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**American University Washington College of Law**

2023 Inter-American Human Rights Moot Court Competition

Hypothetical Case: Equality and Human Rights – Confronting Racial Discrimination<sup>1</sup>

Julia Mendoza et al. v. State of Mekinés

**Description and background on the State of Mekinés**

1. Mekinés is a South American country and one of the largest in the hemisphere, with an estimated surface area of over five million square kilometers. It has a population of 220 million inhabitants, making it the 10th most populous country in the world. Mekinesian society is considered multiethnic, with a diverse mix of peoples and ethnicities, including Indigenous people, whites of European descent, Creoles, Asians, and Afro-descendants.
2. The country gained its independence in 1822 and became a Federal Republic comprising 32 states. The official and most widely spoken language is Portuguese, and it is the largest Portuguese-speaking country in the world. Its economy is the largest in South America, and it is considered an economic powerhouse because of its wealth of industry and natural resources, including oil. Despite its abundant wealth, Mekinés is also one of the most unequal countries in the world, with just 10% of its population receiving close to 60% of the income produced each year.
3. Mekinés is a member of the Organization of American States, and in 1984 it ratified the American Convention on Human Rights (Convention or ACHR), accepting the jurisdiction of the Court. More recently, it ratified the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (CIRDI) in 2019. The State of Mekinés has also been an international proponent of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which it ratified in 1970.
4. Mekinés is a country with an intense history of colonization and slavery. It also has the largest Black population in the region. Although its population is diverse, about 55% self-identifies as Afro-descendant. The current Constitution of Mekinés was adopted in 1950 and expressly recognizes the human rights of all persons. Article 5 of

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<sup>1</sup> The International Institute on Race, Equality and Human Rights thanks the members of its team who contributed to the preparation of the hypothetical case, especially Nathaly Calixto, Bárbara Correia, Fernando Goldar, Carmen Herrera, Esteban Madrigal, Isaac Porto y Leilane Reis.



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the Constitution states that the fundamental duties and responsibilities of the State of Mekinés to its people include “*promoting the common good, without prejudice based on origin, race, sex, color, age, or any other form of discrimination.*”

5. Although the majority of the population is of African descent, slavery was abolished in Mekinés only in 1900. Subsequently, in 1901, illiterate people were excluded from voting. This barred most Afro-descendant people who had lived under slavery from accessing this right. Only in 1982 was the right to vote restored to those who were illiterate. Despite this history, some institutions of the State of Mekinés have tried to implement legislation and public policies for the elimination of all forms of racial discrimination.
6. During the slavery era, Indigenous and African groups—whether enslaved or not—were not allowed to practice their faith and religious beliefs, and were catechized and converted to Catholicism. In 1889, the State declared itself secular; however, the police and the judiciary severely repressed the rites, worship, and practices of Afro-descendants until 1940, criminalizing them as witchcraft and charlatanry. To this day, the colonial heritage of slavery persists under the structural racism that permeates institutions and is reflected in who is considered deserving of human rights, especially with regard to the right to freedom of conscience and religion.
7. Although Mekinés is a secular State, the relationship between church and State has not yet reached the true degree of secularity reflected in the country’s constitution. All public and government offices still display symbols of the Roman Catholic Apostolic religion, especially the crucifix, or images and icons of that religion and others. Even with such influence, the Mekinesian constitution states that its governing principles are the establishment of a democratic republic that guarantees freedom of belief, the autonomy of the State from religion, and the autonomy of religion from the influence of the State. It prohibits religious discrimination. In recent years in Mekinés, with the growth of the Christian caucus in Congress, religious and moral agendas have become even more prominent, influencing issues such as LGBTI+ rights, abortion, Indigenous peoples, women, and children; indeed, the Ministry of Human Rights is now called the Ministry of Women, Family, and Human Rights.
8. Despite having no official religion, Mekinés is also known to be the largest Christian country in the world in terms of absolute number of believers. Throughout the country’s history, Christian religions have claimed that homosexuality interferes with the divine plans of a traditional family—that is, a family consisting of one man and one woman, and then children. Today, with a vociferous Christian caucus in Congress, Christian ideas have also influenced public policy.
9. The agenda for the protection of children is also centered on the traditional family and Christian ideals. According to the Ministry of Women, Family, and Human Rights, in



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the first six months of the ministry's restructuring, its priority issues were: combating abortion, including participation in international anti-abortion meetings; advocating for adoption; combating pedophilia; addressing violence against women; and combating suicide. These agendas are supported and prioritized by religious organizations and are heavily promoted in churches and by Christian politicians.

10. Since his election campaign, the current president of Mekines has stressed that he would defend the values he positioned as fundamental in Mekinesian society: the defense of the traditional family, the right to life from conception, and the repudiation of "gender ideology." At the beginning of his administration, the president issued an executive order to remove all the sitting members of the National Council for the Protection of Children and made changes that, in practice, diminished the body's power to make decisions and issue positions on the matter. The order, published on August 18, 2018, brought new changes to the structure of the council, which is provided for in the Children's Rights Act. Among other measures, the order removed all current members of the council and established new rules for selecting the members from civil society. Previously elected in an assembly composed of three members of government and five members of local communities, the council members will now be chosen through a government-organized selection process. With the new selection process, the government will have more decision-making power than society. Before, this power was shared, but now it focuses on conveying the government's vision.

### **Religious discrimination and the State's approach**

11. Despite the various social inclusion and anti-racism policies promoted by State authorities, Mekines remains one of the countries with the highest rates of racial discrimination in the world. Several organizations have documented a violent system of State intervention in lives, bodies, and behaviors due to the structural racism ingrained in the country, allowing discursive and institutional forms of racism through which the State allegedly silences and conceals disregard for human rights, while hypocritically declaring its commitment to the universal guarantee of human rights.
12. This discrimination is especially pronounced against populations of African descent who practice religions of African origin. About 81% of the country's population considers itself Christian, while 2% reports to profess an African-based faith. Over the course of its history, Mekines has gone from being a Catholic majority to an evangelical Christian majority. Neo-Pentecostal churches and groups have entered various sectors of government, including elected offices, councils, and state and municipal bodies. According to the Ministry of Human Rights, in 2019 there was a 56% increase in complaints and attacks stemming from religious intolerance and discrimination: 356, compared to only 211 in 2018. Most of the victims were followers of the Candomblé and Umbanda religions. According to a survey conducted by civil society organizations, this increase was actually 78%. In most cases, reports of these



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incidents never reach the competent authorities because people are unaware of the reporting channels or lack trust in the system. The discrepancy in data is due to society's growing distrust of State institutions, as there are allegations that State agents are themselves the perpetrators, which is why people avoid filing complaints.

13. Data from Zero Discrimination, a hotline operated by the Ministry of Justice to receive complaints of racial violence, indicate that, between 2015 and 2019, 2,712 reports of religious violence were filed in Mekínés. Of these reports, 57.5% were for attacks on people practicing religions of African origin, especially Candomblé and Umbanda. In February 2016, the Ministry of Human Rights published its Report on Intolerance and Religious Violence in Mekínés (2011 – 2015), in which it found that religious intolerance is a structural problem that is often obscured in society. It further notes that, at the state level, the lack of sufficient data to ascertain the true extent of this problem remains a challenge.
14. In July 2016, the National Human Rights Ombudsperson's Office of the Ministry of Human Rights published a report stating that episodes of religious violence are on the rise in Mekínés and, among all faiths practiced in the country, those most frequently attacked are those of African origin. They documented crimes of religious violence with similar characteristics, such as *“insults, threats, stoning, beatings, beatings in places of worship, arson, expulsion of religious people from their communities, physical assaults, and even murders, among others.”* It also found high rates of crime related to racial violence (i.e., attacking someone because of their race, color, ethnicity, religion, age, or disability), with such offenses reported every 15 hours. The report goes on to state that, despite this, the Mekinesian states generally lack specialized procedures or protocols for investigating crimes motivated by religious intolerance.
15. As a result, these crimes are classified as mere offenses between neighbors, threats, property offenses, and so on. Several Mekinesian human rights organizations, such as FreeMekínés, have complained about the reluctance of the State of Mekínés to acknowledge religious intolerance as a serious public safety issue and have said that the State must *“not only stop and punish religious racism with the necessary vigor, but also consistently and effectively promote awareness, education, the overcoming of negative stigmas and stereotypes, inclusion, respect, and a culture of peace.”* To address religious intolerance, in December 2019, the State of Mekínés created the National Committee for Religious Freedom within the Ministry of Human Rights. The committee comprises seven people, three of whom are representatives of civil society. However, in practice, the committee lacks the power to make and promote real changes in public policy and legislation, since it functions as an advisory body with nonbinding authority.

**Access to justice and the judicial response to religious discrimination**



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16. Access to justice in Mekinés is a fundamental right guaranteed by Article 7 of the Constitution. However, access to this right is undermined by socioeconomic inequality and the legacy of colonialism. The lack of economic resources, the geographic location of vulnerable populations, gender prejudice, and barriers to access to information make it impossible in many cases to file a complaint.
17. In addressing religious intolerance, the decisions of the Mekinesian courts have not recognized Candomblé and Umbanda as religions. According to the case law of the Supreme Constitutional Court, these “practices” with African roots lack the necessary characteristics of a religion, such as a central text (Koran, Bible, etc.), a hierarchical organizational structure, and a single God to be worshipped.
18. This judicial conception has hindered access to justice for victims of religiously motivated violence and has allowed these crimes to go largely unpunished. According to Mekinesian human rights organizations, *“religious discrimination in the country continues with impunity, with rare exceptions. Most cases do not reach the judiciary and are left to the police, prosecutors, or public defenders. The reasons for this include structural barriers, neglect, prejudice, racism, religious intolerance, and the failure to legally recognize these practices as a form of religion, as well as the absence of hate crime legislation.”*
19. In another notable development, the current president appointed Juan Castillo to serve as a new justice of the Supreme Constitutional Court of Mekinés. This justice has positioned himself as a proponent of a society based on the dominant religious practices such as the evangelical religion, while ignoring other forms of worship and religion. During his swearing-in ceremony, after his appointment was confirmed by the Federal Senate, the judge said it was *“one step for a man and a leap for the evangelicals of Mekinés.”* This raised civil society’s concern that the justice has a bias that is likely to influence major judgments, potentially to the detriment of religious freedom and, in particular, Afro-Mekinesian religions.
20. In a thematic hearing before the Inter-American Commission on Human Rights (IACHR) in November 2019, civil society condemned the absence of justice and the current administration’s lack of political will to combat religious intolerance, stating: *“When we go to the police station to report that our religious territories have been invaded and burned, we are laughed at, because the police are often also evangelicals, and they are the main perpetrators of the attacks against the population practicing Afro-Mekinesian religions.”*

### Political and media impacts



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21. As for the political landscape, the tensions and polarization that have marked the country in recent years are rising in the run-up to the November 2023 elections. With the president's mobilization of support from conservative groups, particularly the evangelical Christian sectors, human rights organizations are anticipating an increase in violence against African-based religions.
22. Serious incidents have also occurred against families that practice religions of African origin. Especially in recent years, there has been a documented trend of cases of mothers losing custody of their children due to the practice of African-based religions. Persons motivated by religious racism file complaints with the Councils for the Protection of Children, bodies provided for in Article 139 of the Children's Rights Act. These are autonomous institutions responsible for enforcing the rights of children at the local level in Mekines. Their main purpose is to ensure that minors have effective access to their rights. They are entrusted with social oversight of the family, the community, society, and the government, ensuring that children's rights are respected as a matter of absolute priority.
23. The councils receive reports of child abuse perpetrated by family members or neighbors. Council officials forward the complaints to the Public Prosecution Service, which sometimes prosecutes parents for bodily injury arising from children's initiation into religions, thus triggering the process of loss of parental rights. This trend has grown considerably in recent years, to the point that a federal congresswoman, Beatriz De los Rios, introduced a bill to keep mothers and fathers from losing custody of their children because of their religious beliefs.
24. The Mekinesian media also avoid sharing objective information about African-based religions with the public, and in other cases demonize them. As a result, the practitioners of these religions are marginalized by prejudices that result in their social exclusion. The country's media conglomerate is also controlled by five families that profess the Roman Catholic Apostolic religion, which means that they control print, television, and digital media information. Stories related to Afro-Mekinesian religions are laden with stigma, thus propagating religious intolerance in Mekines.

## **Ministry of Human Rights and the Council for the Protection of Children of Mekines**

25. The Mekinesian Ministry of Human Rights was renamed the Ministry of Women, Family, and Human Rights in January 2019 by a decision of the president. In the last four years, several public policy committees have been abolished, including the Committee for Monitoring the National Human Rights Plan, which was responsible for evaluating whether the government was complying with its public policy commitments, ranging from combating violence against women to guaranteeing religious freedom. Besides the committee, civil society also used to review the Plan,



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but it has ceased to be invited to participate in this review in recent years. The Committees of the National Human Rights Plan also included the National Committee to Combat LGBTI+ Discrimination. Unfortunately, this committee was also disbanded, along with the Department for the Promotion of LGBTI+ Rights, which used to assist the executive branch in developing public policy.

26. In the area of religious freedom, the fight against religious intolerance and racism was a priority agenda of the former Ministry of Human Rights only until 2018, despite the increasing number of complaints received by the ministry in the last four years. *“Mekínés is a Christian and conservative country based on the traditional family.”* These were the closing words of the president’s speech at the opening of the United Nations General Assembly in 2020. The protection of the family and children is provided for in the constitution; however, it does not identify any single family composition as the only valid one. Thus, the restricted notion of family highlighted in the president’s speech and defended by the conservative and religious base of the government excludes different types of families. Through constant action in different governmental spheres, the executive branch has implemented a set of public policies that reinforce this restricted notion of the family as a rights holder. The Ministry of Women, Family, and Human Rights is a key agency for the implementation of these policies.
27. One of the most notable projects and programs of the executive branch is the creation of the National Observatory of the Family (NOF), whose objective, according to its official documents, is to *“promote family-related studies and research, leading the way in the formulation of public policies focused on the family. It also aims to help subsidize family policies, as well as the exchange and dissemination of scientific knowledge on the family in Mekínés and in the world.”* The Observatory is part of the National Secretariat for the Family created by the current government.

## **The case of the minor child Helena Mendoza Herrera and her family**

28. Julia Mendoza and Marcos Herrera were married for five years and have a daughter named Helena Mendoza Herrera. After their separation, Helena was placed in Julia’s custody, with regular visits to Marcos. Julia, who is a practitioner of Candomblé, decided to raise her daughter according to the precepts of her religion and always enjoyed Marcos’ consent.
29. A few years after the separation, Julia began a relationship with Tatiana Reis. Three years into their relationship, Julia and Tatiana moved in together. At that time, ten-year-old Helena decided, after talking to her mother, to go through the ritual of initiation into their religion. This involves the practice of scarification—making small



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incisions in a person's skin for the purpose of protection—and staying in the community for a specific period of time to perform the rituals and obligations of the religion, in a lawful custom known as *Recogimiento* (seclusion).

30. Displeased with Julia's new relationship, Marcos reported Julia and Tatiana to the regional Council for the Protection of Children for abusing Helena, taking advantage of the fact that the chief councilor attends the same evangelical church as his mother. Marcos alleged in his communication to the council that Helena was being forced to remain in the religious community against her will, that she was a victim of bodily harm during the initiation process, and that she was exposed to her mother's reprehensible behavior in a new relationship that was detrimental to the child's development. He further argued that being in her mother's custody jeopardized the child's physical and emotional development, and that Julia could not take care of the child because her sexual orientation, her cohabitation with her partner, and her African-based religion were negatively influencing the child's development. Marcos also contended that the legal recognition of same-sex couples as normal has distorted the meaning of the human male-female couple, thus altering the natural meaning of the family, undermining its fundamental value as the core unit of society.
31. The regional Council for the Protection of Children acted immediately and filed a complaint with the criminal division of the local court alleging deprivation of liberty and battery. It further asserted that two elements interfered in the parental and psychological framework of the child: same-sex parenting and the practice of Candomblé. The council maintained that the couple's sexual orientation also influenced their judgment, in addition to diminishing their ability to assume the role of parents, and that the values of a nonreligious practice hindered the child's ability to construct a complete worldview. Accordingly, it also referred the case to family court. As an urgent measure, the council requested that Helena be removed from the custody of her mother and her partner and that custody be awarded to Helena's father, based on the best interests of the child—who was allegedly being exposed to bad examples and abuse—as well as on the more favorable economic living conditions that Marcos' family could provide for his daughter.

**Julia and Tatiana's domestic legal actions to regain custody of Helena**

32. Regarding the criminal aspects, the information presented by the regional Council for the Protection of Children to the Prosecutor's Office was analyzed by the body, which did not find enough elements to file a complaint towards the Criminal Court.
33. Regarding the civil aspects, the judge of first instance decided that custody should be transferred, considering that Marcos's family had already arranged for Helena's enrollment in a school run by the Catholic Church that his mother attends, which is rated more highly than the school Helena has been attending for years. In reaching his





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decision, the judge also considered several photos submitted by Marcos of Helena’s room in his house, with toys, a place to study, and other comforts. He concluded the decision by drawing attention to the importance of family structure and the maintenance of religious and societal values being passed down to the child and asserting that the mother’s influence also affected Helena’s view of society and religious freedom. He ultimately based his decision 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.”*

34. Julia appealed the decision, contending that to this day in Mekinés there are Christian religious practices that are not analyzed or even discussed from this perspective of “interference in values.” For example, she noted that in both the Catholic and evangelical religions, baptisms are imposed when children are babies or have not yet reached the age of majority. The appellate judge agreed with Julia, noting how the lower court had described and judged her family relationships and private life. He stated that he found the complaints shocking in terms of their aggressiveness, prejudice, discrimination, disregard for the right to homosexual identity, misrepresentation of the facts and, finally, disregard for the best interests of her daughter. He further stated that the allegations regarding her 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 Mekinés nor the Children’s Rights Act consider sexual orientation to be grounds for “loss of custody due to parental unfitness.”
35. The judge found that the practices alleged by Marcos could not be considered a violation of Helena’s rights, especially considering that she agreed to them. He further found that Julia’s sexual orientation and religion had nothing to do with her ability to be a responsible mother, that she exhibited no pathology that would prevent her from performing this role, and that there was no indication that her partner’s presence in the home posed any risk to Helena’s well-being. The judge explained that homosexuality is not a pathology, but a normal human behavior. He held that the courts must base their decisions on the concrete and demonstrable facts of the case and not on assumptions or fears based on prejudices. He therefore ordered that custody be returned to Julia and Tatiana.



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36. Marcos appealed the appellate court’s decision to the Supreme Court, alleging that the decision was inconsistent with the federal law that protects the best interests of the child, and that the court had committed a serious and egregious abuse by prioritizing the mother’s right over that of the daughter, failing to exercise sound judgment and failing in its duty to protect her.
37. On May 5, 2022, despite Julia and Tatiana’s efforts to expose the discriminatory nature of the case and regain custody of Helena, the case reached the Supreme Court, the court of last resort, which affirmed the trial court’s decision and awarded custody to Marcos. The Court found that the discriminatory elements alleged by the mother’s defense had not been proven. It held that, in granting custody to Julia, the lower court had failed to examine the psychological and socioeconomic development of the child, and that it had failed to give absolute priority of the rights of children—a well-established principle under the constitution and in a significant body of settled case law. The Court also reiterated that the constitutional mandate to protect the best interests of the child required ensuring the best living conditions for Helena, and that the conditions offered by Marcos’ family were ideal.
38. This judgment further stated that the mother had violated her daughter’s right to religious freedom by forcing her to participate in the worship and practices of her African-based religion. The Court concluded by emphasizing that children’s right to religious freedom and the ability of minors to make decisions about their beliefs and worship should not be underestimated, since the ability of minors to make free and responsible decisions is increasingly being recognized. Therefore, their decision-making capacity should be given special relevance, particularly in relation to existential matters such as religion.

**Proceedings in the Inter-American Human Rights System (IACHR)**

39. On September 11, 2022, Julia and Tatiana filed a petition with the IACHR alleging the violation of the rights to freedom of conscience and religion (art. 12), rights of the family (art. 17), rights of the child (art. 19), and right to equal protection (art. 24) enshrined in the American Convention on Human Rights (ACHR), in relation to the obligations set forth in Articles 1(1) and 2 of the Convention. The petition also alleged that the State was responsible for the violation of Articles 2, 3, and 4 of the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance (CIRDI). The petition included a request for priority initial review (*per saltum*) under Article 29.2.i of the Rules of Procedure of the IACHR, and was registered under number P-458-22.
40. On September 18, 2022, the Commission forwarded the petition to the State of Mekínés for it to reply to the petitioners’ allegations and arguments within three



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months. The State of Mekinés argued that the inter-American human rights system requires the trust and commitment of the member States, and that this relationship could be undermined if the Court takes an overly regimented approach and fails to consider the majority sentiments of the States, and that a certain margin of appreciation and deference should therefore be granted. The State maintained that this should not be interpreted as questioning the competence of the IACHR, and it expressly waived its right to file preliminary objections. However, the State of Mekinés also asserted that, by accepting the CIRDI in a given context, it had undertaken a commitment to certain types of human rights and not to others that did not yet exist. Hence, procedures should be created to incorporate protocols that protect other previously unforeseen rights. The State also submitted all the information in its possession on the plans and programs carried out for the defense of children's rights and guarantees of religious freedom in the country. In the same communication, it stated its position that it was unwilling to reach a friendly settlement with the petitioners.

41. On September 29, 2022, the IACHR declared the petition admissible. On October 15, 2022, in accordance with Article 50 of the ACHR, it issued Merits Report No. 88/22. It concluded, in light of the facts, that the State of Mekinés is responsible for the human rights violations alleged in the petition, to wit: Articles 8(1), 12, 17, 19, and 24 of the American Convention and Articles 2, 3, and 4 of the CIRDI. According to the Commission, the responsibility of the State of Mekinés arises from its failure to ensure the fundamental rights of religious freedom and the rights of the family enshrined in both the federal Constitution and the inter-American human rights conventions.
42. In Merits Report No. 88/22, the Commission found a violation of the judicial guarantee of impartiality due to the judges' stereotyped approach to the case. It stated that, given the judges' consideration of Julia's sexual orientation as a key element in her fitness as a mother, coupled with the evident use of discriminatory prejudices, it may be concluded that Julia was not afforded the guarantee of impartiality. The Commission also recommended that the State of Mekinés:

*(i) Review judicial practices that deny full access to justice, and provide Julia and Tatiana with comprehensive redress for the human rights violations established in the report, considering their perspective and needs; (ii) fully implement the commitment assumed upon signing the CIRDI, and adopt legislation, public policies, programs, and directives to prohibit and eradicate discrimination based on sexual orientation in all spheres of government, including the justice system. These measures should be accompanied by adequate human and financial resources to ensure their implementation and training programs for the public servants involved in upholding these rights; and (iii) review its racial justice and religious freedom policies, plans,*



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*and programs to protect the human rights of the victims of hate crimes; maintain an up-to-date database on religious freedom and racial discrimination; and provide legal and psychological assistance to persons affected by such offenses.*

43. Once the deadline and the requirements of the Convention and the Commission's Rules of Procedure were met, and because the State of Mekinés did not consider it necessary to implement any of the recommendations made by the IACHR, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on December 15, 2022, alleging the violation of the same articles specified by the petitioners and in the Commission's report on the merits.