

## **Third World Human Rights Moot Court Competition 2011**

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Clarifications have been inserted in square brackets after some of the paragraphs. Some typos have been corrected directly in the text (eg 2002 and not 2001 in paras 1 & 8).

1. The island of Nij is made up of two independent states, Bye and Gone. Until 2002, the two states were united as the Federal Republic of Bygone which had been established following independence in 1807 from Wolt, which had colonized Nij in the 16th century. At the time of the colonization, Nij was made up of the ethnic groups of Byes and Gones. During the colonial era, some Woltians immigrated to Nij, mainly to the capital, Illumea, in the Bye region.

2. President Skut came to power in Bygone in a military coup in 1976. His dreaded secret police ensured that there was no dissent. Thousands of people were killed, tortured or disappeared from 1976 until 2001 because of opposition to President Skut's authoritarian rule.

3. In 2001 millions of protesters gathered in Peace Square in the centre of Illumea to demand that President Skut step down from power. After two weeks of peaceful protest, President Skut relinquished power and fled to the Kingdom of Waudi. A year later Bygone was peacefully dissolved and gave way to the new states of Bye and Gone. The new states declared that they were both successor states to Bygone with regard to all treaties which Bygone had ratified.

[Most of Bygone's estimated three million inhabitants participated in the demonstrations. The declaration of succession with regard to ratified treaties was made by the respective states to the depositories of the ratified treaties. Bye and Gone did not conclude any relevant bi-lateral agreements following the dissolution of Bygone.]

4. Bye and Gone are members of the United Nations. In 1986 Bygone ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention of the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Bye has not ratified any other international human rights treaties. The Bill of Rights in the Bye Constitution substantively corresponds to the rights recognised in the ICCPR and the ICESCR.

[Bye and Gone both became members of the United Nations in 2002. None of the states have ratified any additional treaties relevant to the case.]

5. Bye and Gone are members of a regional inter-governmental organisation, the Andovian Community (AC), which has 15 member states.

In January 2010 the Assembly of Heads of State and the Government of the AC adopted the Convention on the Establishment of an Andovian Human Rights Court (CEAHRC). The Convention was ratified by Bye in July of the same year. Article 3 of the Convention provides that a country can make a declaration allowing victims of human rights violations direct access to the Court. Bye made such a declaration when it ratified the Convention. The Convention further provides in article 10 that the Court may consider claims that the Universal Declaration of Human Rights or any UN human rights instrument ratified by a member state has been violated. It recognises as sources of law those mentioned in article 38(1) of the Statute of the International Court of Justice. The Court may order any appropriate remedy. The admissibility criteria for complaints to the Andovian Human Rights Court are substantially the same as those under the Optional Protocol to the ICCPR. However, the CEAHRC allows victims of systematic human rights violations to submit collective complaints, as well as to authorise NGOs to act on their behalf.

6. In 1990 President Skut decided, without any consultations, to divert the flow of a river in Bye to benefit agricultural production in Gone. The diversion of the river negatively effected food production in Drof, a remote valley inhabited by 500 people, descendants of Woltians who escaped persecution in Illumea following Bygone's independence from Wolt in 1807. Food production as a whole in Bye was only negligibly affected. Bygone was after the diversion self-sufficient with regard to food production.

[The Drof valley was uninhabited when the community moved there. All the inhabitants of the Drof valley were descendants of Woltians and shared a common culture. The community did not have formal ownership of the land but lived there without interference from the outside world until the diversion of the river]

7. Shortly after the river was diverted, an important canal that formed part of the diversion of the river was damaged in an attack clearly aimed at destroying the canal. However, the damage was limited and the canal was repaired within a week. As a result of the diversion of the river, the Drof community was forced to leave their ancestral homes within a year and move to another remote valley in Gone. In view of the lack of rule of law in Bygone, the community decided that it was not worth pursuing a claim in the courts that the diversion of the river was unlawful.

[The Drof valley has remained uninhabited since the Drof community left. The whole community moved to the valley in Gone where they continued their traditional life style without interference from the Bygone/Gone authorities. The Bygone authorities did not provide any assistance with the relocation.]

8. When Bygone dissolved in 2002, the government of Bye declared that everyone living on the territory of Bye at 1 January 2001 would be Bye citizens. Anyone living outside the borders of Bye would have to apply to the authorities within six months to become a citizen of Bye. No one from the Drof community in Gone applied for Bye citizenship.

[The announcement of the requirement for citizenship was advertised widely in newspapers in both Bye and Gone as well as on radio and television in both countries. There was no access to the media in the valley where the Drof community lived, though a few younger members of the community who had moved to other parts of Gone sometimes visited their relatives in the valley. When Bygone dissolved in 2001, the government of Gone made a similar declaration to that of Bye and declared that everyone living on the territory of Gone at 1 January 2001 would be Gone citizens.]

9. President Skut publicly stated that he believed the Drof community was responsible for the attack on the canal. Five days later, on 13 March 1990 Naci Namuh, the Drof leader, disappeared. She was last seen when she was taken away in an unmarked helicopter by men who were recognized by bystanders to be part of the dreaded secret police. Naci Namuh's daughter tried in vain to find out what had happened to her mother. Her requests for information to the secret police, the office of President Skut and prisons across Bygone went unanswered.

[Naci Namuh was arrested at her home in the Drof valley which she shared with her only daughter. Naci Namuh's daughter left the Drof valley together with the rest of the Drof community in 1991. She lived with the Drof community in the valley in Gone until 2000 when she moved to the capital of Gone.]

10. After President Skut escaped to Waudi in 2001 the man most responsible for the atrocities committed over the last 25 years was out of reach and could not be prosecuted. The new leadership of Bygone felt that other perpetrators of human rights violations during the Skut era should receive an amnesty as long as they told the truth about the violations they had committed. The daughter of Naci Namuh was eagerly waiting to finally hear the truth about what happened to her mother. However, no one came forward with information about the disappearance of Naci Namuh.

[The amnesty hearings were concluded before Bygone was dissolved. The new leadership consisted of a broad coalition of groups that had opposed President Skut. No elections were organized before the dissolution of Bygone. One of the first acts of the new leadership was to dissolve the Bygone secret police.]

11. In 2004 while renovating the notorious White Beach Prison, workers found a body in a shallow grave. The body was identified to be that of Naci

Namuh. Her daughter brought a complaint to the public prosecutor that the head of White Beach Prison at the time of Naci's disappearance in 1990, Mr Danger, should be prosecuted for her death as he must have known about the killing. When nothing was done she requested the District Court of Illumea to order that Mr Danger should not benefit from the 2001 amnesty as it was clear that he had been hiding information about his involvement in atrocities during the Skut area. To date the court has failed to schedule a hearing in the case.

[The White Beach Prison is located in Bye. It was clear that the body had been buried at the prison and that she had been executed shortly after her disappearance in 1990. Mr Danger was the head of White Beach Prison from 1989 to 2001.]

12. In 2007 the government of Bye decided to divert back the river to its original flow. The decision was based on food security concerns for Bye following climate change that had brought drought to the country. Agriculture in Gone is heavily dependent on the irrigation canals constructed as part of the 1990 diversion and the diversion of the river back to its original flow created a refugee flow from Gone to Bye. The refugees included the people who used to inhabit the Drof valley. However, Bye refused to admit any refugees from Gone.

[When the government of Bye decided to divert the river back they expected a flow of refugees from Gone. They therefore erected a fence along the border which prevented displaced persons from entering Bye. This meant that many refugees tried to escape from the dismal conditions in Gone by making a very dangerous crossing by boat to the neighbouring country of Domimina.]

13. With the assistance of a lawyer in Illumea, the Drof community in 2008 requested the District Court to declare that the Drof community has the right to resettle in the Drof valley. The Court declared that the community has no right to live in the Drof valley as its members are all citizens of Gone. The judgment of the District Court was confirmed by the Bye Supreme Court in January 2011.

[The case before courts also dealt with a claim for compensation for the diversion of the river in 1990. This claim was declared inadmissible by the District Court (confirmed by the Supreme Court) since the case had not been submitted to the court within reasonable time. The case was brought as a collective complaint by the surviving members of the Drof community, now scattered over Gone and Domimina, including Naci Namuh's daughter. The District Court is located in Illumea. The Bye Supreme Court is the final court of appeal in Bye.]

14. In May 2011 the Drof community submitted a case to the Andovian Human Rights Court seeking

- (a) A declaration that to apply the 2001 amnesty provisions to Mr Danger violates international human rights law;
- (b) Compensation for the suffering caused to the Drof community by the original diversion of the river in 1990;
- (c) A declaration that the Drof community has the right to resettle in the Drof valley.

15. Prepare heads of argument for both the Drof community as applicant and the state of Bye as respondent. Arguments should cover both admissibility and merits.