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criminal. I am coming back home”. Garaldo’s men, who were monitoring their boss’ phone, managed to pin down his location. Within a short period of time, Garaldo’s men arrived, surprising General Sanchez and the remaining soldiers. After extensive exchange of fire, Sanchez and his men won the day, but three of his soldiers were killed and he sustained serious bullet wounds. Lady Ladonya, shocked by the violence, announced on TV that PM should no longer be seen as paradise, where criminals can get away with anything. “We will not hesitate the use the death penalty, and execute as many people as are necessary, if that is what it takes to stop these drug lords who are destroying our society. I don’t care what others say. Drug trafficking is the most serious crime threatening our society.” Humanity First issued a statement questioning whether her earlier human rights awards should be withdrawn.

16. The fight between Garaldo’s men and General Sanchez occurred after they had succeeded in extracting information on the whereabouts of his drugs and the girls who were being trafficked. With little resistance, the drugs were seized and about 160 girls were rescued. With the help of the Nehiko police, Garaldo del Junko was sent to PM for trial. Drug trafficking and human trafficking carries a potential death sentence in PM. Although Nehiko have the same penalty for similar crimes, the death penalty has not been carried out in Nehiko for any offence in the last 36 years.
17. At the time Colonel Robin Martinez took a ferry back to PM, General Sanchez was distraught as he thought that Martinez had been captured by the rebels – or worse still, that he was dead. However, one of his soldiers brought the tracking device that was found on one of Garaldo’s men containing a recording of Martinez’s call to Sonya. General Sanchez felt a deep sense of betrayal. At his instigation, PM’s Military Police were notified and, within hours, Martinez was arrested and charged with desertion. At the time of his arrest, Martinez was telling Sonya that he had made up his mind to report General Sanchez’s manner of interrogation, which he believed was not in accordance with the law.
18. The St. Priyah and Miyah Army Act of 1985 defines a “deserter” in Article 1 as “a soldier who abandons his or her duty or post without permission, a pass, liberty or leave and has no intention of returning”. In terms of Section 18 of St. Priyah and Miyah’s Uniform Code of Military Justice of 1987, the death sentence may be imposed on “a soldier who commits the crime of desertion during an armed conflict to which the state of St. Priyah and Miyah is a party”.
19. After a lengthy trial by a military court, Colonel Robin Martinez was convicted of desertion. The Judges indicated that they needed a week to deliberate on the appropriate sentence and to give counsel time to prepare argument about aggravating or mitigating circumstances of the case. During that week, a journalist asked General Sanchez what he thought of Martinez’s conviction, to which he responded: “I treated that young man like my own son, but he has turned out to be a traitor who put our lives at risk and deserves

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the noose”. At the hearing, counsel highlighted all relevant mitigating factors, including Colonel Martinez’s youth and his lack of prior convictions. However, after some deliberation, Martinez was sentenced to death by lethal injection. He appealed to the PM Court of Appeals for the Armed Forces (CAAF), but his conviction and sentence was upheld. CAAF consists of seven civilian Judges who are appointed by the President of PM. On 14 February 2018, while many were celebrating Valentines’ Day, Robin Martinez was executed – the first execution in 28 years in PM. Sonya requested that his body be released to her so that she could bury him in accordance with Sokotah practices. Her request was denied because the body could only be released to a spouse or next of kin. She indicated that she had married Martinez before their religious leader, but the court martial indicated that theirs was an illegal marriage and therefore invalid. Military burials and Sokotah burials are fundamentally different. Colonel Robin Martinez was buried by the army, with no military honour, and no involvement of Sonya.

20. By the end of February 2018, Garaldo del Junko was convicted of drug and human trafficking committed in PM and was also sentenced to death. The trial and conviction came after his lawyer had unsuccessfully argued in the Constitutional Court that Garaldo’s extradition was in violation of his human rights. While he was on death row, his lawyer approached the Constitutional Court again where he argued that PM violated his right to freedom from torture. The case was dismissed because counsel had used foul language in the application. On 5 March 2018, Garaldo del Junko was executed. Thousands of people went to the streets to celebrate his death, which they saw as a mark of a new era.
21. By the end of March 2018, the trial of Dr. Arturo Moto came to an end. He was convicted of grand corruption with aggravating circumstances. A death sentence was imposed. After his appeal to the Supreme Court had failed and under the advisement of Humanity First, Dr. Arturo Moto sent an urgent letter to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (UN Special Rapporteur) alleging that his trial was unfair and the resultant death penalty imposed on him violates his right to life. In fear of the imminent carrying out of the death sentence, the UN Special Rapporteur sent an urgent appeal to PM indicating that the execution of Moto could potentially contravene the limitations on capital punishment set forth in the pertinent international treaties ratified by PM. PM granted a stay of execution “for further consultations”.
22. In the meantime, Humanity First started its campaign against the death penalty, especially its recent revival in PM. It conducted public opinion polls, asking the populace whether the death penalty should be retained for certain crimes. Of the 1 million who participated in the poll, 70% voted that the death penalty should be retained especially for crimes such as murder and human trafficking. On the specific questions whether the death penalty should have been imposed on Moto, Martinez and Garaldo, 97% voted yes for Moto, 7% yes on Martinez and 99% yes on Garaldo.

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23. On 27 March 2018, Sonya Diaz approached the Constitutional Court regarding the constitutional challenge filed earlier. The Judges noted that the main argument that had been used by the applicant was that for marriage proposals of anyone above the age of 16 – in particular, 17-year olds – courts should look at the specific circumstances of the case. Yet, in the case of Sonya, it was no longer possible to consider the specific circumstances of the case since one of the applicants in the case, Robin Martinez, was now deceased. The Chief Justice asked counsel for Sonya to give reasons why the case should not be struck off the Court’s roll of cases. Sonya and her counsel, now represented by Humanity First, approached the Chief Justice in his chambers. Counsel explained that Sonya had secretly married Robin Martinez, according to Sokotah practice, before a religious leader. He insisted that it was important for the Court to take “judicial notice” of the marriage because its non-recognition would lead to Sonya losing her inheritance from Colonel Martinez. In terms of the Armed Forces Pension Act, “upon death of a member of the armed forces, their spouses are entitled to receive a monthly sum from the armed forces for the duration of their natural life”. For the purposes of this Act, “spouse” means “husband or wife”. The Chief Justice indicated to Sonya and her counsel that, in his opinion, the law clearly precluded her being considered to have legally married Robin Martinez at the age of 17.
24. In May 2018, Humanity First decided to approach the Raccoons Human Rights Court (RHRC) claiming the following:
- a) St. Priyah and Miyah violated the right to life of Robin Martinez, Arturo Moto and Garaldo del Junko.
 - b) St. Priyah and Miyah violated Garaldo del Junko and other victims’ right to freedom from torture.
 - c) St. Priyah and Miyah violated Sonya Diaz and Robin Martinez’s right to found a family and related rights.

The oral hearing of the matter has been set for the month of July 2018.

INSTRUCTION

Prepare memorials for both the Applicant (Humanity First) and the Respondent (the State of St. Priyah and Miyah) addressing, in respect of each of the three claims, legal standing, admissibility, the merits, and reparation.