

**THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**IN THE MATTER BETWEEN**

**THE GOVERNMENT OF UNITED REPUBLIC OF MONGU**

**AND**

**THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**MEMORIAL FOR THE APPLICANT**

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## List of Abbreviations

ACPG	Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights, <i>adopted on</i> November 2010.
ACRWC	African Charter on the Rights and Welfare of the Child, <i>entered into force</i> November 29, 1999.
African Charter	African Charter on Human and Peoples' Rights, adopted June 27, 1981, entered <i>into force</i> October 21, 1986.
African Children's Charter	African Charter on the Rights and Welfare of the Child, <i>entered into force</i> November 29, 1999.
African Commission / ACHPR	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
AHRLR	African Human Rights Law Reports
Court Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, <i>entered into force</i> January 25, 2004.
Disciplinary Code	UNINOK Disciplinary Code of Conduct
ICCPR	International Covenant on Civil and Political Rights, <i>entered into force</i> March 23, 1976.
ICESCR	International Covenant on Economic, Social and Cultural Rights, <i>entered into force</i> Jan. 3, 1976.
Principles on Implementation	Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights, <i>adopted on</i> November 2010.
Protocol on the Rights of Women	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, <i>entered into force</i> November 25, 2005.
Rules of Procedure	Rules of Procedure of the African Commission on Human and Peoples' Rights, <i>adopted on</i> October 6, 1995.

OSHC	Occupational Safety and Health Convention, 1981 (No. 155) <i>entered into force</i> on 11 Aug 1983.
SML	Standard Minerals Limited
UN	United Nations
UNINOK / University	University of the Northwest Province
URM	United Republic of Mongu
Workmen's Convention	Workmen's Compensation (Accidents) Convention (No.17), 1925.

## **Summary of Arguments**

### **1. Admissibility**

All four claims brought before the Court are admissible due to the Court being competent to receive the claims and the exhaustion of all local remedies.

### **2. Violation of the Right to Health**

The Respondent violated Likando Moremi's right to health by not providing him with access to treatment.

### **3. Violation of the Right to Equitable and Satisfactory Work Conditions**

The Respondent did not provide the deceased mineworkers with an equitable and satisfactory place of work, which includes the right to receive equal pay for equal work. These violations constitute an infringement upon the inherent dignity of the mineworkers and their families.

### **4. Violation of the Right to Assemble Freely**

The Peaceful Assemblies Act violates the right to assemble freely. Furthermore, the Respondent infringed upon the students' right to assemble freely by using excessive force, amounting to a violation of the right to personal security.

### **5. Violation of the Right to Academic Freedom and Freedom of Expression**

Specific provisions of the UNINOK Disciplinary Code violate the freedom of expression and academic freedom. The Applicant will therefore argue that the Respondent unlawfully infringed upon Mr Kozo's right to freedom of expression and academic freedom.

## **SUBSTANTIVE ARGUMENTS**

### **A. ADMISSIBILITY**

#### **I. Competence of the Court to Receive Claims**

1. It is submitted that all four claims brought before this Court are admissible. They are neither in contravention of Article 5(3) of the Court Protocol, nor with Article 56 of the African Charter.
2. Article 5(3) of the Court Protocol provides that the African Court may entitle ‘non-governmental organisations with observer status’ to institute cases before the African Commission, in accordance with Article 34(6) of the same.
3. The present case was placed before the Commission by the Applicant, which subsequently submitted the communication to the Court as per Rule 118(4) of the Rules of Procedure. This provides that ‘the Commission may seize the Court at any stage of the examination of a communication if it deems necessary.’
4. This submission constitutes an *indirect* application to the African Court and is therefore not in violation of Article 34(6).

#### **II. Exhaustion of All Local Remedies**

5. The African Court is to determine the admissibility of cases with consideration given to the provisions of Article 56 of the African Charter.<sup>1</sup> An application from the complainant can only be admitted for the Court’s review if all domestic remedies have been exhausted.<sup>2</sup>

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<sup>1</sup> Court Protocol Art 6(2).

<sup>2</sup> African Charter Art. 56(5).

**(i) Likando Moremi**

6. In *Zimbabwe Lawyers for Human Rights v Zimbabwe*,<sup>3</sup> the Commission found that the principle of the exhaustion of domestic remedies presupposes the existence of effective judicial remedies. It was reiterated that where ‘it is obvious that the procedure of achieving the remedies would have been *unduly prolonged*,’ there was no need to exhaust remedies.<sup>4</sup>
7. It is clear from the facts that the case of Likando is one wherein the legal remedies were effectively exhausted on account of the fact that the procedure had been unduly prolonged. On behalf of Likando, Mr and Mrs Moremi brought a case to the Supreme Court against the SML asbestos mine based on a claim for the violation of his health. This case was referred to the High Court, which rejected it on the arbitrary basis that it did not consider matters other than those concerning civil and political rights.
8. In URM, where no court has ever considered that socioeconomic rights fall within the ambit of constitutional protection, it is clear that any attempts by Likando’s parents to make a successful appeal to the Supreme Court would fail.

**(ii) Deceased mineworkers**

9. It is common cause that the Supreme Court rejected the claim of the miners’ trade union. All domestic remedies have been exhausted for the miners.

**(iii) UNINOK students**

10. Where the available domestic remedies are ineffective, the complainant is exempted from having to ensure the exhaustion thereof.<sup>5</sup> The case of *Randolph v Togo*<sup>6</sup> was a matter in which the Applicant had not sought any

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<sup>3</sup> *Zimbabwe Lawyers for Human Rights and Another v Zimbabwe* (2008) AHRLR 120 (ACHPR 2008) para 51.

<sup>4</sup> *Ibid*; own emphasis.

<sup>5</sup> *Ibid* para 26.

remedy to cure alleged human rights violations. The Applicant contended that he had not approached the domestic courts because the Respondent's 'conception of justice was entirely and exclusively self-serving.'<sup>7</sup> The decision by the African Commission was that the Applicant's submission was admissible on account of the fact that there was no effective remedy in domestic law with respect to the alleged violations of his rights.<sup>8</sup> Furthermore, in *Law Office of Gbazi v Sudan*,<sup>9</sup> the Commission held that a remedy is considered available if the petitioner can pursue it without impediment; it offers a prospect of success; and it is capable of redressing the complaint.

11. The domestic courts follow a strictly literalist approach to interpretation. This is relevant in light of the fact that the Peaceful Assemblies Act prohibits public assemblies that occur without the requisite permission from a District Prefect. Furthermore, the Constitution of the URM provides that the right to peaceful assembly may be restricted where said restriction is permissible in law, and is necessary in a democratic society in the interests of national security or public safety.<sup>10</sup>
12. The prevailing attitude of the courts shows that the provisions of the Act will be strictly and literally applied, with the result that the actions of the Presidential Guard will be deemed to be lawful. As such, the available remedies offer no chance of success.

**(iv) Mr Kozo**

13. The Supreme Court rejected the claims of the Mr Kozo on the grounds that his suspension and dismissal were reasonably justified. All domestic remedies for Mr Kozo have been exhausted.

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<sup>6</sup> *Randolph v Togo* (2003) AHRLR 15 (HRC 2003).

<sup>7</sup> *Ibid* para 7.4.

<sup>8</sup> *Ibid* para 8.6.

<sup>9</sup> *Law Offices of Gbazi Suleiman v Sudan* (2002) AHRLR 25 (ACHPR 2002) para 31.

<sup>10</sup> ICCPR Art. 21.



## B. MERITS

### I. Violation of the Right to Health

14. Article 16(1) of the Charter places a clear duty upon states to take the measures necessary to protect the health of their people, and ‘to ensure that medical attention is provided to the people when they are sick’. It has been held that the right to health guarantees the right to health facilities, as well as access to goods and services, guaranteed to all persons without any sort of discrimination.<sup>11</sup>
15. As is clear from Article 16(2), the Charter does not attach any internal limitations in the form of the progressive realisation of rights or the provision of rights within available resources. The Applicant contends that this omission indicates that the drafters of the Charter envisioned the *immediate* provision for the needs related to the right to health.<sup>12</sup> This submission must be read in light of the fact that the African Charter recognises very few traditional socio-economic rights. It implies that the rights that have been *expressly* recognized must be implemented immediately.
16. In *Free Legal Assistance Group v Zaire*,<sup>13</sup> the African Commission found that the failure of the Government to prevent the shortage of medicine constituted a breach of Article 16 of the Charter. The decision in *Odafé v Attorney General*<sup>14</sup> was that the failure of the State to provide medical treatment to patients with HIV constituted a breach of the duty to take necessary measures to protect the health of persons. This decision is directly relevant to the present matter because the *Odafé*<sup>15</sup> case also involved a government failing to provide life-prolonging treatment to patients who suffered from a fatal condition, and because the Commission’s finding turned on the fact that the plaintiffs were being denied medication that could treat their disease.

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<sup>11</sup> *Purobit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) para 80.

<sup>12</sup> C.A Odinkalu, ‘Implementing economic, social and cultural rights under the African Charter on Human and Peoples’ Rights’ in M. Evans and R. Murray (eds.) *The African Charter on Human and Peoples’ Rights: The system in practice, 1986 – 2000* (2002) 178 – 218 at 196 – 8.

<sup>13</sup> *Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995) para 47.

<sup>14</sup> *Odafé and Others v Attorney-General and Others* (2004) AHRLR 205 (NgHC 2004) para 34-35.

<sup>15</sup> *Ibid.*

17. In the present matter, Likando was suffering from advanced lung cancer. He was refused treatment on account of his prognosis along with any others who similarly suffered from chronic conditions. The fact that the state hospital refused treatment to a cancer patient supports the contention that the State has failed to take all necessary measures to ensure that those who are sick receive medical treatment.
18. In order to ensure the fulfilment of the realisation of human rights, states have a positive obligation to ‘move [their] machinery towards the *actual realisation* of the rights.’<sup>16</sup> This means that states must *directly provide* for the basic needs of rights-holders.<sup>17</sup> Any failure of a state to satisfy this obligation by ensuring the immediate provision of basic needs with regards to health constitutes a violation of the right to health as provided by the Charter.
19. In *Purobit*,<sup>18</sup> the African Commission read into Article 16 of the African Charter the obligation on party states to take full advantage of their available resources to ensure that the right to health is fully realised without discrimination of any kind. In this case the mental health facilities in which patients were detained lacked the resources and programmes of treatment for persons with mental disabilities. The Commission found these conditions to be in violation of Article 16 even though it acknowledged that African states faces high poverty levels.<sup>19</sup>
20. In the matter before this Court, the Applicant was denied any form of treatment simply because there was no chance of a cure. Given the large numbers of similarly affected patients it was incumbent on the state, if all resources were constrained, to demonstrate that it had taken measures to provide some form of relief to the deceased, as well as other patients, either immediately or in the near future. The State has failed to show that there exists a policy providing access to medical treatment on a progressive basis.

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<sup>16</sup> *Purobit* supra note 11 para 47; own emphasis.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Purobit* supra note 11 para 84.

<sup>19</sup> *Ibid.*

21. In *Serac v Nigeria*,<sup>20</sup> the African Commission stated that all rights contained in the African Charter require states to take concrete measures to respect, protect, promote and fulfil the rights of rights-holders. The duty to ensure the protection of individuals against abuse from other persons requires states to act with due diligence to prevent violations, investigate them, hold those responsible accountable and provide remedies to victims through a framework of laws allowing for the unencumbered realisation of rights.<sup>21</sup>
22. It is clear on the facts that the mining companies were inadequately regulated. There is no evidence that the State even *attempted* to investigate the cause of Likando's ailment. These facts show that the State failed to exercise due diligence to protect Likando from exposure to life-threatening substances from the mines.
23. Due to the foregoing, the Applicant submits that the Respondent's denial of medical treatment amounts to a violation of the right to health through the denial of medical treatment; and that it has failed to act with due diligence in protecting the right to health.

## II. Violation of the Right to Equitable and Satisfactory Work Conditions

24. The Applicant submits that the Respondent violated the mineworkers' right to work under equitable and satisfactory conditions,<sup>22</sup> and the miners' right to adequate remuneration.<sup>23</sup> These violations have had the effect of infringing upon the inherent dignity of the mineworkers and their families.<sup>24</sup>
25. Article 15 of the African Charter stipulates that all individual persons have the right to work under equitable and satisfactory conditions, and to receive equal pay for equal work. The ICESCR, which the Respondent

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<sup>20</sup> *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 45-47.

<sup>21</sup> *Ibid* para 46.

<sup>22</sup> African Charter Art. 15.

<sup>23</sup> *Ibid*.

<sup>24</sup> African Charter Art. 5 and Preamble of Charter; ICCPR preamble.

has ratified, provides that ‘just and favorable conditions of work’ include ‘*safe and healthy working conditions*’; and ‘*a decent living for [workers] and their families*’.<sup>25</sup>

26. Article 16 of the the Safety Convention provides that states must require that employers ensure that the workplaces and processes under their control are safe and of no risk to the health of workers.<sup>26</sup> The ‘health’ of workers includes the ‘*physical elements affecting health which are directly related to safety*’.<sup>27</sup>
27. Two hundred miners died in what has been deemed a ‘mining accident’ that occurred underground. This is a large scale accident, the cause of which cannot be lightly attributed to chance or nature. It is submitted that the negligence of the SML mining company in a *specific* incident cannot be offset by good conduct in prior years.
28. The doctrine of state responsibility is a general principle of international law which may include the unlawful conduct of private parties, so long as the conduct may be deemed as an act of the state.<sup>28</sup> State responsibility extends, also, to the violation of international human rights obligations.<sup>29</sup>
29. Violations by a private party may be imputed as the responsibility of a state.<sup>30</sup> This responsibility is not to be imputed arbitrarily, but in cases where a state has failed to perform any of its duties to respect, protect and fulfil human rights.<sup>31</sup>

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<sup>25</sup> ICESCR, article 7(a)(ii); 7(b).

<sup>26</sup> Ibid, article 16(1); (2).

<sup>27</sup> Ibid, article 3(e).

<sup>28</sup> Danwood Mzikenge Chirwa ‘The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights’ (2004) 5 *Melbourne Journal of International Law* 1 at 9.

<sup>29</sup> Ibid.

<sup>30</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 143.

<sup>31</sup> Op cit note 28 at 11.

30. It is submitted that the relevant duty in this matter is the duty to protect. Per article 2(2) of the ICCPR, and consequently as found in the constitution, states are enjoined to take measures necessary to give effect to the rights provided in the ICCPR.
31. The duty encapsulated under Article 2 of the ICCPR includes that the state must take measures to prevent the violations of human rights by private parties, and for remedial measures to be taken against the offending private parties.<sup>32</sup>
32. In *Velásquez Rodríguez v Honduras*<sup>33</sup> the court held that a state will be liable for the violations of private parties where it has failed to act with *due diligence* to prevent and respond to the violations.
33. This found support in *SERAC v Nigeria* where the Commission stated that governments had a duty to protect civilians from violations perpetrated by private companies, and consequently found the respondent state liable for failing to protect persons from the human rights breaches caused by oil companies.<sup>34</sup>
34. As such, a state will be liable for the violations of a private person where the state has failed to act with due diligence – that is, reasonably – to prevent an unlawful outcome and to investigate the consequences thereof.
35. The Respondent did not act with due diligence as it took no sufficient actions to prevent the consequence of a work-related death. In four years, the Respondent failed to conduct any visits to the SML gold mine, even though the workers at the mine had expressed dissent. It cannot be shown on the facts that the Respondent conducted any investigation of the accident after it occurred.

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<sup>32</sup> Ibid; provided, also, in *Zimbabwe Human Rights* supra note 30.

<sup>33</sup> *Velásquez Rodríguez v Honduras* (1988) Inter-Am Court HR (Ser. C) No 4 at para 172.

<sup>34</sup> *SERAC* supra note 17 at para 57; Op cit note 32 at 16; support also found in *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995) para 20.

36. Furthermore, the current compensation paid to the estates of mineworkers is unjust and inequitable as it does not offer adequate social protection to the families of the deceased.

37. The Commission held in *Malawi v Mauritania*<sup>35</sup> that:

‘everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.’

38. States are obliged to protect the family unit.<sup>36</sup> States must ensure the protection of the rights of the woman and the child.<sup>37</sup> The wife of the deceased is entitled to an equitable share of the inheritance from the deceased’s estate.<sup>38</sup>

39. It is submitted that the state is bound to ensure that the compensation paid to the estate of the deceased is sufficient for the family of the deceased to be protected from economic vulnerability, and to enjoy a dignified existence therefrom. The current compensation to the estates of deceased miners is a generally applied amount equal to half of the annual salary of the deceased. This is insufficient on account of the fact that mineworkers in Africa are generally low income earners. This is especially dire in Mongu, a small, impoverished state heavily dependent on international aid.

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<sup>35</sup> *Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000) para 135.

<sup>36</sup> Charter on the Rights and Welfare of the Child Art. 18(1); African Charter, Art. 18(1) – (3).

<sup>37</sup> African Charter Art. 18(3).

<sup>38</sup> Protocol on the Rights of Women in Africa Art. 21(1).

### III. Violation of the Right to Assemble Freely

40. The Applicant submits that the Peaceful Assemblies Act ('the Act') violates the right to assemble freely, which any citizen is entitled to exercise,<sup>39</sup> and is therefore invalid. The Applicant further submits that the Respondent infringed upon the students' right to assemble freely in using excessive force in its unlawful and disproportionate response to the protests that took place on 21 January 2015, amounting to a violation of the right to personal security.<sup>40</sup>
41. Article 11 of the Charter provides that every individual has the right to assemble freely with others, subject to necessary restrictions provided for by law. The right to assemble freely is fundamentally necessary for the continuation of a healthy democratic society.<sup>41</sup>
42. In *New Patriotic Party v Inspector General*,<sup>42</sup> the Court held that a prior restraint is an injunction that prohibits the freedom of assembly, procession or demonstration, whether such injunction is imposed by statute or by court order. The Court found that the exercise of such a power constitutes a hindrance upon citizens' freedom to assemble.<sup>43</sup>
43. The Act stipulates that anyone seeking to engage in a form of public assembly that may reasonably lead to acts of public violence must seek permission from the relevant Office of the District Prefect. The permission must be requested at least 48 hours before the planned assembly.
44. The Act's permission requirement can be described as a 'prior restraint' for the following reasons. The Act places the ability to choose between what constitutes a right of assembly and the possibility of a breach of

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<sup>39</sup> African Charter Art. 11; ICCPR Art. 21 as imputed into the URM Constitution.

<sup>40</sup> African Charter Art. 6; ICCPR Art. 9.

<sup>41</sup> *Inspector-General of Police v All Nigeria People's Party and Others* (2007) AHRLR 179 (NgCA 2007) para 12.

<sup>42</sup> *New Patriotic Party v Inspector-General of Police* (2001) AHRLR 138 (GhSC 1993) para 38.

<sup>43</sup> *Ibid.*

order and peace in the power of the District Prefect. However the Act provides no guidance as to *how* the District Prefect is to apply certain standards in making this decision.

45. The Court in *New Patriotic Party*<sup>44</sup> found that conditions such as these allow for a deciding officer to arbitrarily refuse permission out of prejudice, bias or even political preference on flippant and untenable grounds, thereby suppressing free assembly and the free expression of views. Where the law prohibits meetings, processions and demonstrations a serious infringement upon the human rights of citizens occurs, unless sanctioned by a properly empowered authority.<sup>45</sup>
46. In *Malawi African Association v Mauritania*,<sup>46</sup> the African Court found against the State on account of the fact that it had failed to establish any element which had at its core any interest pertaining to the 'interest of national security, the safety, health, ethics and rights and freedoms of others'.
47. In *Gunme and Others v Cameroon*<sup>47</sup> the Court reaffirmed that the State still had a duty to guarantee the rights to freedom of assembly, while maintaining law and order as necessary. It is submitted that this entails that the interest protected by the State, as well as the means used to protect it, are in correct *proportion* to the *severity* of the threat and the *consequences* of acting in that particular way against the threat.
48. The force used by the Presidential Guard was excessive and in complete contradiction to the balancing of the duties that the state police are legally obliged to achieve. Furthermore, this use of force amounted to an unjustifiable assault on the students' right to personal security.<sup>48</sup>
49. It is not in dispute that the Presidential Guard initially issued instructions to the protesting students for them to desist with their protest and leave the presidential premises. However, after the students merely hit against

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<sup>44</sup> Ibid para 48-49, citing *Saia v New York* 334 U.S. 558 (1948).

<sup>45</sup> Ibid para 55.

<sup>46</sup> *Malawi* supra note **Error! Bookmark not defined.** para 111.

<sup>47</sup> *Gunme and Others v Cameroon* (2009) AHRLR 9 (ACHPR 2009) para 138.

<sup>48</sup> African Charter Art. 6; ICCPR Art. 9.



the fence of the President's residence, the Guard used batons to beat the students into submission – thereby turning a peaceful protest into a violent one.<sup>49</sup> This resulted in the hospitalisation of 23 students.

50. Therefore, in light of the severity of the injuries caused, and the fact that the victims of the violence were students armed with posters, it is submitted that the Presidential Guard used excessive force in its retaliation.

#### **IV. Violation of the Right to Academic Freedom and Freedom of Expression**

51. The Applicant therefore submits that the Respondent unlawfully infringed upon Mr Kozo's right to freedom of expression and academic freedom.

52. Freedom of expression is not a privilege; it is a right. The right is afforded to every individual to express and disseminate her opinions within the law.<sup>50</sup>

53. The Charter right to freedom of expression does not contain a derogation clause, in contrast to other international human rights instruments.<sup>51</sup> Article 27(2) of the African Charter provides the only legitimate limitation on this right in that it 'shall be exercised with due regard to the rights of others, collective security, morality and common interest,' justifiable only if 'strictly proportionate with and absolutely necessary for the advantages which follow.'<sup>52</sup>

54. Mr Kozo was suspended and subsequently dismissed by the University's Disciplinary Panel upon the publication of his study on SML's asbestos and gold mines *as commissioned by the University*.

55. Mr Kozo's admonitions were directed towards the State and not towards the University. It therefore cannot be argued that Mr Kozo's findings would substantially damage the University's reputation in keeping with

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<sup>49</sup> The state must ensure peaceful protests that do not unduly disturb any citizen as per *Inspector-General of Police* supra note 41 para 25.

<sup>50</sup> African Charter Art. 9(2).

<sup>51</sup> *Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR) para 36.

<sup>52</sup> Ibid para 41 and 42.

paragraphs 6(1) and 6(2) of the Code. However it is common cause that the Government owns 45% of the shares in SML. There is clearly a conflict of interests between the State's allegiances to the mining company and to the University.

56. It is submitted that the role of academic institutions should be to provide a refuge to challenge steadfast beliefs and to respond to disagreements. Universities must protect the right of citizens to criticize their Government without fear of persecution<sup>53</sup> in order to preserve a healthy, democratic and open society.<sup>54</sup> It must also be found that the persecution of Mr Kozo due to the opinions he expressed was disproportionate, unnecessary and too extreme an action. As such, his freedom of expression was unlawfully restricted.

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<sup>53</sup> *Attorney-General v Clarke* (2008) AHRLR 259 (ZaSC 2008) para 28 and 64; *Marques de Morais v Angola* (2005) AHRLR 3 (HRC 2005) para 6.7.

<sup>54</sup> *Inspector-General of Police* supra note 41 para 12 and 34.

## C. RELIEF SOUGHT

### Claim (I):

1. The Applicant seeks a declaration that the Respondent is in violation of the African Charter and relevant law with regards the right to health.
2. The Applicant also appeals for the Court to declare that the Respondent must duly pay damages to the parents of Likando Moremi, an amount to be decided by the Court.

### Claim (II):

3. The Applicant seeks a declaration that the right to equitable and safety work conditions were violated by the Respondent in contravention of the African Charter and international law.
4. The Applicant seeks the declaration that the estates of the deceased mineworkers must be paid the remainder of the compensation up to the equivalent of one year's salary; and that, insofar as the Mining Safety Act provides that the estates of deceased miners are to receive the equivalent of *half a year's* salary, the provisions of the Mining Safety Act are invalid.
5. The Applicant seeks the further declaration that the Respondent pay damages for the loss of life of the mineworkers.

### Claim (III):

6. The Applicant seeks a declaration that the Respondent is in contravention of the African Charter and international law with regards the protesting students' right to freely assemble.
7. The Applicant seeks the further declaration that the Peaceful Assemblies Act violates the right to freely assemble and is therefore invalid.

### CLAIM (IV):

8. The Applicant seeks a declaration that Mr Kozo's freedom of expression was breached by the Respondent in violation of the African Charter and international law.
9. The Applicant also appeals for the Court to make a declaration that the University must reinstate Mr Kozo to his teaching position.

**CLAIM (V):**

10. The Applicant seeks a declaration that the URM establish a Commission of Inquiry to investigate the activities of the SML mines.
11. The Applicant further requests the URM to report to the Commission on the implementation of this recommendation during the presentation of its next periodic report.

## D. TABLE OF AUTHORITIES

### Cases decided by the African Commission on Human and Peoples' Rights

1. *Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000).
2. *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995).
3. *Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR).
4. *Gunme and Others v Cameroon* (2009) AHRLR 9 (ACHPR 2009).
5. *Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995).
6. *Law Offices of Ghazi Suleiman v Sudan* (2002) AHRLR 25 (ACHPR 2002).
7. *Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000).
8. *Purohit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003).
9. *Randolph v Togo* (2003) AHRLR 15 (HRC 2003).
10. *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).
11. *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).

### Cases decided by other international courts and tribunals

1. *Marques de Morais v Angola* (2005) AHRLR 3 (HRC 2005).
2. *Randolph v Togo* (2003) AHRLR 15 (HRC 2003).
3. *Velásquez Rodríguez v Honduras* (1988) Inter-Am Court HR (Ser. C) No 4.

### Cases decided by National Courts

#### Ghana:

1. *New Patriotic Party v Inspector-General of Police* (2001) AHRLR 138 (GhSC 1993).

#### Nigeria:

2. *Inspector-General of Police v All Nigeria People's Party and Others* (2007) AHRLR 179 (NgCA 2007).
3. *Odufe and Others v Attorney-General and Others* (2004) AHRLR 205 (NgHC 2004).

*United States of America:*

4. *Saia v New York* 334 U.S. 558 (1948).

*Zambia:*

5. *Attorney-General v Clarke* (2008) AHRLR 259 (ZaSC 2008).

**International Instruments**

1. African Charter on the Rights and Welfare of the Child, *entered into force* November 29, 1999.
2. African Charter on Human and Peoples' Rights, adopted June 27, 1981, *entered into force* October 21, 1986.
3. African Charter on the Rights and Welfare of the Child, *entered into force* November 29, 1999.
4. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, *entered into force* January 25, 2004.
5. International Covenant on Civil and Political Rights, *entered into force* March 23, 1976.
6. International Covenant on Economic, Social and Cultural Rights, *entered into force* Jan. 3, 1976.
7. Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, *adopted on* November 2010.
8. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *entered into force* November 25, 2005.
9. Rules of Procedure of the African Commission on Human and Peoples' Rights, *adopted on* October 6, 1995.
10. Occupational Safety and Health Convention, 1981 (No. 155) *entered into force* on 11 Aug 1983.
11. Workmen's Compensation (Accidents) Convention (No.17), 1925.

**Other**

1. C.A Odinkalu, 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' in M. Evans and R. Murray (eds.) *The African Charter on Human and Peoples' Rights: The system in practice, 1986 – 2000* (2002).
2. Danwood Mzikenge Chirwa 'The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights' (2004) 5 *Melbourne Journal of International Law*.