

"WE ARE ALL DIFFERENT - WE ARE ALL EQUAL"

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AFRICAN
HUMAN RIGHTS
MOOT COURT COMPETITION

30

CONCURSO AFRICANO
DE JULGAMENTO FICTÍCIO
SOBRE DIREITOS HUMANOS

2020

Stellenbosch
SOUTH AFRICA
26.07.2021 – 31.07.2021



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CENTRE FOR HUMAN RIGHTS,
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30th African Human Rights Moot Court Competition

at Stellenbosch University, South Africa

HYPOTHETICAL CASE

before the African Court on Human and Peoples' Rights

in the case between:

Reema Lawyers for Human Rights

and

The Republic of Reema

1. The **Unitary** Republic of Reema (Reema), with Reema City as its capital, is a small, low-income country situated on the eastern seaboard of Southern Africa. It consists of eight provinces, which are divided into 135 districts. Reema became independent in 1983 and has since then enjoyed relative peace and stability. It witnessed a three-year economic downturn starting in 2015, but the development of offshore oil ventures has stabilised the country's economy. Its total population is around 8 million people.

2. Reema operates under a plural legal system, where civil law and customary law co-exist **and enjoy 'equal status'** under the 1987 Constitution of the Republic of Reema (1987 Constitution). Chapter III (sections 1-22) of the 1987 Constitution contains, *verbatim*, the rights, obligations and duties set out in articles 2-18 and 25-29 of the African Charter on Human and Peoples' Rights (African Charter). In addition, section 23 of the 1987 Constitution spells out that "any person who alleges that his rights have been, are, or are likely to be infringed in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Provincial Courts for redress". The Reema Parliament, **the only legislative body in the country**, consists of one house, and adopts all legislation. In terms of the Constitution, legislation adopted by Parliament only enters into force once signed by the President.

3. Reema has a five-tier court system consisting of:

(i) A Supreme Court, located in Reema City: the Supreme Court has national jurisdiction and is the final court of appeal, unless the matter involves a constitutional challenge. It operates as a second level court for decisions of the Court of Appeal.

- (ii) A Court of Appeal, also located in Reema City.
- (iii) Nine Provincial Courts: one in Reema City and one located in each of the eight Provinces. Each court, with separate divisions for civil, criminal, commercial and labour matters, acts as the first level court in cases above a certain monetary threshold or where penalties above a certain number of years of imprisonment may be imposed. These courts function as second level courts for District Court appeals. Appeals from the decisions of the Provincial Courts go directly to the Court of Appeal. The jurisdiction of each Provincial Court is limited to the territory of the particular province.
- (iv) District Courts: at present there are only 89 out of 135 District Courts in operation.
- (v) The 1987 Constitution was amended in 2017 to create a fifth tier court, **the Constitutional Council, which is the highest court in 'all constitutional matters'**. Section 199(a) of the 1987 Constitution allocates power to the Constitutional Council to determine the constitutionality of laws and the legality of all other legislative acts upon a request from: the President, the Speaker of the Parliament; the Parliament with support of at least two thirds of its members; the Attorney-General; or a group of 4000 citizens presenting a signed petition. Under section 199(b), during the course of the determination of any case, any party may raise an issue of constitutional validity of any law or executive conduct before the lower courts. The lower courts have to refer such cases to the Constitutional Council for adjudication if they consider the matter to be “fundamentally of a human rights nature”.

4. Reema is a member of the United Nations (UN), the African Union (AU) and the Southern African Development Community (SADC). It has ratified the following UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) in 1984; the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1984; the Convention on the Elimination of All Discrimination Against Women (CEDAW) in 1992; and the Convention on the Rights of the Child in 1999. It is a state party to the First Optional Protocol to the ICCPR (since 2016) and the Optional Protocol to the CEDAW (since 2016). Upon ratification of the CEDAW, Reema registered the following reservation: “The Government of the Republic of Reema declares that it is prepared to apply the provisions of article 2 on condition that they do not conflict with the provisions of the domestic laws of Reema”. At the continental level, Reema has ratified the following instruments: the African Charter on Human and Peoples’ Rights (African Charter) in 1984; the African Charter on the Rights and Welfare of the Child (African Children’s Charter) in 2006; and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) in 2008 with a reservation on the latter, to the effect that “the Republic of Reema does not consider itself bound by article 21 in so far as it relates to social and cultural practices”. Reema also ratified the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights (African Court Protocol) **on 1 January** 2016 and deposited its declaration under article 34(6) in March 2018. At the sub-regional level, Reema ratified the SADC Protocol on Gender

and Development in 2009 and the Agreement Amending the SADC Protocol on Gender and Development in 2018.

5. The Criminal Offences Act has no specific provision making gender-based violence (GBV) a criminal offence. Relevant sections of the Criminal Offences Act prohibiting rape, battery and assault have occasionally been used to prosecute perpetrators of GBV in Reema. The Criminal Offences Act stipulates that the Reema Police Service (RPS) is obligated to investigate all crimes under the Criminal Offences Act where the victim has made a credible complaint, after which, if there is credible evidence, the Public Prosecutor's Office (PPO) is obligated to prosecute. Section 114(1) of the Criminal Offences Act further stipulates that "every person who, by means of any device, knowingly intercepts a private communication shall be guilty of an offence and shall be liable to imprisonment for five years". Section 114(2) stipulates that "subsection (1) does not apply to a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it". Section 182 of the Criminal Offences Act provides that "any male person who dresses or is attired in the fashion of a woman in a public place or any female person who dresses or is attired in the fashion of a man in a public place is guilty of an offence and shall be liable to imprisonment for 3 years, with or without corporal punishment." Section 183 criminalises "indecent practices between males" and stipulates that "any male person who, whether in public or private, commits any act of gross indecency with another male person, with or without the other person's consent, shall be guilty of an offence and shall be liable to imprisonment for 5 years, with or without corporal punishment".

6. Section 30 of the Evidence Act provides, in relation to offences of a sexual nature, as follows: "An accused person shall not be liable to be convicted on evidence of a sexual nature unless such evidence is corroborated by other material evidence implicating the accused person." Similarly, section 31 of the Evidence Act provides: "The evidence of a child witness shall not be the sole basis for conviction of a person accused of any offence, unless the child's evidence is corroborated by other material evidence implicating the accused person".

7. Reema adopted the Children's Act of 2007 which, in section 2, defines a child as "a boy or girl below the age of 18 years, unless he or she attains the age of majority earlier under the law of Reema". **The Act also provides that a "boy or girl below the age of 18 years may attain majority status through marriage"**. Section 5 of the Act stipulates as follows: "Sexual exploitation of a child constitutes a criminal offence, and is punishable with imprisonment for no more than three years, a fine, or compensation to the victim, in an amount of no more than 2 million Reema dollar." Section 30 of the Act recognises "the right of every child to participate in the culture and traditions of their community". Section 10 of the Children's Act provides: "Marriage of a child is prohibited, except with the consent of the parent or guardian, in respect of a child above the age of 16 years." In 2012, the

Supreme Court held that “prolonged and continuous cohabitation” constitutes “marriage” under Reema law. Section 33 of the Children’s Act provides that a social worker may remove any child from parental care “if there is adequate evidence that the best interest of the child so requires”.

8. Reema functions within a heteronormative and patriarchal system where women and lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) persons have limited access to public offices, hold less than 10% of executive jobs and earn considerably less than cisgender male nationals of Reema. Women occupy 35 of the 249 seats in Parliament and there is a rumour that one MP, representing Reema City, has come out as gay. According to recent research conducted by a local NGO, Reema Lawyers for Human Rights (RLHR), GBV is prevalent and underreported in Reema. The researchers found that one in four women and one in three LGBTQI+ persons had experienced GBV, but less than 10% had reported the crime to the RPS. There is also, to this day, no gender reassignment therapy or surgery available in any public medical facility in Reema. In Reema, transgenderism is considered immoral and often equated with engaging in homosexuality. Many of the few openly transgender persons in Reema have been charged under sections 182 and 183 of the Criminal Code. They have also been regularly described as “homosexuals and cross-dressers” on one of the Facebook pages, “Moral Decay”, of Heterosexuals Organised for a Moral Environment (HOME), an association of religious and community leaders. HOME is headquartered in Urabee City, in the Urabee Province. Official statistics show that between 2010 and 2018, the RPS on average arrested 150 persons per year under section 183 of the Criminal Offences Act. The corresponding average under section 182 was 25 per year.

9. In July 2018, the Parliament passed the Domestic Violence Bill (DVB). Section 2 of the DVB creates the offence of “exerting criminal control”, which is defined as one or more of the following acts: “(a) isolating the other person from friends, relatives or other sources of support; (b) controlling, regulating or monitoring the other person’s day-to-day activities; (c) depriving the other person of, or restricting the other person’s, freedom of action.” The DBV defines “the other person” as “a person with whom the perpetrator has, or has had, a domestic relationship”. The DVB categorises domestic violence as a “crime against the public”, which means that there will be no need for the victim to press charges in order for the state to prosecute, as is the case for all crimes under the Criminal Offences Act. Immediately following the adoption of the DVB, widespread public protest ensued, driven by opponents of the DVB, led by HOME. The main concern of HOME is the criminalisation of “coercive control”, which, according to them, will be used to prosecute “benevolent husbands”. HOME commissioned a reputable private research company to conduct a survey among adult Reema citizens, which found that 65% of the respondents expressed “concern” about the criminalisation of “coercive control” in the DVB. To date, the President has not signed the DVB.

10. In June 2019, TV2, Reema's public broadcaster, quoted Mr Senjonjo, Reema's Minister of Justice, saying that sections 182 and 183 of the Criminal Offences Act have been sent to the Reema Law Commission (RLC) for review. However, in August 2019, RLHR announced that there is no evidence that the RLC has been tasked with such a review. On 1 September 2019, the President of Reema, Hugo Manji, announced his intention to refer to the Constitutional Council the question whether sections 182 and 183 of the Criminal Offences Act meet constitutional muster. On 5 September 2019, the Attorney-General ordered the RPS in Reema City to desist from arresting LGBTQI+ individuals, pending a review by the Constitutional Council. In June 2020, HOME brought an application to the Urabee Provincial Court seeking to end the government's de facto moratorium on arrests under sections 182 and 183 of the Criminal Offences Act. On 1 December 2020, the Urabee Provincial Court ordered the RPS and the PPO, with immediate effect, to continue arresting and prosecuting persons who commit "homosexual offences". Following this decision, the RPS has to date arrested 20 persons in Reema under sections 182, but none under section 183 of the Criminal Offences Act.

11. Working to protect human rights on the continent, RLHR in 2008 obtained observer status before the African Commission on Human and Peoples' Rights (African Commission). Due to the situation in Reema, it has, since 2013, mostly focused on GBV and LGBTQI+ related issues domestically and in its statements before the African Commission. Since RLHR's active involvement in these issues, the AU Executive Council has repeatedly - formally and informally - requested the African Commission to withdraw RLHR's observer status. In January 2021, the AU Executive Council, in a decision on the Commission's Activity Report, formally requested the African Commission to consider "African values, identity and good traditions, and to withdraw the observer status granted to the organisation called RLHR, in line with those African values". The African Commission formally withdrew RLHR's observer status on 1 April 2021.

12. Maria had lived most of her adult life in **the city of** Aixs, 80 km north of Reema City. Maria married Rolfinio in 1990, and together they had four children. Rolfinio is a well-known entrepreneur in Reema, involved in lucrative offshore oil ventures. Initially, Maria stayed home with their children but ever since they started studying at Reema City University, she lived alone with Rolfinio. Simona has worked as a live-in domestic worker for Maria and Rolfinio since their first child was born in 1991.

13. Maria, who was a professional long-distance runner when she met Rolfinio, came from a big family; she was outgoing and had many friends. When Maria fell pregnant and then hastily got married, Rolfinio told her to stop running and focus on their child. Over the years Maria had grown deeply dependent on Rolfinio, both financially and emotionally. She had no income of her own, and merely relied on what he allocated to her every month. Rolfinio monitored Maria's day-to-day activities by checking her phone and emails. A couple of years ago he installed FlexiSPY on her

phone. Maria did not resist this and voluntarily gave him her passwords and allowed him to install the app. Rolfinio often told Maria that he did this because he loved her and was afraid that something “bad” would happen to her. On occasions, he presented her with different scenarios of what could happen to her if he did not “look out” for her, such as an “accidental” drowning or “disappearing” without a trace. Rolfinio did not like Maria’s family, as they, according to him, had some “immoral tendencies.” Thus, over the years Maria had become more and more isolated. The only person she confided in was Simona.

14. In the early afternoon of Friday 9 September 2016, Rolfinio left the house, as he usually did, to travel to the capital for business meetings. He only returned late on Sunday evening. After Rolfinio left on this particular Friday, Maria found Simona in the laundry room, sobbing, and confronted her. After Maria threatened to call Rolfinio, Simona broke down and told Maria how Rolfinio had sexually harrassed and assaulted her over the years, asking for sexual favours, touching her inappropriately, and beating her when she refused him sex. She admitted that she was coerced into having sexual intercourse with Rolfinio the previous day. Maria was furious and told Simona that she was fired.

14. At the start of 2016, Rolfino bought an apartment in Reema City where Mpho, the 17 year old daughter of a long serving parliamentarian, lived while attending the National University of Reema. Rolfino stayed with her whenever he was in Reema City, which included most weekends. Although her father had initially been vocally opposed to her living with Rolfino, he had subsequently refrained from expressing himself on the issue. On 9 September 2016, Mpho had been busy planning her father’s 75th birthday and she was tired but excited about the party the following day. After spending the afternoon with Rolfino at the Waterfront, Mpho asked to be dropped off at her father’s house, in the outskirts of Reema City.

16. As they got closer to her father’s house, Rolfinio complained about Mpho not wanting to go to the apartment with him. Mpho tried to explain that she was tired and that she still had some final preparations for her father’s party the next day to attend to. Rolfinio did not believe her and called her a “slut” and a “street woman”. He yelled at her: “do you think I am stupid?” “you just want to get rid of me so that you can go back to the Waterfront to get it on with someone else!” and then punched her repeatedly in the face. Mpho managed to unlock the car door and stumbled onto the pavement where she collapsed. Eventually Rolfinio took her to a private hospital in Reema City, where she was told that she had lost three teeth, as well as the hearing in her right ear, and that her nose was broken and her jawbone dislocated. Mpho, while not able to speak, communicated via text messages with her doctor telling him that she had been assaulted, that the person assaulting her was the person that brought her in and that she wanted the police to come “now!”. She did not want her father to know that Rolfinio had hurt her and asked the doctor to not call her family. However, she merely received a pat on the shoulder and a comment from the doctor

to “calm down and consider your options when you are a little less emotional”. Upon her release from the hospital 10 days later, she reported the matter to the RPS. Rolfinio was subsequently arrested at his house in Aix and detained in Reema City. He was only released on bail on 9 October 2016, after repeated attempts by his team of lawyers to convince the Provincial Court that he was not a “flight risk” and posed no “imminent danger to any witness” eventually succeeded.

17. In Aix, Simona was in despair about losing her job, and on the same day (9 September 2016) approached the RPS to report Rolfinio’s abuse. She was asked to make a statement to the male officer on duty in the front charge office of the police station, without any privacy as there were other complainants waiting to report their cases. The officer on duty advised her to go to the local hospital to have a medical examination to collect evidence of the alleged rape and physical abuse. However, as soon as she mentioned Rolfinio as the alleged offender, the officer lost interest in her case and asked her to come back on the following Monday. Simona decided to go to the local hospital, anyway. After waiting for many hours, she was seen by a nurse who needed some convincing to agree to examine her. The nurse informed her that the hospital did not have any rape kits available and there was no doctor on duty to examine her. The nurse established that Simona had several bruises around her wrists and on her knees, while there were several old injuries to her body. Simona returned to the police station with the nurse’s brief report, which was filed by a third officer. Returning home, Simona found her husband waiting for her. After hearing her story, he accused her of having a relationship with the “boss” and vowed to divorce her. When Simona returned to the police station the following week, a different officer was on duty and Simona was told that he could not trace the docket related to her case. She was told to come back the next day when the first officer that she had met, would be back on duty. When she arrived at the police station for the third time – this time accompanied by her daughter Rachel – the officer was indeed on duty, but pretended that he did not recognise her and told Simona that she had to stop spreading unfounded lies. On 8 October 2016, Simona returned to the police station to inquire about progress regarding her case, only to find that the case had been closed due to a lack of evidence.

18. When Maria learned about the threat of divorce by Simona’s husband, she regretted her actions of dismissing Simona. Confident that Rolfinio was still detained, she on 10 October 2016 decided to approach the RPS. In a written statement taken by the RPS in Aix, she confirmed that she had been aware of the abuse suffered by Simona at the hands of her husband but that she had been too afraid to intervene. She also filed a complaint of GBV against Rolfinio, stating that she had been the subject of his “controlling behaviour” for more than 20 years. Worried that Rolfinio would be let out on bail, but unaware that he had in fact been released on bail the previous day, she asked for protection and a place to stay. She was advised to travel to Reema City where the only women’s shelter was located and to file for a protection order there. With no immediate means to get to Reema City,

Maria returned home, only to find that Rolfinio had returned home. Returning home the following morning from the University for the weekend, Prince, Maria and Rolfinio's son, found his mother's body floating in the swimming pool. His father was at the time not home, and only returned later that day, according to him, from Reema City. Maria's death was investigated as suspicious, but later classified by the RPS as an "accidental drowning" due to lack of evidence to the contrary.

19. In Reema City, Mpho was anxiously waiting for Rolfinio's first court appearance in Reema City Provincial Court, set for 1 February 2017. Through her lawyer, Mpho was informed that her docket had been lost since November 2016 but, due to her father's intervention, it had now made its way to the PPO. Since Rolfinio's release on bail, he repeatedly contacted Mpho, predominantly via WhatsApp. In December 2016, she received the following text messages from Rolfinio: "Make these charges go away or else", "You are my wife, let us resolve this like adults", "Baby I am on my hands and knees begging you to forgive me - I am sorry for the hurt I caused you" and "Don't ignore what happened to your 'sister' in Aixs". Mpho did not understand the last message, but submitted the messages as evidence in the pending trial.

20. After a number of delays, in May 2017 Rolfinio's trial for assaulting Mpho and sexually exploiting her, in violation of section 5 of the Children's Act, took place before the Provincial Court. The Court found Rolfinio guilty of assault, and sentenced him to a compensation payment to be paid to the victim of the assault, in the amount of 1.9 million Reema dollar, equivalent to US\$250 000. The allegations of sexual exploitation of a child were dismissed on the basis of the relationship between Mpho and Rolfinio. Social media in Reema was on fire over these developments: some commentators remarked that the fine was too high, influenced by the victim's prominent father; while others were indignant at the fact that Rolfinio was not going to prison. Some argued that Rolfinio had taken advantage of Mpho and deserved severe punishment, while others argued that Mpho was a spoiled and poorly behaved teenager who got what she deserved. Others argued that, since cohabitation is considered marriage in Reema, the two should have handled the issues in accordance with their customs and should not have allowed the matter to be brought to court. Two of the most vocal commentators were Rachel, Simona's daughter, and Prince. Together they had formed the online platform "Justice for our Mothers", to highlight that there were thousands of GBV cases in Reema that were never prosecuted. Through all the publicity of Mpho's case, they had become rather suspicious about Rolfinio's role in their mothers' sufferings. Mpho had also come to know Prince, Rachel, Simona and the fate of her "deceased sister in Aixs" Maria, and joined the effort of "Justice for our Mothers".

21. The media attention to the cases generated a wider discussion on the issue of GBV in Reema society. In light of the interest generated by the media conversations, the Parliament of Reema held a special sitting to discuss the challenges that had been raised by various commentators in the recent days. The majority of Members of

Parliament who spoke during the session acknowledged that GBV was prevalent in Reema, but that the issue was mostly a private and personal experience that was confined to the homes and personal lives of each individual. In his contribution, one of the Members of Parliament argued that “addressing GBV is a matter for our communities, our religious institutions, and each individual in Reema to address in their own home. The state cannot be in people’s homes and relationships protecting family members against each other. It is not a crime against the state, and our laws clearly reflect that.” His statement received a standing ovation from the floor of the House, and was reproduced verbatim in some of Reema’s prominent media channels.

22. Rolfinio appealed against his conviction and sentence to the Court of Appeal, which in July 2018 upheld the appeal and ruled that Mpho may well have injured herself as her blood-alcohol concentration was shown to be 0.05g per 100ml. The Court of Appeal dismissed the evidence of the otolaryngologist who testified for the prosecution, concluding that the medical doctor failed to prove that it was Rolfinio’s fist that caused Mpho’s permanent hearing loss. The Court of Appeal further placed no weight on the WhatsApp messages sent by Rolfinio, stating that the messages could neither be construed as “death threats” nor as a “confession”; the latter because it was an “attestation to a good character to apologise, whether guilty or not”. The Court concluded that Mpho’s version was not corroborated by any other material evidence and must therefore be rejected. The prosecution did not appeal the decision of the Provincial Court to acquit Rolfinio on the sexual exploitation of a child. Feeling helpless, and in attempt to place a spotlight on the case, Mpho in August 2018 filed a complaint with the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW Committee) alleging that Reema had failed to protect her from violence and sexual exploitation. The CEDAW Committee in January 2020 declared the complaint admissible, but has not yet finalised it on the merits.

23. **Maria**’s cousin, Caroline Ndiaye, officially named Kudjo Ndiaye, was born in Reema and was registered at birth as male in accordance with section 7 of the 1967 Birth and Death Registration Act (BDR Act) which stipulates that “a birth certificate must reflect an individual’s sex at birth as determined by physical characteristics and confirmed by at least two medical doctors”. However, since Caroline was a teenager, she has secretly been living as a woman. In 2011, while studying computer science in Snowlanda, Caroline met her husband-to-be, Reshard, a cis-gender Snowlandian man, studying towards a degree in medicine. Supported by Reshard, Caroline conducted her life as a woman but did not undergo gender reassignment therapy or surgery. As a foreign national living in Snowlanda by means of a study visa, gender reassignment surgery was not available to her through the Snowlandian Public Health System. In 2012, Caroline and Reshard decided to marry. As the Snowlandian authorities required birth certificates of both parties to issue a marriage certificate, Caroline applied for this document through the Reema Embassy in Burido, the capital of Snowlanda, on 1 February 2012. In her request, Caroline formally asked the

authorities to consider that the designation on her birth certificate of her sex as “male” was an “error of fact”. Under section 18 of the BRD Act, “an error of fact in the register may be corrected by the Registrar General upon production to him of an official declaration detailing the nature of the error and the facts of the case made by two qualified informants.”

24. In support of her request, Caroline submitted a medical report by Dr Merchant, a leading Snowlandian expert specialising in gender reassignment, explaining that Caroline’s psychological sex is female, not male, and therefore the sex indicated on her birth certificate should be corrected. Reshard, who by that time had completed his studies, also submitted an affidavit, confirming Caroline’s lived and psychological sex as female. After waiting for four months, Caroline received her birth certificate, with her sex still indicated as male. Attached to the certificate was a handwritten note signed by the Registrar General, Mr L. Ayaande, which read: “The 1967 Birth and Death Registration Act stipulates that a birth certificate must reflect an individual’s sex at birth as determined by physical characteristics and confirmed by at least two medical doctors. The report and affidavit submitted in support of Mr Ndiaye’s application refer to psychological sex which is not a recognised concept under Reema law. Therefore, there has been no error in the registry. Mr Kudjo Ndiaye is male and will always be male under Reema law”. Eager to get married, Caroline and Reshard submitted their birth certificates and in July 2012 their marriage was registered as a same-sex marriage in terms of Snowlandian law. A year later, they welcomed a child, Anjij, to their family using an altruistic surrogacy mother, inseminated with donations from both Caroline and Reshard. Anjij’s birth was registered in Snowlanda, with Caroline as the biological mother and Reshard as the biological father. They opted for a gender neutral birth certificate for Anjij, as available in terms of Snowlandian law.

25. In February 2019 Caroline’s father died. As the oldest child, she was required to return home in accordance with cultural rites. Caroline returned to Reema, together with Reshard, and settled in Aixs. After learning that the Attorney-General had ordered the RPS in Reema City to not arrest LGBTQI+ individuals, the couple moved to the capital. In Reema City, Reshard quickly found employment at a private hospital, Caroline did odd programming jobs online and the family moved into an old and dilapidated rental apartment close to the hospital. They found a mixed-gender, private school, Reema Primary School, perfect for Anjij who was soon turning 6. They applied for admission, and filed Anjij’s birth certificate, as requested by the school. Due to the need for urgent and major structural refurbishments to the apartment building where they stayed, the family was given a month’s notice to vacate the rental premises.

26. Desperate to find accommodation, the couple approached Zero Bank for a loan to secure a townhouse in an estate on the outskirts of Reema City. The bank manager processed the pre-approval of the loan bond and preliminarily approved it based on

the couple's income. Consequently, the couple made an offer on the townhouse, which was accepted. As part of finalising the loan bond application, Caroline and Reshard were asked to submit their birth certificates or identity documents, and their marriage certificate. Two days after submitting the required information, the couple received an email from the bank stating that their application had been denied. Reshard phoned the manager who claimed that the couple's "criminal behaviour of Caroline masquerading as a woman", and their "sham of a marriage certificate" led the bank to decline their application. On the same day, the Principal of Reema Primary School contacted Caroline and informed her that they only accept "girls or boys – nothing in-between".

27. While she was grocery shopping, one of Caroline's high school friends recognised her in a local market and outed her as a "homosexual". Caroline was severely beaten by a mob that quickly dispersed, and she suffered a concussion and several broken ribs. Upon Caroline's release from hospital, Reshard tried to convince his wife to go to the police but she initially declined for fear of prosecution. After much persuasion, Caroline reported the mob attack to the Reema police but was arrested for "dressing as a woman", in violation of section 182 of the Sexual Offences Act, before being released on bail. Nevertheless, the police opened an investigation into the mob assault but no arrests were made as Caroline could not name or provide an accurate description of the actual perpetrators. Meanwhile, some police officers who were worried about the behaviour of Caroline and concerned for Anjij's safety, notified the Child Services Department of Caroline's arrest. The next day, officials from the Child Services Department went to Reshard and Caroline's home and took Anjij to "protect the child from bad parental influence". Anjij was later placed in an established and award-winning children's home that also had the distinction of having been home to a teenager who later became a president of the country. To date, Anjij is still in this home.

28. Caroline was brought to trial before the District Court, where **on 1 February 2020** she challenged the validity of section 182 of the Criminal Offences Act and requested that the District Court refer the matter to the Constitutional Council, together with the validity of section 183, since the two provisions are so closely related. In a **decision handed down on the same day**, the District Court declined to refer the issue on the validity of sections 182 or 183 of the Criminal Code to the Constitutional Council on the basis that these provisions do not raise issues of "fundamentally of a human rights nature" but rather of a "moral and cultural nature".

29. Having learnt about its involvement with LGBTQI+ rights, Caroline contacted RLHR for advice concerning the treatment of her family. One of RLHR more senior lawyers cautioned her against proceeding with the matters, as Caroline and Anjij's biological sex and gender identities would inevitably be further exposed to the public. To protect the rights of the family, the RLHR agreed to challenge sections 7 and 18 of

the BDR Act and the discriminatory treatment of the family at the Reema City Provincial Court. In August 2020, the Court found the case to be inadmissible on the basis that RLHR did not have standing under section 23 of the 1987 Constitution. In its decision, the Provincial Court relied on a 2000 decision of the Supreme Court holding that only natural persons have standing to bring cases under section 23.

30. On 30 December 2020 the RLHR submitted a case to the African Court on Human and Peoples' Rights contending the following:

- (a) Reema violated relevant human rights treaties by failing to ensure the protection of Maria, Simona, Caroline and Mpho from gender based violence.
- (b) Reema violated relevant human rights treaties by failing to protect Mpho and Anjij from the violation of their rights as children.
- (c) The Criminal Offences Act and the Birth and Deaths Registration Act violate the rights of Reshard, Anjij and Caroline under relevant human rights treaties.

31. The matter is set to be heard by the African Court on 27 and 28 July 2021. Prepare memorials for both RLHR (Applicant) and Reema (Respondent) setting out the following arguments:

1. The parties' position on the procedural aspects (jurisdiction and admissibility) of the case.
2. The parties' position on the material aspects (merits) of the case, and the appropriate remedies.