

WORLD HUMAN RIGHTS MOOT COURT COMPETITION

HYPOTHETICAL CASE TO BE ARGUED

PRETORIA 8 AND 9 DECEMBER 2010

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1. It is January 2013. Belgravia is a small country with three million inhabitants. During the last five years the Belgravian economy has been in steady decline with unemployment doubling from 7,5% to 15%. However, due to a well-educated work force the country has managed to attract investments from several foreign companies that specialise in information technology. Belgravia has an inadequate public health system and the HIV infection rate has steadily climbed over the last decade and is currently 10%. Belgravia borders the sea and has only one inland neighbour, Itemba, a highly industrialised country with 15 million inhabitants. A high wall extends along the border between Belgravia and Itemba. The wall was built by order of the Belgravian dictator Sylvia Salsa in 1965 to stop Belgravians from fleeing to the more prosperous Itemba. Since Salsa's death in 1985, Belgravians and Itembans only need a valid passport to travel between each other's countries through two border posts that are open 7/24.

2. Politically, Belgravia has evolved into a parliamentary democracy since the death of Salsa, who ruled the country for more than 50 years. There has been a proliferation of small parties and the government mostly consists of fractious coalitions with three to four coalition members. Frequently these coalitions collapse after a brief period, leading to more frequent general elections than the five-year electoral period provided for in the Belgravian Constitution of 1987.

3. Belgravia is a member of the United Nations. In 1986 it 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 on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Bill of Rights in the Belgravian Constitution substantively corresponds to the rights recognised in the ICCPR and the ICESCR.

4. Belgravia is also a member of a regional inter-governmental organisation, the Andovian Community (AC), which has 15 member states. In January 2011 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 Belgravia in July of the same year. Article 3 of the Convention provides that a country can pass a declaration allowing victims of human rights violations direct access to the Court. Belgravia passed such a declaration under Article 3 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.

5. For the last 15 years, the fast-growing Divine Luna Movement (DLM) has been a member of all government coalitions. In the last elections two years ago the DLM became the largest political party with 21% of the popular vote. Four of the 11 cabinet members are from the DLM: the Prime Minister, the Minister of National Security, the Minister of Finance and the Minister of Broadcasting and Telecommunications.

6. The DLM is founded on the principles of the Luna religion, to which 98% of all Belgravians adhere. Religious rituals were discouraged during the dictatorship, although neither the Luna nor any other religion was officially forbidden. The state is still officially secular, though religious values have increasingly found their way into legislation and policy as a result of the influence of the DLM. The DLM has been highly successful in attracting new members, claiming that a return to 'pure' Lunar values would be the solution to the country's political fragility and economic malaise. Its manifesto supports 'traditional family values'.

7. EGLO-Belgravia is the Belgravian affiliate of the global NGO, Equality for Gays and Lesbians Organisation, which strives for the equal treatment of lesbian, gay, bisexual and transgender persons (LGBTs). In 1990 EGLO-Belgravia succeeded in convincing the Belgravian Supreme Court to declare a law that criminalised sexual acts between consenting adults of the same sex unconstitutional.

8. In cooperation with a prize-winning international journalist, EGLO-Belgravia has produced a documentary about the everyday lives of homosexuals in Belgravia. More controversially, the documentary claims that two prominent cabinet ministers as well as several prominent DLM members are homosexual, but are not prepared to 'come out' as they fear for their jobs as well as their safety. The claims are backed up by video material and photographs that place the cabinet ministers and DLM members in compromising situations. The documentary was scheduled for broadcasting on 13 February 2012 at 20:00, on the privately owned Free TV (FTV). FTV is the only competitor of the state-owned Belgravia Broadcasting Service (BBS).

9. On 12 February 2012, FTV announced that the documentary would not be shown as FTV could be seen as supporting unsubstantiated allegations and that FTV feared being sued for libel. It is rumoured that FTV was pressurised by the government to withdraw the EGLO documentary as a condition for renewal of its broadcasting licence and that DLM had threatened to persuade

Belgravian companies to no longer screen commercials on FTV if the documentary was broadcast.

10. FTV announced that instead of the scheduled documentary, it would broadcast a live interview with the Great Leader of the Luna religious movement. The Great Leader is highly revered by the followers of the Luna religion. However, he had not made a public speech since his release from prison at the end of the dictatorship in 1985. The broadcast of his speech on FTV was therefore highly anticipated. During this broadcast, which was watched by 70% of the Belgravian population over the age of 16, the Great Leader declared homosexuality as 'being against the order of nature and in breach of the most fundamental principles of the Luna faith. Belgravian society should be prepared to take all necessary steps to banish this practice and those who practise it from its society'.

11. The evening after the broadcast, five petrol bomb attacks on gay bars were reported in different parts of Belgravia City, the capital of Belgravia. In two instances the fire brigade did not react to calls for help. Both bars were destroyed and four people died. The following day the Great Leader and the Secretary General of the DLM issued a joint public statement, stating that the 'homosexual community brought these acts of violence upon themselves, by defying the laws of nature'. The government did not react to this statement. The Minister of Finance, who was also the deputy chairperson of the DLM, said on public radio that there was no reason for the police to investigate the attacks.

12. On 15 March the EGLO leader in Belgravia, Dr Jonathan Gillespi, announced a mass public gathering in Belgravia City, which had in the past been known for its secularism and tolerance, as well as its lively gay nightlife. The purpose of the gathering, planned for the evening of 20 March 2012, was to protest against what he described as 'flagrant hate speech and incitement of violence against the homosexual community' by the Great Leader and the DLM.

13. On the evening of 20 March 2012, almost 100 000 EGLO supporters from all over the country as well as neighbouring Itemba gathered in front of the town hall of Belgravia City. Itemba is well known in the region for its liberal views on homosexuality and was the first country in the AC to allow same-sex marriages. The EGLO claimed that this large gathering of people, including large numbers from far-away areas, was due to its superb command of modern technology as an instrument of mobilisation. Dr Gillespi is a major shareholder in one of Belgravia's largest IT companies and specialises in the field of information technology. His PhD thesis which he defended at the University of Belgravia in 2010 dealt with weaknesses in the IT systems of the Belgravian state. His argument was very complex and the examination panel for his thesis included some of the world's leading experts on cyber terrorism. The Belgravian state, due to its declining economy, could not afford to take action against the holes in its IT security identified by Gillespi and instead chose to prohibit the publication of his thesis.

14. During the gathering on 20 March, Dr Gillespi made an emotional speech, claiming that the government had 'declared war on the homosexual community of Belgravia. All persons who truly believed in equality should be prepared to defend themselves against this vicious attack. We will also mobilise our friends in Itemba and elsewhere to join our struggle for justice and will use all weapons at our disposal in the fight for justice'.

15. The next morning, several ministries reported severe disruptions in their computer networks. Some of the compromising photographic and video material from the EGLO documentary was placed on the web site of the office of the Prime Minister. The Prime Minister's State of the Nation address was scheduled to be broadcast on BBS on 21 March 2012 at 19:00. However, five minutes into the broadcast the State of the Nation address was replaced by a message from Dr Gillespi followed by the EGLO documentary. It took BBS technicians 15 minutes to regain control and resume the broadcast of the State of the Nation address.

16. In the early hours of the morning of 22 March 2012, Dr Gillespi was arrested by the National Special Crimes Unit and charged with terrorism, in accordance with Article 5 of the Belgravian Criminal Code of 2002. This article defined acts of terrorism as 'acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes'.

17. The Belgravian Code of Criminal Procedure provides that an accused person should be provisionally released pending trial unless it is shown on a balance of probabilities that he or she would attempt to evade trial or commit an act that could endanger public safety or national security. An order of provisional release can be combined with conditions such as the surrender of the accused's passport. A request for provisional release of Dr Gillespi was denied, on the grounds that he may attempt to flee the country to neighbouring Itemba and that he could endanger public safety through accessing a computer if released on bail. Dr Gillespi was detained in a notorious prison in downtown Belgravia City, well-known for its violence amongst the prisoners who were confined to small cells with up to 12 people in 4m². Claims of sexual activity amongst its inhabitants have been widely reported in the local press, as well as the rapid spread of HIV amongst male inmates in recent years. According to the statistics of the reputable international NGO, Health Watch, up to 25% of all male inmates are HIV positive.

18. EGLO, on behalf of Dr Gillespi, immediately insisted that condoms should be readily available for all the prisoners in order to protect them from HIV infection. The Director of the prison refused this request, stating that the national prison regulations explicitly prohibited any sexual activity between any persons in any prison or pre-trial detention centre in Belgravia and that such activity would be subject to disciplinary proceedings. The prison regulations had been promulgated by the Minister in accordance with the Prison Act of 1997. According to the Director, allowing the distribution of

condoms in prisons would amount to nothing less than aiding and abetting a crime.

19. By 15 August 2012, Dr Gillespi was still in detention and no date for a trial had been set. According to the government, the investigation was in a sensitive stage and the available evidence could not be made public in open court, due to the risk to national security. For the same reason, Dr Gillespi had to remain in detention without bail. Meanwhile, assaults on members of the gay community continued across the country. More than 15 assaults were reported throughout Belgravia, six of which resulted in extensive periods of hospitalisation.

20. On 20 August 2012, EGLO filed a complaint on behalf of Dr Gillespi and 400 members of the Belgravian homosexual community before the Belgravian Supreme Court, which is the only court with jurisdiction in a dispute of this nature. The complainant sought the following relief:

- (a) An order to grant Dr Gillespi provisional release as there is no flight risk and no risk that he will endanger public safety;
- (b) A declaration that the Belgravian government condemn homophobic hate speech and take immediate steps to prevent further hate speech against its homosexual community and bring perpetrators of homophobic attacks to justice;
- (c) An order that the prisons regulations be amended so as to allow access to condoms for prisoners and that the government should establish an effective distribution network for condoms in prisons within six months.

21. On 20 October 2012, the Belgravian Supreme Court handed down its judgment in which it denied all requests. On 1 November 2012, EGLO filed a complaint against Belgravia before the Andovian Court of Human Rights on behalf of Dr Gillespi and 400 members of the Belgravian homosexual community, seeking the same relief as that claimed before the Belgravian Supreme Court.

22. Prepare heads of argument for both EGLO as applicant and the state of Belgravia as respondent.