

**16th World Human Rights Moot**

**Court Competition**

**15 July to 19 July 2024**

**Geneva, Switzerland**

**IN THE MATTER BETWEEN**

**Tripple C**

**AND**

**Republic of SaManyanga**

**AND**

**Tripple C**

**MEMORIAL FOR RESPONDENT**

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## **TABLE OF ABBREVIATIONS**

ACHPR	African Charter on Human and Peoples' Rights
AFCHPR	African Court on Human and Peoples' Rights
CUN	Charter of the United Nations
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICEFRD	International Convention on the Elimination of All Forms of Racial Discrimination
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
Montevideo Convention	Montevideo Convention on the Rights and Duties of States 1933
OHCHR	United Nations Educational, Scientific and Cultural Organization
UN CERD	United Nations Committee on the Elimination of Racial Discrimination
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNERD	United Nations Committee on the Elimination of all Forms of Discrimination

## **TABLE OF AUTHORITIES**

### **I. TREATIES AND DECLARATIONS**

The Respondent is a State Party to:

ACHPR	African Charter on Human and Peoples' Rights
CUN	Charter of the United Nations.
ICCPR	International Covenant on Civil and Political Rights
ICEFRD	International Convention on the Elimination of All Forms of Racial Discrimination
Montevideo Convention	Montevideo Convention on the Rights and Duties of States 1933
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination

### **II. UNITED NATIONS**

#### ***Treaty bodies***

#### **Office of the High Commissioner on Human Rights**

RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES <i>Amnesties</i>	Office of the High Commissioner on Human Rights
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United Nations Committee on the Elimination of Racial Discrimination

General comment no 32 of 2009	International Convention on the Elimination of All Forms of Racial Discrimination
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United Nations Committee on the Elimination of Racial Discrimination

Recommendation 32 of 2009	United Nations Committee on the Elimination of Racial Discrimination
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United Nations General Assembly

Resolution 3148, 14 December 1973	United Nations General Assembly
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United Nations Educational, Scientific and Cultural Organization

Records of the General Conference, Fourteenth Session, 1966, Resolutions	United Nations Educational, Scientific and Cultural Organization
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**III. COUNCIL OF EUROPE**

European Commission against Racism and Intolerance

General Policy Recommendation 15	European Commission against Racism and Intolerance
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The Bulletin	Venice Commission
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#### **IV. NATIONAL LEGISLATION**

ROM	Constitutional Amendment 80.
ROM	Digital and AI Bill of Rights Act 2015.

#### **V. CA 80 COMMISSION**

ROM	CA80 Commission report
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#### **VI. African Court on Human and Peoples' Right**

AFCHPR	<i>Mgwanga Gunme v Camero</i>
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#### **VII. SOUTH AFRICAN CONSTITUTIONAL COURT**

Constitutional Court	<i>Stefaans Conrad Brümmer v. Minister for Social Development.</i>
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#### **VIII. OTHERS**

Crawford	The Creation of States in International Law BIICL 2007.
Oxford University Press	Oxford English Dictionary

Robert A. Rosenstone	History in Images, History in Words, Reflections on the Possibility of Really Putting History onto Film (Harvard 1995)
The International Criminal Law Practitioner	Superior responsibility. In: <i>International Criminal Law Practitioner Library</i>



## **Summary of Facts**

The Republic of SaManyanga (ROM) is a thriving state on the beautiful continent of Elephantia. It borders Pangolina, a smaller but culturally more advanced country, to the east. With 50 million people, ROM has diverse social dynamics and ethnic backgrounds. The SaManyangas, who make up only 1% of the population, are officially designated as the nation's "first peoples" by the Constitution being its original residents. The Shumbas descended from slaves transported from Pangolina, comprise 10% of the population, while the SaManyembas make up 87%.

The conflict between the SaManyanga and SaManyemba factions over the country's identity has thrown ROM into a violent socio-political tempest. The proud native residents of the region, the SaManyanga, fiercely oppose the proposal by the SaManyemba to rename ROM the Republic of SaManyemba. The SaManyanga community views the name ROM as a tribute to their heritage as the area's original settlers and as a representation of their ongoing contributions to the region's development.

A prominent professor of computer science at the esteemed Central University of Panda (CUP), Mjolo Headscarf, is leading the SaManyanga opposition. Arguably the third-best university in the world, CUP is a prominent state institution in ROM. Along with being the acknowledged leader of the SaManyanga community, Prof. Headscarf also conceptualised and founded the KaNjiva social media platform with Prof. Minus Opportunity. (Prof MO)

ROM is a signatory to all international human rights agreements, including the nine fundamental agreements of the United Nations, as well as the membership in the Elephantia Treaty on Human Rights (ETHR), a regional agreement that has had a significant impact on the norms of human rights throughout the Elephantia continent. The ETHR is the cornerstone of Elephantia's human rights institutions and, in essence, is a mirror image of the African Charter on Human and Peoples' Rights.

Although English is her second language, Miss Teanto, who was born in Pangolina in 2001, is an exceptional student. Miss Teanto was a symbol of optimism and resiliency because her town was in the throes of a civil conflict, even though she was protected by a Peace Keeping Mission from ROM. For supporting students such as herself, CA80 has received high praise. The concept of command responsibility in international criminal law was applied to the violent treatment of Teanto by soldiers under the command of Commander Domini Nomina, who was judged guilty. He was sentenced to 18 years in prison by the ROM High Court.

MissTeanto applied for a Bachelor of Laws degree at CUP in 2021. Despite her past trials, she persevered and embodied justice and equality. As an international student, she had to pass the English Language Test, despite students being exempt from former colonies of ROM. Miss Teanto, a passionate advocate for linguistic equality, led a campaign against the ELT requirement at CUP, leading to the abolishment of the requirement in December 2022. However, in July 2023, the ROM Ministry of Higher and Tertiary Education ordered CUP to reinstate the ELT, which aligned with the student visa conditions. CUP sued in the High Court, arguing the directive infringed on their institutional autonomy and academic freedom.

The CA80 Commission reviewed CA80's impact on modern ROM, assessing its relevance and impact. Despite significant progress, such as increased representation for women and Shumbas, poverty rates dropping, and land rights increasing for SaManyangas, the average income of Shumbas remained at 70% of SaManyembas'. Gender-based income disparity persisted, and SaManyangas still suffered from cultural erasure and minimal representation in Parliament. The Commission's report highlighted the need for affirmative action in modern ROM.

Commander Domini Nomina, a man with a tumultuous past, was granted amnesty by the ROM government in April 2023. The decision was defended by highlighting his significant contributions to society, including his philanthropic efforts and training of police officers in community policing, ethics, and human rights. However, the Coalition for Rights and Empowerment of Women campaigned against the decision, with 52% of ROM's citizens supporting Domini's second chance. Miss Teanto experienced a devastating blow when Commander Domini was seen on TV, causing her to relive the trauma she experienced. The ongoing debates surrounding amnesty and other contentious matters in ROM are significant.

Professor MO proposed KaNjiva to ROMEK for an online survey. The survey revealed a 50.1% majority in favour of the renaming, leading Professor Headscarf to accuse Professor MO of rigging the results. She filed a case with SACOCO, accusing them of violating the rights of the SaManyanga people.

On 20 December 2023, a meeting was held to discuss the ongoing legal and social turmoil in ROM. The meeting included Professor Headscarf, representing the interests of the SaManyanga, and Miss Teanto. During the meeting, Miss Teanto expressed her admiration for Professor Headscarf's groundbreaking innovations but also expressed her distress over the removal of the block feature on KaShiri, which had become a source of trauma for her. Professor Headscarf was left grappling with the broader social and ethical implications of his work, as he grappled with the irony that Miss Teanto was also adversely affected by his innovations.

Triple C, an alliance of three main litigants, applied to the ECHR Registry, alleging that ROM's actions, including the elimination of affirmative action in education, altering the nation's name, restricting Prof Headscarf's authority, and providing amnesty to Commander Domini Nomina, violate its international human rights obligations. The

application aims to address the systemic neglect and potential misuse of authority in ROM, highlighting the importance of international human rights.

## Summary of Arguments

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## **Summary of Arguments**

### **Claim A**

Firstly, the Respondent avers that the continued maintenance of CA80 will lead to the maintenance of separate rights for separate racial groups thereby, violating Article 1(4) of ICERD. Secondly, the Respondent also avers that the purpose of the CA80 affirmative action measures which was to address and mitigate the existing disparities in education and other sectors in the nation, has been met. Therefore, the decision of the ROM to repeal the affirmative action measures is permitted by Article 1(4) of ICERD. Lastly, the Respondent avers that the repeal of the affirmative action measures complies with Article 2(c) of ICEFRD

### **Claim B**

The Respondent avers that this court cannot interfere with the country's name change as ROM has made a rational and reasonable decision to make the name change and the right to self-determination has not been infringed.

### **Claim C**

The protests that erupted in response to Professor Headscarf's changes in KaNjiva threatened the continued maintenance of law and order in ROM. Therefore, this created an emergency that justifies the limitation of Professor Headscarf's rights. Furthermore, Professor Headscarf did not apply for condonation, therefore, the court was not obliged to grant condonation without just cause.

### **Claim D**

Abolishing the English language test at CUP was unlawful and created an unjustified differentiation that was unacceptable in terms of Article 1(4) of the ICERD, therefore, the reinstatement of this the English Language Test eliminates an unacceptable differentiation.

**Claim E**

The amnesty granted to Commander Nomina was acceptable as it did not violate the prosecution of human rights ; interfere with victims' rights to an effective remedy; or restrict the victims' and the societies' right to know the truth about human rights violations.





## **PLEADINGS**

### **I. Jurisdiction**

Article 32 of the ECHR confers jurisdiction on the ECHR in all matters related to the interpretation of the Convention. Where there is a dispute, the Court has the power to adjudicate the matter. All five legal issues allege violations of the ECHR and other UN human rights treaties to which ROM is a signatory. The adjudication thereof necessarily involves the interpretation of the ECHR and several other UN treaties.

### **II. Admissibility**

Article 34 of the ECHR allows the Court to receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of any rights of one of the State Parties. Triple C does not fall under this category as it is a non-registered<sup>1</sup> group consisting of a juristic person and two non-governmental organisations representing victims. The lack of registration of the group is therefore fatal to this application as there are no textual indicators of Article 34 making provision for it.

For a matter to be admissible, Article 35(1) of ECHR provides that all domestic remedies must have been exhausted, according to the generally recognised rules of international law, and within four months from the date on which the final decision was taken.

For Claims A and B, all domestic remedies have been exhausted with the ROM's apex court SAROCO handing down judgements against the Applicant.<sup>2</sup> Further, the application to this Court was within 4 months from the date of the final judgment.

For the rest of the issues, domestic remedies were not exhausted. To this end, the respondent acknowledges that local remedies must only be exhausted if they are

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<sup>1</sup> Facts, para 48.

<sup>2</sup> Facts, para 26 and 35.

available, effective, and sufficient. Domestic remedies will be deemed available if they can be pursued without hindrance, effective if there is a reasonable likelihood of success, and sufficient if they offer redress for the violations in question.

For Claims C and D, domestic remedies could be pursued without any hindrance because the Applicant has access to the Respondent's Courts, specifically SACOCO as the apex court clothed with power to make final and binding decisions.<sup>3</sup> Had the Applicant made use of the domestic remedies, there could have been a reasonable likelihood of them succeeding and therefore not having to approach this Court as they would have obtained redress. The video<sup>4</sup> of the Chief Justice and the Registrar do not impair the impartiality of SACOCO due to the possibility that it could have been fake.<sup>5</sup>

For Claim E local remedies were not fully exhausted because SACOCO was approached and a date for the hearing was set and is forthcoming.<sup>6</sup> While there is an 8-month wait period, the matter has been set down and this is a guarantee that SACOCO will adjudicate the matter. In the premises, the respondent submits that Claims C, D and E are inadmissible.

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<sup>3</sup> Facts, para 15.

<sup>4</sup> Facts, para 43.

<sup>5</sup> Facts, para 45.

<sup>6</sup> Facts, para 32.



### **III. Merits**

**Claim A: The repeal of affirmative action measures in education does not contravene any International Human Rights Obligations.**

- a. The continued maintenance of CA80 will lead to the maintenance of separate rights for different racial groups.

General Recommendation 32, provides that discrimination occurs when there is an unjustifiable distinction or preference between different groups. Article 1(4) of the ICERD provides that affirmative action measures designed to ensure equal enjoyment and exercise of human rights shall not be deemed racial discrimination, provided that such a measure does not lead to the maintenance of separate rights for different racial groups.<sup>7</sup>

The report compiled by the CA80 commission provides that there are persons who despite not belonging to historically disadvantaged groups, were equally disadvantaged, however, they did not benefit from the affirmative action measures in terms of CA80.<sup>8</sup> This report shows that affirmative measures create a preference for previously historically disadvantaged groups that is separate, distinct and to the disadvantage of other groups in the nation. Therefore, the continued implementation of the CA80 will have the effect of maintaining separate rights for different racial groups within the nation.

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<sup>7</sup> ICERD.

<sup>8</sup> Facts par 26.

b. The purpose of the CA80 has been fulfilled

Article 1(4) of ICERD also provides that affirmative measures shall not be continued after their purpose has been achieved.<sup>9</sup> General Recommendation 32, states that this limitation on affirmative action measures means that these measures must cease to be applied when their objectives have been sustainably achieved.<sup>10</sup>

According to Article 1 of CA80, it was enacted to address and mitigate the disparities in education and other sectors within the nation.<sup>11</sup> The CA80 Commission conducted a review to determine if CA80 had achieved its objectives addressing and mitigating the disparities in education and other sectors of the nation. The Commission's review found that there had been significant progress in addressing the existing disparities in education and that this could be seen in the reduction of the poverty rate by 50 % among the marginalized communities which could be attributed to a more skilled workforce.<sup>12</sup>

However, the report also pointed out that only 10% of the Shumbas proceed to obtain tertiary education compared to 50% of the SaManyembas.<sup>13</sup> Article 13(2)(c) of the ICESCR provides that higher education shall be equally accessible to all.<sup>14</sup> The ROM has a higher education system that is accessible to all based on academic merit rather than admission on quotas.

ROM does not have policies to realise free tertiary education, however, the affirmative action measures created a situation where the previously marginalised by 50% making tertiary education more affordable for marginalised

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<sup>9</sup> Article 1(4) of ICERD.

<sup>10</sup> UN CERD Recommendation 32 of 2009, ICERD. par [27].

<sup>11</sup> Facts par 17.

<sup>12</sup> Facts 26.

<sup>13</sup> Facts 26.

<sup>14</sup> Article 13(2)(c) of ICESCR.

communities. Therefore, ROM has complied with its obligation in terms of Article 13(2)(c) of the ICESCR and has made higher education accessible to all.

The objectives of CA80 which are to address and mitigate disparities in education have been fulfilled and in terms of Article 1(4) of the ICERD, the continued maintenance of the affirmative action measures is likely to lead to the maintenance of different rights for different racial groups.

c. The CA80 Commission reviewed the impact of the affirmative action measures.

Article 2(1) of the ICERD requires that all State Parties pursue a policy of eliminating racial discrimination and that each State Party shall not engage in racial discrimination against any person and act in conformity with this obligation.<sup>15</sup> Article 2(1)(c) goes further to provide that each State Party must take effective measures to review, amend, rescind or nullify policies that have the effect of creating or perpetuating racial discrimination.

Article 2 of the ICERD prescribes how the State must realise the elimination of racial discrimination.<sup>16</sup> States have discretion on the mechanism they apply to achieve the objective of this Article. ROM has introduced CA80 to address and mitigate the impact of racial discrimination on education and other sectors in the nation.<sup>17</sup> We submit that ROM is free to decide how it achieves the elimination of racial discrimination so long as its approach complies with the requirements of this Convention.

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<sup>15</sup> Article 2(1) of ICEFRD.

<sup>16</sup> Article 2 of ICEFRD.

<sup>17</sup> Article 1 Constitutional Amendment 80.

Article 2(c) of the ICEFDR further requires State Parties such as ROM to continuously review its policies on addressing racial discrimination, and based on the outcome of such reviews, the States must either amend, rescind or nullify policies that have the effect of creating or perpetuating racial discrimination.<sup>18</sup> The CA80 Commission reviewed the impact of the affirmative action measures and determined that the objectives of the measures had been achieved.<sup>19</sup>

Therefore, we submit that the decision of ROM to repeal the impugned affirmative action measures complies with Article 1(4) and Article 2 of the ICEFRD.

Applicant may argue, that State Parties should carefully consider the consequences that may arise from the abrupt repeal of affirmative measures on the human rights of communities. However, ROM has carefully considered qualitative and quantitative data from the CA80 Commission's report.<sup>20</sup>

**Claim B: The name change of the ROM does not contravene any international law obligations binding on the nation.**

a. Resolution 3148

Resolution 3148 of the General Assembly then provides that the sovereign rights that accrue to States by virtue of their statehood mean that every state has the right to create and apply policies and measures that enhance its cultural values and heritage while respecting the value and dignity of each culture.<sup>21</sup> Therefore, ROM has the right to decide on how it fosters cultural development within the nation, however, this

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<sup>18</sup> Article 2(c) ICEFRD.

<sup>19</sup> CA80 Commission's report.

<sup>20</sup> Facts

<sup>21</sup> CA80 Commission's report.

cultural development process must respect the value and dignity of the SaManyanga and the Shumbas.

The name change of the ROM does not discriminate against the SaManyangas based on their cultural belonging as they are represented proportionally in Parliament. The SaManyangas comprise only of 1% of the Parliament, but this is because the SaManyangas represent only 1% of the population of the country.

Special history is described as including written records of significant value on the nation-state, individual rights, and cultural development within the country.<sup>22</sup> In terms of this definition, the name change does not have the effect of destroying special history because it does not destroy written records.

The name change from the ROM to the Republic of SaManyemba was passed by Parliament where both cultural groups concerned are proportionally represented, therefore the minority groups were involved in the process of the name change.<sup>23</sup>

We, submit that changing the name of the ROM to the Republic of SaManyemba is in terms of the sovereignty of the ROM is an internal matter that this honourable court cannot interfere with because the factors limiting the State's sovereignty in this instance have not been activated by the actions of ROM.

b. The Charter of the United Nations and the ICCPR have not been infringed

Article 1 of the Charter of the United Nations and Article 1 of the ICCPR provides for the right to self-determination, which includes the rights to freely determine political

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<sup>22</sup> Rosenstone *History in Images, History in Words* Reflections on the Possibility of Really Putting History onto Film, 1986.

<sup>23</sup> Facts par 33.



status and pursue economic and cultural development.<sup>24;25</sup> In *Kevin Mgwanga Gunme v Cameroon* the African court described a people as a group of persons having a variety of characteristics such as a common history, territorial connection and who identify themselves as a people with a separate and distinct identity.<sup>26</sup>

The Respondent accepts that the SaManyanga are a people as described in the Charter and that they are entitled to the right to self-determination provided for in the Charter and the ICCPR. However, the Respondent avers that their right has not been infringed as established in terms of the criteria set out in Resolution 3148. Furthermore, the Declaration of the Principles of International Cultural Co-operation is concerned with the right of people to choose their cultural system and to freely pursue their cultural development.<sup>27</sup> In terms of this Declaration, nations have a duty to the different cultures represented in the nation in a balanced manner that respects the dignity and value of each culture.

We submit based on that the criteria set out in resolution 3148, which assesses whether cultural development considers the value and dignity of minority cultures, that the right to self-determination outlined in the Charter of the United Nations and the ICCPR is not violated.

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<sup>24</sup> Charter of the United Nations.

<sup>25</sup> Article 1 of ICCPR.

<sup>26</sup> *Mgwanga Gunme v Cameroon*.

<sup>27</sup> UNESCO, Records of the General Conference, Fourteenth Session, 1966, Resolutions, pp. 8

**Claim C: The restrictions imposed on kaNjiva by the Minister of AIICT do not contravene any of the nation's international obligations.**

a. The Minister's instruction

The Montevideo Convention provides the requirements for statehood including of, among other things, an effective government.<sup>28</sup> Effective government requires the government to have general control over the territory, which includes the ability to maintain law and order in its territory.<sup>29</sup> Therefore, ROM has an obligation arising from international customary law, as a result of its statehood, to maintain law and order in its territory.

Article 19 of the Digital and AI Bill of Rights Act 2015, provides that it can be invoked in instances where there is an emergency caused by non-state parties that could cause irreparable harm, and the Minister AIICT may impose temporary measures to address the immediate harm. The Act further provides that these measures will remain in force until they are adjudicated in court.<sup>30</sup> The definition of emergency is a serious unexpected and often dangerous situation requiring immediate action.<sup>31</sup>

The changes made by Professor Headscarf triggered a series of widespread protests across the nation which created a situation where there was a risk of losing law and order in the country, in terms of international customary law this is a dangerous situation requiring immediate action as it could lead to the questioning of the statehood of ROM. It qualifies as an emergency caused by a non-State Party that could cause irreparable harm and, it is reasonable for the Minister of AIICT to invoke Article 19 of the Digital and AI Bill of Rights Act 2015.

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<sup>28</sup> Montevideo Convention on the Rights and Duties of States 1933.

<sup>29</sup> Crawford Creation of States op cit 59. Crawford.

<sup>30</sup> Digital and AI Bill of Rights Act 2015.

<sup>31</sup> Oxford dictionary

b. The SACOCO's ruling in favour of Mind, Body and Soul (MOBS)

For courts to function efficiently they must operate timeously, hence the strict adherence to time limits. In instances where an individual fails to comply with the rules of a court, the individual in violation of the court rules may apply for condonation.<sup>32</sup> Condonation occurs when a court excuses unacceptable conduct.<sup>33</sup>

The South African Constitutional Court, in *Stefaans Conrad Brümmer v. Minister for Social Development and others*, refused to grant condonation on the ground that the impugned legislative provision was unconstitutional.<sup>34</sup> This decision was cited with approval by the Venice Commission.<sup>35</sup> This case shows that courts have a discretion on whether to grant condonation and this discretion may be influenced by factors such as necessity and reasonableness.

Professor Headsarf filed her application late and did not make an application for condonation, therefore, the court is not obliged to condone the late filing of the application, without a reasonable justification or without having the reasonable impression that it was necessary to condone the late application.

**Claim D: The ROM's directive to reinstate the English Language Test complies with the nation's international human rights obligations.**

Article 1(4) of the ICERD provides that affirmative measures designed to ensure equal enjoyment and exercise of human rights shall not be deemed racial

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<sup>32</sup> ECRI General Policy Recommendation 15.

<sup>33</sup> ECRI General Policy Recommendation 15.

<sup>34</sup> *Stefaans Conrad Brümmer v. Minister for Social Development*.

<sup>35</sup> European Commission for Democracy through Law: The Bulletin.

discrimination provided that such a measure does not lead to the maintenance of separate rights for different racial groups.<sup>36</sup>

The requirement for the English Language Test was applicable nationally before the Central University of Panda (CUP) unilaterally decided to abolish this requirement. CUP's decision had the effect of creating a situation where there are separate rights for different groups. This decision created discrimination that is considered to be unacceptable in terms of Article 1(4), which if not overturned will result in the maintenance of separate rights for CUP students and the students at other universities in the country. Therefore, the reinstatement of the English Language Test at CUP was lawful in terms of Article 1(4) of the ICERD as it eliminates this unacceptable differentiation.

**Claim E: The decision of the ROM to grant Commander Nomina Amnesty is not in breach of its international human rights obligations.**

According to the United Nations, amnesties are impermissible if they prevent the prosecution of individuals who may be criminally responsible for human rights violations; interfere with victims' right to an effective remedy; or restrict victims' and societies' right to know the truth about violations of human rights.<sup>37</sup>

The amnesty given to Commander Nomina does not extinguish the prosecution. It does not interfere with the right to an effective remedy as he has played a pivotal role in training police officers, and donated US\$5 million towards education and healthcare in impoverished communities. Lastly, the amnesty granted to the Commander does not restrict victims' and societies' right to know the truth about

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<sup>36</sup> Article 1(4) of ICERD.

<sup>37</sup> Recommendation 32 of 2009, UNERD.

violations of human rights as the matter was prosecuted and therefore, the victims and the society had the opportunity to learn the truth about the Commander's actions.

The Applicant may argue that the crime of rape committed against Ms Teanto falls under crimes against humanity in terms of the Rome Statute. However, Commander Nomina was convicted for contravention of the international principle of command responsibility. This principle provides for the prosecution of military commanders for failing to prevent or punish crimes committed by their subordinates and not for crimes that he has committed, planned or ordered.<sup>38</sup> We submit that Commander Nomina's conviction was for the failure to prevent or punish the crimes of his subordinates and not for the crime of rape. Therefore, Commander Nomina's offence does not fall under crimes against humanity as provided for in the Rome Statute.

#### **IV.Reparations**

The Respondent humbly requests that this honourable court declare no reparations.

#### **Prayer for relief**

The Respondent prays that this honourable court:

- a. Declare that:
  - i. The applicant does not have legal standing to bring this matter before this court.
  - ii. Merit C, D and E are inadmissible.
- b. Declare that:

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<sup>38</sup> Boas G. Superior responsibility. In: *International Criminal Law Practitioner Library*. Cambridge University Press; 2008:142-277.

- i. The repeal of the affirmative action measures does not contravene the Respondent's international human rights obligations.
- ii. The name change of ROM does not violate any of the Respondent's international law obligations.
- iii. The restrictions imposed on kaNjiva do not violate the Respondent's international law obligations.
- iv. The decision to reinstate the English Language Test does not violate the Respondent's international human rights obligations.
- v. The decision to grant Commander Nomina Amnesty does not violate the Respondent's international obligations.

**Word count**

Summary of the argument: 287.

Memorial: 2986 words.