

7TH NELSON MANDELA WORLD HUMAN RIGHTS MOOT COURT COMPETITION
OHCHR, GENEVA , 8-10 DECEMBER 2015

HYPOTHETICAL CASE
before the
SANTANACIA HUMAN RIGHTS COURT

in the matter between Bronkolian Rights Organisation (BRO)
and
the Government of the Republic of Bronkolia

This version of the problem is issued on 15 July 2015. It contains modifications (**in bold**) made on the basis of requests for clarification received by the Steering Committee under Rule 11. Teams are expected to argue the case on the basis of the facts provided.

1. The Republic of Bronkolia lies on the southern tip of the continent of Santanacia. Altacia is an archipelago in the Marabthian Ocean to the east of Bronkolia, which forms part of Santanacia. **Both Bronkolia and Altacia are members of the United Nations. Bronkolia is a developed country and Altacia is a developing country.** The Santanacia Human Rights Convention is substantively the same as the International Covenant on Civil and Political Rights (ICCPR), with the difference that it provides for an individual complaints mechanism in the Convention and that, under this mechanism, NGOs may submit to the Santanacia Court on behalf of victims if local remedies have been exhausted. **The admissibility rules/requirements of the Santanacia Human Rights Court are similar to those provided in Article 5 (2) (a) and (b) of the Optional Protocol to the International Covenant on Civil and Political Rights.** The Santanacia Human Rights Court may apply the Santanacia Human Rights Convention and United Nations human rights treaties. **Decisions of other courts are only of persuasive value to the Santanacia Human Rights Court.** The Constitution of Bronkolia has a Bill of Rights which **guarantees civil and political rights** and incorporates the Santanacia Human Rights Convention. **The hierarchy of courts in Bronkolia includes a High Court which hears all matters and, further, a Constitutional Court and a Supreme Court. The Constitutional Court is the highest court responsible for human rights matters. The Supreme Court is the highest court in all other matters.**
2. Bronkolia has ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1965 International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the 1951 Refugee Convention and the 1967 Protocol, the United Nations Framework Convention on Climate Change (**UNFCCC**), the 2005 International Convention against Doping in Sport 2005 and the 1985 International Convention Against Apartheid in Sports. **Bronkolia is listed in Annex I and II of the UNFCCC. Bronkolia has not made any reservations to the above-mentioned treaties and conventions.**
3. Although the cultures of the two countries are very similar, Bronkolians and Altacians have distinct physical characteristics. In general, Altacians are small in stature and have dark skin. Bronkolians have a lighter skin colour and are taller in stature. These visible differences in physical appearance have contributed to racism and discrimination among Bronkolians and Altacians living in Bronkolia.

4. Bronkolia has a booming economy and, in recent years, its GDP has seen huge increases. The economic situation is different in Altacia, whose GDP growth slowed dramatically in 2015, the fifth consecutive year of deceleration since the effects of global warming began to be felt. Altacian islands are warming up at almost four times the global average so that, that by the year 2013, the government of Altacia had declared that global warming is rendering some of its islands uninhabitable, and began asking for help to evacuate the affected populations to other parts of Altacia. The environmental disasters in Altacia have displaced thousands of Altacians who have since migrated to Bronkolia.
5. Bronkolia, being a richer country, is better equipped to deal with the challenges of climate change. It has, for example, resorted to using man-made snow, by shipping in powder from surrounding glaciers. This has helped maintain sports and other activities that rely on snow for example. Global warming has been good for the Bronkolia wine industry, which has improved tremendously. Furthermore, a Bronkolian company called Plume Trees Limited (PTL) undertook a scientific study on global warming with the aim of finding the actual impact of global warming and possible solutions. The report concluded that *'climate change is altering the Marabian Ocean in three ways: acidification, sea level rise and an under-the-radar effect of oxygen depletion. Such oxygen depletion is posing a great danger to marine life and fisheries. The sea is being warmed up, leaving fish and other marine life without sufficient oxygen. At present, the surface temperature of the Marabian Ocean is the warmest on record: 1.56 degrees above the 20th Century average of 61.5 degrees. This is where we are coming in: it is scientifically proven that the artificially-enhanced Plume trees can double the quantity of oxygen currently being emitted.'* After this report, PTL was commissioned by the Bronkolian government to start its project of planting the special Plume trees. However, this presented some difficulties since the areas where PTL proposed to plant the trees were largely occupied by Altacian immigrants fleeing the effects of global warming in Altacia.
6. Following pressure from the general public, Bronkolian Senators resolved that all Altacians who were in the country illegally be deported forthwith. Notwithstanding various protests from human right organisations, the government began rounding up Altacians from their tents and putting them on ships back to Altacia. The Bronkolian Rights Organisation (BRO) wrote several letters to the government arguing that the state of Bronkolia was in violation of its international obligations. The government responded, noting that Altacians being deported were illegal immigrants in Bronkolia. On 13 July 2014, BRO approached the High Court of Bronkolia with a list of applicants claiming to be climate change refugees and applying for refugee status in Bronkolia. The High Court ruled that the applicants did not qualify as refugees and they lost the case. By January 2014, 103 Altacian deportees had died on the islands, either from starvation or from diseases plaguing the Altacian islands.
7. These and other stories continued to dominate Bronkolian media in early 2014, with almost daily newspaper coverage of PTL activities and Altacian deportations. Focus shifted, however, as the Bronkolian Festival approached and as the 2014 Santanacia Winter Games, which Bronkolia was preparing to host, drew near. **The Bronkolian Festival is celebrated for 5 days in Bronkofe, the capital city of Bronkolia.** The annual Bronkolian Festival is observed through worship of Bronkolian gods and celebration of Bronkolian religious heroes. One such hero is Bashanu Daku a woman who, during foreign occupation and the brutal Kantanaic

religious crusades, was executed for refusing to convert to another religion. On the day of her execution, Bashanu Daku was stripped naked and humiliated before she was executed. Since then, and during the Bronkolian festival, Bronkolian women wear thick garments that cover all their body in an act they call 'Dressing up Bashanu Daku and restoring her dignity'. Younger women, however, have started protesting against the use of these garments during the Bronkolian Festival, with some of them coming to Festival preparations dressed in shorter dresses. They complain that in the warming world, it is difficult to embrace the all-covering garments, even if one wishes to.

8. This change in dress has been met with different responses from different parts of the nation. Some, especially men, expressed anger against short dresses viewing them as a great disrespect to Bronkolian gods and to Bashanu Daku. Others have defended the right of women to dress as they wish.
9. As the Bronkolian Festival approached, many incidents occurred in which women seen to be 'improperly dressed' were harassed. Groups of men would surround women coming for the celebrations in short dresses, strip them naked and subject them to humiliating treatment. A number of such incidents were recorded on cell phones. Religious leaders argued that as the government can tolerate Bronkolian women dressing as they please, the sacred Bronkolian Festival should be an exception. In August 2014, Bronkolia's Director of Public Prosecutions, Wayne Bierro, forwarded the video clips to the Criminal Investigations Department for investigation. No prosecutions have been made to date as the Department claims that it is difficult to identify the culprits from the videos. Most of the videos are not clear because of the commotion that occurred during the incidents. Some men suspected to be in the videos were arrested, but subsequently set free as expert analysis of the videos proved them innocent.
10. Citing the rampant occurrence of such incidents, BRO approached the Constitutional Court of Bronkolia arguing that the requirement for women to wear long garments to attend the Bronkolian Festival interferes with their freedom of association, and that the stripping naked of women violates their dignity. In October 2014, the Constitutional Court condemned the stripping of women but could not find a violation on the part of the government as there was no evidence that the state either condoned or acquiesced to the actions. On the question of freedom of association, the court ruled that the right to freedom of association encompasses the right not to associate and by that measure women who want to attend the Festival must comply with requirements of the religion being celebrated.
11. During the celebrations of the Bronkolian Festival, various theatre groups give stage performances. Some groups, like the famous 'In and Out Broadway' theatre group, give performance on the Bronkolian National Hall stage that stereotype different ethnic groups in Bronkolia. This has become a tradition during the Festival and is to show the diversity of peoples living in Bronkolia. Some human rights organisations in Bronkolia, in particular BRO and Human Rights for Everybody (HRE), have accused these performing groups of disseminating and promoting racist images, attitudes and perceptions in Bronkolia. They argue that this has, in turn created a history of prejudice, hostility, and ignorance towards certain racial and immigrant groups living in Bronkolia.

12. The Executive Director of HRE noted in 2013 as follows: *'As a human rights organisation, we firmly believe that everyone has a right to freedom of expression. However, some of the mocking caricatures we witness every year during the Bronkolian Festival have, for many years, perpetuated the belief that any other race other than that of Bronkolians is racially and socially inferior. These caricatures have taken a strong hold on the Bronkolian imagination so that audiences expect any person with dark skin, any person who is Altacian, no matter what their background, to conform to one or more of the stereotypes.'*
13. Following a series of campaigns by human rights organisations in Bronkolia, the Bronkolian Legislature amended the Anti-Discrimination Act (Chapter 23:06) in 2013 to include a section which makes the stereotyping of other races a criminal offence punishable by up to 10 years imprisonment. A huge outcry followed from Bronkolians, especially from performers who claimed that the law unfairly interfered with their freedom of expression, as well as with Bronkolian cultures and traditions.
14. In 2014 during the Bronkolian Festival, members of the 'In and Out Broadway' performing group under the leadership of Danny Ben, could not resist performing a stereotypical show. Danny Ben is not only a performer but one of the leading and most powerful religious monks in Bronkolia. To mimic the Altacian stereotype, members of the 'In and Out Broadway' group wore black face makeup made by smearing burnt cork on a layer of coca butter or black grease. They also wore costumes often worn by Altacians. On stage, they imitated Altacian music and dance while speaking in exaggerated 'archipelago' dialects. The show also featured a variety of jokes, songs, dances and skits that were based on both the ugliest and most beautiful Altacian stereotypes, in particular their current tent life after the effects of global warming and how Altacians are always a peaceful people. After a tip off to the Bronkolia Police, Danny Ben, his performers and a number of religious leaders were arrested and dragged off stage after being charged under the Anti-Discrimination Act for racially abusing Altacians.
15. A number of newspapers carried the story on the arrest of Danny Ben and others. Daybreak News Chronicle (DNC), a newspaper whose majority shares are held by Altacians, also carried the story. For various weeks after the incident, DNC produced hundreds of cartoons that showed Danny Ben being dragged off stage with Bronkolian gods pointing at him and shedding tears of laughter. Although many of the cartoons were shocking and offensive to the Bronkolian religion, DNC produced cartoons that went viral on the internet without any sanction from the Bronkolian government. In one of its editions, DNC published scathing criticism of Bronkolian religion and its leaders: *'Bronkolian religion is a cult of barbarians who are of ashamed of stripping women of their dignity. If they have any gods, they are gods of evil.'*
16. In the meantime, Danny Ben and a few other leaders were released on bail. On the same day they were released, they tried to get the Police and the court to arrest the cartoonists and the owners of DNC or at least to censure them. They failed in their attempt as the Bronkolian High Court ruled that DNC's actions were within the bounds of freedom of expression.
17. Danny Ben and four others organised an interview with a local radio station, during which they lambasted both the DNC and the President of Bronkolia. Danny Ben is quoted saying: *'DNC is a useless Newspaper owned by Zvidum-dum and whose*

criticism of Bronkolian religion not only threatens the religion but the state itself. The conduct of DNC's owners is tolerated by a corrupt and immoral President. What is wrong with asking women to dress properly and cover themselves? If they want to walk around naked, we can assist them to become completely naked. It is surprising that the President turns a blind eye to these pressing issues and rather allows the harassing of those who seek to preserve our culture and religion.'

'Zvidum-dum' is a derogatory Bronkolian term used to refer to a short dark man. Immediately after the interview, Danny Ben and those accompanying him were arrested outside the radio studio, for insulting the President, under the Public Order Act which criminalises subversive statements against the person of the President. **Danny Ben and others remain in custody and their case has been postponed many times due to the overwhelming workload of the courts. They are due to appear before the High Court of Bronkolia on 13 December 2015.**

18. Meanwhile with the Santanacia Winter Games approaching, media focus shifted to sports. Bronkolia and Altacia are known for producing some of the best champions in the winter games. In the 2013 Santanacia Winter Games (SWG) most of the gold medals were won by Bronkolian and Altacian nationals. The SWG is governed by the Federation of Santanacia Winter Games (FSWG) and includes sports and disciplines such as Alpine skiing, luge, short track speed skating, freestyle skiing and snowboarding.
19. Unlike other years, one of the most talked-about events in the 2014 SWG edition, were the racial slurs exchanged between the Altacian sportswoman Kid Fankoh and the Bronkolian all-time-skiing champion Rudey Floura. Kid Fankoh is resident in Bronkolia where she is employed by a Bronkolian local club. During the SWGs however, she represented her country, Altacia. The racial slurs exchanged between Rudey Floura and Kid Fankoh sparked animosity among fans, generating a war of words on Twitter and other social media, while in the streets of the capital of Bronkolia there were clashes between Altacian and Bronkolian supporters. Riot Police had to be called into disperse crowds.
20. Findings from SWG news reporters estimate that there were over 280,000 discriminatory posts online during the 2014 SWG season. In his speech condemning the incidents, FSWG president Madre Pedro proposed suspension or relegation for teams or individuals found guilty of racism in the winter games. There is wide belief that tough punishment is the only possible way to eradicate racism from the games. Hundreds of supporters on both sides sang derogatory songs against each other.
21. On the morning of 16 November 2014, while Kid Fankoh and Rudey Floura were at the SWG registration centre awaiting registration, Kid Fankoh overheard Rudey Floura say to one of the officials: *'You should closely monitor and check zvidum-dum, I think they are using drugs.'* The official did not respond and continued with his desk work, which left many by-standers wondering if he had heard what Rudey had said. As she passed Kid Fankoh, Rudey Floura giggled to her team mate saying: *'That dark monkey is high, very high, can you see?'* At that point, Kid Fankoh lost her temper and hit Rudey Floura on the cheek making her unconscious. Kid Fankoh was charged by the FSWG Disciplinary Committee and found guilty of contravening Section 3 of SWG Regulations on the prohibition of violence. She was handed a three-year ban from the Santanacia Winter Games. No

charges were brought against Rudey Floura and she went on to win the 2014 championship in her category.

22. Many people argued that the decision by the Disciplinary Committee was unduly harsh, with others suggesting that it was racially biased. The Disciplinary Committee was comprised of six Bronkolian nationals, one Altacian and two nationals of The Republic of Motohotia. **In terms of the Constitution and Regulations of the Federation of Santanacia Winter Games, members of the Disciplinary Committee are randomly picked from a list that is drawn through democratic processes of the Federation.** One journalist, who had access to the disciplinary hearing, remarked as follows: *'The attitude of the members of the Disciplinary Committee was clear: Altacians are not well liked in this region.'* Through her lawyer, Kid Fankoh approached the Constitutional Court of Bronkolia seeking to enforce her right to non-discrimination. She particularly argued that the decision by the FSWG disciplinary Committee, was too harsh and was motivated by racial prejudice; that the selective punishment meted against her by the Committee, while Rudey went unpunished, was discriminatory; and that she has been subjected to racial abuse, which is against the Constitution of Bronkolia. The Constitutional Court ruled that FSWG is a regional organisation not based in Bronkolia, over which the court has no jurisdiction.
23. In May 2015, BRO filed a case against Bronkolia in the Santanacia Human Rights Court and makes the following claims:
- (i) Removal, deportations of Altacians and refusal to grant them refugee status is inconsistent with Bronkolia's international obligations and is in violation of their rights;
 - (ii) The government of Bronkolia has failed in its obligation to protect women's rights to association, religion and dignity in relation to the Bronkolian Festival incidents;
 - (iii) The government of Bronkolia has interfered with Danny Ben and others' rights to freedom of expression, equality before the law and the rule of law;
 - (iv) The government of Bronkolia has failed in its obligation to protect Kid Fankoh's right to non-discrimination in sport.
24. The case has been set for hearing in December 2015. Prepare heads of argument on both admissibility and merits, for each issue for consideration by the Santanacian Human Rights Court on behalf of both BRO (**the Applicant**) and the Republic of Bronkolia (**the Respondent**).