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## **International Moot Court Competition**

### **2009-2010 Problem**

The Human Trafficking Case

### **Makallie v. Pogona**

1. The State of Makallie is a democratic country located in the Western region of the Berusian continent. It has a population of 172,800,048. To the south of Makallie lies the Republic of Pogona, well known for its flourishing economy and advancing wealth. Pogona is currently the dominant power on the Berusian continent. The currency of both Pogona and Makallie is the genairium. Ten genairium are roughly equivalent to one U.S. dollar. While the two countries have a common currency, the languages are completely different. Makallians speak Kanick, while Pogonians speak a dialect of Teffnish.

2. In the State of Makallie, the government is voted into power by its citizens as well. Both the executive and the legislative branches of the elected government serve five-

year terms. Traditionally, the Panawi Party, a party dedicated to the enhancement of the State's wealth and economy, controlled the State of Makallie. It had remained in power for several decades, during which Makallie experienced a 62% increase in overall job opportunities. However, in 2002, the Sebach Party was elected to power on a platform of wholesale economic and social change. The Sebach administration led Makallie into turmoil and instability, fuelled by corruption, bribery, and money laundering.

3. The Sebach Party also ran and was elected on a platform that promised increased educational opportunities and medical care for all citizens, especially the poor and underrepresented. Unfortunately, unbeknownst to voters, the Sebach party's true motivation for gaining power was to develop Makallie's military, and ultimately, set up a military dictatorship. Once the Sebach party was safely elected, all taxes and governmental funds went towards increasing Makallie's military forces. Ultimately, the military controlled Makallie. Paramilitary units called the "T-Mac" were allowed to operate as long as they acted in conformity with the military's objectives.

4. Education, employment and the variety of job opportunities steadily declined. Currently, the unemployment rate is drastically higher than when the Panawi Party was in power. The Sebach party abolished all minimum wage laws previously put into place by the Panawi Party. The only new jobs created after the Sebach Party took over were military jobs. The Makallie military, now the principal governing body of the country, regulates all government employment practices, and has imposed and implements a strict male-only hiring policy. Thus, no Malakian woman qualifies for the new military jobs. Further, the military is in charge of all hospitals, schools, and banks. Women who were previously employed as doctors, nurses, teachers, or bank tellers and managers are now jobless.

5. Enrollment in schools also decreased because the only families who can afford to send their children to schools are those with able bodied men who qualify to work under the military's employment standards. In light of the recent, severe economic crises, low-life Makallie adults recruit Makallie children to spend their days on the streets as beggars. The recruiters promise the children food in exchange for only a small part of the money they glean from begging as payment. However, once the children go out to actually work the streets, the recruiters give them only a pittance of the money they bring in; as food, they give the children only one piece of bread for each day worked. This ensures that the children will continue to look malnourished, generate more sympathy from passersby and, accordingly, larger donations. The children who do not fall prey to the recruiters are sent by their families to work in factories for scant pay, under terrible conditions, and with no employment laws to regulate either the number of hours they are forced to work or the kinds of tasks they

can perform. Many children suffer debilitating injuries that permanently maim them or cause their death.

6. Life for the typical Makallian is hopeless and full of fear. Even those fortunate enough to have a job are under a severe state of stress because the military regime is brutal. During the day, military patrols walk the streets with machine guns and bayonets. They do not investigate disputes among the populace; they simply arrest everyone surrounding the incident and send them to jail. Anyone who tries to flee arrest is usually shot. At night, patrols enforce a strict 6 p.m. curfew. Anyone who has a job must make sure that they are back in their house before the curfew begins, regardless of what time their shifts end, or how far they must travel to return home. Most employees who do not get off work until 5:30, or who simply must travel too far to reach home by 6 p.m., sleep in their office cubicles.

7. The unemployment rate in Makallie is around 50%. Most people keep their eyes open for the first opportunity to leave the country. Women, in particular, are most anxious to seek work in foreign places.

8. Helania is an eight year old girl who lived with her mother Thedonia in a Makallian village called Sendii. Thedonia and Helania are both citizens of Pogona who moved to Makallie several years ago to care for an aging relative. The relative died during the time the government of Makallie was transitioning, and Thedonia and Helania were unable to get out of the country before the Sebach Party seized all of their assets during a so-called “renewal of the country” campaign.

9. Thedonia had no job and no way to get out of the country since she had no money for the train fare needed to get back to the Pogona border. Thedonia was desperate to find some kind of work, and she refused to let Helania work for the factories or the recruiters. One day, while she was out looking for a job, Thedonia accidentally brushed against a peddler with a basket full of fruit. All of the fruit tumbled out to the ground and starving children swooped in to eat it. The peddler was cursing and screaming at the mortified Thedonia, when a T-Mac patrol came swiftly from around the corner. The patrol grabbed Thedonia and the peddler and threw them both into the paddy wagon and took them away.

10. Helania watched the entire scene in horror. She had no idea where her mother was taken, nor how to get her out of her predicament. Helania, however, was thinking quickly, and she decided to mail a letter. Her mother had just enough genairium hidden at their home for Helania to buy a stamp and mail the news of her mother’s arrest to her Aunt Bettinia back home in Pogona. Meanwhile, Helania was not able to fend for herself, and she ended up working in a factory with a group of thirty other

orphaned children. Their little hands were the perfect size to grease the cylinders that were used to manufacture military grade weapons.

11. While the people of Makallie suffered the ravages of their new government, the citizens of the nearby Republic of Pogona were flourishing. Pogonians enjoy many economic, cultural and educational opportunities. Women are encouraged to pursue high ranking government jobs, as well as to aspire to the elite fields of medicine, law and engineering. Pogona does not have the death penalty, it mandates a minimum wage of ten genairium for a ten-hour work day, and it forbids child labor. A child is defined in Pogonian law as any person under the age of sixteen. Pogona recognizes that a child is incapable of consenting to a sex act, and forbids sexual acts with children. It imposes heavy prison terms on any adult who commits such acts against a child.

12. Pogona is fully aware that an enormous migration of Makallians to their country is afoot. Aiming to be pro-active, the Pogonian government begins advertising the benefits of working in Pogona. It boasts a flourishing agricultural sector which provides 70% of the nation's wealth. Pogona's soil is very unique and enriched with fertilizing minerals. Its farmers are capable of producing crops that are rare and highly desired all over the world. The Pogonian export of the products of the farming industry is therefore highly profitable. The government anticipated that farmers could enhance their profits even more by hiring Makallian immigrants who would be willing to work for less pay than the typical Pogonian citizens.

13. Most of the agricultural sector is under the control of the National Agricultural Reserve for Foods and Crops ("NARFAC"). NARFAC's founder and chief leader is Sergeant Neopaldo Humphrey. NARFAC is a private company which Sergeant Humphrey operates much like a union. All farmers in the country are encouraged to join in order to gain the advantages of NARFAC's influence within the government, as well as the protections and favorable contracts that NARFAC makes possible. Farmers who do not join NARFAC suffer unexplained crop devastation from out-of-control fires and mysterious crop diseases. The principal Pogonian cash crop is coca leaves.

14. NARFAC's success in advancing Pogona's economic status led to an increased demand for productivity and labor. When the Pogonian government began encouraging Makallians to migrate to the country, NARFAC quickly moved to secure for itself the advantages of an influx of desperate workers. NARFAC set up work camps and advertised to its membership that day laborers were immediately available to work for reasonable wages. When Makallians began arriving in the country, NARFAC agents met them at the border and promised them housing in the camps, and food at affordable prices. For a small, one-time fee of five hundred genairium, the

NARFAC agents promised Makallian immigrants a stable job and a wage of ten genairium for each day they worked, for as long as they wanted to work. Makallian immigrants were attracted by this representation and overwhelmingly accepted the offer as a means of finding better opportunities for themselves and their families. Even though the fee required them to pay over the only money they had with them, most Makallians thought this was the best way to invest in their new life. Most of those who accepted NARFAC's offer did so thinking they would do the agricultural work only temporarily. Once they had some savings, and familiarized themselves with the language and the local customs, they intended to leave the camps to find more desirable work.

15. The work camp program was the brainchild of Sergeant Humphrey. He designed a one-hundred camp plan that would entail each camp being located conveniently near a farming community. NARFAC represented to the farmers that it would provide each worker it sent out with a daily lunch. All the farmers needed to do was send out pickup trucks or vans each morning to pick up the number of workers they needed for that day. Farmers who utilized the program paid thirty-five genairium a day to NARFAC for each worker they hired. They were billed at the end of every month, and farmers who were members of NARFAC received a ten percent discount off their total bill. The farmers thought it was a fine program. They were helping poor immigrants find work at what was a fair, if somewhat under market, price and the farmers could increase productivity without increasing costs.

16. Makallian immigrants quickly became known as Narfackers. Narfackers farmed Pogona's regional crops six days a week. They harvested coca leaves, as well as fruit crops, vegetables, cotton, and tobacco. During the day, Narfackers worked under the direction of the farmer who hired them. At the end of the day, they went back to their designated camp to sleep. To the farmers, it seemed like an ideal way for immigrants to sustain themselves.

17. However, life for a Narfacker was hardly ideal. Each of the one hundred camps established under Sergeant Humphrey's plan housed more than one-thousand Makallian immigrants. NARFAC camps were exactly that: The only permanent structures inside the walls surrounding the camps were the offices and dwellings of NARFAC agents. All Narfackers lived in community tents. There were not enough cots, so many Narfackers slept on the ground at night. There was a makeshift latrine at the east end of each camp. There were ten outside showers enclosed by burlap stapled end to end to four posts in the ground. Several of the NARFAC agents assigned to live at the camps began to sexually molest Makallian women and children.

18. Sergeant Humphrey ordered that each worker be forced to chew coca leaves each morning in lieu of being fed breakfast. In addition to being very cheap, the leaves had

an amphetamine quality that spiked the energy of a person who chewed them, and boosted that person's capacity to work over the course of a day. It was pointed out to Sergeant Humphrey, early in the planning stages, that coca leaves had zero nutritional value and, when ingested long term, caused brittling of the bones and stomach ulcers. He dismissed the concern because he saw the immigrant work pool of Makallians as limitless. For every person who became useless as a worker, he knew ten more would be ready to come in as a replacement. The farmers all thought the Narfackers were bringing a NARFAC lunch with them to work, but the lunch consisted of a piece of bread and a moldy, mashed remnant of an undiscernable type of fruit. In the evening, when the workers returned to the camps, they were given a watery soup and a cup of tea.

19. NARFAC agents confiscated the official documents, especially the passports, of every immigrant who came into its camps. The NARFAC agents told the workers that if they complained, or told any of the farmers about the conditions in which they worked, that they would be forced to pay a fine. Agents also threatened to beat or kill their family members, and to banish them from the camps. NARFAC agents also began informing the Narfackers that the initial fee they paid proved insufficient to cover their living expenses. Accordingly, their wages would be garnished at the rate of nine and half genairium per day worked.

20. The NARFAC camps are completely enclosed by stone walls, and there is only one gated entrance. The only times the gates are not locked down is when the workers go out in the morning and return in the evenings. Some local residents expressed concerns to police that the gates were very heavy and the locks were extremely imposing. The residents were concerned that people might be kept inside the gates against their will. The head of the Southwestern Pogonian Police Force, Commander Allania Hepsif, sent officers out to the Southwest camp to investigate the concerns. The head of the camp, Lepcynth Malconi, found out they were coming and stood in front of the closed gate to meet them. He assured the officers that none of the workers were there against their will. They came and went every day. Any one of them, if they so desired, was perfectly free to not return. He lastly assured the officers that the locks were simply for the protection of the workers. The locks ensured that their belongings would not be stolen while they were out at work, and that no unauthorized people could sneak into the camp at night. The officers were satisfied by the explanation and left the camp without inspecting the inside.

21. It was not long before Narfackers began getting sick and suffering injuries at work. However, everyone, sick or not, continued to go out to work so they would not fall behind in what they now owed NARFAC for their upkeep. No one decided to leave the camp, and each Narfacker continued to show up every day to be taken out to a farm to work.

22. Thimani was a seventeen year old Makallian whose family met Lepcinth Malconi at the border when they arrived in northern Pogona. Malconi said he had placements for both her mother and her father, as well as for Thimani. Unfortunately, the placements would not all be at the same camp. Malconi promised that if the father initially took a placement in a camp in northeast Pogona, he would send word immediately when a placement opened up in the southwestern camp that Thimani and her mother were going to. The family was particularly anxious to find jobs, and Thimani's father thought it would be best to accept what Malconi offered them. They said a tearful goodbye to each other, and Thimani and her mother went to the southwestern camp with Malconi.

23. Thimani and her mother were at the southwestern NARFAC camp for three years. Thimani left on the trucks each day to go and work as a housekeeper for a farmer's wife. She cooked, cleaned and looked after the children from six in the morning until nine o'clock at night. After only a few weeks, she was very tired and sore, but she had to keep working because Malconi informed her and her mother that NARFAC was forced to garnish a portion of their wages in order to let them stay at the camp.

24. One Sunday morning, after about a month, Malconi called Thimani to his quarters at the camp. Thimani did not want to give up her one day to sleep, but she thought he might have news about when her father was coming so she went. Malconi invited her in and told her to sit on the couch. He told her he thought she was a very beautiful girl and that it was a shame she did not have a boyfriend. Malconi said that he was going to be her boyfriend from now on. Thimani did not want this arrangement in the least, but Malconi began to touch her and tell her that he had a lot of friends in Pogona. He said her father was still in the northeast camp and that he could arrange to have him severely injured if Thimani was not nice to him whenever he told her to be.

25. Over the course of the next three years, Malconi called Thimani to his house every Sunday, and many nights after she returned to the camp from work. In addition to requiring her to perform sexual favors, Malconi also took pictures of her while she was undressed. He told her to post these pictures on his website, and he required her to keep track of the number of hits the site got per day. His Internet side business, as he called it, made money by charging companies to advertise on it. Malconi was never physically violent to Thimani. He threatened to hurt her parents when she resisted him, and he told her that her father, now very sick, could never come to the camp unless she ran the Internet site as she was told. He also threatened that if she told anyone about their friendship, he would send all of the pictures he took of her to her father.

26. Eftimar is a forty year old Makallian immigrant who came to the southwestern camp about a year after Thimani and her mother. He worked there for two years and is

now very sick with bone pain and stomach distress. One day, while he was out working at a farm, he saw a flyer stapled to a post. He almost ignored it because he had grown so accustomed to seeing posters written in Teffnish, a language he, like the vast majority of Narfackers, could neither read nor speak. However, he noticed just before he looked away, that this poster was written in Kanick. Eftimar had not seen such a thing for two years. The poster was created by Safekeepers, an international nongovernmental organization. The Safekeeper poster announced growing concern over the invisible way in which Makallian immigrants were living in Pogona. The poster urged anyone with information about people known as “Narfackers” to contact the Safekeeper station post in southwestern Pogona. Eftimar decided to risk finding this station post. He had missed so many work days due to illness, that he owed a hopeless debt to NARFAC. He had nothing more to lose at this point.

27. Upon hearing Eftimar’s story and learning about the real life of a Narfacker, Safekeeping contacted the Makallian Embassy in southwestern Pogona. By this time, the country of Makallie had come under severe, international criticism for its domestic policies. It was also receiving particularly bad press over the most recent story to garner international attention: A Pogonian woman, Bettinia Arroworth, was featured on all of the Pogonian news programs telling the story of how her little niece witnessed the horrifying arrest of her mother, and how neither the mother nor the child had been heard from since. A Pogonian investigative reporter went undercover in Makallie and discovered the location of the prison in which Thedonia was being held. Rumors were circulating that her daughter Helania was working in a factory, but ongoing efforts to find her were proving fruitless.

28. Makallie saw rescuing its citizens from NARFAC as a means of recovering some of its lost international credibility. Safekeeping operatives worked with Makallian officials to put pressure on Pogonian forces to close NARFAC’s one hundred camps, to set up a means to aid Makallian immigrants and help them recover, and to prosecute Sergeant Humphrey and all of his NARFAC agents as human traffickers.

29. Pogona resisted, however. It did not believe it had any obligations to prosecute NARFAC agents. Pogona’s highest law enforcement officials say that NARFAC was not engaging in an international crime because none of its agents ever left Pogona to recruit Makallians to work for them, thus any so-called human trafficking that might have occurred was entirely domestic, and thus was not covered by its international treaty obligations. It further refused to prosecute any NARFAC agent under its domestic criminal law because all of the Narfackers consented to living in the camps and no violence was used against them. As a conciliatory measure, however, the Pogona government agreed to order that the NARFAC camps be closed and its occupants summarily deported back to Makallie.

30. Finally free of Malconi, Thimani decided to bring rape charges against him. She told her story to Commander Allania Hepsif. Commander Hepsif believed there was enough evidence to arrest Malconi and she called the local prosecutor, Candida Clemens. Clemens, however, refused to authorize the arrest of Malconi. She said unless Thimani could testify that Malconi beat her or threatened her life, held a gun to her head or something like that, there was no evidence of rape. Clemens said it sounded more like the story of girl who wished she had not had sex than it did the story of a girl who was raped. Additionally, from Thimani's own story, she was the one who posted the pornographic pictures of herself on the Internet.

31. The Sebach Party leadership was outraged by Pogona's refusal to honor its international treaty obligations, and it decided to take the legal issues raised by the plight of its citizens in Pogona before the International Court of Justice (ICJ). Makallie, not a member of the United Nations nor a party to the Statute of the ICJ, deposits with the Registrar of the Court a written declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter. It limited this acceptance of the jurisdiction of the Court to the dispute with Pogona as described in this fact pattern, and asks the Court to adjudge and declare that Pogona committed various serious violations of international human rights law in allowing, inter alia, rampant human trafficking across its borders and labor and sexual exploitation on its soil.

32. Pogona is astonished about what it calls Makallie's "chutzpah." It itself is a member of the United Nations and a state party to the Statute of the ICJ. It also had subjected itself, by binding declaration submitted in 1952, to the jurisdiction of the ICJ with respect to all international legal disputes with other states that might arise in the future, excepting disputes that threaten the very survival of the state. In its written response to Makallie's claims, it challenges the jurisdiction of the Court over this matter, and it makes clear that Makallie itself has committed grave breaches of human rights law that should not be left unsanctioned. In particular, in case the ICJ affirms its jurisdiction, Pogona, brings the case of the massive human rights violations throughout Makallie, and also, the particular plight of its citizens, Helania and Thedonia, to the attention of the Court.

33. After bilateral negotiations, Makallie and Pogona submitted an agreed-upon statement of facts, as described here, to the Registrar of the Court.

34. Pogona and Makallie have both ratified the International Covenant on Civil and

Political Rights – however, both with reservations, with Makallie excepting Articles 9 and 10, and Pogona Article 13. Both Pogona and Makallie are also parties, without any reservations, to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Finally, both countries are parties to the United Nations Convention against Transnational Organized Crime, as well as its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

35. The Applicant, the State of Makallie, requests the Court to adjudge and declare that:

A. The I.C.J. has jurisdiction over this dispute.

B. Pogona has an obligation to prosecute NARFAC agents for the international crime of human trafficking in labor; and that Pogona's refusal to do so renders it in violation of its international treaty obligations as well as its obligation to protect human rights in general and prosecute its citizens for keeping people in a condition of slavery.

C. Pogona is in violation of various treaty obligations for failing to prosecute Malconi for the international crime of trafficking in persons for sexual exploitation with respect to Thimani, a Makallie citizen.

D. Pogona's decision to summarily deport all Makallian immigrants and its failure to provide relief to those persons violates international human rights law.

E. Makallie has not violated any of its international treaty obligations to its citizens as it reorganizes itself; in any event, Pogona does not have standing to espouse the claims of Makallie citizens.

F. As to the claims regarding Helania and Thedonia, they do not constitute violations of international law as Makallie is not responsible for the actions of essentially private actors.

36. The Respondent, the State of Pogona, requests the Court to adjudge and declare that:

A. The I.C.J. does not have jurisdiction over this dispute.

B. Pogona did not violate international law as the acts of NARFAC and its agents cannot be attributed to it, occurred inside of Pogona's borders, and, in any event, did not constitute a violation of international law.

C. Pogona did not violate its treaty obligations as its citizen, Malconi, did not commit any internationally unlawful act against Thimani: he did not commit any sexual acts against her without her consent, did not traffic her across borders, exploit her, or engage in any other act which constitutes human trafficking under international law.

D. Pogona did not violate international law by summarily deporting Makallie's citizens.

E. Makallie's military forces, on the other hand, committed massive violations of fundamental human rights.

F. The forced disappearance of Pogona's citizen, Thedonia, by paramilitary actors under the full control of Makallie's government constitutes also a cardinal violation of international law as does the subjection of her child Helania to the working conditions she now endures.