



Bonavero
Institute
of Human
Rights



PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2022/2023 COMPETITION YEAR

**Official case of the 2023 International Rounds and the
2022/2023 Regional Rounds in South Asia, Asia Pacific,
South-East Europe & North-East Europe, Northern Europe,
the Americas, the Middle East, and Africa Regional Rounds**

Kurulu

1. Kurulu is a country with a population of approximately 50 million people. Article 14 of its Constitution recognises the right to education, and the state provides free primary, secondary, and tertiary education. While private schools have operated in Kurulu for many years, the state maintains a monopoly over university education.
2. Due to a scarcity of resources, less than 20% of those completing secondary education are admitted to state universities. In September 2021, out of 426,000 students who completed their high school diplomas, only 81,000 entered university. There are 40 state universities in Kurulu, and each received around 2,000 new undergraduates in 2021.
3. All universities are registered and regulated by the University Standards Board. Section 4 of the University Standards Board Law of 1995 provides:

All universities shall be owned and operated by the state, which shall make available adequate resources to ensure the progressive realisation of the right to tertiary education in compliance with the Constitution of Kurulu.

4. Kurulu's Constitution provides as follows:

Article 5

Every person shall have the right to equality.

No person shall be discriminated against on the grounds of race, religion, language, caste, sex, gender, sexual orientation, political opinion, economic status, place of origin or any one of such grounds.

Article 7

Every person shall have the freedom from interference with their privacy, family, home, or correspondence.

Article 9

Every person shall have the freedom of opinion and expression, including publication.

Article 14

(1) Every person has the right to primary and secondary education. The State shall provide such education free of charge.

(2) Every person has the right to tertiary education, which the State, through reasonable measures, shall make progressively accessible.

(3) The State shall respect and protect academic freedom, and the autonomy of higher educational institutions.

Article 15

Every person has the freedom to engage in a lawful occupation, profession, trade, business, or enterprise.

Article 19

Any limitation on any right or freedom recognised in this Chapter shall be:

(1) in strict accordance with law;

(2) necessary, reasonable, non-discriminatory, and justifiable in an open and democratic society;

(3) solely in the interest of public security, safety, or health, or for the purpose of protecting the duly recognised rights and freedoms of others; and

(4) the least restrictive means through which an interest or purpose under subparagraph (3) of this paragraph may be advanced.

Article 20

The State shall provide effective remedies for the protection of all persons from the infringement or imminent infringement of their constitutional rights due to the actions of private actors.

Article 21

When interpreting any constitutional right, the Constitutional Court shall ensure such interpretation is consistent with Kurulu's obligations under international law.

5. All 40 of Kurulu's universities are ranked within the top 500 universities in the world. The National University of Kurulu was ranked 12th in the World University Rankings of 2021.

Campaign for Private Education

6. The Campaign for Private Education (CPE) is an organisation of civil society activists and academics who advocate the establishment of privately-owned universities. CPE argues that the state is denying young people the right to

tertiary education by preventing their access to it through private universities. It also bases its campaign on the freedom to engage in a lawful occupation, profession, trade, business, or enterprise, recognised by Article 15 of Kurulu's Constitution. It argues that the state is denying this freedom to entrepreneurs wishing to establish private universities. The organisation has approximately 30,000 members, mostly comprising young persons aged eighteen to twenty-five years. It also has around a hundred academics within its membership.

7. The head of CPE is Professor Swarna Shikra, a reputed educationist and tenured professor at the National University of Kurulu. Shikra and the CPE members argue that a large majority of young persons are deprived of a university education due to the lack of capacity within the state university system. They contend that the only solution to the crisis is the relaxation of the legal requirement that universities be owned and resourced by the state. They, therefore, demand that Section 4 of the University Standards Board Law be amended to permit privately-owned universities.

Besra Limited

8. One of CPE's largest benefactors is Kanthi Besra, a successful entrepreneur who has promised to found the first private university in Kurulu if the law is reformed. Besra is also Shikra's partner of over fifteen years.
9. Besra's organisation, Besra Limited, owns and operates a dozen high schools in Kurulu. These schools charge students fees and remain the only private schools in the country that offer high school diplomas recognised by the University Standards Board.
10. In 2021, around 600 students from these twelve schools entered state universities. This number, approximately 50 entrants per school, is higher than the national average. There are approximately 2,000 state-owned high schools, and an average of 40 students per state-owned school entered university.
11. The twelve Besra-owned schools have been performing at a slightly better level than state-owned high schools during the past five years. The CPE has used this statistic to argue that future private universities have the potential to meet and even exceed the standards of state universities.

The Inter-University Students Union

12. The Inter-University Students Union (IUSU) is a nation-wide organisation comprising student unions in 39 of the 40 state universities in Kurulu. The only student union that is not part of the IUSU is the Student Association of the National University of Kurulu (SANUK). The IUSU expelled SANUK from its membership due to a dispute in 2019, which concerned SANUK's overt support of Shikra and the CPE. A rival student union called the National University of

Kurulu Students Union (NUKSU) was formed in 2020 and has publicly opposed Shikra and SANUK. Its membership in IUSU is currently under consideration.

13. The IUSU has consistently opposed private universities in Kurulu and has actively lobbied the government to maintain a monopoly over university education. It argues that Kurulu has thus far managed to maintain standards in university education because of its policy, and that permitting 'for profit' universities would erode the people's right to a free education. The IUSU's position is that more state universities must be established and resourced to ensure that the right to education is 'progressively realised' and guaranteed to all citizens on an equal basis. It argues that private universities would charge fees and that such schemes would create inequality in access to education.

Chirp

14. Chirp is Kurulu's most popular social media platform. Chirp is owned by Chirp Enterprises, a multinational company with its headquarters based in Kurulu's capital, Koha. In 2022, it had over 23 million users in Kurulu.
15. Chirp has a simple user interface, where users can post images and videos on the platform along with a caption, and other users can 'Follow' them and post comments in response. A user can 'Like' another user's post or comment. They can also share a post with others by sharing the unique internet hyperlink to a post.
16. All users have a 'Home Feed' which displays the content of those they Follow as well as content that is Liked by those they Follow.
17. Chirp offers several 'Modes' to enable a user to customise their experience:
 - a. If a user chooses 'Private Mode', they can accept or reject other users' requests to 'Follow' them. Only other users who 'Follow' them can view their content and post comments.
 - b. If a user chooses 'Normal Mode', they cannot prevent another user from 'Following' them. Any other user who 'Follows' them can view their content and post comments.
 - c. If a user chooses 'Public Mode', any user, regardless of whether they Follow them or not can view their content and post comments.
18. A user, regardless of their Mode, can 'Block' any other user, in which case that Blocked user would cease to Follow them or to view their content. The user concerned may, however, view the Blocked user's content (depending on the Mode of that Blocked user) and Un-block the user at any time.

19. Chirp offers an additional function that enables a user to 'Restrict Comments' on a specific post. Users would be prevented from commenting on such posts. This function is available only for an individual post and cannot be selected as a default option where comments are restricted automatically. A user can choose to 'Restrict Comments' at the point of posting an image or video or choose to 'Restrict Comments' at any point after publishing a post. In the latter case, all comments posted prior to the restriction would still be visible to any user who can view the post.
20. When a user 'Blocks' any other user, the Blocked user's comments on any post of the user concerned would be automatically deleted.
21. Chirp has Community Guidelines that apply to all posts and comments. Clause 8 of the Guidelines provides:
 - (1) *Chirp wants to foster a positive and diverse user community. We remove content that contains credible threats, content that targets private individuals to degrade or shame them, and personal information meant to blackmail or harass someone. We do generally allow unrestricted conversation around people who are featured in the news or have a large public audience due to their profession or chosen activities.*
 - (2) *Serious threats of harm to public and personal safety are not allowed on Chirp. Such threats include specific threats of physical harm as well as threats of theft, vandalism, and other financial harm. Chirp carefully reviews reports of threats and consider many things when determining whether a threat is credible, including:*
 - a. *The nature of the harm, i.e., whether it is physical, psychological, financial, or another type of harm;*
 - b. *The severity of the harm;*
 - c. *The foreseeability of the harm; and*
 - d. *The imminence of the harm.*
22. Chirp has two mechanisms in place to deal with content that violate its Community Guidelines.
23. First, it has an Artificial Intelligence (AI) mechanism that scans and analyses all content on Chirp, i.e., all posts and comments, for Community Guidelines violations. The AI mechanism was programmed with advanced abilities to detect violations and was launched in late 2018. It also can learn and improve with time by factoring in the determinations of human content reviewers and the Appeals Committee (see below).

24. In early 2021, Chirp commissioned the National University of Kurulu's Information Technology Department to conduct an in-depth review of Chirp's AI mechanism's performance in 2020. The review revealed that the mechanism had succeeded in detecting 86% of all violations during that year. The review did, however, also detect that some of the content (all of which related to public figures) that the mechanism flagged as violating the Community Guidelines were not in fact violations. Only 90% of the content classified as violating the Community Guidelines actually violated the Guidelines. The review concluded that the mechanism had an 88% 'accuracy rate' in terms of correctly classifying content as either complying or violating the Community Guidelines.
25. Following the review, Chirp announced in September 2021 that it had introduced certain 'tweaks' to its AI mechanism for 2022 to ensure 'more robust debates on public issues'. It stated that it was confident that the adjustments would drive its 'accuracy rate' to over 90%, and that initial internal reviews had confirmed an 'outstanding accuracy rate of 95%'.
26. Second, Chirp employs over a thousand human content reviewers who perform reviews of all user complaints. A user is able to 'Report' any post or comment, by selecting the three dots '...' that appear on the top righthand corner of any post or comment. The user making the complaint is required to select which Community Guideline was allegedly violated by the content.
27. The content reviewer's task is to review the content and determine whether or not a violation has taken place. This determination is automatically fed into the AI mechanism, which then learns from the determination and improves its ability to proactively detect future violations of a similar nature.
28. In April 2022, Chirp announced that it would downsize its human content review team to 500 reviewers. It claimed that its AI mechanism was proactively detecting 'almost all' Community Guidelines violations.
29. The AI mechanism and a human content reviewer can take down any content that violates the Community Guidelines. The AI mechanism usually takes down a violating comment within three to five seconds of it being posted.
30. If a user repeatedly violates Community Guidelines, the AI mechanism, or the human content reviewer concerned, can temporarily suspend a user account for a period of one month. If a user violates Community Guidelines after being readmitted following suspension, only a human content reviewer can permanently ban a user from Chirp.
31. A user can 'Appeal' any action taken against them (including a content take down, suspension, or permanent ban) by appealing to Chirp's Appeal Committee. An Appeal usually takes about two weeks to determine. Users cannot appeal the decisions of other users to Block them.

32. Whenever a user is notified of any action taken against them, the notification page provides a hyperlink to an online form through which an appeal may be lodged. Whenever the Appeals Committee overturns the determination by the AI mechanism or a human content reviewer, the decision of the Committee is fed into the AI mechanism to enable further learning and improvement of the mechanism.
33. There is currently no legislation regulating social media platforms in Kurulu. However, in 2016, the Constitutional Court of Kurulu issued a historic judgment declaring that private sector companies operating social media platforms have duties and responsibilities under the Constitution of Kurulu.
34. In this case (*Battichcha v The State of Kurulu*), the Court ordered Chirp to pay compensation to the petitioner due to its failure to take down comments that revealed personal details of the petitioner. The petitioner was a journalist who had published a video on Chirp depicting damage to public property following a student demonstration against privatisation of university education. Several users commenting on the video had revealed the address of his residence and had called for reprisals against him.
35. In June 2016, the Court found that Chirp had failed to take reasonable action to 'proactively detect and take down harmful content', i.e., user comments that revealed the petitioner's personal address and called for reprisals against him. It found that Chirp had therefore violated the petitioner's freedom from interference with his privacy and home, protected under Article 7 of Kurulu's Constitution.
36. In July 2016, Chirp paid the petitioner compensation, and subsequently began developing an AI mechanism to detect and take down violations of Community Guidelines.

The Events of 9 July 2022

37. At 9.00am on 9 July, Shikra posted on Chirp an image of a candle with the following words:

I'm saddened by the thought that so many young, deserving people in Kurulu cannot access university education today. We owe it to them to change the system.

It's time for all academics and students to take a stand. Until change comes: REFUSE to teach or attend classes; OCCUPY all university premises. DO NOT TOLERATE traitors to the cause.

I start my vigil today.

38. Shikra has over 200,000 followers on Chirp and maintains her account on 'Public Mode'. The post on 9 July received over 15,000 'Likes'. The hyperlink to the post was shared several thousand times, although the precise number is not known.
39. At around 11.00am, SANUK issued a statement on Chirp and on its official website endorsing Shikra's call for strike action. SANUK had Restricted comments on its post. The short statement was as follows:

SANUK endorses Professor Swarna Shikra's call for all academics and students to immediately cease all academic activities until further notice. All members of SANUK are required to comply with this directive until further notice. Strict action will be taken against non-compliance.

40. Over a thousand users posted comments below Shikra's post. While some of the comments below Shikra's post endorsed her sentiments, a vast majority of them disagreed with her. By around 5.00pm that evening, the comments that were being posted were hostile and antagonistic towards Shikra. Many of the users posting such comments were anonymous users, i.e., their identification was not apparent from their usernames.
41. For instance, one user named 'Drongo22' commented: '*What kind of academic refuses to teach? What kind of public intellectual calls for 'intolerance' against her opponents? Shikra should be fired immediately. Clip those wings before it's too late.*' Another user, named 'Heron100' exclaimed: '*Enjoying a cushy tenured position and "lecturing" students to cut classes and attack "traitors"! What a fraud!*'.
42. By 6.00pm, the IUSU issued a statement condemning Shikra's post. The IUSU demanded that Shikra be removed from her university post with immediate effect for violating NUK's Academic Code of Conduct. It cited Section 24, Paragraph 4 of the Code, which states:

Instances of gross misconduct that are considered violations of this Code and could result in disciplinary action include, but are not limited to the following:

[...]

- (4) Disrupting the normal operations of the university (including teaching, research, service, and business operations) or university-sponsored activities by participating in an on-campus or off-campus demonstration, riot, or activity, or leading or*

inciting others to cause nuisance or disrupt scheduled or normal activities within any university building or area.

43. The IUSU also intimated in its statement that its members are 'taking active steps to dispel the false narrative perpetuated by Shikra on social media'.
44. At 8.00pm, an anonymous user by the name of 'IUSU_RedKite' posted the following comment:

This entire campaign is being funded by Shikra's lover, that evil neoliberal Kanthi Besra.

45. Another user named 'BarnOwl_NUKSU' liked IUSU_RedKite's comment, and posted the following immediately below it: '*What a pair of birdbrains. Trash their nest!*'. Several hundred other users liked both IUSU_RedKite and BarnOwl_NUKSU's comments.
46. During this period, Chirp's AI mechanism removed around 40 comments that were determined to be violations of Clause 8 of the Community Guidelines. Eight of these comments were directed at Shikra, and the remaining 32 were directed at Besra. The removed comments against both Shikra and Besra called for physical harm against them or their property, and included calls for assaulting them and destroying their property.
47. The abovementioned comments by Drongo22, Heron100, IUSU_RedKite, and BarnOwl_NUKSU were not removed. No user complaints against these comments were made.
48. By 9.30pm, Shikra decided to Restrict comments on her 9.00am post. However, all previous comments that had not been taken down remained visible.
49. At 3am the next morning, Shikra and Besra's home was broken into and vandalised while they were asleep. No valuables were taken from the premises. CCTV footage depicted three individuals breaking open a window and entering the premises. One suspect spray painted the following words on the living room wall: 'BIRDBRAINS!'

Complaints and Inquiries

50. On 10 July, the Office of the Vice Chancellor at National University of Kurulu issued a statement condemning the attack on Shikra and Besra's residence and called on all university students to refrain from any act of violence or vandalism against persons. It stated: 'Differences in opinion are part of democratic life, and disputes over policy must be settled through constructive dialogue and public reasoning'.

51. By evening on 10 July, the Vice Chancellor's Office issued a letter to Shikra mentioning that she is being investigated for a breach of the Academic Code of Conduct, and that an inquiry will be held in one week. Shikra immediately responded to the letter confirming her attendance at the inquiry.
52. Meanwhile, at 4.00pm on 10 July, Besra filed a complaint at the Central Koha Police Station, complaining that unidentified persons had entered their residence and had vandalised the premises with an intention to intimidate them. Besra also provided a screenshot of the comment by BarnOwl_NUKSU, and alleged that the exact words used by the user (i.e., 'Birdbrains') suggest that this user – most probably a member of NUKSU – was involved in the break-in.
53. Besra's complaint also alleged that Chirp failed to take reasonable action to prevent or mitigate the crime from taking place. The police assured Besra that a full investigation would be launched, but that it was not possible to trace the user without a court warrant.
54. On 12 July, the Central Koha Police summoned a representative of Chirp Enterprises and recorded a statement on the company's process relating to content moderation. The investigating officer concluded that the platform had taken reasonable precautions and that the liability, if at all, would lie entirely with the users concerned. The Chirp representative informed the officer that Chirp Enterprises would only have the email address and IP address of a user, and that no other personal data was stored by the platform. The representative also assured the officer that such data could be provided to the police if a court warrant was obtained.
55. On 13 July, the Central Koha Police applied for a warrant to obtain from Chirp Enterprises any information with regard to the user BarnOwl_NUKSU that may reveal their identity. The Magistrate of Central Koha denied the warrant request, citing Articles 7 and 9 of Kurulu's Constitution, which guarantee the right to privacy and the freedom of expression respectively.
56. The Police informed Besra of this decision the next day, but continued to investigate the incident on 10 July through other means, including by analysing CCTV footage and forensic evidence.
57. On 17 July, the Vice Chancellor's Office held an inquiry into Shikra's post on 9 July. A panel of three senior academics were appointed to conduct the inquiry and question Shikra.
58. The panel was appointed under section 100 of the University's Academic Code of Conduct, which authorises the Vice Chancellor's Office to appoint and act on the recommendations of 'a suitable panel of academic peers to inquire into the conduct of a tenured professor and recommend disciplinary action'. Section 29 of the University Standards Board Law authorises the University Standards

Board to approve all codes of conduct of state universities. The National University of Kurulu Academic Code of Conduct was approved by the Board in 1999.

59. Shikra defended her post on the basis of ‘academic freedom’ protected under Article 14 of Kurulu’s Constitution.
60. After a brief period of deliberation, the panel determined that Shikra’s call for a total academic and student boycott of classes, for the ‘occupation’ of university premises, and for ‘intolerance’ against those she termed ‘traitors’, knowing full well that she had the support of the main student union (SANUK), would have caused serious disruption to the university. It concluded that her conduct violated Section 24 of the Academic Code of Conduct and warranted disciplinary action.
61. The panel recommended that Shikra be suspended for a period of one week, and that the lifting of her suspension be conditional on a written undertaking that she refrains from issuing similar statements in the future. The Vice Chancellor’s Office accepted the recommendations of the panel and issued a suspension letter to Shikra.

Proceedings before the Constitutional Court

62. The Constitutional Court of Kurulu has jurisdiction to consider violations of constitutional rights (by state and non-state actors, including companies) guaranteed under Kurulu’s Constitution.
63. On 20 July, Shikra and Besra filed a joint petition before the Constitutional Court complaining that the State of Kurulu had violated their rights under Articles 7, 9, and 20 of the Constitution. Their main complaint was that the state had failed to provide them an effective remedy against the violation of their rights under Articles 7 and 9 by private actors. They alleged that the State had failed to properly investigate the crime that had taken place on 10 July by failing to direct Chirp Enterprises to disclose the personal details of suspects involved in the crime.
64. The petition also named Chirp Enterprises as a party. Citing *Battichcha v The State of Kurulu* (2016), the petitioners contended that Chirp Enterprises had failed to proactively detect and take down harmful content, which in fact led to real world physical harm. They complained that Chirp’s conduct amounted to a violation of their freedom from interference with their privacy and home, and also had a stifling effect on the exercise of their freedom of opinion and expression, including publication. The petitioners further claimed that the state had violated their constitutional rights under Articles 7 and 9, read with Article 20, by failing to impose reasonable statutory duties on private actors such as

Chirp Enterprises to remove online content (within its control) that is likely to result in imminent harm of a serious nature.

65. The Court heard all parties to the case, and on 1 August 2022, it issued its judgment dismissing the petition. It held that the State had launched an investigation into the crime (i.e., the break-in and vandalism of the petitioners' home on 10 July), and that it was too early in the process to determine whether or not the petitioners had been denied an effective remedy.
66. It also held that there was insufficient evidence before the Court to establish that a particular user on Chirp was responsible for or had caused the commission of the crime, and that it deferred to the order of the magistrate, who had reviewed the evidence and had determined that there was no basis to violate the privacy of any user.
67. It further held that Chirp had taken reasonable steps to detect and take down harmful content, and 'as an internet intermediary, could not be held liable for the unforeseeable actions of unknown assailants in the real world'. However, the Court observed:

The time had come for the government to consider introducing legislation to regulate the conduct of social media platforms. Although it is not the province of this Court to dictate policy to the government, it recommends that such legislation be strongly considered through a process of public consultation on its pros and cons.

68. No further progress has been made by the Central Koha Police to identify the persons who broke into Shikra and Besra's home.
69. In a separate petition filed on 20 July, Shikra complained that the National University of Kurulu had violated her rights under Articles 9 and 14(3) of the Constitution. The petition stated that the National University of Kurulu was a state-owned entity and had obligations to respect her freedom of opinion and expression, including publication, and to respect and protect her academic freedom. The petition alleged that her suspension and the conditions attached to the removal of her suspension violated her rights.
70. The Court heard all parties, and on 4 August, dismissed the petition. It determined that the action of the National University of Kurulu was reasonable in terms of Article 19 of the Constitution.
71. It held that Shikra's expressions potentially impeded students at the National University of Kurulu from receiving their entitlements under Article 14 of the Constitution, and could therefore be reasonably restricted through disciplinary action. It observed that, 'although the punishment meted on the petitioner

appears to be harsh, it is not for this Court to interfere with the disciplinary action of a higher educational institution, which enjoys a degree of autonomy under Article 14(3) of the Constitution’.

72. Shikra is yet to return to her post at the National University of Kurulu, as she is yet to tender a written assurance that meets the conditions of the lifting of her suspension.

Universal Court of Human Rights

73. The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from persons alleging the violation of rights recognised in the International Covenant on Civil and Political Rights (ICCPR). Kurulu ratified the ICCPR in 2008. It also ratified the International Covenant on Economic, Social and Cultural Rights in 2009.
74. Shikra and Besra have exhausted all domestic remedies. They filed applications before the Universal Court of Human Rights alleging violations of Article 17 and Article 19, read with Article 2(3) of the ICCPR.
75. The Court decided to hear the applications together, and certified the applications on two discrete issues:

Issue A: Whether the State of Kurulu’s (1) failure to impose a statutory duty on social media service providers to remove content that is likely to cause imminent harm of a serious nature, and (2) action and inaction with respect to investigations into the break-in and vandalism of Shikra and Besra’s home, violated their rights recognised by Article 17 and Article 19, read with Article 2(3), of the ICCPR.

Issue B: Whether the State of Kurulu’s action with respect to the suspension of Shikra and the imposing of conditions on the removal of her suspension violated her rights recognised by Article 19 of the ICCPR.

76. Shikra and Besra sought from the Universal Court of Human Rights: (1) declarations that their rights under the ICCPR have been violated, and (2) directions to the State of Kurulu to take immediate measures to fulfil its obligations under the ICCPR.