

2010 INTERNATIONAL ROUNDS IN OXFORD

CASE

1. Cabengo is a former French colony which became independent in the 1960s. Until 1990, it was a Soviet-bloc single-party State. Since 1990, it has been a democracy, but rather a fragile one. Disputes over alleged diamond-smuggling from its neighbour, Poto, resulted in border warfare, and a good deal of civil unrest, throughout 1995. Aside from this instability, the people of Cabengo's main problems are economic, with half the population living on less than one US dollar a day, and social. The plurality of languages – the four million people variously speak over 50 different languages – has complicated Cabengo's transition from an agricultural economy to one based on export. In addition, one in 40 adults is HIV-positive. Gun crime is rife.

2. Despite these difficulties, Cabengo is blessed with great mineral riches: oil, natural gas, gold, iron and phosphate deposits, as well as, of course, diamonds. An area of outstanding natural beauty, it shelters some unique wildlife populations in its isolated swamp region.

3. For all these reasons, Cabengo's future is of international concern. Since 2003, the World Bank's International Development Association and the International Monetary Fund have granted access to interim debt relief to Cabengo under the Heavily Indebted Poor Countries Initiative. This debt relief is contingent upon Cabengo's addressing "serious concerns about governance and financial transparency" and "improving the lot of the poor through the delivery of education and health services".

4. The country is presently governed, after a controversial but ultimately accepted ballot, by the Cabengon Socialist Party, led by President Pierre Pontneuf. His party came to power with a manifesto to build a new school in each of the 12 départements of the country and four state-of-the-art hospitals. Three such hospitals have already been built, and proudly exhibited to international visitors. Poto's daily newspaper, 'The Citizen', jeers that these buildings are largely empty of people and equipment; reminds its readership that, when Shadow Minister for Health, Pontneuf proclaimed that the only effective treatment for AIDS was filtered water; and openly speculates on where the money for furnishing and running these brand new institutions has gone.

5. Cabengo is a member of the United Nations and has ratified the International Convention on Civil and Political Rights. Cabengo's basic law guarantees the right to freedom of expression and to hold opinions and impart information and ideas without interference by a public authority, subject to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, prevention of crime, protection of morals, protection of the reputation and the rights of others, preventing the disclosure of confidential information and maintaining the authority and impartiality of the judiciary. Fair and accurate reporting of judicial proceedings and of parliamentary proceedings is protected by qualified privilege, ie a newspaper or other media outlet can only be sued for such a report if it is published with malice. There is no restriction on media ownership, but the poverty of the general population is such that few of them have regular access to private digital televisions or to the Internet. Most of them take their daily news from the government-licensed television station, the two government-licensed radio stations and the government-owned newspaper. This newspaper is widely distributed free, and contains many small "give-aways" and competitions. The oligarchy of rich Cabengons, about 2.5% of the population, access their news

online or by subscription from the international media. There are two dissentient media voices: 'La Semaine Cabengaine', which favours the opposition (the Cabengon Liberal Party) and 'The Citizen', which circulates principally in the border area between Cabengo and Poto, but is often recirculated throughout the country by opponents of the Cabengon Socialist Party. Recently 'The Citizen' – which has no office or assets in Cabengo – wrote an editorial suggesting, in heavily allusive terms, that President Pontneuf was carrying the HIV virus and being treated for it by anti-retroviral drugs smuggled from Poto. This rumour has spread through most levels of Cabengon society, to the point where President Pontneuf issued a public denial.

6. The basis of the rumour was the statement by a nursing source in Poto to a 'Citizen' journalist, Bernadette Abloh, that the President's wife had regularly been seen to attend at a specialist hospital in Poto for the treatment of HIV and other infectious diseases and to uplift a small parcel on each occasion. Ms Abloh, intrigued but considering that a number of other common sub-Saharan diseases were treated at the same clinic, pressed the source to find prescriptions or other documentary evidence that President Pontneuf was being treated for HIV at the clinic. The source, on payment of money, produced two medical files. According to them, the President had been tested for HIV and found to be HIV-negative. However, he was found to be carrying a gene for sickle-cell anaemia. The President's wife's file disclosed her to be carrying the HIV virus and, moreover, to be suffering from sickle-cell anaemia.

7. The Poto 'Citizen' printed both diagnoses, vaunted the superior credentials of the Poto hospital, attacked the President for "hypocrisy" in having his own family treated there with retrovirals whilst denying effective drugs to his fellow country people, questioned his physical and moral fitness to govern and hinted that his wife had been unfaithful.

8. 'La Semaine Cabengaine' picked up this story, omitting the suggestions as to infidelity.

9. President Pontneuf and Madame Pontneuf immediately commenced actions for breach of confidence against 'La Semaine Cabengaine' for knowingly publishing the health records of another without consent. He also issued the following statement, which was broadcast in full on the State-owned television channel and both radio stations and carried on the front-page of the State-owned newspaper:

"I am shocked and disgusted that 'La Semaine Cabengaine', for its own political reasons, should stoop to betraying the medical secrets of my gravely ill wife, lifted from 'The Citizen', the mouthpiece of our country's enemy. It is true that, like many of my countrymen, I carry the gene for sickle-cell anaemia. This does not mean that I suffer from the disease. Neither my physical capacity nor my life expectancy is affected by this. Sadly, however, since my wife does suffer from the disease, we took the decision not to have children. It is also true that – as the result of a blood transfusion she received during her treatment for this terrible disease – my wife contracted HIV and is treating it with drugs procured in Poto. My wife is an independent adult, not my colonial vassal. Her treatment is a matter for her. I respect that. I can only wish that the gutter-press of Cabengo had done so as well, rather than intruding upon a complex personal and familial tragedy. I would therefore request the Cabengo media, for the future, to leave my wife and me alone with our grief."

10. In the meantime, the World Bank and IMF were becoming increasingly concerned about reports – substantiated in a London court case – of lavish spending by President Pontneuf, his family and allies; the shortage of teachers and doctors in many regions; and the lack of transparency over what was happening to Cabengo's export revenues and to the foreign aid which it was receiving. The leader of the opposition, François Pasteur of the Cabengon Liberal Party, challenged President Pontneuf to a live debate on the issue of health provision and spending in the country, on State television and radio. This was enthusiastically endorsed by a number of voices, domestic and international. President Pontneuf agreed. The debate was to take place in the Cabengon Parliament, with invited gallery guests

from accredited media organisations. The BBC, Reuters, Dow Jones, Le Monde and Le Canard Enchaîné were all permitted to attend.

11. A fortnight before the debate was due to take place, Madame Pontneuf, while driving to Poto for an appointment at the clinic, was killed by a bullet wound in the head. Her husband said that the diamond earrings, bracelet and necklace she had been wearing that morning had been stolen from her corpse. A murder investigation was launched. In the circumstances, the Minister for Health, Eugène St Lo, stepped into the President's place for the debate.

12. The debate was well attended, heated and ultimately short. François Pasteur demanded figures breaking down how much of the country's foreign aid had been spent on the health sector and how much, as a percentage, of Cabengo's oil and other mineral export revenues had gone to health. The transcript runs as follows:

St Lo: Only the President has the up-to-date figures. However, President Pontneuf's hospital building programme is there for all the world to see.

Pasteur: But you're the Minister for Health. The Socialist Party are all empty promises and empty hospitals. All the world can see that President Pontneuf's health system is not good enough for his own family.

St Lo: This is an indefensibly tasteless personal attack on a bereaved man.

Pasteur: Bereaved man? He is a wife-murderer.

Speaker of the Parliament: That is an extremely serious allegation and the President is not here to defend himself. I cannot allow the debate to continue in these terms. Have we any questions from the visitors' gallery?

13. At this point, Bernadette Abloh, wearing a 'La Semaine Africaine' identity badge, walked up to a lectern, which was next to a camera, and held up to the lens statements from the President's credit cards showing lavish expenditure on expensive goods including healthcare in Poto, jewellery and the upkeep of apartments in Paris, Vienna, Los Angeles and New York. She stated that she had reason to believe that these credit card bills were met using funds from companies which had received money from trading in Cabengon diamonds and oil. Ms Abloh was escorted from the lectern by two security guards. However, international journalists continued to direct questions to a stuttering St Lo about the President's spending. The debate, truncated by half an hour, received copious international coverage nonetheless. The following day, 'La Semaine Cabengaine' had as its headline: "Hypocrite, Thief, Murderer?" and a verbatim account of the proceedings at the debate.

14. In the wake of these events, Ms Abloh was prosecuted under the Cabengon Privacy, Data Protection and Credit Fraud Prevention Act 2008 for showing the President's credit card details to the nation. She was also prosecuted for giving a false name to the Parliament's security officers before being admitted to the Gallery. The judge rejected the argument that this disclosure was in the public interest, stating that the private expenditure of the President was not a matter for the detailed knowledge of the general television-watching public. If there were questions to be asked about the use of export revenues and aid, these were matters for, respectively, the Cabengon Parliament itself and the donors of the aid. Ms Abloh was sentenced to four months in prison. On appeal, the convictions were upheld, but a sentence of two months was substituted.

15. President Pontneuf sued the television channel, 'La Semaine Cabengaine' and the individual journalist, Marie Challet, who wrote the report of the debate proceedings, for the defamatory allegations that he was a hypocrite, thief and a wife-murderer. The judge declined to hold any of them liable for carrying or reporting François Pasteur's comments, saying that not only were all these remarks covered by qualified privilege, it was difficult to see how the TV station, in a live broadcast, could be held responsible for broadcasting what Pasteur had said on the floor of the Parliament. He also exculpated Marie Challet for her coverage, as she had had it "legalled" by the newspaper's legal advisors and had originally headlined her piece "All The President's Spend". However, he found 'La Semaine

Cabengaine' liable for damages of £230,000, of which £200,000 was compensatory and £30,000 exemplary, for its altered headline. Coupled with the newspaper's earlier coverage of the Poto 'Citizen's' "medical records" exclusive, the choice of the headline was indicative of malice which would defeat qualified privilege. The judge also held that qualified privilege did not and could not extend to reporting the words of "a renegade journalist" speaking from the gallery. Although he accepted that there were "legitimate questions for the President to answer" about his financial affairs and their relationship with those of Cabengo, this could not justify an accusation of uxoricide:

"Armed robbery is sadly endemic in our society. There is nothing other than the timing of Madame Pontneuf's death to support any culpability on the part of the claimant. An allegation that someone is responsible for the murder of his own wife is as defamatory as may be imagined. Only the strongest evidence could justify such a slur."

16. The Poto doctor who had treated Madame Pontneuf confirmed her and her husband's diagnoses, but refused to state when and how Madame Pontneuf contracted the HIV virus, whether she had ever had a blood transfusion or if her husband knew of her HIV status.

17. The same judge heard the breach of confidence case brought by President Pontneuf against 'La Semaine Cabengaine'. He called the newspaper's reports of the Poto 'Citizen's' story "an appalling invasion of personal privacy and an abdication of a national newspaper's responsibility to find and to investigate its own stories". Attacking the newspaper for blighting the last days of the ill-fated Madame Pontneuf, he awarded £35,000 to the President and £85,000 posthumously to Madame Pontneuf, to be paid to the President as her heir.

18. In the meantime, the Cabengon Socialist Party brought forward legislation making the licensing of broadcasting enterprises, TV, radio or online, contingent upon all programmes and contributions, including posted texts from the public, being pre-recorded and/or pre-moderated. This was narrowly passed in the Cabengon Parliament. The day after the Bill went through, the Cabengon police announced that they were closing the murder investigation into Madame Pontneuf's death.

19. That night, a group of Madame Pontneuf's family of origin, friends and fellow patients at the Poto Clinic arranged a candlelit vigil outside the President's house, in memory of her. This group was soon joined by other cabals: from 'La Semaine Cabengaine', which, from the cumulative impact of the breach of confidence and defamation damages, was on the verge of closing down; from the Cabengon Liberal Party, which was concerned about the lack of progress on the allegations of financial impropriety; and from Poto readership of 'The Citizen', which had run a series of articles saying the Cabengon President was literally getting away with murder and calling for the release of their journalist.

20. The President, in a bid to quell the situation, came on to the balcony to "thank everyone for this tribute to my late wife". Some of the crowd threw stones at the balcony. Immediately, he called his militia into action. Although the militia was ordered to shoot over the heads of the crowd, and there was no fatality, Madame Pontneuf's brother was badly wounded, along with several others.

21. In the wake of this fracas, Bernadette Abloh, with three weeks left to serve of her two-month sentence, was prosecuted afresh for incitement. It was deemed that she was directly responsible for the chain of events which led to this bloodshed, to discord with the state of Poto and to adverse further economic and political scrutiny by the World Bank. She was gaoled, as a second offender, for a year. Another appeal failed. She and 'La Semaine Cabengaine' submitted an application to the Universal Freedom of Expression Court that their respective Article 19 rights had been violated in the following ways:

- (a) The requirement that all broadcasts, including online broadcasts, be licensed and pre-recorded, which interfered with 'La Semaine Cabengaine's' aspirations to run an interactive online newspaper site.
- (b) The prosecutions of Bernadette Ablon for:
 - (i) giving a false identity to Parliament;
 - (ii) breach of the 2008 Act; and
 - (iii) incitement.
- (c) The finding of breach of confidence against 'La Semaine Cabengaine' and the quantum of damages awarded.
- (d) The absence of an explicit right to protect journalistic sources stopped 'La Semaine Cabengaine' from leading the anonymous evidence of a woman who claimed that the President had hired a hitman to shoot Madame Pontneuf.
- (e) The finding that qualified privilege did not cover interventions from the Gallery during a parliamentary debate.
- (f) The quantum of defamation damages awarded against 'La Semaine Cabengaine', especially given the judge's acceptance that there were "legitimate questions to answer" for the President.