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INTERNATIONAL MEDIA LAW MOOT
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MOOT PROPOSITION

INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION

2017

BEFORE THE INTERNATIONAL COURT OF JUSTICE

THE CASE CONCERNING THE TURENCIA NEWS NETWORK

THE DEMOCRATIC REPUBLIC OF TURENCIA

v.

THE KINGDOM OF GHOULUM

1. The Democratic Republic of Turencia (“**Turencia**”) is the largest democracy in the world located in the northern hemisphere. It is one of the fastest growing free-market economies and the world leader in the quality of print and visual media. Once under colonial rule, Turencia was declared independent in 1922 and consequentially elected their own government through a democratic election system, which has ever since been an example for the other states. Due to its geographical size (being fourth largest in the world) and the respect for economic and social rights, Turencia attracts a significant amount of immigrants every year. Consequently, it has become the most ethnically diverse and multicultural nation in the world. It is a secular nation and respects all religions equally. It has also been one of the staunchest proponents of individual liberties before various international and regional forums.

2. The Kingdom of Ghoulum (“**Ghoulum**”), like Turencia, was also under colonial rule. After a violent struggle, it was declared independent in 1942 and the leader of their

nationalist army assumed the throne and declared himself the monarch of the Kingdom. Since then, the throne has been passed on to his descendants without even a single contest or objection from anybody in Ghoulum. Ghoulum is a geographically smaller nation located in the southern hemisphere. Iliia is the official religion of Ghoulum, which provides that the *“King is the representative of God on Earth and even death is too small a punishment for a man who defies his King”*. The entire legal system of the Kingdom accords supremacy to the Iliia law, i.e., the text of the holy book, Iliayatah, which dates back to the 3rd Century B.C.. Ghoulum has attracted a significant amount of criticism from the international media for its lack of democratic and religious freedom and for the status of women in the society.

3. In December 2009, the King of Ghoulum, Anshianah Praksheshi, issued an executive order opening up the economy in a limited manner and inviting foreign investors to set up their businesses in Ghoulum. Until this time, King Praksheshi closely controlled every sector of the industry. The international media speculated that the reason for such an action was the depletion of Ghoulum’s natural resources, which has hit the nation’s position as the biggest exporter of natural gas, triggering the need to attract foreign investment. The order specifically allowed up to 100% foreign direct investment in Ghoulum and gave an assurance to the investors that investment-friendly practices will be followed and the investors will be accorded the same treatment that is given to the domestic corporations.

4. The Turencia News Network (“TNN”) is the largest media corporation incorporated in Turencia. Founded in 1998 by Robin Pestos, an influential businessman and one of the most well regarded journalists, TNN quickly expanded its operations in the entire northern hemisphere and has created an image of being an impartial and courageous media house that believes in voicing the concerns of the oppressed. TNN’s claim to fame was an exposé in

1999, which not only revealed the wrongdoings of the erstwhile government in Turencia but also uncovered the complicity of one of its major shareholder in those transgressions. TNN, thereafter, led a mass movement that resulted in the ouster of the erstwhile party and prosecution of the said shareholder. The world found it remarkable that even though TNN was openly accusing the government of misconduct, Turencia's laws did not give the government any opportunity to stifle the voice of the free press.

5. On January 2, 2010, TNN's board of directors passed a resolution considering that there is a need for the company to expand its business to the southern hemisphere as well. The Board perceived Ghoulum's 2009 order as an apt opportunity for TNN to invest in the state. Accordingly, an advice was sought from the legal department of TNN.

6. On January 5, 2010, the legal department of TNN advised their Board not to make an investment as the Ilia law is not considered to be very progressive, which may lead to several complications for the media business, especially in the absence of any bilateral investment treaty between Turencia and Ghoulum. They also informed the Board that all the news corporations in Ghoulum are state owned and the nation was ranked 177 in the Global Press Freedom Index published in 2009 by Journalists Without Frontiers (JWF), a non-governmental organization. Another major concern raised by the legal department was that the international media has often criticized the courts in Ghoulum for their lack of independence and impartiality. The judges in Ghoulum are appointed by the King on the advice of the Chief Justice of Ghoulum and they can be impeached by the King on the advice of his Council of Ministers.

7. On April 21, 2010, Robin Pestos met King Praksheshi to discuss the possibility of TNN's investment in Ghoulum. The meeting lasted several hours and thereafter, a press statement was issued by King Praksheshi in the evening, stating the following:

“I have had a very fruitful discussion with Mr. Robin Pestos of TNN. He told me that TNN perceives the Kingdom of Ghoulum as an excellent investment destination and is looking forward to making a long-term investment in the Kingdom of Ghoulum. He also had some concerns due to some baseless assumptions. However, I have assured him that no foreign investor needs to worry about any unnecessary hassles while doing business in the Kingdom of Ghoulum. Our nation knows how to take care of its guests and as a sign of friendship, I have provided TNN 45 acres of land for them to set up their offices and conduct their operations.”

8. TNN soon started establishing themselves in Ghoulum and their first show in Ghoulum was aired on November 12, 2011. TNN was also using Ghoulum as a base for making it more convenient for its journalists to cover other nations in the southern hemisphere. Robin Pestos himself started doing a talk show titled “Way of Life” once a month, dealing with various social and economic issues. It quickly gained popularity as it would raise issues concerning the day-to-day lives of the citizens of Ghoulum and then suggested corrective measures to the citizens themselves.

9. On December 10, 2015, www.theworldofwomen.org, a popular website espousing the cause of equal treatment of women, published a report on the condition of women in Ghoulum. The website claimed that their researchers have lived in Ghoulum for about 10

months and have closely observed the manner in which women are treated in the nation. An extract of the report, titled as ‘The Ghoulum Report’ stated the following:

“A large majority of women in Ghoulum are treated like chattels by the men. Child abuse, child marriage and marital rape are extremely prevalent in the society. The King Praksheshi himself has 32 wives and several mistresses. He is also said to have incestuous relationships with otherwomen in his own family. The same holds true for most of the ministers and high-ranking officials of Ghoulum. The saddest part of the whole story is that both men and women justify all these practices in the name of religion, which is also the law of the land.”

10. The Ghoulum Report sparked heated debates in almost all the civilized nations. Several academicians and women rights activists across the globe started actively criticizing the government of Ghoulum and stated that there is a need to abolish the Ilia law and to replace it with laws that are more in line with the international law and the laws of other civilized nations. King Praksheshi, however, denied the authenticity of the contents of Ghoulum Report and termed it an attack against the Ilia religion.

11. In the New Year special episode of Way of Life, aired on January 1, 2016, Robin Pestos took up the issue of women rights in Ghoulum. While relying on the Ghoulum Report that portrayed the Ilia law as evil, Mr. Pestos stated the following:

“The legal framework of Ghoulum needs an overhaul. The Ilia law is archaic and draconian, quite contrary to the values of the nations of the northern hemisphere. The times have changed since the 3rd century B.C. and a religion should also evolve accordingly. No State should have laws that have such little

regard for human rights [...] A King acts as the role model for his subjects, and when the King himself accords such little respect to women, nothing better can be expected from the citizens [...] Is this the kind of life you want for your mothers, daughters, sisters and wives? I urge the citizens of Ghoulum to take a conscious decision as to the way of life they want for themselves and their future generations. The citizens themselves should protest against the evils associated with the Ilia law and ensure that the Government takes effective and prompt steps to bring a change for the better.”

12. This episode had an unprecedented reaction and thousands of women rights activists took to streets shouting slogans against the King, burning his effigies and claiming equal rights for women. Some smaller groups also demanded that the King should step down as he is too consumed in his own luxuries to take care of the masses. The police used force to disperse the mob and thereafter, protests also turned violent at certain places. Stones were pelted at police personnel other government officials. On two separate occasions, some police vehicles were torched by the angry mob. However, no one got seriously injured in any of the incidents.

13. King Praksheshi blamed TNN and Robin Pestos for the uproar. On January 28, 2016, the Justice Department of Ghoulum issued a press statement asserting that TNN has committed serious violations of Section 12 of the Information and Broadcasting Act by relying upon and broadcasting information without any corroboration.¹ TNN's offices were sealed, their equipment confiscated and the all the Turencian citizens, except Robin Pestos,

¹**Section 12** -"Every individual or corporation (whether a national or foreigner) shall independently corroborate every information before broadcasting the same, failing which the State shall have the power to terminate all the information broadcasting activities and confiscate all the property belonging to such person or individual.

Notwithstanding anything contained in any other law for the time being in force, such termination shall be final and binding on the parties concerned and may not be subject to judicial scrutiny."

were sent back to their country. The police arrested Mr. Pestos and charged him with sedition under Section 23B of the Ghoulum Criminal Code. Section 23B provided as follows:

“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the King, shall be hanged till death.”

14. The said actions took the entire world by surprise. Many journalists termed the day of arrest of Mr. Pestos as the darkest day for freedom of press in the 21st century. Several human rights organizations and media corporations circulated petitions in support of Robin Pestos and TNN and sought immediate release of Mr. Pestos.

15. On February 4, 2016, Trent Alphonso, the President of Turencia, issued a public statement:

“I am appalled by the actions taken by the Kingdom of Ghoulum in the last few days. It appears that some nations have chosen to live in the Stone Age and have failed to realize that this is the 21st century. The Kingdom of Ghoulum has not only breached some of the most basic principles of international law but has also disregarded the basic human rights that every person must get. I, therefore, request King Praksheshi to release the property of TNN to the company and the immediately order the release of Mr. Robin Pestos, who is one of the most well regarded journalists in the world. If he fails to do so, we will be forced to take recourse to appropriate remedies available under law.”

16. On February 7, 2016, King Praksheshi issued a response to President Alphonso:

“The Kingdom of Ghoulum has always shown utmost respect to human rights. However, rights must be coupled with duties. A person or a company that plots against our religion and threatens the peace and stability of our nation will not be allowed to go unpunished. Mr. Pestos is a criminal who shall get the treatment a criminal deserves and will be tried by the courts of the Kingdom of Ghoulum. Further, we had given the plot of land to TNN as a sign of our friendship and we cannot allow it to keep the same even after they stabbed us in the back. TNN has disregarded the law of Ghoulum by disseminating information relying upon the Ghoulum Report. Our investigative agencies have found that no researcher belonging to www.theworldofwomen.org has ever entered the territory of the Kingdom of Ghoulum. If TNN is aggrieved by the decision, it is free to approach the courts of the Kingdom of Ghoulum of an appropriate relief. Further, I say this with absolute confidence that there is absolutely no breach of international law on the part of the Kingdom of Ghoulum.”

17. TNN again sought the help of the Democratic Republic of Turencia to get the dispute resolved through the ministerial level talks between the two states. However, the said talks did not reach any conclusion.

18. In the meantime, both the states were facing immense pressure from the international community to resolve the dispute expeditiously. The Kingdom of Ghoulum was being constantly blamed *inter alia* for disregarding the freedom of press and for expropriation of the property of TNN. The Democratic Republic of Turencia was also constantly receiving petitions from various non- governmental organizations asking it to espouse the cause of TNN and Robin Pestos.

19. In light of growing international pressure, Turencia and Ghoulum agreed to refer all matters in dispute to the International Court of Justice, under a Special Agreement. Both the states have agreed that the Court will also adjudge the issue of maintainability and the jurisdiction of the Court over these disputes.

20. Turencia and Ghoulum are both members of the United Nations and parties to the Statute of the International Court of Justice and the Vienna Convention on the Law of Treaties. Turencia is also a member of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

21. Turencia (Applicant) has asked the Court to adjudge and declare that:

- I. The Court has jurisdiction over the dispute as a state can always advocate the cause of private citizens in appropriate cases before the Court.
- II. The actions of the Kingdom of Ghoulum including that of sealing of the offices of TNN and confiscating its property inter alia amounts to expropriation and denial of fair and equitable treatment; Section 12 of the Information and Broadcasting Act imposes an extremely onerous obligation on news agencies; it violates international law and Ghoulum should immediately return the property of TNN along with appropriate compensation.
- III. Ilia law directly conflicts with some of the most fundamental principles of human rights, violates customary international law and its continued application is in itself a breach of Ghoulum's obligations under international law.

IV. The comments made by Robin Pestos on Way of Life are covered under freedom of speech and expression and it cannot be considered a seditious speech under Section 23B.

V. Alternatively, he should be extradited to Turencia in order to ensure a free and fair trial.

22. Ghoulum (Respondent) has asked the Court to adjudge and declare that:

I. The Court does not have jurisdiction over the present dispute. It is not an appropriate case for which this Court should exercise its jurisdiction. In any event, alternative remedies have not been exhausted so far.

II. There is no Bilateral Investment Treaty entered into between Turencia and Ghoulum at any point in time; Section 12 treats the foreign media agencies at par with the national media agencies; and there has been no breach of international law either by the application of Section 12 or by the actions of the Kingdom of Ghoulum as alleged by Turencia.

III. Iia law does not breach any obligation imposed by the international law on Ghoulum.

IV. Freedom of speech is not an absolute right. Robin Pestos's comments on "Way of Life" amount inter alia to a threat to the peace and security of Ghoulum and is evidently a seditious speech under Section 23B.

V. There is no extradition treaty between Turencia and Ghoulum. Robin Pestos has committed an offence on the territory of Ghoulum, against the Kingdom of Ghoulum, and must, therefore, be tried by the courts of Ghoulum.

This Moot Problem has been drafted by Mr. Ankit Yadav, Advocate, Supreme Court of India. Any attempt to contact him in relation to the same shall lead to disqualification of the concerned team.