

**Clarification Questions and Answers**  
**Twenty-Eighth Inter-American Human Rights Moot Court Competition**  
**Academy on Human Rights and International Humanitarian Law**  
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- 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 court. 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 4.367/90 provides that: *“It is the duty of the family, society, and the State to guarantee, with absolute priority for their best interests, children’s rights to life, health, food, education, recreation, professional training, culture, dignity, respect, freedom, and family and community life, and to protect them from all forms of neglect, discrimination, exploitation, 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 a child’s best interests cannot override the obligation to respect all the child’s rights under this law and the applicable international conventions.*

*§ 2 The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, 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 rights and interests of legally vulnerable persons or organizationally fragile groups. The Office thus works on behalf of children’s rights as part of its work to protect vulnerable persons or groups. It intervened in the proceedings of this case, arguing that the allegations regarding Julia’s 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 terms: *“The State of Mekinés is secular and shall refrain from having economic, incentive-based, teaching, or any other type of relations that entail disseminating, promoting, subsidizing, or financially supporting religious entities, allocating funds for religious events, donating public land, or purchasing land for religious entities, under penalty of violating the precept of equal treatment of all religions under the republican principle.*

*I - Freedom of conscience and belief is inviolable, and the free exercise of religious worship and the protection of places of worship and their services are guaranteed under the terms provided by law;”*

**5. What is the exact duration of the court proceedings to which the case refers?**

Due to the request for interim relief and *periculum in mora* [assertion that the plaintiff is at risk of irreparable harm] filed by the Public Prosecution Service, the proceedings lasted one year and four months.

**6. What is the process for the appointment of judges in the State of Mekinés?**

To participate in the public competition for a judgeship, candidates must have at least three years of demonstrated experience in the practice of law.

After passing a public examination, the judge serves as a substitute judge, i.e., assisting other judges in common and routine activities. After two years in this position, the judge obtains a lifetime appointment.

He or she may also be promoted to the position of appellate judge, presiding over a court of second instance, or to the position of Supreme Court justice.

**7. Under the domestic law of Mekinés, what are the grounds for loss of parental custody?**

Under the Civil Code, parents may lose custody due to the emancipation of the minor; his or her reaching the age of majority; adoption by another family or by court decision; abandonment; acts contrary to morality and decency; or the improper surrender of children for adoption.

**8. What exactly does the process of *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.)?**

The candidate for religious initiation is kept confined in a sacred space for 21 days. He (or she) has his (or her) head shaved and marks are made on the arm or head, usually with fish bones. The head is shaved as a symbol of death and resurrection, and the recovery period represents the person's time in the mother's womb and the link to their own ancestors. The scars symbolize the entryway for the *orixá* [deity] during its embodiment. The ritual ends with a new blood bath, this time of a four-legged animal, usually a goat or sheep, sacrificed in honor of the *orixá*. Blood is thrown on the child. Finally, after this time of retreat, the person is presented to the community. It is a long and intense ritual.

**9. How are the branches of government structured and composed in Mekínés?**

The Federal Constitution of Mekínés provides for three branches of government: executive, legislative, and judicial. Although independent, they work together.

The executive branch is responsible for implementing, overseeing, and managing the laws of the country. It includes the presidency of the Republic, the ministries, the secretariats of the presidency, the administrative agencies, and the public policy councils.

The legislature is the branch of government that makes the country's laws. It consists of the National Congress, i.e., the House of Representatives, the Senate, the parliaments, and the Assemblies, whose primary task is to introduce laws to govern the country and its citizens. This branch also has oversight of the executive branch.

The judicial branch acts within the scope of law enforcement. It is the branch responsible for adjudicating cases in accordance with the national Constitution. It is composed of judges, prosecutors, and appellate court judges, represented by the courts, especially the Federal Supreme Court (FSC). Essentially, the role of the judiciary is to apply the law, judging and interpreting the facts and controversies, in line with the national Constitution.

**10. Did the parties receive notice of the Supreme Court's granting of Marcos's petitions on May 5, 2022?**

Yes, the parties were notified and the case followed due process in accordance with the law.

**11. Which conventions are referred to in paragraph 41 of the hypothetical case?**

The American Convention on Human Rights and the Inter-American Convention against Racism and All forms of Discrimination and Intolerance.

**12. Has any judicial inspection and oversight body ruled on or taken any action regarding Judge Juan Castillo's opinion on the "evangelical predominance" in his rulings and other positions?**

Due to the predominance of evangelicalism in his decisions, the month after he joined the Supreme Court, the National Council of Justice issued the National Policy to Promote

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

- 13. Have the national courts of Mekinés 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, generally public, of belief in a particular religion. To be classified as such, the belief must 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 religion arises 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 *Recogimiento*. 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 *terreiro* (sacred place where Afro-Mekinesian 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 life, food, leisure, career training, culture, dignity, respect, freedom, and family and community life; 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 Catholic school offered by Marcos was compatible with the interests of the child, while Helena’s practice of initiation to the Afro-Mekinesian 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 Rios 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 Mekinés ruled on the matter. Between the trial court’s decision**

**and the Supreme Court's decision, how was Helena's custody handled in practice and where/with whom is she currently residing?**

Initially, Helena remained with her mother until the custody order was enforced. Helena is now reunited with her father, Marcos, while the proceedings at the Inter-American Court of Human Rights are pending.

**18. Considering that Marcos's family professes the evangelical faith, was Helena enrolled in a school run by that church after Marcos was granted custody?**

After Marcos was awarded custody, Helena was enrolled in a Catholic school, where Marcos' mother has already worked on some projects for the evangelical church they attend. The school is also ranked higher academically than the school Helena attended when she was living with Julia.

**19. Given that the population of Mekinés is multiethnic, Does the Supreme Court of Mekinés have prior case law on religious practices resulting in minor bodily injury related to religions other than those of African origin?**

Despite the country's multiethnic and majority Black demographic makeup, the Supreme Court of Mekinés has no prior case law on the practice of religions of African (or any other) origin resulting in or involving bodily harm.

**20. How are the Councils for the Protection of Children provided for in Article 139 of the Children's Rights Act of the State of Mekinés composed?**

The Children's Rights Act is based on the comprehensive protection doctrine, which regards children and adolescents as rights holders entitled to special protection by the family, the community, society in general and the State. On this basis, the Act created the Council for the Protection of Children. Each municipality has one such council responsible for ensuring compliance with the rights of children as defined in the Act. The Council is also autonomous, so that it can faithfully exercise its social responsibility to see to the observance of the rights defined in the Act, combating anything that threatens or violates the rights of children. It does this through the implementation of protective measures for parents or guardians, requests for public services, and proceedings/complaints before the Public Prosecution Service.

In this regard, Art. 139 provides as follows:

*"The process for selecting the members of the Council for the Protection of Children shall be established by municipal law and shall be carried out under the responsibility of the Municipal Council for Children's Rights and the supervision of the Public Prosecution Service.*

*§ 1 The Council for the Protection of Children is composed of five regular members and five alternate members elected by the local population to serve a term of four years, through a new selection process.*

*§ 2 The decisions of the Council for the Protection of Children shall be made by all of its members together, according to its Rules of Procedure.*

- Therefore, its members must meet periodically to make their decisions (the number of deliberative sessions held per week will depend on the needs of each municipality), without prejudice to serving the local population (if needed, it should take place outside the hours in which the Council is open to the public).

§ 3 As protective measures, the competent authority of the Council may determine the following measures:

I - transfer to the parents or guardians, by means of a statement of responsibility;

II - temporary guidance, support, and monitoring;

III - obligatory enrollment and attendance in government basic education institutions;

IV - inclusion in community or government programs of family, child and adolescent assistance;

V - requisition of medical, psychological, or psychiatric treatment in a hospital or outpatient system;

VI - transfer to the judicial authority or to the Public Prosecution Service;”

**21. Since the Constitution of Mekínés—while providing for the protection of the family and children—does not define one specific “legitimate” family composition, is there Supreme Court precedent on the identification of a same-sex family as one of the various types of family composition protected under the Constitution?**

The definition of family traditionally used by the Supreme Court is that of couples (consisting of a mother and father) and children; it does not include stable same-sex couples, or even a family formed by one of the parents and their offspring.

**22. In paragraph 33 of the case, custody was revoked and granted to Marcos in the civil proceeding. Was Helena heard during this or any other proceeding? If so, how did Helena’s hearing unfold, specifically and in detail?**

The right of children to be heard is expressly provided for in the Children’s Rights Act:

“Art. 43. Foster care shall be provided through guardianship, custody, or adoption, independently of the legal status of the child, under the terms of this Act.

§ 1 Whenever possible, the child should be heard beforehand and his or her opinion should be duly considered.”

A hearing was held to ask Helena which room she liked better, the one in Marcos’ house or the one in Julia’s house; what her relationship with Julia’s partner Tatiana was like; whether she liked participating in religious worship/rituals with Julia and Tatiana; and whether she felt pain during the process of initiation into the religion. Helena answered all the questions very clearly, emphasizing that she liked the room in Marcos’ house better, but that she loved the house where she lived. She said that she had an excellent relationship with Tatiana, that she felt very comfortable with her, and that she never felt any pain or discomfort during the process of initiation to the Afro-Mekinesian religion, and that she enjoyed playing in the *terreiro*.

**23. In light of the discriminatory context presented in the case, what actions were taken by the responsible inspection authorities and agents? Were any investigations opened to determine the acts and omissions of the responsible authorities, including the President of the Republic?**

Due to the discriminatory context, the National Council of Justice launched an investigation into the proceedings, as well as into the judges and authorities involved in the case. In addition, the Ombudsperson of the Supreme Court opened an independent investigation into the facts of the case, including the conduct of the president and the conservative political parties.

- 24. Please describe in detail the Council for the Protection of Children, including its organizational chart; how its membership is 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 12 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)?**

Yes, it is common knowledge that the families that control the media conglomerates are Catholic. In fact, in 2015, an executive from one of the families that controls a major radio and television channel gave a public interview in which he said that people affiliated with Afro-Mekinesian religions were “savages” and threatened “the values of Western civilization.”

- 32. How do the domestic courts in Mekines construe the best interest of the child in legal custody cases, and is there a consistent case law on the subject?**

See question 2. The case law is consistent on the use of the principle of the best interests of the child, but not on the continuation of custody with the paternal or maternal figure.

- 33. Are there different custody models under the Mekinesian legal system? If so, what are the differences between them, especially with respect to who is responsible for making decisions about the child’s life? If custody is shared between the parents, how does the custody order address discrepancies between them? Also, are there any predictors of loss of custody? In Helena’s case, did her parents share custody at any time, either before or after the Supreme Court’s decision?**

The legal system of Mekines provides for:

**Sole custody** - This is the type of custody that is assigned to only one of the parents, with the other party retaining visitation rights and the right to monitor and supervise decisions regarding the child’s upbringing. In this case, the noncustodial parent must pay child support.

**Joint custody** – Under this modality, all decisions regarding the child’s upbringing must be shared between the parties. However, unlike what may be expected, the time spent with each parent does not necessarily have to be exactly the same. With joint custody, the child does not have alternate living arrangements, i.e., the child lives with one parent and the other parent has free access to the child. Both parents share all responsibilities, make joint decisions, and participate equally in the child’s development; but it is important for the child’s healthy development that they have a primary home, so that they can establish a routine and have stability in their lives and social relationships (neighbors, classmates, etc.). In this case, the parent who does not live with the child is still required to pay child support.

In Helena’s case, shortly after the Supreme Court decision, custody was awarded to Marcos, with Julia only having visitation rights.

- 34. Is the Supreme Court decision (paragraph 37 of the hypothetical case) reversing the appellate court’s custody decision final? Was the judgment rendered by a single justice or by several? If it was issued by a single justice, can it be challenged by an appeal to the full court? If there is another procedure, what are the requirements for this appeal?**



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 small but 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 her 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 maternal role, in conditions that may affect the child's subsequent development, and the court can only conclude that the plaintiff makes more favorable arguments in favor of the best interests of the child—arguments which, in the context of a heterosexual and traditional society, are of great importance."*

The Court also stated that Helena was at risk due to 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, public and private contracting, and vacancies in universities. There are no specialized police for these cases.

**41. Is there any body within the legislative branch to screen for laws that violate human rights? If so, what influence would this body have on the vetoes and provisional measures issued by the current president of the Republic? Was the previous administration more protective of human rights?**

The Mekinesian Human Rights Council (MHRC) is a joint collegiate body whose purpose is to promote and defend human rights in Mekinés through preventive, protective, restorative, and punitive actions to address situations in which rights recognized under federal law, the Constitution, and international treaties and acts duly ratified by the State are threatened or violated.

The MHRC is responsible, among other functions, for supervising and monitoring public human rights policies and the national human rights program. It may suggest and recommend guidelines for their implementation, and coordinate and foster exchanges and cooperation with public or private, municipal, state, national, or international entities, in particular with the bodies that are part of the international and regional human rights systems. In other words, the MHRC can only issue recommendations, and lacks the power to veto the president's actions.

Yes, the previous administration acted much more in line with the international human rights regime.

**42. Is there any information or statistical analysis in Mekinés on the academic quality of both evangelical and non-evangelical schools, and can the data be disaggregated by the type of beliefs they practice?**

According to the Federal Education Council of Mekinés, secular primary schools perform better, with 58% of their students passing entrance exams to top-tier universities in the country. This stands in contrast to evangelical or Catholic schools, which have a 51% approval rating. In addition, population data are always aggregated with the practitioners' type of belief.

**43. How is the legal capacity and progressive autonomy of children regulated?**

The Mekinesian legal system follows the UN Convention on the Rights of the Child. Minors who have a sufficient degree of maturity may personally perform acts permitted by law. They have the right to be heard in any legal proceedings concerning them, as well as to participate in decisions about their person. In the case of adolescents between twelve and twenty years of age, their opinion will always be considered when decisions are made in matters ranging from school tutoring to adoption and the means of continuing education that are conducive to their development.

The concept of progressive autonomy in relation to existential situations has not yet gone beyond the fixed notion of capacity, rigidly established on the basis of age groups predetermined in the abstract by legislators. The Mekinesian Civil Code considers those under 16 years of age to be incapable of performing civil acts, and those over 16 and under 18 years of age to be relatively incapable of performing civil acts.

**44. What are the regulations on custody and guardianship in Mekinés?**

See questions 2 and 33.