

**23<sup>RD</sup> AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION  
1 TO 6 SEPTEMBER 2014**

**UNIVERSITY OF NAIROBI  
AND**

**CENTER FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA**

**HYPOTHETICAL CASE**

**The case between Government of Karinda and Erdana Center for Justice**

1. The Republic of Karinda is a developing country in South Eastern Africa. It borders the Democratic Republic of Pata on the West, the Peoples' Republic of Managa on the East, the Great Rayers Republic on the North and the Sacred Sea on the South. According to the UNDP Development Report released in 2012, Karinda is ranked 145 out of 186 countries. According to this Report, Karinda has an under 5 mortality rate of 85 deaths per 1000 births, life expectancy of 57 years, an adult (over 15 years) literacy rate of 87% and a GNI per capita of 1,541 USD. Karinda has a population of about 40 million. Its economy has grown rapidly since it gained independence from the Kingdom of Roblem in 1960. Since then the Republic of Karinda has had a presidential form of government, with a bicameral Parliament, consisting of a lower chamber (the House of Deputies) and a higher chamber (the House of Delegates). Its law is based primarily on common law principles introduced during the colonial period. Its 1960 Constitution was replaced by the 1990 Constitution.
2. The 1990 Constitution of the Republic of Karinda provides for two levels of government, the national government and the provincial government. In accordance with the Constitution, the Republic of Karinda is divided into 40 provinces. The counties are not fully autonomous and are heavily dependent on the national government. Each province has a Governor. National contributions to provinces are strictly proportionate to the population size of each province. The capital city of Karinda is Karindus, located in the Central Province. The Central Province has the largest population in Karinda, despite being the smallest province in terms of land mass.
3. Chapter II of the Constitution provides for three levels of courts: the High Court, the Court of Appeal and the Constitutional Court. In this chapter of the Constitution, the Constitutional Court is recognised as the highest court in respect of all constitutional matters. The Constitutional Court cannot be seized of a matter directly, unless the matter is pending before or has been finalized by the Court of Appeal.
4. The 1990 Constitution for the first time provided for a justiciable Bill of Rights in Chapter III. Any person who alleges a violation of his or her own rights under the Bill of Right may approach a High Court to adjudicate the matter. The Constitution also provides

that where a matter relating to Chapter III is on appeal before the Court of Appeal, an interim application can be made to the Constitutional Court if the decision of the Court of Appeal is unduly prolonged without reasonable cause. To file a case on anyone's behalf, one needs to have the authorization in the form of signatures from all the affected persons one is representing, or from the parents of such person, in the case of minors, and must deposit filing fees equivalent to USD 1000. Each of the 40 counties has a High Court. Appeals from these High Courts are to the Court of Appeal, which is the highest court in the country on all matters, except in constitutional matters.

5. The country consists of 30 ethnic communities, of which the Ibuting constitute about 1% and the Illaruk about 80%. Other ethnic communities constitute the remaining 19%. The members of the Illaruk group hold most government and corporate positions. Karinda has had four presidents since independence and all of them have been from the Illaruk ethnic group, a factor that has created ethnic tension over the years. Members of the other ethnic communities have largely been marginalized from public life. Most of the Ibuting live in the Erdana Forest, located in the Erdana Province. According to 2012 national census figures, the total number of inhabitants of Erdana Province is 400 000, of which more than 80% live in the Erdana Forest. Of those living in the Erdana Forest, about 60% are younger than 18 years old. The Governor of Erdana Province and almost all officials in the Erdana Province government are members of the Ibuting group.
6. The Republic of Karinda is a member of the United Nations (UN) and the African Union (AU). It is a party to the following UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC). Karinda ratified the ICCPR and ICESCR in 1977, and the CRC in 1992. It has not accepted any of the individual complaints mechanisms allowed for under these treaties. At the regional level, it has become a party to the following: the OAU Refugee Convention (ratified on 1 June 1977); the African Charter on Human and Peoples' Rights (African Charter) (acceded to on 21 October 1987); the African Charter on the Rights and Welfare of the Child (African Children's Charter) (acceded to on 16 June 1991); the Protocol to the African Charter on the Rights of Women in Africa (ratified on 1 January 2012); the Protocol to the African Charter on the Establishment of African Court on Human and Peoples' Rights (African Court Protocol) (ratified on 1 January 2012); and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (IDP Convention) (signed on 1 January 2012, and ratified on 31 December 2013). On 1 March 2014, Karinda's bicameral Parliament adopted the Internal Displacement Act, which transformed all the relevant provisions of the IDP Convention into domestic law. It was the first time that the Karinda Parliament fully domesticated an international treaty. Karinda on 7 June 2014 made a declaration under article 34(6) of the African Court Protocol.
7. At the time of acceding to the African Charter, Karinda entered a reservation to article 9 of the Charter. The reservation reads as follows: 'The right to access information shall only be exercised if specifically provided for under national legislation'. Section 35 of the 1990 Constitution of Karinda entrenches the right to access information for its citizens in the following terms:

Every citizen has the right of access to (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

8. The Erdana Forest is a stretch of natural forest bordering the Sacred Sea. It makes up most of the land mass of the Erdana Province. The Erdana Forest extends from the Republic of Karinda into the Republic of Pata. The Piwi has from time immemorial lived on the Pata side of the Forest, and the Ibuting on the Karinda side. There is no clear borderline in the Forest, and the two communities never respected any rigid border lines. They used the Erdana Forest for hunting and gathering for their essential livelihood. Their religious shrines are also located in various sites inside the Erdana Forest.
9. During the period of colonialism, the traditional leadership of the Ibuting did not fight against the colonialists. As a result, the colonialists allowed the Ibuting to continue living and using the Erdana Forest. Unlike the Ibuting, the Piwi opposed the colonial rule of the Kingdom of Roblem, which in Pata lasted from 1897 to 1965. Consequently, many Piwi were maimed and killed as the colonialists sought to suppress repeated uprisings. In the 1960s, about 10 000 of them moved to the Karinda part of the Forest, and were welcomed by the traditional leadership of the Ibuting on the understanding that they would submit to the leadership of the Ibuting. Upon the end of the colonial era over Pata, in 1965, about half of this group of Piwi did not go back to their ancestral land in the Pata part of the Erdana Forest. On the basis of their historical roots, the Piwi in the Karinda part of the Forest still identify themselves as Pata, and none of them at any stage acquired Karinda nationality. It is only the remnants of the Piwi who now live in Karinda who still maintain their cultural way of life. Almost all of those in the Pata part of the Forest have gradually since 1965 been integrated into the modernized economy of Pata, and had abandoned the forest and their cultural way of life. The Pata part of the Erdana Forest has in 2001 been declared a natural conservation site, and has subsequently earned the country significant external revenue through tourism, mainly comprising visitors from Roblem.
10. Upon attaining independence, the new government of Karinda allowed the Ibuting to continue using the Erdana Forest. It did not classify the land as customary land and no individual titles were registered over the land. All the four successive post-colonial governments allowed the Ibuting to use the land as they had done before. Given its relatively small population size, the Erdana Province receives very little support from the national government. In its contribution, the national government devoted only a small percentage of the expenditure on health and education. Communities in other parts of the country consider the Ibuting as a relic of the past. While there are only a few hospitals in Erdana Province, they have all been established by private faith based organisations. However, because most inhabitants of the Erdana Forest still prefer traditional medicine derived from the forest, these hospitals have been largely underutilized. The few primary and secondary schools in the Erdana Province are not attended well. The Ibuting have informal schools in the Forest, where their male children between 10 and 16, and girls between 8 and 12 are trained on their roles in society.
11. In 2009, Masii Energy Ltd (Masii), a foreign company registered in Roblem, was granted a prospecting license by the government of Karinda to prospect minerals in the Erdana Forest. Earlier, in 2008, Masii discovered oil in commercially viable quantities in the Great Rayers Republic and Managa. However, due to several internal conflicts arising from the public knowledge of this discovery, several interested oil and energy companies turned away from the Great Rayers Republic. In Managa, oil deposits were found in the Maro Lake but the government's ongoing negotiations with Masii have been seriously

disturbed by conservationists concerned about the aquatic life in the Lake, which is unrivalled in the world. As a result of its prospecting activities in the Erdana Forest, Masii in 2012 discovered considerable oil and coal deposits. According to an independent impact assessment report, commissioned by the Karinda government, in order to achieve the full benefit of the deposits, mining would require an excavation of almost three-quarters of the forest. The report also indicated that there were sufficient quantities to make oil drilling and mining economical. The assessment acknowledged the negative impact on local populations, and suggested that measures be taken to provide alternative accommodation to all affected Ibusing, and to provide them with reasonable compensation.

12. Three months after oil and coal had been discovered in the Erdana Forest, on 31 March 2012, the Karinda government issued notice of its intention to resettle all the inhabitants of the Erdana Forest in the small deforested part of the Erdana Province, where some temporary shelters were erected. The government also unveiled a plan to build high rise apartments in Erdana City, that would be able to accommodate all the inhabitants of the Erdana Forest by June 2015. The government published a flyer, containing all relevant information, written in the local language, and distributed it widely in the community. In the flyer, inhabitants of the Forest were invited to register their concerns with the relevant government office in Erdana City.
13. In July 2012, a notice was issued pursuant to section 2(3) of the Land Law Amendment Act, which was adopted earlier in 2012 by the two Houses of Parliament. Section 2(3) provides that only citizens with proof of ancestral roots in Karinda would be eligible for compensation due to resettlement. Jointly with Masii, the government called for a meeting with male elders of the Ibusing community at the capital Karindus and told them of the need to move to the temporary shelters, in order to pave way for the clearing of the Forest so that mining could start. While the Ibusing were promised a once-off monetary compensation of 1500 USD per person in addition to free accommodation in the to-be-constructed high rise apartments, they were also informed that should they refuse to move, the government would forcibly remove them, and they would forfeit all compensation.
14. At the meeting, representatives of government of Karinda and Masii spared no effort to convince the Ibusing to accept compensation and move to the temporary shelters. The Ibusing leadership refused. However, some of the Piwi speaking affiliates of the Ibusing accepted to move and were compensated with 1500 USD per person in addition to promises of accommodation in the high rise apartments. According to Mr Jojo Korono, the leader of a faith based organisation that worked closely with the communities, 'the Piwi accepted to move out of fear that the government will make good on its promise to drive them away with nothing!' Ultimately, on 31 January 2013, Masii began clearing the Forest with a view to commence mining, and its security agents started removing inhabitants and relocating them in the temporary shelter camps outside the Forest. At that stage, only about 10 000 persons were removed and relocated.
15. In the meantime, a small militant group called Movement for the Emancipation of Erdana (MEE) was created by some members of the Ibusing with the stated goal of 'stopping the exploitation and oppression of the inhabitants of Erdana Forest and the devastation of the natural environment by public-private partnerships between the government of Karinda and corporations involved in the production of oil in the Erdana Forest.' Shortly after the

clearing of the Forest and the relocation of inhabitants began, the leader of the MEE issued an ultimatum over a video released on the internet stating ‘Erdana forest belongs to the Ibuting that have lived in it for hundreds of years. The government and Masii should stop destroying the forest and oppressing our people. If not, they will pay the price.’ The parliament passed a decision to designate MEE as a terrorist organization under the section 3(2) of Kardina’s 2009 Prevention of Terrorism Act.

16. At a glamorous ceremony, on 3 March 2013, the Minister of Mines signed the agreement between Masii and the government. When asked for a copy of the agreement, the Minister’s spokesperson said that the content could not be revealed, in the interest of state security. The matter did not end there. According to subsequent reports in *Every Day* and *Close Monitors* newspapers, ‘insiders’ within government indicated that the agreement was very lucrative for Masii, and that the Minister was granted some ‘contingency fee’ under the agreement. *The Daily Source*, winner of the 2012 Openness Integrity Award for newspapers, equally confirmed this report. It also became clear from a report by Human Rights For All that Masii was relying solely on employees relocated from Roblem to Karinda to work on the mining and oil drilling project. When Members of the Karinda House of Deputies raised some concerns and posed questions during parliamentary question time, the Minister of Mines refused to divulge any details of the agreement, claiming that the agreement had been approved by the cabinet, and that it is not in the national interest to reveal the details of the agreement, as that may, in addition to other reasons, have an impact on the state’s regional economic advantage in the oil and coal extraction market.
17. Meanwhile, a non-governmental organization, the Erdana Centre for Justice (ECFJ), approached the High Court seeking orders to restrain the government from evicting any other inhabitants of the Erdana Forest. Due to the internal differences within the members of Ibuting, the authorisation of only a small group of the Ibuting could be obtained. Most of the inhabitants were in fact unaware of ECFJ’s case with the High Court and had continued with their lives, particularly in areas where the clearing of the Forest was yet to commence. The High Court heard the matter on 16 May 2013, and found that ECFJ did not have the requisite standing to bring the case. ECFJ also approached the High Court on the basis of a violation of the Constitution, claiming that the right to freedom of information of the Ibuting community had been violated by the government’s refusal to make the agreement between itself and Masii public. The Court found that it lacked jurisdiction to deal with this issues, as no national legislation had been adopted. ECFJ lodged an appeal on both these issues to the Court of Appeal on 27 September 2013. On 25 September 2013, the President of the Court of Appeal issued a practice directive that ‘due to the backlog of appeal cases requiring urgent attention dating back to January 2012, appeals lodged after 31 July 2013 will be decided in due course, but at least within the next thirteen months from the date the appeal was lodged.’
18. Some time after the decision of the High Court, in January 2014, Masii and its security agents started to clear substantial parts of the Forest, including through explosions that destroyed caves traditionally used by the Ibuting to live in. Masii supplied the affected Ibuting with some food relief and gave them clothing. The Ibuting leadership accepted the food and the clothing and at this stage about 100 000 Ibuting accepted to be moved to the temporary shelters built by the government. Following media reports covering these explosions, ECFJ moved to the temporary shelter area and sought their consent to file a

further suit on their behalf, in which the community would claim to be entitled to at least 25% of all profits resulting from the oil drilling. The Ibuting leadership however declined to give the required consent in fear that the government would deny them food and shelter.

19. At the time one of the most violent of these explosions took place, around 1 March 2014, a group of about two hundred girls aged around 10 was undergoing traditional education in a remote part of the Forest. Family members later found one of the girls who stayed behind, hidden in the Forest close to the site where the traditional education took place. She told her parents that the other girls fled out of the Forest when they heard the sounds of the explosion. She saw them moving along a footpath, leading to the province immediately to the north of Erdana Province. These children have now been separated from their parents and family. According to their parents, they lack the know-how of communicating in a modern society, and only speak Ibuteng, the local language, which is not widely understood in the rest of Karinda.
20. ECFJ approached the High Court, requesting that the government take immediate action, including under the Internal Displacement Act, but this application was on 31 March 2014 dismissed due to the lack of authorisation by the parents of about a third of the affected girls, whom ECFJ could not trace before bringing the application. Given the delays experienced with the other appeals, ECFJ decided not to institute an appeal to the Court of Appeal. It started collecting information about the girls, including their names and physical description, but ascertained that the family has no photos of these girls that could be used in attempts to locate them.
21. ECFJ proceeded to file a case before the African Court in July 2014, arguing the following:
  - a) It has the necessary standing to file the case before the African Court of Human and Peoples' Rights, and that the claim is admissible.
  - b) The government of Karinda has violated the provisions of the African Charter and other relevant treaties through the process of resettlement of both the Ibuting and Piwi.
  - c) The government violated the African Charter and other relevant international law by depriving the Ibuting community of its right of freedom to information.
  - d) The government should immediately take all necessary steps to ensure that the rights of the children who have fled from the Forest are protected.

The case has been set for hearing in September 2014. Prepare heads of arguments on behalf of ECFJ and the government of Karinda.