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TOPIC: “Affirmative action policies may be the long needed solution to curbing inequalities or be part of the problem, depending on how the policies themselves are handled.” IS AFFIRMATIVE ACTION THE SOLUTION TOWARDS SOLVING INEQUALITIES OR PART OF THE PROBLEM?

BRIEF HISTORY AND CURRENT SITUATION

Affirmative action entails allocating resources and opportunities specifically to minorities and disadvantaged groups in an attempt to reduce the discrimination they face. This may be in terms of positions in the places of work or leadership in the political sphere and entries in learning institutions. Over the years, affirmative action has been implemented through constitutional mandates, laws, administrative regulations, court orders or voluntary initiatives. These programs have been seen to aid sustainable development goals such as reducing gender inequality, improving quality of education, ensuring decent working conditions, and enabling economic growth.

Affirmative action policies differ around the world, depending on the specific country. Examples include the 1961 executive order in the US concerning employment for minorities, the Rio education system in Brazil that deals with education for the black minorities, the 2/3 gender rule in Kenya, and South Africa’s Employment Equity Act 1998. However it should also be noted that some countries such as Sri Lanka and India have mixed reactions towards affirmative action policies.

Is affirmative action the answer? Affirmative action raises the question, what are disadvantaged groups? Who fits in this category? This problem can be seen especially in the US where Asian and Jewish Americans have been subject to discrimination in the United States, but they are by and large excluded groups in the Affirmative Action schemes. Elite members of these ‘disadvantaged groups are being seen to be reaping the benefits of affirmative action. Moreover, the initiative is plagued by challenges like nepotism, tribalism, negative discrimination and lack of clear guidelines just to name a few. One may argue that affirmative action is working around discrimination, and that instead of that, countries should confront discrimination head on rather than going around it. Further, affirmative action being seen as positive discrimination raises the question of the place of equality.

From the foregoing, discuss whether affirmative action is the answer or the problem towards solving inequalities.

RELEVANT UN ACTION

The United Nations has been a great pioneer in championing for the reduction of inequalities and has done this through the adoption of the CEDAW Committee Report on affirmative action particularly General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures. The report seeks to empower states to eliminate all forms of discrimination against women and imposes an obligation on States to respect, protect, promote and fulfil the right to non-discrimination for women.

EXPECTATION FROM THE DIAS

Commissioners while conducting their research and coming up with the draft articles should tackle the issue of positive discrimination in relation to affirmative action in their determination of whether affirmative action promotes inequalities or not. They should also examine the place of affirmative action in international law specifically on the force of law it commands.

Moreover, the commissioners should focus on the challenges around affirmative action in the determination of whether it is the solution to solve inequalities around the world. Finally, they should use and lay emphasis on the international current legal frameworks on affirmative action such as CEDAW, case laws books and other credible sources of information that provide a clear legal analysis and backing while picking a side and answering the question.

DRAFT ARTICLE RULES

The format for drafting a Draft Article is to be communicated by your PILC at your chapter level in advance. However, the Chair of the International Law Commission **MAY** decide to send the Rules for the Draft Articles depending on the need that may arise. That notwithstanding, the Draft Articles should be submitted to the email address herein being (pilc@kenyamodelun.or.ke) two days before the actual day for the mock debate and for the avoidance of doubt the **14th January 2021 by 5pm**. The font type should be **Book Antiqua**, with a **font size of 12, spacing of 1.5**. Ideally the Draft Article should consist a minimum of 7 pages with no limit as to the maximum amount of pages.

CLOSING REMARKS

From the dais, we wish you the very best as you embark on your research and hope to see you at the first Mock Debate. We are looking forward to a fruitful day full of vigor, fun and most importantly quality debate.