

## Fourth World Human Rights Moot Court Competition 2012

Pretoria – December 2012

### Hypothetical Case to be Argued

1. Teaopia is a former colonised state that gained its independence from Nambara in 1944. It is comprised of two provinces – Oolang (to the west) and Hanghou (to the east). It has a population of 5 million and a per capita Gross Domestic Product (GDP) of US\$14,200.

2. The border between the two provinces of Oolang and Hanghou was established by the government of Teaopia following its independence and is roughly a partition between two ethnic groups. Ethnic tensions between these two groups existed since before the independence of Teaopia but were minimal. This relatively peaceful situation began to change when, in October 2000, the government of Teaopia decided to take steps to improve the poor condition of its roads and highways.

3. The government of Teaopia placed a call for tenders to companies in Teaopia for the reconstruction of its roads and highways. The procurement contracts were, in the end, granted to companies from Oolang, despite the fact that, on paper, companies from Hanghou submitted better proposals. The companies from Hanghou challenged the decision of the government through a local arbitration mechanism. The claim was that the government of Teaopia deviated from the *Procurement Policy Regulations, 1952*, and it was further alleged that, as 85% of the Members of Parliament of Teaopia are Oolangian, the government was inherently biased in favor of the Oolangian companies.

4. This series of events combined with the ethnic tensions already present in Teaopia lead to protests and riots and, by February 2002, escalated into conflict, at times violent, between the people of Oolang and the people of Hanghou. The government of Teaopia declared a state of emergency and stationed military forces along the border of Oolang and Hanghou in order to protect its citizens. The people of Hanghou were not, however, convinced that these government measures would have any effect and in the beginning of March 2002 the people of Hanghou began to flee eastwards to the neighboring state of Javan.

5. The state of Javan has 30 million people, an area of 15,000 square kilometers and thus a population density of 2000 people per square kilometer. It has a per capita GDP of US\$14,800. Javan is a coastal state and its only border state is Teaopia to the west. It normally has a good relationship with the state of Teaopia, in part due to the good import/export relationship between them. Javan produces coffee and exports to Teaopia while Teaopia produces tea and exports to Javan. Further, many Teaopians live in Javan, having moved there to obtain higher education from the world-renowned Javan University. The movement of people from Teaopia to Javan in 2002, however, caused a strain on the relationship between these two states.

6. Increasing numbers of people from Hanghou have since March 2002 been claiming refugee status in Javan. In accordance with the *Immigration and Refugee Act, 1968*, the government of Javan accepted applications from the people of Hanghou to obtain refugee status and facilitated individual appeals in instances of denial. However, the end result in most cases was that the government of Javan labeled the people of Hanghou as 'migrants' and deported them.

7. A citizen of Teaopia from the province of Hanghou – Henrietta Bloom – was hired on a three month probationary contract, beginning 1 January 1997, by the social network website *SmallWorld.com*. *Small World* is incorporated in Javan. Ms. Bloom was hired as the Senior Managing Officer of the satellite office in Teaopia. On 1 April 1997, following a review, it was determined that Ms. Bloom was not meeting expectations and her contract was not renewed.

8. Ms. Bloom's lifestyle changed dramatically as she was no longer able to afford the restaurants, club memberships or holidays that her high-paying salary at *It's a Small World* provided. In order to maintain the lifestyle she had become accustomed to, she became involved in the lucrative world of drug-dealing.

9. A sting operation was organized in August 1997 by Teaopian police in order to catch drug dealers in action and thereby combat the increasing number of drug users in Teaopia. On 21 August 1997, Ms. Bloom was arrested for possession of a controlled substance with the intent to distribute. She was convicted of this offence by Teaopian courts in January 1998.

10. Possession of a controlled substance with the intent to distribute, i.e. drug-dealing, in Teaopia carries the mandatory penalty of death. In the early 1970s, the then Prime Minister of Teaopia lost a child who overdosed on drugs. In reaction to this loss, the Prime Minister pushed for the enactment of legislation that imposed the mandatory penalty of death on convicted drug dealers. The legislation has not been overturned because since the late 1970s, it has been used rarely and has thus not garnered the attention of the public. In the past fifteen years, however, Teaopia has become a haven for both drug users and drug dealers. In order to try to control the situation, the number of convictions for drug dealing has increased and the mandatory penalty of death has been enforced. Ms. Bloom spent many years on death row, while awaiting the outcome of an appeal against her conviction. In March 2002, she escaped from prison. She eluded the authorities of Teaopia throughout 2002 and in December of that year she joined a group of people from Hanghou who fled to the neighboring state of Javan in order to escape the conflict between Oolang and Hanghou. Ms. Bloom did not, however, claim refugee status in Javan as she feared that this might lead to her extradition to Teaopia.

11. Ms. Bloom's presence in Javan came to the attention of the authorities in Javan after she was caught shoplifting a pair of designer shoes in a shop in an upscale hotel on the Javan coast. Upon entering her fingerprints into the system, it was discovered that she was an escapee from a prison in Teaopia.

12. Javan abolished the death penalty in 1965 and signed the *Second Optional Protocol to the International Covenant on Civil and Political Rights* in 1992. An extradition treaty – *Extradition Treaty, 1945* – is in place between Javan and Teaopia. But before extraditing Ms. Bloom, the officials of Javan sought reassurance from the officials of Teaopia that they would not carry out the death penalty on Ms. Bloom if she were to be sent back to Teaopia. The officials of Teaopia replied in a letter dated June 2003 that they would “comply with their obligations as set out under international law.” No further communications took place between the two states regarding the matter. Following adequate opportunities for Ms. Bloom to challenge the extradition in Javan courts, Javan extradited Ms. Bloom to Teaopia in July 2003.

13. In January 2003, local human rights organizations started to investigate and report on the situations in both Teaopia and Javan. These investigations sparked the attention of the international community and led to the posting of opinions and pictures from people all over the world on *It's a Small World*. Some of these postings caused concern for the government of Javan. Teaopia and Javan are opposed in terms of religious beliefs. Teaopia's majority religion

– Dorsa – is more liberal and accepting of women in positions of religious authority, homosexuality, divorce, abortion and suicide. Javan’s majority religion – Bardo – is more conservative and adopts an opposing stance on all the aforementioned matters. The postings on *It’s a Small World* were, in the opinion of the government of Javan, offensive to the tenets of Bardo, inciting religious hatred against those of the Bardo faith and escalating tension between those practicing Dorsa and those practicing Bardo and residing together in the state of Javan. One posting, for example, was a picture of two women embracing while wearing the garb of religious leaders of the Bardo faith and another posting, for example, suggested in writing that those of the Bardo faith should be rounded up and forced out to sea unless or until they accepted all human beings and their personal decisions.

14. The government of Javan, in April 2003, filed a lawsuit against *It’s a Small World*, aiming to force the website to remove the relevant postings and to screen and block future postings for similar content. Pending the outcome of the lawsuit, the government of Javan amended its *Censorship Act, 1972* in order to give the government the right to request websites to remove or block objectionable material. If websites failed to comply with this request within 24 hours then they would face a monetary penalty of 500,000 Javan dollars (equivalent to US\$450,000) or imprisonment of up to 5 years.

15. *It’s a Small World*, in order to remain operable in Javan, is complying with the amendments to the *Censorship Act, 1972* but opposed the lawsuit and brought a counterclaim arguing that the amendments violate the provisions of the *Constitution of Javan* protecting freedom of expression. It further has promised its users that it will alert them when content has been withheld, and provide information as to why, through a separate website – *ScaryDevelopments.com*. After years of litigation, in 2009, all claims were decided in favor of the government of Javan.

16. In the midst of the continuing migration crisis in Javan, Javan also faced a natural disaster. In December 2003, Hurricane Charley hit the northern coast of Javan and then headed inland before moving further northward and back towards the sea where it lost its force. Hurricane Charley left many people in northern Javan homeless and without access to a safe water supply, enough food, proper sanitation or adequate medical services.

17. Javan is not prone to hurricanes. The last hurricane to hit the region was Hurricane Betty in 1928. Javan has a reasonable budget to cover damage caused by natural disasters and has programmes in place, within the government, to help organize aid groups and relief organizations to deal with the damage. Hurricane Charley was, however, especially damaging and it is taking a long time for Javan to recover and for the residents of northern Javan to move back to their homes.

18. The people of Javan who live in the north were forced to the south where Hurricane Charley had no effect. Northern Javan has been the more prosperous region of Javan as this is where the majority of the companies producing coffee are based. Southern Javan has been forced to rely on a marginal tourist industry. The hurricane has brought an influx of people from the north to the south and the south has not been able to adequately deal with the consequences of this movement. In southern Javan, there is now a shortage of food and water and medical services and sanitation are lacking.

19. A local non-governmental organization (NGO) – the J Group for Human Rights – has been observing the happenings in Teapopia and Javan. It brought separate claims, in 2004, in local Javan courts against the government of Javan in relation to the extradition of Henrietta Bloom;

the limits placed on the freedom of expression of the users of *It's a Small World*; and the breaches of human rights of the people affected by Hurricane Charley. All claims were decided by the end of 2009 in favor of the government of Javan.

20. Javan has been a member of the United Nations since 1955. In 1985, Javan 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*. It has also ratified the *1951 Convention Relating to the Status of Refugees*, and the *1967 Protocol Relating to the Status of Refugees*. It has not ratified any other international human rights treaties. The rights in the Bill of Rights in the *Constitution of Javan* are substantively similar to the rights recognized in the *ICCPR* and the *ICESCR*.

21. Javan is also a member of the regional inter-governmental organization, the Coastal Community (CC), which has eight member states. In January 2011, the Assembly of Heads of State and the Government of the CC adopted the *Convention on the Establishment of the Coastal Community Human Rights Court (CCHRC)*. The Convention was ratified by Javan in March 2011. Article 3 of the Convention provides that a state can make a declaration allowing victims of human rights violations direct access to the Court. Javan 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 United Nations human rights instrument ratified by a member state has been violated. It recognizes 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 Coastal Community Human Rights Court are substantially the same as those under the *First Optional Protocol to the International Covenant on Civil and Political Rights*. However, the *CCHRC* allows victims of systemic human rights violations to submit collective complaints, as well as to authorize NGOs to act on their behalf.

22. In February 2012, the J Group for Human Rights submitted a case to the Coastal Community Human Rights Court seeking:

- (a) a Declaration that Javan violated its human rights obligations by extraditing Ms. Bloom
- (b) an Order nullifying the amendments to the *Censorship Act, 1972*
- (c) an Order forcing the government of Javan to put in place adequate budgets and programmes to cover the damage caused by natural disasters.

23. Prepare heads of argument for both the J Group for Human Rights as applicant and the state of Javan as respondent.