

CLARIFICATION QUESTIONS AND ANSWERS

GENERAL TRANSLATION QUESTIONS

1. The Spanish hypothetical implies that Iberoland ratified the Convention of Belem do Para while the English version explicitly states that Iberoland signed it. Which version should we follow?

The Spanish version is the correct one. Iberoland ratified the Convention of Belem do Para in February 25th of 1998. The English version should say “ratified” and not “signed.”

TEAM QUESTIONS

1. What other International Humans Rights Conventions has Iberoland ratified and when?

The available information is limited to the facts described in the hypothetical case.

2. Under which modality or mechanism should the State have granted the minimum quota for afro-descendants in the higher public academic institutions, in the fulfillment of article 45 of the Law No. 678?

The modality was left to the discretion of the provincial authorities or to each institution of superior education. Law 678 required that a minimum of 20% of the spaces available had to be reserved to afro-Iberolands without specifying the modality or mechanism to reach this percentage.

3. What is the percentage (or numbers) of applicants versus accepted students for men and women, and likewise between white and afro-descendants, to the University of North Shore?

The available information is limited to the facts described in the hypothetical case.

4. What position did Juana Olin occupy within the 137 applicants who were not admitted to the University?

The available information is limited to the facts described in the hypothetical case.

5. On what criteria were the 250 students selected from the 387 students that achieved the minimum requirements?

The university placed special emphasis on the results of the oral interviews.

6. What was the exact date that Juana Olin applied to the University and what was the exact date that Law 678 entered into force effective?

Juan Olin applied to the University once Law 678 became effective.

7. Which is the percentage of women that annually enter to higher education in North Shore?

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The available information is limited to the facts described in the hypothetical case.

8. Which is the selection criteria for those applicants that have surpassed the three minimum requirements (mentioned in the facts of the case) to enter the Universities of Iberoland, and in particular the North Shore University?

See answer # 5.

9. What hierarchy exists between Federal or National Law as it relates to the provincial Constitution and what is the limit of the autonomy of this last one to comply with that federal or national law?

Article 18 of the Constitution of Iberoland states:

The provinces reserve all powers not expressly delegated by this Constitution to the Federal Government. The Federal Congress will not adopt laws on matters that have been reserved by the provinces.

Article 19 of the Constitution of Iberoland states:

This Constitution, the laws that the Federal Congress approve within the limits established in the previous article and all treaties ratified by Iberoland will be the supreme law of this country. The judges of each province will respect this Constitution, the federal laws and the ratified treaties, notwithstanding any provision to the contrary included in the provincial Constitutions or laws. The Provincial Governors are obligated to enforce the federal laws.

10. What pertinent measures, political and constitutional, did the Federal Government use in order to make North Shore adopt the affirmative actions proposed in law 678/99?

In the files of the Inter-American Court appear the following procedures: meetings of President Acheve with the Governor of North Shore; the National Minister of Education with the President of North Shore University; and the National Minister of the Interior with the federal legislators of the province of North Shore. The Department of Education published different materials to help the authorities of the higher public academic institutions apply Law 678. The National Department of Economy had a special budget to support the higher public academic institutions that applied Law 678.

11. What are the criteria that North Shore University considers when assigning the available seats to the applicants that surpass the minimum requirements of admission?

See answer # 5.

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12. How has Iberoland's development been, in educative matters, in each one of its levels (primary, secondary and superior), from year 2000 to date?

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13. In paragraph 9 of the hypothetical case it is indicated that "According to valid studies, the province annually distributed 79.3 percent of the academic budget to the predominantly white school districts although 50.4 percent of North Shore's students attended school in those districts. Thus, the predominantly African-descendant districts received 20.7 percent of the academic budget for 49.6 percent of their population in the school-age range". Could you clarify who conducted these valid studies?

The National Institute of Statistics (NIS), an independent state institution, made several studies on the subject. These studies are considered very objective and are used by the different political, economic, labor, education and academic sectors.

14. In paragraph 13 of the hypothetical, the system of admission of North Shore University is described and it also indicates that this academic institution has 250 spaces per year. Also, it established that to decide which students are going to be admitted, the University has to evaluate the applicant's grade point average (GPA), a personal interview and a general admissions exam. The University has a minimum standard and the students must surpass these three requirements. Later it is indicated that the University selects the 250 admitted students within the applicants that have fulfilled the three requirements. Could you explain how are these 250 selected?

See answer # 5.

15. The 4th paragraph of the hypothetical indicates that Iberoland has an approximated population of 75 million inhabitants. It also indicates that the province of North Shore is the poorest and the one with the greatest proportion of afro-Iberolands, a 53.8% of the total population. In this sense, which is the percentage of the white race population in the province of North Shore?

The rest of North Shore's population is white.

16. Which were the constitutional and political pressures (mentioned in paragraph 8) that the federal government used to eliminate North Shore's segregated system?

The Government made similar procedures and activities of those enumerated in answer 10, relating to Law 678. These procedures and activities resulted in the elimination of the law establishing a segregated education system in North Shore.

17. Since there are federal, provincial and municipal higher educational establishments (as recognize by the Law 678), how are their competences compatible with the exclusive competence of the provinces in educational issues? That is, the federal and municipal establishments, precisely for being so, cannot have provincial competence, then how is this

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suppose to be understood? And if so are there any establishments with these characteristics in North Shore?

Two federal institutes of higher education exist: the Superior School of Defense (SSD) that depends on the Department of Defense and the Superior School of Magistrates (SSM) dependent on the Supreme Court of Justice. The Constitution orders the creation of the SSD and the SSM, as an exception to what is stipulated in Article Five of the Constitution. SSD and SSM exclusively function in the Metropolitan District. Several municipalities have created Superior Institutes of Municipal Administration (SIMA). The Supreme Court of Justice has considered that the municipalities have constitutional faculties to create SIMA in order to educate its staff. The provinces, in accordance with Article 5 of the Constitution, reserve the right to establish the legal regime to which the SIMA are going to be bound. There does not exist any SIMA in North Shore.

18. Which is the scope of the competence of the provinces in the matter of education? We are questioning whether the scope includes references to basic, secondary and superior levels, or just one of them?

The only existing disposition is Article 5 of the Constitution.

19. It is possible for a person who did not enter the North Shore University to try the process of admission again the following year?

Yes.

20. At what distance is the nearest public university of North shore located?

The available information is limited to the facts described in the hypothetical case.

21. Is Juana Olin staying with her mother for economical or emotional reasons?

The available information is limited to the facts described in the hypothetical case.

22. What does Iberoland's Constitution say about the integration between the sources of international law (understood as those stipulated in Article 38 of the Statute of the International Court of Justice) and the internal law?

The only reference is the contained in Article 19 already mentioned in answer 9.

23. On what date did the Commission notify Iberoland of the report issued in compliance of Article 50 of the American Convention on Human Rights?

On October 2, 2003.

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24. On which date did Iberoland ratify the Convention on the Elimination of all Forms of Racial Discrimination?

The available information is limited to the facts described in the hypothetical case.

25. According to the facts, Juana Olin filed the lawsuit against North Shore; however, after her appeal, the Federal Supreme Court denominated the case as Olin v. North Shore University. We would like to know if this is a material error, or if the University at the Federal Supreme Court became the passive party of the lawsuit.

Only one case exists: Olin v. North Shore University, in which the Province of North Shore is sued for the actions and omissions of its authorities and of those of North Shore University. In the jurisdictional system of Iberoland, you must sue the provincial institution directly involved, in this case the North Shore University, to question the actions and omissions of the Province in general and those of the University.

26. According to the facts, if Juana Olin was approved, she would be at the University in the year of 2000. We would like to know when the selection process took place: whether in 1999 (similar to countries in the Southern Hemisphere), or in 2000 (similar to countries in the Northern Hemisphere).

In 2000.

27. What was the criteria/method used by the University of North Shore to select the 250 students that were effectively admitted among those 387 students that surpassed the minimum standards?

See answer # 5.

28. Paragraph 30 states: "Iberoland, following its policies on the matter, decided not to interpose preliminary exceptions in the case." Does this mean that the state is barred from making preliminary objections regarding jurisdiction and admissibility?

Indeed. The State specifically indicated that it renounced any intention to interpose preliminary exceptions and therefore the Court decided to continue with the substance of the case.

29. Paragraph 3 states "Iberoland sought to provide autonomy to its regional governments, while designating to its central government certain basic functions that would grant the country a level of cohesion." What are these certain basic functions?

The available information is limited to the facts described in the hypothetical case and in these questions.

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30. Paragraph 23 states that "Juana's academic grades were superior to the *minimum* required by the University." (Empasis added) How did Juana's grades rank as compared to the grades of the students actually *accepted* by the University of North Shore in the year 2000?

They were similar.

31. Is the Federal Supreme Court of Iberoland the highest court in the judicial hierarchy of Iberoland?

Yes, in conformity with what is establish in the Constitution.

32. On what date did the State of Iberoland ratify the Convention of Belem do Para?

See answer # 1.

33. Was Juana ranked within the top 250 students who applied for admission to the University of North Shore in 2000?

The available information is limited to the facts described in the hypothetical case.

34. Who is responsible for collecting the taxes that are designated for education? Is it exclusively the provinces or do some federal taxes also exist that collect money specifically for an educational budget?

The collection corresponds to the provinces.

35. What is the hierarchy that exists in Iberoland with respect to the Constitution, the international treaties, the federal laws and the laws of the provinces?

See answer # 9.

36. In order to ratify international treaties, is it necessary that the provinces expressly grant consent to the Federal Government or is this responsibility expressly granted to the Federal Government?

The available information is limited to the facts described in the hypothetical case and in these questions.

37. What recommendations (under Art. 50 of the American Convention) did the Commission issue to Iberoland to remedy the situation, after the friendly settlement process with Juana Olin failed?

The available information is limited to the facts described in the hypothetical case.

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38. Art. 5 of the Iberoland Constitution states that "The provinces will have exclusive power regarding the security of its citizens, the administration of justice and education." Should the phrase "administration of" be applied only to the word justice or does it also apply to the word education?

According to the interpretation given by Supreme Court of Justice, the word "administration" exclusively applies to the word "justice."

39. Based on her admission scores, what was Juana Olin's standing among all of the students who surpassed the minimum standards for admission to the University of North Shore (was she a top ranked candidate, average, or at the low end of the rankings)?

The available information is limited to the facts described in the hypothetical case.

40. Did the last student admitted to the only public university of the Province of North Shore for the year of 2000 surpass the grades of Juana Olin?

The available information is limited to the facts described in the hypothetical case.

41. Of the 250 people admitted to the only public university of North Shore, for the year 2000, how many were women?

The available information is limited to the facts described in the hypothetical case.

42. Does the declaration of unconstitutionality of Law 678 of 1999, referred to in paragraph 26 of the hypothetical, produce a general effect (for all the provinces), or are its effects just for the *sub judice* case?

The Constitution establishes that the declarations of unconstitutionality of a law done by the Supreme Court of Justice produce general effects (*erga omnes*).

43. Paragraph 31: On what decisions did the Association for the Defense of Federalism base their *amicus*?

The available information is limited to the facts described in the hypothetical case.

44. Paragraph 31: Is the jurisprudence of the European Court of Human Rights binding when defending in the Inter-American system?

The available information is limited to the facts described in the hypothetical case.

45. Paragraph 27: Why doesn't the Supreme Court of Iberoland adopt the jurisprudence in the matter of equality for the Province of North Shore? Is the jurisprudence of affirmative action binding?

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Until the Olin Case, the Supreme Court of Justice had not made specific pronouncements on the issues Juana raises in her suit. The existing jurisprudence was on other aspects of the right to equality and on the distribution of competences between the National Congress and the provinces.

46. The last sentence of paragraph 13 states: “In the last 10 years, the percentage of admitted students of African descent has oscillated every year between 1.2 and 7.3 percent”. In these last ten years, what percentage of the total applicants come from afro-Iberoland citizens?

The available information is limited to the facts described in the hypothetical case.

47. Paragraph 28 of the Hypothetical mentions that during the celebration of a hearing before the Commission on March 1, 2003, and during the friendly settlement process, the Federal Government offered her the possibility of applying to other provincial universities, as well as a scholarship for her studies. At what distances are these universities from Juana Olin’s home?

The available information is limited to the facts described in the hypothetical case.

48. Paragraph 20 of the hypothetical indicates the data of admissions of the North Shore University during the year 2000. Do we have any knowledge if Juana’s grades were higher than those of the 250 students that were admitted to the North Shore University and that therefore had the minimum requirements?

The available information is limited to the facts described in the hypothetical case.

49. Article 39 of Iberoland’s Constitution states that “The Federal Congress shall have the power to legislate and promote affirmative action measures to guarantee equal treatment, equal access of opportunity and equal and full enjoyment and exercise of the Federal Constitution’s recognized rights, as well as of the human rights guaranteed in the international agreements ratified by Iberoland.” Which are those treaties in which Iberoland is a part?

The available information is limited to the facts described in the hypothetical case.

50. Is there any hierarchy between Article 5 and Article 39 of Iberoland’s Constitution?

All of the Constitutional Norms have the same hierarchy.

51. What criteria did North Shore University use to select and admit candidates among those who satisfied the minimum requirements?

See answer # 5.

52. Were there any reservations regarding the international responsibility of the State at the moment of the acceptance of the Court’s jurisdictional competence?

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No.

53. What was the constitutional controversy that resulted in the declaration of the constitutionality of the 250 spaces per year that North Shore University has? (Paragraph 13 of hypothetical)

The Court had to decide if the establishment of the 250 spaces per year was constitutional.

54. In paragraph 4 of the hypothetical, the percentage of 53.8%, refers to the total population of North Shore or to the total population of afro-descendents in Iberoland?

It refers to the population of North Shore.

55. In Iberoland, because of the Federal system, do the Federal Supreme Court and the [provincial] Supreme Courts coexist, and do they possess the capacity of declaring the unconstitutionality of laws?

Iberoland possesses a Federal Supreme Court as well as a Supreme Court in each Province. Both have the capacity to declare the unconstitutionality of laws.

56. In accordance with paragraph 13 of the facts, the number of applicants that fulfill the minimum standard of admission is greater than the ones that actually were admitted. It is necessary to establish what were the criteria used by the provincial University to select the 250 students that were admitted.

See answer # 5.

57. Within the legal system of Iberoland, is affirmative action a component of the right to equality, or is it just a public policy?

The available information is limited to the facts described in the hypothetical case.

58. In relation to paragraph 19 of the hypothetical case, what measures were taken by the central government of Iberoland in response to the refusal of North Shore University to apply Law 678?

See answer # 10.

59. We know that Juana Olin obtained the minimum standards to be accepted in the University, but is there some information that demonstrates that she obtained such or even greater scores than the rest of the applicants that were actually admitted?

The available information is limited to the facts described in the hypothetical case.

60. In what sense does the Province of North Shore understand that Law 678 is discriminatory, as cited in paragraph 19(2) [of the hypothetical case] which refers to the quota system?

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The available information is limited to the facts described in the hypothetical case.

61. Which alternating criteria does the North Shore University use to select the 250 available spaces, within the applicants that surpass the minimum requirements?

See answer # 5.

62. What is the temporality of the affirmative action contained in the Law 678?

Article 63 of the Law 678 establishes different terms for the duration of the different forms of affirmative action methods mentioned in the law.

63. Which are the criteria to be considered an "afro-descendant student" and to benefit from the quota system established in Law 678: how many generations of ancestors, the discretionary appreciation of the external characteristics, or the self-declaration of the applicant?

In accordance with the practice adopted several decades ago, in particular since the 1950 census, the self-identification criterion has been used.

64. [We would like to know] are the provinces of North Shore authorized to apply "diffuse control" [judicial review], or if the North Shore University challenged judicially the unconstitutionality of the quota law.

The available information is limited to the facts described in the hypothetical case and in these questions.

65. What is the situation of women in Iberoland regarding the participation of wealth and access to economic, social and cultural rights?

The available information is limited to the facts described in the hypothetical case.

66. How is the family nucleus of Juana Olin composed, (how many siblings does she have and what are their activities)?

The available information is limited to the facts described in the hypothetical case.

67. What rank do international treaties on human rights have in the Iberoland Constitution?

See answer # 9.