

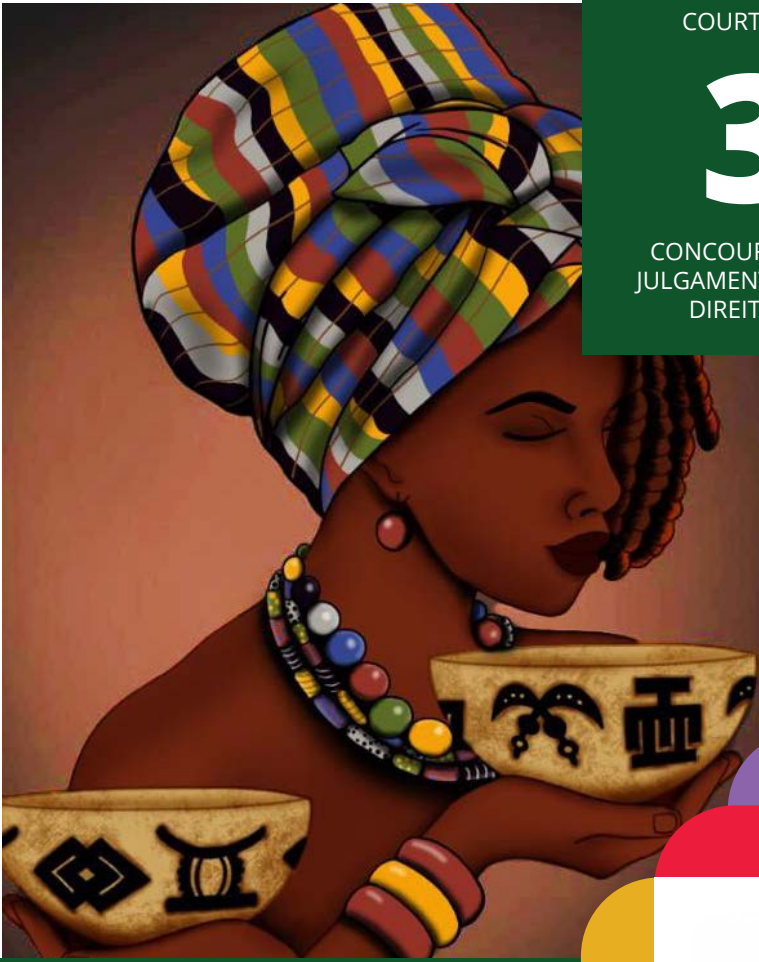
L'AFRIQUE: DE LA MÉCONNAISSANCE À LA RECONNAISSANCE DES DROITS DE L'HOMME

AFRICA: FROM HUMAN WRONGS TO HUMAN RIGHTS

**Christof Heyns**  
AFRICAN HUMAN RIGHTS MOOT  
COURT COMPETITION

**32**

CONCURSO AFRICANO DE  
JULGAMENTO FICTÍCIO SOBRE  
DIREITOS HUMANOS



KNUST-Kumasi  
**GHANA**  
3 - 9 September 2023



[www.chr.up.ac.za/moot](http://www.chr.up.ac.za/moot)



Organised by the

CENTRE FOR HUMAN RIGHTS,  
UNIVERSITY OF PRETORIA  
In collaboration with  
KWAME NKUMAH UNIVERSITY OF  
SCIENCE AND TECHNOLOGY

**32ND CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION  
KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY  
3 – 9 SEPTEMBER 2023, KUMASI, GHANA**

**HYPOTHETICAL CASE  
Before the African Court on Human and Peoples' Rights  
in the case between  
Gozanga Human Rights Association  
and  
The State of Sentsifia**

1. The State of Sentsifia is a small coastal state in West Africa with a relatively high-density population. It is bordered on the north-east by the Republic of Camelot and on the south-west by the Kingdom of Kategath. On the west side, it is bordered by the State of Zeitounia, and on the east side, by the Republic of Afutuo. Sentsifia has a per capita gross national income (GNI), using the World Bank Atlas method, of \$ 150 as at 2019, and an annual economic growth rate of 1.5 per cent. It has thus been categorised as a lower middle-income developing country. The Sentsi Dollar (SED) is the country's currency; the exchange rate of SED to Ghana Cedis is 2:1. Sentsifia has 16 regions, 34 Metropolitan Assemblies, 50 Municipal Assemblies and 160 District Assemblies. Its capital city, Aseda, lies on the Gulf of Guinea. Its 34 Metropolitan Assemblies are located in its 16 major cities, which are also regional capitals. The wealthy, westernised and more affluent part of the population largely reside in these 34 Metropolitan Assemblies. Municipal Assemblies are located in the semi-urbanised towns and District Assemblies in rural areas. These areas are occupied by the semi-elite and marginal income earners. Based on the 2020 national population census, Sentsifia's population numbers 32 million and its dependency ratio is 67 per cent. Its main sources of income are agriculture, mineral mining, cocoa farming, oil production, timber export, and international grants. The proportion of the country's annual budget devoted to education, as a share of its Gross Domestic Product (GDP), was 6.5% in 2019/2020, 7% in 2020/2021, and 6% in 2021/2022. The country also relies heavily on foreign investment to capitalise its industry and infrastructure. Sentsifia is an active member of the United Nations (UN) and African Union (AU).
2. Sentsifia is steeped in ancient tradition and culture, which is envied by its neighbours and their people. It has **for example** consistently boasted of its Hugono Trees, an ancient plant unique to Sentsifia. These trees are used primarily for the production of immune boosters and drugs for respiratory related diseases. According to the 2018 Osborne Scientific Report, the Hugono Tree is adaptable and thus can be used to produce medicine for colon cancer and respiratory related diseases.

3. It has for centuries maintained close and peaceful relations with all its neighbouring countries, especially the Republic of Camelot, with which it has a bilateral trade commerce arrangement. In January 2019, Sentsifia mediated the execution of the “Bilateral Lasting Peace Treaty” between the Republics of Afutuo and Camelot to end a century of warfare over the Kikisi Peninsula, a region rich in crude oil, lying at the south-east side of Sentsifia. Under the Treaty, the states agreed to withdraw their forces from the region and to jointly explore and mine the crude oil in the region and share the profits equally. Sentsifia supervised the process leading to the withdrawal of the forces of the two states from the region. Since then, no form of attack or atrocity has been recorded in the region. However, three months after the mediation, the Camelot army resurfaced in the region and has since been stationed there.
4. Sentsifia gained independence from Britain in 1957. Since the adoption of the Fourth Republican Constitution in 1992, it had experienced continuous peaceful changes of government. It has consistently prided itself on being a country in which the rule of law prevails, and in which an effectively-functioning judiciary is in place. It has retained a number of laws adopted during the colonial period, including the Unnatural Offences Act of 1960, which criminalises “unnatural acts”, defined as “consensual sexual acts between adults of the same sex committed in private”. The Constitution of Sentsifia contains a Bill of Rights consisting of civil and political rights mirroring the provisions of the American Convention on Human Rights. The only socio-economic rights in the Bill of Rights is the “right to basic education”. Sentsifia has a vibrant civil society. The NGO Registration Act of 1995 requires all non-governmental organisations (NGOs) to register with the Sentsifia Department of Social Welfare and Development in order to operate. By the end of 2022, a total of around 350 NGOs were registered. While the Constitution makes no reference to the position of international law in the country, the Supreme Court has made it clear that Sentsifia is a dualist state, holding that treaties that have been ratified by the state do not form part of domestic law unless specifically domesticated by an Act of Parliament. The Supreme Court further held that principles of customary international law form part of the domestic law to the extent that they are not incompatible with any provisions of domestic legislation.
5. Sentsifia operates a multiparty democratic system with the dominating political parties being the Sentsifia Peoples’ Front (SPF) and Alliance for Progress Party (APP). In the December 2016 elections, a new government led by Mr Ragnar Lotbrook of the APP came to power, overthrowing the incumbent government led by Dr Kojo Adarkwa-Papalano of the SPF. Since his ascendance to the presidency, Sentsifia’s President, HE Ragnar Lotbrook, has made public statements, including at the AU in Addis Ababa, Ethiopia in March 2018, that his government is committed to ensuring quality education, fighting corruption, guaranteeing public health and safety

and to the principles of international law enshrined in the AU Constitutive Act and UN Charter, particularly the protection of human rights. Sometime after assuming office, President Ragnar Lotbrook rolled out the Free Senior High School (FSHS) policy. Under this policy, all students who have successfully completed seven years of primary school and the first two years of secondary (or “high”) school are admitted to the last three years of secondary school without any charge for tuition, accommodation, sustenance and learning materials. There are 13,000 secondary schools in Sentsifia. Praises were heaped on President Ragnar Lotbrook locally and internationally for this novel initiative. During the mid-year budget review in July 2018, the Minister of Finance, Kofi Vitzseck, noted that “education is the cornerstone of development. The FSHS policy is here to stay.” He also revealed that the government is committed to securing more international partnerships with multinational companies to continually finance the FSHS policy. He also announced that the first year of implementation, the 2019/2020 academic year, starting August 2019, would only cover “approximately half of all secondary schools”, due to the need to ensure “appropriate budgetary planning and allocation”. The FSHS was in fact rolled out to 6,111 secondary schools in the 2019/2020 academic year.

6. The Sentsifia judiciary is structured into superior and inferior courts. The superior courts consist of the Supreme Court, Court of Appeal and the High Court. The Supreme Court, the apex court in Sentsifia, is the final appellate court in all matters, civil and criminal, all matters relating to the enforcement and interpretation of the 1992 Constitution and supervisory jurisdiction over all courts below it. The Court of Appeal is clothed with appellate jurisdiction only. It hears appeals from High Courts. High Courts are established in all the sixteen regions. It has original, appellate and supervisory jurisdiction. In terms of its original jurisdiction, the High Court hears all matters on the enforcement of fundamental human rights guaranteed by the 1992 Constitution. In particular, it has the power to adjudicate on human rights matters submitted before it by all persons, natural and juristic alike. With its appellate jurisdiction, appeals from the Circuit Courts, District Courts, and Family Tribunal lie as of right to the High Court. By exercising its supervisory jurisdiction, the High Court supervises all the inferior courts, quasi-judicial bodies and administrative tribunals. All citizens have the right to challenge the constitutionality of any legislation, or the conduct of any public or private body. Sentsifia courts follow a strict system of precedent, though the Supreme Court has the competence to depart from any past decision when it is “in the interest of justice to do so”. The inferior courts consist of the Circuit Courts, District Courts, Family Tribunal, Juvenile Courts and the Judicial Committee of the Traditional Councils, Regional Houses of Chiefs and National House of Chiefs. The District Courts have jurisdiction over misdemeanours and small civil claims not exceeding SED\$500,000 in value. The Circuit Courts deal with felonies, capital crimes and other civil claims beyond the prescribed limit for small

claims but not exceeding SED\$2 million in value. Most cases are heard in the inferior courts, which experience a massive backlog. Media reports have over the years indicated that corruption and bribery impede the independent functioning of the inferior courts and the High Court. The average period between the submission and the hearing of a case before the Court of Appeal is two years.

7. The country's 1992 Constitution creates the Commission on Human Rights and Administrative Justice (CHRAJ). The CHRAJ is a specialised human rights body, headquartered in all the 16 regions and offices in all the Metropolitan, Municipal and District Assemblies of Sentsifia. It has the power to investigate all allegations of violations of human rights and corruption involving public office holders. It has the same adjudicatory framework as the High Court and is clothed with all the procedural and inherent jurisdictional powers of the High Court. A research study conducted by the Centre for Human Rights and Democratic Development (CHRDD) in 2021 indicates that not less than 60% of all cases of alleged human rights violations in the country are instituted before it. Access to CHRAJ is open to all persons who are citizens or resident in Sentsifia but with civil society organisations and pressure groups, access is opened to those groups registered under the laws of Sentsifia. Since its inception in 1994, it has heard 7,200 complaints and made 6,200 "recommendatory" orders in favour of complainants and victims of human rights violations. It has been reported that close to 75% of its orders receive unobjectionable compliance within three months from the date it was first made. Last year, during the AU Day ceremony, Sentsifia's CHRAJ was commended for its commitment to the protection of and respect for fundamental human rights in Sentsifia. It was named as one of the most efficient institutions in Sentsifia and in Africa at large and in that regard was crowned as the winner of the prestigious Christof Heyns Gold Baxter Honorary Award. In recent times, concerns have been raised about the incessant dismissal of complaints by CHRAJ. Since January 2023, it has not held proceedings despite the numerous complaints received. **The budget allocated to the CHRAJ has since the 2022/2023 budget year been significantly reduced. In his 2022/2023 budget speech, the Minister of Finance noted that 'due to the proliferation of independent institutions financed by the state, in particular the addition of the OSP, compounded by the continuing fiscal effects of Covid-19, the percentage of the budget available for the CHRAJ will be much less than in previous financial years'.**
8. Sentsifia has enjoyed a stable democratic political system characterised by regular free and fair elections. The political system is tolerant and accommodative of different political viewpoints. However, for the past three years the media has criticized the ruling party of President Ragnar Lotbrook, the APP, of suppressing political and cultural tolerance, enrolling infeasible policies, misappropriation of public funds and engaging in corruption. The Gozanga Human Rights Association (GoHRA) is one of

the most prominent and active human rights organisations in the country. GoHRA advocates for the protection of and respect for a wide spectrum of human rights in Sentsifia and internationally. It was registered in terms of the NGO Registration Act in 1996. It further gained observer status before the African Commission on Human and Peoples' Rights (African Commission) on 15 February 2015, and with the African Children's Committee on 22 March 2016. GoHRA has filed a number of complaints with the African Commission alleging human rights violations by certain member states of the AU.

9. Sentsifia is a party to the following treaties, shown below with the year of ratification:

<b>Treaty</b>	<b>Year Ratified</b>
African Charter on Human and Peoples' Rights	2005
African Charter on the Rights and Welfare of the Child	2012
United Nations Convention on the Rights of the Child	1997
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	2004
International Covenant on Civil and Political Rights	2002
International Covenant on Economic, Social and Cultural Rights	2002
Protocol to the African Charter on Human and Peoples' Rights on the Establishment the African Court on Human and Peoples' Rights	2017
African Union Convention on Preventing and Combating Corruption	2008
African Union Charter on Democracy, Elections and Governance	2017
Convention on the Elimination of All of Forms of Discrimination against Women	1998
African Charter on Values and Principles of Public Service and Administration	2011
African Charter on the Values and Principles of Decentralization, Local Government and Local Development	2016
United Nations International Health Regulations No 10921	1971
Constitution of the World Health Organization and Amendments	1959
International Convention for the Protection of All Persons from Enforced Disappearance	2009
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1987

United Nations Convention against Corruption	2010
UNESCO Convention Against Discrimination in Education	1995
Revised African Convention on the Conservation of Nature and Natural Resources	2016
United Nations Framework Convention on Climate Change	2019

The Sentsifia Parliament has not enacted these treaties in their entirety into domestic law. Limited amendment to align domestic legislation with some of these treaties has occurred subsequent to the ratification of the treaties. Sentsifia deposited the optional declaration under article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights on 5 July 2019.

10. Sentsifia is a foreign investment hub. Many multinational companies engage in diverse businesses in Sentsifia including mineral extraction and processing, trade and manufacturing. The south-east parts of Sentsifia, predominantly a rural area occupied by the Akan tribe, is rich in gold, bauxite and manganese. It is dominated by two multinational mining companies, the Adryx Mining Engineers Ltd and Angold PLC, whose net profit is US\$ 5 trillion per annum. Adryx Ltd and Angold PLC have been licensed and granted mining leases, spanning over 25 years. Mining constitutes 35% of the annual GDP of Sentsifia. The laws of Sentsifia insist on a 50% local content participation policy and also requires that 35% of the grand profits of all multinational companies be invested in rural infrastructure, industry and development. Under their respective lease agreement, the two companies undertook to ensure an environmentally-friendly ecosystem as they engage in their mining operations.
11. Over the years, all multinational companies operating in the country have been supervised by the Ministry of Foreign Investment headed by Professor Adwoa Lagartha, the majority Member of Parliament for Aseda East constituency. In June 2019, Parliament passed the Public-Private Partnership Act. This Act established the Foreign Partnership Board (FPB), which operates under the auspices of the Ministry of Foreign Investment (MoFI). Under the new structure, royalties and investment equities required of all multinational companies are paid to the Foreign Partnership Board. Since its inauguration on 7 August 2019, the Board has been chaired by Mr Nsana Adongo, the Minister for Local Government and Rural Development. In its 2022 annual report, the Auditor General noted that the Board has recorded a cash flow deficit of SED\$ 20 billion, which was unaccounted for by the Board. The report also noted that Mr Nsana's assets have increased in value by 15 per cent over the last three years.

12. Earlier in June 2018, residents of Sentsifia’s mining towns expressed concerns about the operations of Adryx Mining Engineers Ltd and Angold PLC. The residents had complained that aside from their leased concessions, the two companies have, in cooperation with some chiefs and politicians, started engaging in illegal small-scale gold mining. They lamented that the chiefs are selling lands to the two companies through the influence of some politicians, notably, Mr Nsana. According to the residents, on two occasions, Yaw Aluwa, a resident of Akumumu, captured Mr Nsana receiving an enveloped parcel from officers of the two companies. In October 2018, *The Tiger Eye*, a diasporan online TV station, run by Mr Kweku Zara, a Sentsifian national residing in the United Kingdom, reported that Adryx Mining Engineers Ltd and Angold PLC now engage in deep-earth mining that involves the removal of vegetation covers, lumbering, soil earthing and rock-blasting using explosives and other methods such as gas pressure blasting pyrotechnics. In the same month, the United Nations Environment Programme (UNEP) reported that local habitats, inland streams, rivers, forest vegetation, and farms have been decimated because of “unsafe” deep-earth mining practices. The report projected that by 2025, two-thirds of the entire village outlet in the major mining communities could be displaced, rendering many persons homeless.
13. The Sentsifia Minerals Commission (SMC) conducted a night raid and arrested 50 Camelot nationals who worked on unlicensed concessionary lands. The SMC seized many pieces of mining equipment such as excavators, wheel loaders, rotary drill rigs, motor graders, electric rope shovels, hydraulic drilling shovels, large dozers and heavy-duty trucks, conspicuously inscribed with the emblems of Adryx Ltd and Angold PLC. Later, the SMC arrested Mr Putin Yeungo, a Camelotian national who owns all the equity shares in Adryx Ltd and Angold PLC. No chief nor politician was arrested. Together with the other Camelotians, he was extradited to Camelot for prosecution after H.E. Kofi Mawere, the President of Camelot, and President Ragnar Lotbrook reached an agreement on 21 August 2020. Under this agreement, President Mawere promised to hold Mr Putin Yeungo and his accomplices accountable under Camelot laws. He also promised that sufficient compensation will be paid to the affected persons. Camelot indicated that it has initiated negotiations with the AfroMax Bank, a **China-based** investment bank, for a loan sum of US\$ 7 million to compensate and rehabilitate the affected persons. In September 2020, the Camelot High Court tried and convicted Mr Putin Yeungo and the 50 others for illegal mining and sentenced each of them to 15 years in prison. Under Sentsifia law, the punishment for illegal mining is imprisonment not exceeding 3 years or a fine of not more than SED\$ 2 million or both. Mr Putin Yeungo and the 50 others have **on 1 January 2023** been granted pardons by President Kofi Mawere. Camelot is yet to compensate the affected Sentsifian nationals.



14. Local habitats and farms continue to wane leaving many families destitute, as reportedly, *orpailleurs* continue to operate. Aggrieved by the incessant deterioration of their livelihood, an association of potentially displaced persons sued in the High Court and claimed compensation for loss of livelihood and an order for rehabilitation and relocation on 15 January 2021. On 14 February 2021, the High Court awarded US\$ 3.5 million monetary damages to the local inhabitants but made no orders as to rehabilitation and relocation of the inhabitants. The High Court's decision was affirmed by the Court of Appeal in April 2022 and the Supreme Court in July 2022, following an appeal by the government. The government, which is yet to pay the compensation, has provided a temporary shelter site made of leather tents to the affected persons and has indicated that new lands have been acquired to build a "relief city" for them.
  
15. Business magnate Kwame Nsenku is the uterine brother of Mr Nsana Adongo. Nsenku owns one of the largest mining concessions at Akumumu, a small town in an area rich in manganese and bauxite reserves. In November 2020, he launched his new estate company worth a little over SED\$ 25 billion. One Sunday evening, during the *The Pulse* programme on United Television, he indicated that his brother has been of enormous support to him. When questioned on how at the age of 25, he has been able to secure such wealth, Nsenku with a broad smile replied: "Get the best people to be at the corridors of power and see if you will not succeed". On the same programme, Nsenku also said that this is the least of his assets and he and his brother "own a lot together". The next day, Nsenku's statement during the interview was a major headline in the media. Many civil society organisations (CSOs) called for the prompt investigation of Nsenku and his brother. Feeling pressured by the demands of the CSOs and the general citizenry, President Ragnar Lotbrook called on Parliament to expeditiously pass a specialised law creating a body tasked solely with the investigation and prosecution of corruption in Sentsifia. In the interim, he publicly encouraged the CHRAJ to investigate Mr Nsana and his brother "if possible". The next day, CHRAJ announced the start of investigations. All the proceedings before it was to be held *in camera*. A week later, the acting director of CHRAJ, Dr Jojo Asemisisi, revealed the following during a press conference: "Probity requires that all persons be held accountable for corruption, which is an insidious public crime. My colleague in the public service, Nsana, whom I have known since childhood, will be fine as long as he is not found guilty".
  
16. On March 2021, a Private Member Bill establishing the Office of the Special Prosecutor (OSP) was introduced to the Sentsifia Parliament by Honourable Mustapha Aladin, the chief whip of the SPF minority caucus. Under the Bill, the OSP is mandated to investigate and prosecute cases of corruption involving public officers and private persons. A month after the Bill was introduced, it was unanimously

passed into law. The OSP was established as an independent body, but its prosecutorial powers are 'subjected to the powers of the Attorney-General' under article 80 of Sentsifia's Constitution. Under his powers under the OSP Act, the President immediately appointed Mr Ivar Debana as the head of the OSP. On his inauguration, Mr Debana vowed to "tame the beasts of corruption and public irregularity" in Sentsifia. Within a few weeks, he launched the OSP complaint software and website. The platforms allow persons, however remote, to lodge anonymous complaints of suspected corruption and irregularities with the OSP.

- 17.** Within 24 hours of launching the platforms, the OSP received over 150 complaints of suspected corruption and irregularities. Many of these complaints alleged the embezzlement of funds, sale of government contracts and procurement breaches by officers of the MoFI and FPB, including Mr Nsana, between 2017 and 2021. However, the complainants did not leave any personal contact or documents to buttress the allegations. The OSP began collecting data on the allegations with the intention to launch a full-scale investigation into them. Meanwhile, two months after the OSP Act was adopted, CHRAJ found that Mr Nsana is not a corrupt person and his brother's wealth is "explainable" since he is a reputable businessman in Sentsifia. Following this, the OSP decided not to further probe the allegations against Mr Nsana and the officers of the FPB. The media and CSOs criticised CHRAJ's finding and the OSP's decision as irrational and unreasonable. On application by the Attorney-General, the High Court on 1 July 2021 quashed the OSP's decision and ordered that those investigations be reopened. The OSP immediately reopened the investigation against Mr Nsana and his brother. The investigation is ongoing.
- 18.** In the run-up to the December 2020 presidential and parliamentary elections, President Ragnar Lotbrook pledged his commitment towards securing "a better Sentsifia". In early January 2020, prior to the polls, the Covid-19 pandemic started in Sentsifia and ushered in a record-breaking decline in economic growth, and an increase in inflation and the cost of living. Foreign investment profit decreased by 56% from 2019 to 2020, and the SED decreased 40% in value in 2020, triggering job cuts across the private sectors and panic on the state-owned stock exchange. In early March 2020, all neighbouring countries closed their land, air and sea borders but Sentsifia closed only its land and sea borders. Local and international airlines continued to operate. Sentsifia recorded its first 300 Covid-19 cases after the celebration of its "Year of Return" festival, which took place in mid-March 2020. During the festival, over 13,000 Sentsifians living in China and Europe visited Aseda and other major cities along Sentsifia's coast, continuously for the two weeks period that the festival lasted.

- 19.** After the festival, the President issued a Directive that the major cities in Sentsifia be locked down indefinitely. A Presidential Directive has the status of legislation. All gatherings, including during funerals, church services, or in restaurants, bars or night clubs, and all forms of public transport were banned. All forms of public civil activism were also prohibited. Despite the implementation of the President's Directive, the number of Covid-19 cases skyrocketed. Persons who flouted the President's Directive were arrested and detained. One of the prisons used to detain transgressors was the state-owned housing complex, The Villa, a former battalion barracks that used to house retired military commanders. The Ministry of Health introduced a mandatory Covid-19 safety precaution policy, requiring the compulsory wearing of nose masks, face shields, social distancing and regular handwashing and hand sanitising, in line with World Health Organization's safety precautions. On 14 April 2020, the Aseda Regional police rounded up 50 children (aged between 15 and 17), who were unaccompanied on the streets of Aseda. The police encountered these children as they responded to protests by 20 senior staff members of GoHRA against the "harshness" of the Covid-19 containment policy issued by the government. The 20 arrested senior GoHRA staff members and the children were accommodated at The Villa, fed and catered for by the government. The Villa is surrounded with very high walls, and armed guards are placed at the entrance gate to ensure that no one leaves the compound. At that time, the Ministries of Food and Agriculture and Interior launched the government's mobile food bank policy, which upon an online request supplied food items and other necessities to be homes in need.
- 20.** As the pandemic grew and continued to impact negatively on the economy of Sentsifia, President Ragnar Lotbrook looked for innovative ways to stabilise the economy. On the advice of the Economic Management Team (EMT), he increased export and import duties, corporate taxes and implemented the electronic levy policy (e-levy), under which all mobile money transactions were surcharged to a 3.5% transfer-and-receipt tax. The e-levy policy generated a little over SED\$ 1.5 million during the first three months of its implementation and, thus, constituted 4% of the estimated generatable revenue. This, reportedly, was due to the sharp decline in the number of mobile money users. The pooled revenue failed to mitigate the current economic hardship in Sentsifia. As a result, the President began to cut a number of governments-sponsored policies across the various public sectors.
- 21.** On 19 June 2020, President Ragnar Lotbrook issued a public statement. It read, in relevant part:
- "The Covid-19 pandemic continues to be at a standoff with tranquil and normal human life. Like other economies of the world, Sentsifia's economy was adversely affected. Our currency has declined sharply, drastically reducing foreign investment. Many

investors are fearful of investing in our country. The number of cases keeps on increasing daily. Our economy remains in crisis. All governments policies taken to salvage our economy has led to a cul-de-sac. My fellow patriotic Sentsifians, the time has come for all of us to collectively wage war against the pandemic. Earlier in 2020, we secured 25 million doses of the *Pfizer* Covid-19 vaccine from the Kingdom of Kategath. I am informed that this vaccine boosts the immune system and builds a 93% anti-viral defense against the Covid-19 virus. Our fight against the virus is a gradual one but we will surely succeed. Against this background, the government has reviewed a number of policies it sponsors freely and singularly. In particular, the government has carefully reconsidered the FSHS policy and has realised the need to run it only for a limited number of schools. On that note, with immediate effect from the 2020/2021 academic year, starting in August 2020, the policy will run only in the 150 least endowed schools located across the various rural areas in Sentsifia. The FSHS programme will therefore regrettably be discontinued in most schools where they had been initiated last year. While we hope in the future to extend the coverage beyond these 150 schools, the policy shall in the foreseeable future under no circumstances run in any of the well-to-do schools located in the sixteen major cities in Sentsifia. This will help us to divert adequate resources to other sectors of the economy where there is a dire need for support. I charge all stakeholders to ensure the compliance and implementation of this directive with utmost good faith. May God bless us all and heal us of this deadly pandemic. Long live Sentsifia!”

- 22.** The President’s statement stirred mixed reactions from the general citizenry and civil activist groups. GoHRA started a nationwide online campaign against the government’s decision to limit the running of the FSHS policy. It also advocated against the continued “detention” of the street children and its 20 officers at The Villa. On 13 October 2020 the President lifted the Covid-related bans and restored public life. On the same day, he announced the immediate implementation of a compulsory vaccination policy, which requires all Sentsifians of 15 years and older to be vaccinated against Covid-19. The next day, officers of the Aseda Regional Health Directorate arrived at The Villa to carry out the vaccination of all persons present in The Villa. Despite some protestations, the children were all vaccinated without any testing, explanation as to the reasons for, or potential negative effects of the vaccine. They were all immediately taken in a vehicle and dropped off where they had been

rounded up earlier. GoHRA's senior officers refused to be vaccinated. Three of them were African Jehovah Witnesses, who contended that they were forbidden from undergoing the vaccination. The other 17 decided to refuse injections, too, out of "solidarity". On 14 November 2020, out of desperation, the GoHRA staff members allowed themselves to be vaccinated. They were all released two days later.

**23.** GoHRA continued its campaign against the government's decision to limit the FSHS policy to the 150 less endowed schools in Sentsifia. GoHRA obtained a legal opinion from a senior advocate, who advised that the prospects of a successful constitutional challenge against the limited implementation of the FSHS policy were remote, given that only the right to "basic education" is justiciable under the 1992 Constitution. On the basis of this advice, GoHRA abandoned its constitutional challenge against the FSHS policy. GoHRA submitted a case to the High Court, alleging numerous violations of Sentsifia's Bill of Rights by the government in the treatment of the children and its 20 senior officers at The Villa. The High Court dismissed the case, holding that GoHRA had no standing to bring the case on behalf of the children and its senior officers. GoHRA filed an appeal at the Court of Appeal on 5 July 2021. No date has been set for the hearing. Later in July 2021, the government issued a statement that, "regrettably, the FSHS policy will in the 2021/2022 academic year be implemented only in respect of the same 150 schools as in the previous academic year."

**24.** Aisha Moshoeshoe, a transwoman formerly known as Felix Caesar, is a Sentsifian national and renowned transgender activist, who resides in Aseda. Over the last decades, Aisha has been advocating for the right to non-discrimination on the basis of sexual orientation and gender identity. She has organised and held a number of symposiums and public lectures in over 20 African countries. On Friday, 16 July 2021, Aisha wrote on her Facebook, Twitter and Instagram handles:

*"I feel so excited guys. Guess what? Very soon, I will launch the Center for Sexual Minority Rights. Hurray. A new dawn has come for the gay, lesbian and transgender community in Sentsifia. I will do whatever it takes to champion the gay, lesbian and transgender cause in Sentsifia. We must invade their conscience to accept us. My people in Sentsifia, fear not. I shall not relent but travail to prevail!*

SIGNED

Your Babe\_MaMa LGBTIQ+

AishaMoshoeshoe @unapologetictransgender".

25. A fortnight later, Aisha secured a conference hall at the Kesewaa Executive Lodge and held a closed strategic planning meeting of around fifty members of the LGBTIQ+ community in Sentsifia. Based on the outcomes of the meeting, Aisha sponsored television advertisements on the major TV channels in Sentsifia depicting the advantages of progressive pro-LGBTIQ+ laws, government policies and judicial decisions in other African countries such as Angola, Botswana, Cape Verde, Côte d'Ivoire, Gabon, Malawi, Mozambique, Seychelles, and South Africa. The ads advocated for the abolition of the Unnatural Offences Act. Aisha acquired a permanent office at Aseda and named it the Centre for Sexual Minority Rights space (CSMR space). The CSMR office was adorned with colours of the International Lesbian and Gay Association (ILGA). An article in a newspaper reported that about 120 people – mostly young people with an average age of 20 – paid a day visit the CSMR office. In response to this report, religious leaders raised concerns on the impact of Aisha's activities on the youth and children. Many parents who reproached Aisha's campaign tagged her as the "Agent of the Dark World" and called on the government for intervention. On 3 December 2021, during a press briefing, the Minister for Chieftaincy and Religious Affairs, Kwame Brukusu, said: "We won't sit down for our values to fade. Aisha's gay activism shall be tamed at all cost. I give you this assurance". He also indicated the government's intention to close down the CSMR space.
26. In March 2022, Kwame Brukusu introduced the Proper Sexual Identity Bill to the Parliament of Sentsifia. The Proper Sexual Identity Bill, if adopted, would prohibit LGBTIQ+ activism and criminalise anyone who has been publicly identified as a lesbian, gay, bisexual or transgender person. The Bill is still pending before Parliament. At that time, Aisha applied to the Department of Social Welfare and Development to register CSMR under the NGO Registration Act. With GoHRA's assistance, all the documents required by the legislation were submitted. The submitted documents include CSMR's Constitution, which sets out its objective as follows: "CSMR aims to work towards the prevention and eradication of homophobia, lesbophobia and transphobia in Sentsifian society, and the protection of all the rights of LGBT persons, in particular, their right to health and to be free from violence, in Sentsifia and beyond." The Department rejected the application on the basis that the objectives of CSMR are not in harmony with the Sentsifian Constitution. GoHRA assisted CSMR to challenge the decision of the Department before the Aseda High Court. The High Court dismissed Aisha's action, upholding the Department's reasons. On appeal, the Court of Appeal affirmed the High Court's decision. Aisha further appealed to the Supreme Court. On 5 June 2022, the Supreme Court held that the Department's refusal to register the CSMR was justified under both the 1992 Constitution and the Unnatural Offences Act.

- 27.** On 5 May 2023, GoHRA submitted an application to the African Court on Human and Peoples' Rights requesting it to make the following findings:
- (a) Sentsifia violated the African Charter and other international human rights norms by failing to hold Mr Putin Yeungo accountable for illegal mining and Mr Nsana Adongo accountable for corruption.
  - (b) Sentsifia violated the African Charter and other relevant human rights treaties in its treatment of the children and GoHRA's 20 senior staff members at The Villa.
  - (c) Sentsifia violated the African Charter and other relevant international human rights law by its decision to run the FSHS policy only in the 150 less endowed schools.
  - (d) Sentsifia violated the African Charter and other relevant international human rights law for refusing the Centre for Sexual Minority Rights to register under the NGO Registration Act.
- 28.** The case has been set, on the basis of urgency, for hearing in September 2023. Prepare separate written submissions on behalf of GoHRA and the State of Sentsifia. In each instance, address the issue of jurisdiction, admissibility, merits and reparations in relation to claims (a) to (d) above.

## Annex I

### Excerpts from relevant Legislations in Sentsifia

#### THE CONSTITUTION OF THE STATE OF SENTSIFIA 1992

11. No person may be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, or political opinion.

#### *Protection of Rights by the Courts*

33. (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.

(2) The High Court may, under subsection (1) of this article, issue such directions or orders as it considers appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person is entitled.

\*\*\*\*\*

(5) The rights and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.

#### *Cultural Objectives*

75. (1) The State shall ensure the development of Sentsifian languages, and pride in Sentsifian culture and traditional values; and in particular that appropriate customary and cultural values are developed as an integral part of the whole Sentsifian society.

#### THE CHILDREN'S ACT 2004 (ACT 650)

##### *PART I – The Rights of Child and Parental Duty*

1. For purposes of this Act, a child is a person below the age of eighteen years.
2. (1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.



3. No person shall discriminate against a child on the grounds of gender, race, age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth or other status, socio-economic status or because the child is a refugee.

\*\*\*\*\*

10. No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would
- (a) lead to significant harm to the child; or
  - (b) subject the child to serious abuse; or
  - (c) not be in the best interest of the child.

\*\*\*\*\*

12. A child found unaccompanied, shall be fostered by the government until such time that he is united with his parents or any other responsible family member.

### **CRIMINAL OFFENCES ACT 1970 (ACT 92)**

\*\*\*\*\*

#### *Using Public Office for Profit*

179. Any person who—
- (a) while holding a public office corruptly or dishonestly abuses the office for private profit or benefit; or
  - (b) not being a holder of a public office acts or is found to have acted in collaboration with a person holding public office for the latter to corruptly or dishonestly abuse the office for private profit or benefit
- commits an offence and is liable on conviction to a fine of not less than SED\$5 million or imprisonment not exceeding ten years or both.

180. A public office is corruptly or dishonestly used for private profit or benefit if the holder of the office directly or indirectly agrees or offers to permit his conduct as such officer to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever.

### **NGO REGISTRATION ACT 1995 (ACT 399)**

\*\*\*\*\*

9. (1) No NGO existing before or after the commencement of this Act shall operate without a certificate of registration.

(2) Unless otherwise provided, an NGO shall upon application to the Department of Social Welfare and Development be registered and be issued with a certificate.

**10.** (1) A certificate of registration shall be granted upon an application signed by at least ten persons qualified for membership. The application shall be accompanied by three copies of the Constitution of the NGO. The NGO's Constitution must not be in violation of Sentsifian law.

(2) Within two months after receiving an application, the Director-General of the Department (i) must consider the application and any further information provided by the applicant; and (ii) if satisfied that the applicant complies with the requirements for registration, must register the applicant by entering the NGO's name in the register.

### **PROPER SEXUAL IDENTITY BILL 2022**

**17.** (1) A person who supports, facilitates, encourages or promotes LGBTIQ+ activities commit an offence and is liable on conviction to imprisonment of not less than ten years and not more than fifteen years.

(2) A person who publicly identifies himself as lesbian, gay, bisexual or transgender commits an offence and is liable on conviction to imprisonment not exceeding twenty years.

### **OFFICE OF THE SPECIAL PROSECUTOR ACT 2021 (ACT 1015)**

\*\*\*\*\*

**2.** The President appoints the head of the Office from among qualified candidates.

...

**5.** The functions of the Office shall be to

(a) investigate and prosecute cases of alleged or suspected corruption and corruption-related offences;

(b) investigate and prosecute allegations of corruption and corruption-related offences under the Criminal Offences Act, 1970 (Act 92) involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence;

(c) investigate and prosecute alleged or suspected corruption and corruption-related offences involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence under any other relevant law; and

(d) recover and manage the proceeds of corruption.

## **IMPOSITION OF RESTRICTIONS ACT 2015 (ACT 759)**

\*\*\*\*\*

- 41.** (1) The President may, acting in accordance with the advice of relevant person or body, by Executive Instrument, impose restrictions where the restriction
- (a) is reasonably required in the interest of defence, public safety, public health or the running of essential services;
  - (b) is reasonably required on the movement or residence within Sentsifia of any person or persons generally or any class of persons;
  - (c) is required to restrict the freedom of entry into Sentsifia or movement in Sentsifia, of a person who is not a citizen of Sentsifia; or
  - (d) is reasonably required for the purpose of safeguarding the people of Sentsifia against the teaching or propagation of a doctrine which exhibits or encourage disrespect for the nationhood of Sentsifia, the national symbols and emblems, or incites hatred against other members of the community.
- (2) The imposition of restriction under subsection (1) shall be reasonably justifiable in accordance with the spirit of the Constitution.

## **MINERALS AND MINING ACT 2002 (ACT 589)**

\*\*\*\*\*

### *Small-Scale Mining*

- 82.** (1) Despite a law to the contrary, a person shall not engage in or undertake a small-scale mining operation for a mineral unless there is in existence in respect of the mining operation a licence granted by the Minister for Mines or by an officer authorized by the Minister.
- (2) A person who without a licence granted by the Sentsifia Minerals Commission undertakes a small-scale mining operation contrary to subsection (1) commits an offence and is liable on summary conviction to a minimum fine of SED\$ 2 million or to imprisonment for a term not more than three years or to both.