

26th African Human Rights Moot Court Competition

University of Mauritius

18 – 23 September 2017, Réduit, Mauritius

THE AFRICAN COURT ON HUMAN AND PEOPLE' RIGHTS

IN THE MATTER BETWEEN

THE AFRICAN COMMISSION ON HUMAN AND PEOPLE' RIGHTS

AND

THE STATE OF THE REPUBLIC OF ATOLLIZEA

MEMORIAL FOR THE APPLICANT

SUMMARY OF ARGUMENTS

1. THE AFRICAN COURT HAS JURISDICTION OVER THE CASE AND ALL THE ELEMENTS OF THE CASE ARE ADMISSIBLE

2. THE DECISION TO PRIVATISE THE TOURISM INDUSTRY AND RELATED LEGISLATIVE CHANGES VIOLATED THE AFRICAN CHARTER

2.1 The Applicant submits that (A) the inhabitants of Sambuka are a distinct community who constitute 'people's' for purposes of the collective rights enshrined in the African Charter and that (B) the Respondent's failure to consult with the community violated their right to political participation. The Applicant further submits that (C) the Respondent violated the Sambuka people's right to participate in the cultural life of the community.

3. ATOLLIZEA VIOLATED THE AFRICAN CHARTER AND OTHER RELEVANT TREATIES BY AUTHORISING THE CONSTRUCTION OF THE MARINA BY WORLD MARINA.

3.1 The Applicant submits that (A) the food shortages and pollution resulting from the construction of the Marina amounts to a violation of Atollizea's international obligations under the African Charter, ICESCR and the Rio Declaration.

4. ATOLLIZEA VIOLATED THE AFRICAN CHARTER AND OTHER RELEVANT TREATIES BY ARRESTING KONA AND THE EDITOR OF THE SAVE ATOLLIZEA TIMES FOR 'SPREADING FALSE NEWS'

4.1 The Applicant submits that the Respondent (A) should have released Kona and the editor in accordance with the presumption in favour of pre-trial release and (B) the provisions of the CPA are contrary to the African Charter.

SUBSTANTIVE ARGUMENTS

(I) THE AFRICAN COURT HAS JURISDICTION OVER THE CASE AND ALL THE ELEMENTS OF THE CASE ARE ADMISSIBLE

5. The Applicant submits that (A) the above Honourable Court has jurisdiction over the case and that (B) all elements of the case are admissible.

(A) THE COURT HAS JURISDICTION OVER ALL ELEMENTS OF THE CASE

6. The Respondent State is a party to the African Charter on Human and People Rights, (hereafter the “African Charter”), and to the Protocol to the African Charter Establishing the African Court on Human and People’s Rights (hereafter the “Protocol”).¹ The Applicant therefore submits that this Honourable Court has jurisdiction *ratione personae* over the current matter.

7. The jurisdiction of this Honourable Court *ratione materia* is set out in Article 3(1) of the Protocol which reads:

“The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the state concerned.”

8. The Applicant submits that this Honourable Court has jurisdiction as the complaint is founded on violations of rights guaranteed in the African Charter as well as other Human Rights instruments such as the United Nations International Covenant on Civil and Political Rights (hereafter the “ICCPR”) which the Republic of Atollizea has ratified.²

¹ Hypothetical Facts par 4.

² n 1 above par 4.

9. The Court's temporal jurisdiction will be determined with regard to the principle of non-retroactivity of treaties.³ In accordance with this principle, the Court lacks temporal jurisdiction in respect of "any act or fact which took place, or any situation which ceases to exist before the date of entry into force" of the treaty concerned for a particular state party.⁴
10. The Applicant submits that, in line with the majority of this Court's reasoning in *Mkwandawire v Malawi*,⁵ the date of entry into force of the African Charter is paramount in determining the Court's temporal jurisdiction.⁶ In this case the Court held that it would enjoy temporal jurisdiction over a matter if at the time of the violation "*the Charter was already binding on the Respondent [and] the latter was under the duty to protect the Applicant's rights alleged to have been violated.*"⁷
11. The Respondent ratified the African Charter in 1990,⁸ wherefore the Applicant submits that the Respondent was already bound by the African Charter at all material times and this Court consequentially enjoys jurisdiction *ratione temporis* in respect of all elements of the case.
12. In the alternative, the Applicant submits that this Honourable Court enjoys jurisdiction *ratione temporis* as the effects of the violations have continued after the entry into force of the Protocol. The principle that a Court shall enjoy jurisdiction *ratione temporis* over continuous violations was endorsed by this Court in *Mkwandawire* where it was held that "*even though the facts giving rise to the application arose before the Respondent*

³ ACtHPR, *Tanganyika Law Society v United Republic of Tanzania*, Judgment (Application 669/2004).

⁴ Southern African Litigation Centre, 'Justice for all: Realising the Promise of the Protocol establishing the African Court on Human and People' Rights', p 20.

⁵ ACtHPR, *Mkwandawire v Malawi*, Judgment (Application 003/2011).

⁶ n 5 above par 69.

⁷ n 5 above par 32.

⁸ n 1 above par 4.

filed the declaration” the Court has jurisdiction over violations which continued to exist after the entry into force of the Protocol.⁹

13. The Applicant submits that the adverse effects of the privatisation decision, including the increased levels of unemployment and lack of access to beaches by the Sambuka community, have continued after the Protocol entered into force in July 2015,¹⁰ wherefore this Honourable Court has temporal jurisdiction in respect of this complaint. The negative effects of the construction of the Marina, including food shortages, have continued after the entry into force of the Protocol,¹¹ wherefore the Applicant submits that this Honourable Court enjoys temporal jurisdiction in respect of this complaint as a continuing violation.

14. The arrest and subsequent detention of Kona and the Editor of the Save Atollizea Times both occurred after the entry into force of the Protocol in addition to the fact that their detention is ongoing,¹² wherefore the Applicant submits that this Honourable Court has temporal jurisdiction in respect of this complaint.

(B) ALL ELEMENTS OF THE CASE ARE ADMISSIBLE

15. Article 5(1) (a) of the Protocol provides that an application can be brought before the Court by the African Commission against any state that is a party to the Protocol. The present case is brought by the African Commission and the Respondent is a party to the Protocol,¹³ wherefore the Applicant submits that the first two admissibility requirements have been met in respect of the entire case.

16. Rule 40(5) of the Rules of this Honourable Court provide that, subject to the provisions of Article 56 of the African Charter, applications to the Court shall *“be filed after*

⁹ n 5 above see also Viljoen *International Human Rights Law in Africa* (2012).

¹⁰ n 1 above par 4, 7 and 8.

¹¹ n 1 above par 12.

¹² n 1 above par 15 and 16.

¹³ n 1 above par 5.

exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.” The Sambuka Development Movement (SDM) did not file an appeal against the High Court Judgment.¹⁴ The Applicant, however, submits that considering the significant backlog of cases at the Supreme Court of Appeal, where only twenty percent of all cases filed between 2014 and 2016 have been heard,¹⁵ it has become apparent that the procedure would be unduly delayed.

17. The complaints surrounding the authorisation of the construction of the Marina and the arrest and detention of Kona and the Editor of the Save Atollizea Times have both been appealed to the highest Court in the Respondent State.¹⁶ The Applicant therefore submits that Rule 40(5) has been materially complied with in all respects.

(II) THE DECISION OF THE STATE TO PRIVATISE THE TOURISM INDUSTRY AND RELATED LEGISLATIVE CHANGES VIOLATED THE AFRICAN CHARTER AND OTHER RELEVANT HUMAN RIGHTS TREATIES

18. The Applicant submits that (A) the inhabitants of Sambuka are a distinct community and constitute “peoples” entitled to collective rights and that (B) the Respondent’s failure to consult with the community violated their right to political participation. The Applicant further submits that (C) the Respondent violated the Sambuka people’s rights to participate in the cultural life of the community and (D) development.

(A) THE INHABITANTS OF SAMBUKA ARE A DISTINCT COMMUNITY AND CONSTITUTE PEOPLES ENTITLED TO COLLECTIVE RIGHTS

¹⁴ n 1 above par 10.

¹⁵ n 1 above par 3.

¹⁶ n 1 above par 14 and 16.

19. In *Centre for Minority Rights Development v Kenya*,¹⁷ (hereafter the ‘*Endorois Case*’) the African Commission emphasised that a key characteristic of an Indigenous Community or “peoples” is that for most of them “*the survival of their particular way of life depends on access and rights to their traditional land.*”¹⁸ In the present matter it is common cause that the coastal way of life has become an intricate part of the identity of the Sambuka community.¹⁹
20. In *Saramaka v Suriname*,²⁰ (hereafter ‘*Saramaka*’) the IACtHR recognised the Saramaka people as indigenous people “*whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with the land.*”²¹ The Applicant submits that the people of Sambuka share a special relationship with the public beaches, much like the Saramaka people with their land, on which the Sambuka women have performed their cultural dance for centuries.²²
21. In the *Endorois* case the African Commission also found that, to be recognised as “peoples”, a group of individuals should manifest certain features such as a “*common historical tradition, cultural homogeneity, territorial connection and common economic life and other bonds, identities and affinities they collectively enjoy or suffer collectively from the deprivation of such rights.*”²³ The Applicant submits that the women of Sambuka share common historical traditions and a common economic life through the Senga dance and suffer collectively from the deprivation of the right wherefore they should be recognised as “peoples” for purposes of collective rights contained in the African Charter.

¹⁷ ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group v Kenya*, Communication no. 276/03 (2009).

¹⁸ n 17 above par 150.

¹⁹ n 1 above par 5.

²⁰ IACtHR, *Saramaka People v Suriname*, Judgment, IACtHR Series B No.2 (2007).

²¹ n 20 above par 160.

²² n 1 above par 5.

²³ n 17 above par 151.

(B) THE RESPONDENT'S FAILURE TO CONSULT WITH THE COMMUNITY
VIOLATED THEIR RIGHT TO POLITICAL PARTICIPATION

22. The right to political participation is set out in various international instruments to which the Respondent is a party, including Article 25 of the ICCPR and Article 13 of the African Charter.

23. The right to political participation has traditionally been interpreted restrictively so as not to extend to a right to direct participation.²⁴ The *Saramaka* and *Endorois* cases, however, showed a marked departure from the restrictive traditional approach by finding that in instances where the State's decision is likely to impact upon the community's right to development or where indigenous rights are concerned a right to direct participation does in fact exist.²⁵ The African Commission held that in such cases:

*"...the state has a duty to actively consult with the said community...This duty requires the state to both accept and disseminate information, and entails constant communication between the parties."*²⁶

The Applicant submits that the Respondent announced the privatisation decision without any prior consultation with the community which violated their right to political participation.²⁷

(C) THE RESPONDENT VIOLATED THE PEOPLE OF SAMBUKA'S RIGHT TO
PARTICIPATE IN THE CULTURAL LIFE OF THE COMMUNITY

24. Article 17(2) of the African Charter provides that "*every individual may freely take part in the cultural life of his community.*"²⁸ Simultaneously Article 17(3) places a duty on the State to promote and protect the community's traditional values.²⁹

²⁴ Temperman, 'Public Participation in Times of Privatisation: A Human Rights Analysis' *Erasmus Law Review* (2011) p 25.

²⁵ n 17 above par 289.

²⁶ n 17 above par 289.

²⁷ n 1 above par 6.

25. The failure and consequential violation of the duty to protect the community's culture is further demonstrated by the State's failure to take action after the appropriation of the Senga dance by Global One.³⁰

26. The IACtHR in *Velásquez Rodríguez v. Honduras*,³¹ held that:

*"...the state must take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."*³²

The Applicant submits that the Respondent failed to undertake any investigations to ascertain the extent that these actions were perpetrated by private parties.

27. In *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*,³³ the African Commission further explained that:

*"... governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties."*³⁴

28. The African Commission has interpreted Article 17(2) as requiring governments to take measures to address challenges facing indigenous communities such as exploitation, discrimination, deprivation of their means of subsistence and lack of participation in decisions affecting the community.³⁵ The Applicant accordingly submits that the Respondent has violated Article 17(2) of the African Charter in failing to provide for the community's right to participation as well as depriving the women of their means of subsistence.

²⁸ African Charter on Human and People' Rights (1982).

²⁹ n 28 above.

³⁰ n 1 above par 7.

³¹ IACtHR, *Velásquez Rodríguez v. Honduras*, Judgment, Series C No. 4 (1986).

³² n 31 above par.174

³³ ACHPR, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, Communication No. 155/96 (2001).

³⁴ n 31 above par 57.

³⁵ Guidelines for National Periodic Reports, in Second Annual Activity Report of the African Commission on Human and People Rights 1988–1989, ACHPR/RPT/2nd, Annex XII.

(D) THE RESPONDENT VIOLATED THE SAMBUKA COMMUNITY'S RIGHT TO DEVELOPMENT

29. Article 22 of the African Charter provides that "*All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*"³⁶

30. It has repeatedly been emphasised that freedom of choice must be present as part of the right to development.³⁷ The Applicant submits that the members of the Sambuka community were given no choice but to leave the beaches when they were declared to be private and local fishermen were banned from these beaches in direct contravention of the guarantees of the right to development.³⁸

31. International Human Rights bodies have also increasingly acknowledged that people, and particularly indigenous people, should not be coerced, pressured or intimidated in their choices of development.³⁹ In the *Endorois* case, the African Commission also held that where a state has facilitated the right to development as envisaged in the Charter, community members' ability to benefit economically would increase.⁴⁰ Moreover, the IACTHR held that "*the right to development will be violated when the development in question decreases the well-being of the community.*"⁴¹

32. The Applicant submits that the well-being of the community has decreased due to the Sambuka women not being able to perform their traditional dance and refusing local fisherwomen access to waters near the hotel. Furthermore, the Applicant submits that

³⁶ n 17 above.

³⁷ Sengupta, "The Right to Development as a Human Right," Francois-Xavier Bagnoud Centre Working Paper No. 8, (2000), p 8.

³⁸ n 1 above par 7.

³⁹ Antoanella-Iulia Motoc and the Tebtebba Foundation, "Preliminary working paper on the principle of free, prior and informed consent of indigenous people in relation to development affecting their lands and natural resources." (2004), par. 14 (a).

⁴⁰ n 31 above par 279.

⁴¹ n 31 above par 279.

these actions resulted in a significant increase of unemployment and violated the right to development.

33. The Committee on Economic, Social and Cultural Rights has also expressed the view that states have the duty to “*adopt legislation or to take other measures ensuring equal access to work and training and to ensure that privatisation measures do not undermine workers’ rights.*”⁴² The Applicant submits that the Respondent’s failure to ensure that employment opportunities exist for its nationals after the privatisation amounted to a violation of this obligation.

(II) ATOLLIZEA VIOLATED THE AFRICAN CHARTER AND OTHER RELEVANT TREATIES BY AUTHORISING THE CONSTRUCTION OF THE MARINA

34. The right to an adequate standard of living is promoted in Article 11 of the International Covenant on Economic, Social and Cultural Rights, (hereafter “ICESCR”) which recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing, and to the continuous improvement of living conditions. The obligations to respect existing access to adequate food requires the State not to take any measures that result in preventing such access and the obligation to protect entails that the State ensures enterprises or individuals do not deprive persons of their access to adequate food.⁴³

35. It has widely been reported that as a result of the construction of the Marina the Sambuka fishing community has severely been affected through food shortages.⁴⁴ The Applicant submits that the Respondent’s decision to authorise the construction of the

⁴² General Comment No. 18, The right to work CESCR (6 February 2006).

⁴³ Jayawickrama, *The judicial application of Human Rights Law National, Regional and International Jurisprudence*, 4th ed.

⁴⁴ Hypothetical facts par 12.

Marina limited the community's existing access to adequate food and amounts to a violation of its obligations under the ICESCR.

36. In *Tellis v Bombay Municipal Corporation*,⁴⁵ the Supreme Court of India held that an important facet of the right to life is the “*right to livelihood because no person can live without the means of living, that is, the means of livelihood.*”⁴⁶ The Applicant submits that the negative impact of the construction of the Marina on the fishing community has deprived this community of their means of livelihood and as such amounts to a violation of their right to life.

37. The ECtHR in *Taşkin and Others v Turkey*,⁴⁷ held that where a state is to determine complex issues of environmental and economic policy, the process must firstly involve appropriate investigations and studies to predict any potential infringements of individual rights and strike an appropriate balance between competing interests.⁴⁸ The Court further emphasised that these studies should be made available to the community and sufficient weight should be given to the community's comments in the decision making process.⁴⁹

38. The Applicant submits that, although the Respondent undertook the necessary studies, it failed to make these studies available to the members of the Sambuka Community.⁵⁰ Furthermore, the distribution of pamphlets by World Marina were merely promotional in nature and did not set out the potential risks as well as potential benefits of the project,⁵¹ wherefore the Applicant submits that the distribution of these pamphlets is not equivalent to making studies available to the community.

⁴⁵ Supreme Court of India, *Indian Council for Enviro-Legal Affairs v Union of India*, 1996 AIR 1446 see also High Court of Kenya, *Waweru v Republic of Kenya* (2007) AHRLR 1 49 (KeHC 2006).

⁴⁶ n 45 above.

⁴⁷ ECtHR, *Taşkin and Others v Turkey*, Judgment, Application No 9654/02 (2004).

⁴⁸ n 17 above par 119.

⁴⁹ n 17 above par.119 and 120.

⁵⁰ Hypothetical Facts par 12.

⁵¹ Hypothetical Facts par 12.

39. The Applicant accordingly submits that in authorising the construction of the Marina the Respondent violated its international obligations under the African Charter, ICESCR and the Rio Declaration on Environment and Development.

(III) ATOLLIZEA VIOLATED THE AFRICAN CHARTER AND OTHER RELEVANT TREATIES BY ARRESTING KONA AND THE EDITOR OF THE SAVE ATOLLIZEA TIMES FOR ‘SPREADING FALSE NEWS’

40. The Applicant submits that (A) the arrest and continued detention of Kona and the Editor violates their rights to liberty and that (B) the Respondent violated Kona’s and the Editor’s right to freedom of expression.

(A) THE ARREST AND CONTINUED DETENTION OF KONA AND THE EDITOR VIOLATES THEIR RIGHTS TO LIBERTY AND SECURITY OF THE PERSON

41. The African Commission has expressed the view that the right to liberty contained in Article 6 of the African Charter requires that:

“Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing... state must ensure that they are not kept in custody pending their trial.”⁵²

Wherefore, there is generally a presumption in favour of pre-trial release in terms of the African Charter.

42. In *Tomasi v France*,⁵³ the ECtHR also explained that the risk of an accused person absconding must be assessed with regard to all relevant factors and that these factors

⁵² African Commission, ‘Principles and Guidelines on the Right to a Fair Trial in Africa’, Principle M (1) (e), (2003) see also ECtHR, *Grishin v Russia*, Application No. 14807/08 (2012) par 139.

⁵³ ECtHR, *Tomasi v France*, App No. 12850/87, (1993).

should indicate the existence of a substantial danger of absconding.⁵⁴ The Court emphasised the word substantial and indicated that a slight risk doesn't justify pre-trial detention.⁵⁵ Therefore, the Applicant submits that the stated grounds on which their pre-trial release was denied, namely the existence of international contacts, does not create a substantial risk of absconding.

(B) THE ARREST AND DETENTION OF KONA AND THE EDITOR FOR SPREADING
'FALSE NEWS' VIOLATES THE RIGHT TO FREEDOM OF EXPRESSION

43. The Right to Freedom of Expression is recognised in Article 9 of the African Charter which provides that *"every individual shall have the right to express and disseminate his opinions within the law."* In *Madanhire and another v. Attorney General*,⁵⁶ the Zimbabwean Constitutional Court also stated that:

*"There can be no doubt that the freedom of expression, coupled with the corollary right to receive and impart information, is a core value of any democratic society deserving of the utmost legal protection."*⁵⁷

44. The East African Court of Justice in *Burundi Journalists' Union v The Attorney General of the Republic of Burundi*,⁵⁸ (hereafter "*Burundi Journalists Union*") explained that the right to freedom of expression is particularly strong for members of the press because a *"free press goes hand in hand with the principles of accountability and transparency."*⁵⁹ The Applicant submits that the arrest of the Editor operated to encumber freedom of the press and could have a chilling effect on other journalists.

⁵⁴ n 53 above par 98.

⁵⁵ n 53 above par 98 see also ECtHR, *Cahit Demirel v Turkey* Application no. 18623/03 (2009).

⁵⁶ Zimbabwean Constitutional Court, *Madanhire and another v Attorney General*, Judgment No. CCZ 2/14.

⁵⁷ n 56 above par 7 see also ACHPR, *Constitutional Rights Project v Nigeria* Communication No 145/95 (1999) and Uganda Supreme Court, *Obbo v Attorney General* [2004] 1 EA 265 (SCU).

⁵⁸ EACJ, *Burundi Journalists' Union v The Attorney General of the Republic of Burundi*, Reference No. 1 of 2014 (2015).

⁵⁹ n 58 above par 82 and 83.

45. The wording “*within the law*” contained in Article 9 of the African Charter has been interpreted by this Honourable Court in *Konate v Burkina Faso*,⁶⁰ as referring to international norms rather than domestic law promulgated by the state.⁶¹ Therefore, the Applicant submits that any limitations on freedom of expression must meet the three requirements set out by various international and regional Courts namely that the restriction must: (i) be prescribed by law; (ii) serve one of the prescribed purposes listed in the text of the human rights instrument; and (iii) be necessary to achieve the prescribed purpose. These requirements are each addressed in turn below.

46. In *The Sunday Times v United Kingdom*,⁶² the ECtHR held that, in deciding whether a restriction is necessary, the public interest in a case must be considered. The Court held that if the information to be restricted relates to a matter of public concern, it would be necessary to demonstrate that the dissemination would certainly damage the legitimate purpose identified.⁶³ The Applicant submits that the World Marina project is a matter of public concern due to its significant impact on the fishing community.

47. In considering if a restriction is necessary regard must also be had to the proportionality of the measures. This view was clearly supported by the EACJ in *Burundi Journalists Union* which held that the determination of which ideas or information should be placed in the public sphere should not be determined by government.⁶⁴

48. In *Shelton v Tucker*,⁶⁵ the US Supreme Court emphasised that a restriction on press freedom would not be proportional if there are less restrictive means available to

⁶⁰ ACHPR, *Konaté v Burkina Faso* Application No 004/2013 (2014).

⁶¹ n 60 above par 129 see also ACHPR, *Malawi African Association v Mauritania*, Communication no. 210/98 (2000).

⁶² ECtHR, *The Sunday Times v United Kingdom*, Application No. 5493/72 (1976).

⁶³ n 62 above par 66.

⁶⁴ n 58 above.

⁶⁵ United States Supreme Court, *Shelton v Tucker*, 364 US 479 (1960).

achieve the purpose.⁶⁶ The Applicant submits that common law civil remedies, such as the action for defamation,⁶⁷ are less restrictive means available to deter the spreading of false news than custodial sentences.⁶⁸

49. This Honourable Court in *Konate* further held that custodial sentences for violating laws limiting freedom of expression or the press can only be justified under Article 9 in extreme circumstances such as the incitement of hate.⁶⁹ The Applicant submits that in line with this reasoning the prospect of a custodial sentence being imposed in matters where the only legitimate interest sought to be protected is commercial in nature, such as the tourism industry in the present matter, is a violation of Article 9.

⁶⁶ n 65 above p 488.

⁶⁷ Pound 'Equitable Relief against Defamation and Injuries to Personality', *Harvard Law Review*, (1916) p 650-652 see also Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2000) and ECtHR, *Amorim Giestas and Jesus Costa Bordalo v Portugal*, Application No 37840/10 (2014) par 36.

⁶⁸ n 56 above par 7.

⁶⁹ n 60 above.

PRAYERS

Wherefore the Applicant prays that this Honourable Court find, adjudge and declare that:

1. All elements of the case are admissible.
2. The Respondent violated the African Charter and other relevant human rights treaties in its privatisation decision and subsequent legislative changes.
3. The Respondent is ordered to implement measures to ensure that the members of the Sambuka community benefit from its economic development policies, including but not limited to, effective regulations on the hiring of foreign employees at privatised enterprises.
4. The Respondent violated the African Charter and other relevant human rights treaties in authorising the construction of the Marina.
5. The Respondent is to implement measures to reduce environmental damage.
6. The Respondent violated the African Charter and other relevant human rights treaties in its arrest and continued detention of Kona and the Editor of the Save Atollizea Times.
7. The Respondent is ordered to release Kona and the Editor of the Save Atollizea Times.
8. Any further and/or alternative relief this Honourable Court may deem appropriate.

Respectfully Submitted,

Agents for the African
Commission on Human and
Peoples Rights.

LIST OF SOURCES

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5. United Nations Conference on Environment and Development, Rio de Janeiro, Braz, June 3-14, 1992, Rio Declaration on Environment and Development.
6. United Nations Convention on Biological Diversity, 1992.

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7. ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, Communication no. 276/03 (2009).
8. ACHPR, *Constitutional Rights Project v Nigeria*, Communication No 145/95 (1999).
9. ACHPR, *Malawi African Association v Mauritania*, Communication no. 210/98 (2000).
10. ACHPR, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Communication No. 155/96 (2001).
11. ACtHPR, *Konaté v Burkina Faso* Application No 004/2013 (2014).
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13. ACtHPR, *Tanganyika Law Society v United Republic of Tanzania*, Judgment (Application 669/2004).

14. EACJ, *Burundi Journalists' Union v The Attorney General of the Republic of Burundi*, Reference No. 1 of 2014 (2015).

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15. High Court of Kenya, *Waweru v Republic of Kenya* (2007) AHRLR 1 49 (KeHC 2006).

16. Uganda Supreme Court, *Obbo v Attorney General* [2004] 1 EA 265 (SCU).

17. Zimbabwean Constitutional Court, *Madanhire and another v Attorney General*, Judgment No. CCZ 2/14.

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18. ECtHR, *Amorim Giestas and Jesus Costa Bordalo v Portugal*, Application No 37840/10 (2014).

19. ECtHR, *Cahit Demirel v Turkey* Application no. 18623/03 (2009).

20. ECtHR, *Grishin v Russia*, Application No. 14807/08 (2012).

21. ECtHR, *Taşkin and Others v Turkey*, Judgment, Application No 9654/02 (2004).

22. ECtHR, *The Sunday Times v United Kingdom*, Application No. 5493/72 (1976).

23. ECtHR, *Tomasi v France*, App No. 12850/87, (1993).

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24. IACtHR, *Saramaka People v Suriname*, Judgment, IACtHR Series B No.2. (2007).

25. IACtHR, *Velásquez Rodríguez v Honduras*, Judgment, Series C No. 4 (1986).

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26. Supreme Court of India, *Indian Council for Enviro-Legal Affairs v Union of India*, 1996 AIR 1446.

27. United States Supreme Court, *Shelton v Tucker*, 364 US 479 (1960).

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28. African Commission, 'Principles and Guidelines on the Right to a Fair Trial in Africa' (2003).

29. Antoanella-Iulia Motoc and the Tebtebba Foundation, "Preliminary working paper on the principle of free, prior and informed consent of indigenous people in relation to development affecting their lands and natural resources that they would serve as a framework for the drafting of a legal commentary by the Working Group on this concept." U.N. Doc. E/CN.4/Sub.2/AC.4/2004/4 (2004).

30. General Comment No. 18, The right to work (art. 6 of the International Covenant on Economic, Social and Cultural Rights), CESCR UN Doc E/C.12/GC/18 (6 February 2006).

31. Guidelines for National Periodic Reports, in Second Annual Activity Report of the African Commission on Human and People Rights 1988–1989, ACHPR/RPT/2nd, Annex XII.

32. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression E/CN.4/2000/63 (2000).

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34. Pound 'Equitable Relief against Defamation and Injuries to Personality' *Harvard Law Review* (1916) p 650-652.

35. Sengupta, "The Right to Development as a Human Right," Francois-Xavier Bagnoud Centre Working Paper No. 8, (2000), p 8.
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37. Temperman, 'Public Participation in Times of Privatisation: A Human Rights Analysis' *Erasmus Law Review* (2011) p 25.
38. Viljoen *International Human Rights Law in Africa* (2012) p 449.