

Clarification Questions and Answers
Twenty-Eighth Inter-American Human Rights Moot Court Competition
Academy on Human Rights and International Humanitarian Law
2023

1. Paragraph 22 of the hypothetical case mentions a documented trend of mothers losing custody of their children because they practice African-based religions. Who is responsible for this documentation? What percentage of complaints are admitted each year? How many complaints are filed against mothers who follow religions other than those of African origin?

These complaints are normally filed with the Council for the Protection of Children, which takes the case to the Public Prosecution Service and, once it agrees to take the case, custody is litigated in the juvenile division of each state. Currently, of the 2,722 complaints seeking the termination of custody, 56% were accepted, 347 were related to religious intolerance, of which 233 concerned practitioners of African religions, 61 concerned practitioners of Spiritist religions, and 23 concerned Christian or evangelical religions.

2. In a few places, the hypothetical case mentions protecting the “best interests of the child.” What is the content of the “federal law protecting the best interests of the child” mentioned in paragraph 36? Does the law provide for a specific body to defend the interests of the child in court? If so, did this body have a role in Helena’s custody proceedings?

Article 3 of Federal Law 367/90 provides that “it is the duty of the family, society, and the State to guarantee, with absolute priority for the best interests of the child, their rights to life, health, food, education, recreation, professional training, dignity, respect, freedom, and family and community life, and to protect them from all forms of neglect, discrimination, violence, cruelty, and oppression.

§ 1 The concept of the best interests of the child is intended to ensure the full and effective enjoyment of all the rights recognized above. An adult’s judgment of his or her interests cannot override the obligation to respect all the child’s rights under this Convention and applicable international conventions.

§ 2 The full application of the concept of the best interests of the child requires the development of a rights-based approach, engaging all actors, to secure the child’s physical, moral and spiritual integrity of the child and promote his or her human dignity.

The specific body involved in the court proceedings was the Office of the Ombudsperson, whose institutional duties are to protect the essential interests of legally vulnerable persons or organizationally fragile groups. The Office works on behalf of children’s rights as part of its work to protect vulnerable persons groups. It intervened in the proceedings of this case, arguing that the allegations regarding sexual identity were unrelated to her role and function as a mother and should not be part of the litigation, since neither the Civil Code of Mekínés nor the Children’s Rights Act consider sexual orientation to be grounds for “loss of custody due to parental unfitness.” The Office of the Ombudsperson did not address religious freedom as a condition for the loss of custody.

3. Did Juan Castillo participate, in any way, in the custody trial of Helena Mendoza Herrera in the Supreme Court of Justice?

No, the Supreme Court only rules on questions of law that do not require the presentation of testimony or expert opinions, except in extraordinary cases.

4. In what respect is the State referred to as secular? What degree of secularity is established under the State's laws and regulations?

Based on Article 3 of its Constitution, Mekinés defines itself as a secular State in the following manner: The State of Mekinés is secular and shall refrain from entering into any other type of relations that entail dissemination of religious ideas, or the creation of religious entities, allocating funds for religious purposes, or donating public property to religious entities.

Recogimiento mentioned in paragraph 29 involve (in terms of who performs the scarifications and where on the body, under what conditions the person should remain in the community, etc.)?

Religious Freedom and Combat Intolerance in the Judiciary, determining that religious freedom must be respected in all court facilities in Mekínés.

13. Have the national courts of Mekínés ever provided a clear definition of the concept of “religion,” and what is the basis for the characteristics that the Supreme Constitutional Court has proposed as necessary to qualify as a religion?

The national courts define religion as an expression of a generally public, belief in a particular religion. To be classified as such, the beliefs necessarily have meeting places or even a sacred book, as well as a hierarchical structure, and it must worship a specific god. Besides this definition, the Supreme Court adds that religions arise from the practice of beliefs and that the State must tolerate and allow all religions that do not violate morals and decency or national security.

14. Paragraph 29 states that Helena decided to go through the initiation ritual, but it is not clear whether the scarification was actually performed on Helena and whether she went through the *Recogimienta*. Has this ritual already taken place?

Yes, this ritual has already taken place. After Helena expressed her desire to be initiated into the religion, and with Julia’s consent, Helena underwent her entire initiation and seclusion procedure in the terreir (sacred place where Afro-Mekínés religious ceremonies are held) where they gathered.

15. Paragraph 37 says that the Supreme Court ruled that the living conditions offered by Marcos’s family for Helena were ideal, which suggests that those offered by Julia’s family were less than ideal. On what criteria and evidence did the Supreme Court rely to compare the two homes?

The Supreme Court considers that the best interests of the child include access to the highest levels of education; school attendance at all stages of primary education; and access to transportation, food, and health; the rights to food, leisure, career training, culture, dignity, respect, freedom, and family and community, as well as protection from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression. In this context, the Supreme Court found that the respectable school offered by Marcos was compatible with the interests of the child, while Helena’s practice of initiation to the Afro-Mekínésian religion demonstrated negligence and violence on Julia’s part, and was therefore incompatible with the child’s best interests.

16. According to paragraph 23 of the facts of the case, Congresswoman Beatriz de los Ríos introduced a bill related to family cohabitation. Was this bill defeated or passed by the legislature?

The bill was defeated in January 2023.

17. According to the facts of the case, the decision on Helena’s custody was not final until the Supreme Court of Mekínés ruled on the matter. Between the trial court’s decision

- Therefore, its members must meet periodically (the number of deliberative sessions)

24. Please describe in detail the Council for the Protection of Children, including its organizational chart; how its memberships determined (elected, commissioned, or by a competitive process); its actions to guarantee religious freedom for children of African descent; and whether such actions are equivalent to the protection afforded to children of other religions.

See question 20.

25. Who are the victims identified in the report of the Inter-American Commission on Human Rights mentioned in paragraph 43 of the hypothetical case, and who among them are Black?

The victims in question are the petitioners, and in the case in question Julia is of African descent.

26. What are the criteria for awarding custody of the children of separated couples in the State of Mekinés?

See question 7.

27. What are the dates of the following events: Helena's birth, Julia and Marcos's separation, and the beginning of Julia and Tatiana's relationship?

Helena was born on November 17, 2012. Julia and Marcos were married on September 12, 2010, and separated on December 13, 2015. Julia and Tatiana started a relationship in 2017 and began living together in 2020.

28. Based on what the Supreme Court has said (paragraph 38) about the importance of religious freedom of children and their ability to make decisions about their beliefs and worship, what does the domestic legislation and case law of the State of Mekinés say about children's autonomy and the age at which they can decide freely and responsibly on existential matters such as religion?

By law, the child has the right from the age of 16 to choose which parent he or she wants to stay with. But the child's opinion is also heard and considered in custody decisions starting at the age of 8.

29. Regarding the ritual for Helena's initiation into the Candomblé religion, paragraph 29 of the hypothetical case refers to scarification, which consists of small incisions made in the skin. What are the procedures for performing these rituals? What are the consequences, and is there any harm to the person who undergoes them?

See question 8.

30. Is Julia Mendoza a person of African descent?
Yes, Julia Mendoza is of African descent.

31. It is public knowledge that the five families who control the Mekinesian media conglomerates are Catholic? Do all conglomerates have a Catholic bias against religions of African origin (referring to paragraph 24 of the case)?

The Supreme Court's reversal of the appellate court's decision is final and unappealable.

35. In merits report No. 88/22 issued by the IACHR on October 15, 2022 (paragraph 41 of the hypothetical case), are only Tatiana and Julia named as victims?

Yes, only Julia and Tatiana are listed as victims in the merits report.

36. Can you provide information about Helena's age and education at the time of the conversation about her initiation?

According to paragraph 29, Helena was 8 years old and attending elementary school when she decided she wanted to be initiated into the religion.

37. Can you provide information about the socioeconomic conditions, including housing, education, health, and other relevant conditions in which Helena was living during her stay with Julia and Tatiana?

Julia and Tatiana each earn one and a half times the minimum wage and live in a one-bedroom apartment with a balcony. Helena attends a prestigious school in her neighborhood. Julia, Tatiana, and Helena are in excellent health and only have public access to the national health system.

38. Can you elaborate on the rationale for the May 5, 2022, ruling of the Supreme Court of Justice? In particular, did the Court expressly reiterate the trial court's reasoning with respect to the impact that living in the custody of a same-sex couple could have on Helena?

The Supreme Court recognized the award of custody to the father and the regulation of the mother's visitation, despite acknowledging that there was no evidence to prove her unfitness. Its decision was based on the following arguments: (i) the respondent, making her sexual choice explicit, lives with her partner in the same home where her daughter lives, altering the normalcy of family life with her, putting personal interests and own well-being before the emotional well-being and the appropriate socialization of her daughter; and (ii) the respondent put her personal interests and well-being before the fulfillment of her parental obligations that may affect the child's subsequent development. The court can only conclude that the plaintiff makes more favorable arguments in favor of the best interests of the child, which, in the context of a heterosexual and traditional society, are of great importance."

The Court also stated that Helena was at risk of the violence involved in Julia's religion. And it found that Helena's social environment made her vulnerable, since her family and religious environment differed significantly from that of her peers, which could give rise to isolation and discrimination that could affect her personal development.

39. Does Mekínés have a protocol for judges to contend with discriminatory decisions? Are there internal procedures for challenging the impartiality of judges or any punishment for those who render discriminatory decisions? If so, did the victims use this procedure?

Yes, there is a procedure before the National Council of Justice, but the victims were not aware of the existence of this mechanism when the events occurred, so it only began its investigation after the case was brought before the Inter-American Court of Human Rights.

40. What social inclusion and anti-racism policies are being implemented by the State of Mekinés, as referenced in paragraph 11 of the hypothetical case? Is there a specialized police force for these cases?

The State's policies are limited to affirmative actions aimed at reserving spots for Afro-descendant students in public competitions and private contra

