26th African Human Rights Moot Court Competition

University of Mauritius

18 – 23 September 2017, Réduit, Mauritius

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE MATTER BETWEEN

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

AND

THE STATE OF THE REPUBLIC OF ATOLLIZEA

MEMORIAL FOR THE RESPONDENT

SUMMARY OF ARGUMENTS

1. THE AFRICAN COURT DOES NOT HAVE JURISDICTION OVER THE CASE AND NOT ALL THE ELEMENTS ARE ADMISSIBLE.

    1.1 The Respondent submits that (A) this Honourable Court lacks jurisdiction *ratione temporis* in terms of the complaint surrounding the privatisation decision and the construction of the Marina. The Respondent further submits that (B) the complaint surrounding the privatisation decision is inadmissible for failure to exhaust domestic remedies.

2. THE RESPONDENT DID NOT VIOLATE THE AFRICAN CHARTER IN ITS PRIVATISATION DECISION

    2.1 The Respondent submits that (A) the decision to privatise was a lawful exercise of state sovereignty. The Respondent further submits that (B) to the extent that rights were violated these violations are not attributable to the State and (C) the State did not fail in its duty to exercise due diligence.

3. ATOLLIZEA DID NOT VIOLATE THE AFRICAN CHARTER BY AUTHORISING THE CONSTRUCTION OF THE MARINA BY WORLD MARINA

    3.1 The Respondent submits that the authorisation of the construction was an exercise of sovereignty and did not violate any of its international obligations.

4. THE ARREST OF KONA AND THE EDITOR DID NOT AMOUNT TO A VIOLATION OF THE AFRICAN CHARTER

    4.1 The Respondent submits that the arrest and detention of Kona and the Editor of the Save Atollizea Times is compatible with international law.

SUBSTANTIVE ARGUMENTS

(I) THE AFRICAN COURT DOES NOT HAVE JURISDICTION OVER THE CASE AND NOT ALL THE ELEMENTS ARE ADMISSIBLE

5. The Respondent submits that (A) this Honourable Court lacks jurisdiction *ratione temporis* in terms of the complaint surrounding the privatisation decision and the authorization of the construction of the Marina. The Respondent further submits that (B) the complaint surrounding the privatisation decision is inadmissible for failure to exhaust domestic remedies.

(A) THE COURT LACKS JURISDICTION *RATIONE TEMPORIS* IN RESPECT OF THE CLAIM SURROUNDING THE PRIVATISATION DECISION AND THE AUTHORISATION OF THE CONSTRUCTION OF THE MARINA

6. The *ratione temporis* requirement provides that this Honourable Court may only take cognisance of violations which took place after the date of entry into force of the treaty for the country in question.[1] It must be noted that the Respondent state only ratified the African Court Protocol (hereafter the "Protocol") on 1 June 2015.[2]
7. In *Tanganyika Law Society v United Republic of Tanzania*,[3] Justice Fatsah Ouguergouz, in his separate opinion, found that based on non-retroactivity of treaties the Court cannot be seized of allegations of alleged violations of Human and Peoples Rights unless the "*violations occurred after the entry into force for the state concerned, not only of the African Charter but also of the protocol.*"[4]

[1] Southern African Litigation Centre, 'Justice for all: Realising the Promise of the Protocol establishing the African Court on Human and Peoples' Rights' (2014) p 20.
[2] Hypothetical Facts par 4.
[3] ACtHPR, *Tanganyika Law Society v United Republic of Tanzania,* Separate Opinion of Vice President Fatsah Ouguergouz.
[4] n 3 above.

8. This view is also supported by various other international Courts and tribunals including the United Nations Human Rights Committee (UNHRC) and the Committee Against Torture (CAT).[5] In *Konye v Hungary*,[6] the UNHRC explained it as follow:

> *"In its jurisprudence under the Optional Protocol, the Committee has held that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol."*[7]

9. The State of Atollizea's cabinet made the privatisation decision in 2013 whilst Global One purchased the state-owned hotels in February 2015.[8] These events occurred prior to the ratification of the Protocol wherefore the Respondent submits that this Honourable Court lacks jurisdiction *ratione temporis* in respect of the Applicant's contention surrounding the privatisation decision.

10. The World Marina Project was initiated sometime in 2014 and thus also occurred prior to the ratification of the Protocol.[9] Wherefore the Respondent respectfully submits that this Honourable Court lacks jurisdiction *ratione temporis* in respect of the Applicants contentions surrounding the authorisation of the World Marina Project.

(B) THE COMPLAINT SURROUNDING THE PRIVATISATION DECISION IS INADMISSIBLE

11. It is a principle under international law that protection of human rights should be carried out by national governments. Therefore, before a complaint is lodged with an international or regional body an attempt must first be made to remedy the violations with national laws. The exhaustion of domestic remedies requires the use of all

[5] See *inter alia* UNHRC, *Aduayom v Togo*, Communication 422/90 (1996) and CAT, *Gerasimov v Kazakhstan*, Communication 433/10 (2012) par 11.2.
[6] UNHRC, *Konye and Konye v Hungary*, Communication 520/92 (1994).
[7] n 6 above par 6.4.
[8] Hypothetical Facts par 6 and 7.
[9] Hypothetical Facts par 12.

available local remedies.[10] This principle finds expression in Article 56 of the Charter and Rule 40(5) of the rules of this Honourable Court in which it is indicated that an application may only "*be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.*"

12. In *Mkandawire v Malawi*,[11] this Honourable Court held that local remedies refer primarily to judicial remedies that meet the requirements of availability, effectiveness and sufficiency.[12] The African Commission in *Eyob Asemie v Ethiopia*,[13] also emphasized that a complainant must exhaust all appeals before the African Commission can be seized with a matter.[14] The Respondent submits that the Sambuka Development Movement (SDM) did not take their case to the highest court in the Respondent state by its failure to file an appeal.[15]

13. The African Commission in *Liesbeth Zegveld and Mussie Ephrem v Eritrea*,[16] explained that "*a domestic remedy is considered available if the petitioner can pursue it without impediment, it is effective if it offers a prospect of success and it is sufficient if it is capable of redressing the complaint*."[17] The Respondent submits that the SDM could have pursued the appeal without impediment. The SDM's only stated reason for failure to pursue the appeal is its concern over the costs involved in such proceedings.[18] In this regard, the African Commission in *Africa Legal Aid v The Gambia*,[19] held that inability to pay legal costs is not an exception to the rule requiring exhaustion of local remedies.[20] This view was also supported by the UNHRC in *P.S. v Denmark*,[21] where

[10] Southern African Litigation Centre, 'Justice for all: Realising the Promise of the Protocol establishing the African Court on Human and Peoples' Rights', p 20.
[11] ACtHPR, *Mkandawire v Malawi,* Judgment, Application 003/2011.
[12] n 11 above.
[13] ACHPR, *Eyob Asemie v Ethiopia,* Communication 270/94 (1995).
[14] n 13 above par 25.
[15] Hypothetical Facts par 10.
[16] ACHPR, *Liesbeth Zegveld and Mussie Ephrem v Eritrea,* Communication 250/02 (2003).
[17] n 16 above par 37.
[18] Hypothetical Facts par 10.
[19] ACHPR, *Africa Legal Aid v The Gambia,* Communication 209/97 (2000).
[20] n 19 above.
[21] UNHRC, *P.S. v Denmark,* Communication No. 397/1990 (1992).

it was held that "*financial considerations and doubts about the effectiveness of domestic remedies do not absolve the author from exhausting them.*"[22] The Respondent therefore submits that the SDM's failure to launch an appeal because of the costs involved does not exempt them from the exhaustion of local remedies rule.

14. The Respondent further submits that the SDM has not indicated any doubt that the appeal will succeed nor that it would be incapable of redressing the complaint. In addition, the African Commission in *Anuak Justice Council v Ethiopia*,[23] held that:

> *"If a remedy has the slightest likelihood to be effective, the applicant must pursue it. Arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will not simply sway the Commission."*[24]

15. The Respondent submits that SDM did not avail themselves of the domestic remedies available and thus cannot claim an apprehension that the available appeal would have been ineffective. The Respondent further submits that the elements of the case surrounding the privatisation decision and subsequent legislative changes are inadmissible because of the failure to exhaust domestic remedies.

(II) THE REPUBLIC OF ATOLLIZEA DID NOT VIOLATE THE AFRICAN CHARTER AND/OR ANY OTHER RELEVANT HUMAN RIGHTS INSTRUMENTS IN ITS PRIVATISATION DECISION

17. The Respondent submits that (A) the decision to privatise was a lawful exercise of state sovereignty. The Respondent further submits that (B) to the extent that rights were violated these violations are not attributable to the State and (C) the State did not fail in its duty to exercise due diligence.

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[22] n 21 above par 5.4.
[23] ACHPR, *Anuak Justice Council v Ethiopia*, Communication 299/05 (2006).
[24] n 23 above par 58.

(A) THE DECISION TO PRIVATISE WAS A LAWFUL EXERCISE OF STATE SOVEREIGNTY UNDER INTERNATIONAL LAW

18. States have the inalienable right to freely dispose of their natural wealth and resources in accordance with their national interest and in respect of the economic independence of States.[25] The act of privatisation falls within the realm of the State's economic activities, and more so the State is free to choose how to deal with the possession and disposal of its State-owned enterprises.[26]

19. Article 3 of the Declaration on the Right to Development asserts that States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development.[27] The declaration thus emphasizes states' right to the exercise their inalienable right to full sovereignty over all their natural wealth and resources.

20. In *James and Others v the UK*,[28] the European Court of Human Rights (ECtHR) recognised that the margin of appreciation available to a state "*in implementing social and economic policies should be a wide one*."[29] The rationale was that national authorities are better placed than an international court to assess what is in the 'public interest'.[30] It can therefore be said that if the goals justifying privatisation are regarded as legitimate, for example because they serve the 'public interest', the State's wide margin of appreciation can be justified.[31] The Respondent submits that the goal to increase foreign investment[32] is a legitimate objective and that the

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[25] Rio Declaration on Environment and Development, Principle 1 (1992).
[26] International Covenant on Civil and Political Rights (1966), United Nations, Treaty Series, vol. 999, par 173.
[27] UN General Assembly, *Declaration on the Right to Development: resolution / adopted by the General Assembly*, 4 December 1986.
[28] ECtHR, *James and Others v the UK*, Judgment, Application No. 8754/84 (1986).
[29] n 28 above par 46.
[30] n 28 above par 46.
[31] Koen De Feyter and Gómez *Privatisation and Human Rights in the Age of Globalisation* (2005) p 230.
[32] Hypothetical Facts par 6.

Respondent should thus be afforded a wide margin of appreciation in the implementation of these policies.

21. The Court in *James* also explained that the adoption and eventual implementation of such policies often depends on economic expediency requirements,[33] which justifies moving forward with the implementation of policies with less extensive public consultations.

22. The Respondent therefore submits that its decision to privatise the tourism industry was a lawful exercise of its sovereignty and did not amount to a violation of any of its international obligations.

(B) THE VIOLATION OF RIGHTS WAS CAUSED BY THE PRIVATE PARTIES AND IS NOT ATTRIBUTABLE TO THE STATE OF ATOLLIZEA

23. In *Gabzvikovo-Nagymaros Project (Hungary v Slovakia),*[34] the International Court of Justice (ICJ) held that when a state has committed an international wrongful act, its international responsibility is likely to be invoked regardless of the nature of the obligation the state failed to respect.[35] The rules of international law pertaining to State responsibility thus also extends to human rights treaties and must be considered in the present matter

24. In *Corn Products International Inc. v United Mexican States,*[36] it was emphasised that the International Law Commission Articles on State Responsibility (hereafter "ILC Articles") is the most authoritative statement on state responsibility.[37] The commission also expressed the view that it applies to all international legal

[33] n 28 above par 46.
[34] ICJ, *Gabčikovo-Nagymaros Project, Hungary v Slovakia*, Judgment, Merits, ICJ GL No 92, (1997).
[35] n 34 above par 47.
[36] ICSID, *Corn Products International Inc., v The United Mexican States*, Case No. ARB(AF)/04/01, decision on responsibility (2008).
[37] n 36 above par 76.

instruments save to the extent that they are excluded by the treaties' provisions as *lex specialis*.[38]

25. In accordance with Article 8 of the ILC Articles the general rule is that the only conduct attributable to the State at international level is that of its organs of government or of those who have acted under the instructions, instigation or control of such organs.[39] The requirements for instruction, instigation or control were set out by the ICJ in the case of *Nicaragua v United States of America*.[40] The ICJ applied the *"strict control test"* to equate a group of individuals with an organ of state. This rule requires a relationship of dependence and control to such a degree that it can be qualified as *"complete dependence on the state*."[41] It can therefore be said that the general rule of attribution entails that the conduct of private actors is not attributable to the State.[42]

26. The ICJ in *Bosnia and Herzegovina v Serbia and Montenegro*,[43] also warned against:

> "*broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility: A State is responsible only for its own conduct that is to say the conduct of persons acting, on whatever basis, on its behalf.*"[44]

27. The Respondent submits that Global One was not acting under the instructions, instigation or control of the State when it committed the alleged human rights

[38] n 36 above see also De Wolf "Reconciling Privatization with Human Rights" School of Human Rights Research Series, Volume 49 p 235.
[39] United Nations, International Law Commission, Report on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001), General Assembly.
[40] ICJ, *Nicaragua v United States of America*, Judgment, I.C.J Report (1986).
[41] n 40 above.
[42] De Wolf "Reconciling Privatization with Human Rights" School of Human Rights Research Series, Volume 49 p 204.
[43] ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment of 26 February 2007.
[44] n 43 above par 406.

violations. Wherefore, the conduct of these parties cannot be attributed to the State unless it failed in its duty to exercise due diligence to prevent the violation.[45]

(C) THE STATE DID NOT FAIL IN ITS DUTY OF DUE DILIGENCE TO PREVENT HUMAN RIGHTS VIOLATIONS

28. The African Commission in *Zimbabwe Human Rights NGO Forum v Zimbabwe* (hereafter the *"Zimbabwe"* case) held that:

> "*A state can be held complicit where it fails systematically to provide protection of violations from private actors who deprive any person of his/her human rights. However, unlike for direct state action, the standard for establishing state responsibility in violations committed by private actors is more relative. Responsibility must be demonstrated by establishing that the state condones a pattern of abuse through pervasive non-action*."[46]

The complainant must also establish that the State was afforded adequate opportunity to address widespread complaints of human rights violations, within the processes of its domestic legal order, and systemically failed to do so by "*routinely disregarding evidence*".[47]

29. The African Commission further emphasised that "*individual cases of policy failure or sporadic incidents of non-punishment*" would not give rise to the states international responsibility under the due-diligence doctrine.[48] The Respondent therefore submits that a failure to investigate a single case of human rights violations by Global One would be insufficient to give rise to its international responsibility.

30. The Respondent further submits that the SDM did not bring any action against Global One which limited the Respondent's ability to address their complaint within

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[45] ACHPR, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Admissibility Decision, Application no. 245/02 (2006) see also IACtHR, *Velásquez Rodríguez v Honduras*, Judgment, Series C No. 4 (1986).
[46] n 45 above.
[47] n 45 above par 160.
[48] n 45 above par 159 see also Commission on Human Rights, Fifty-second session, February 1996, Report of the Special Rapporteur on violence against women, its causes and consequences, "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms" (1996).

the processes of its domestic legal order. Additionally, there is no evidence before this Court suggesting that the Respondent has received a significant number of complaints, through the appropriate channels, alleging widespread human rights violations.

31. The only reports of a potential infringement on the right to development allegedly resulting from the privatisation decision before this Honourable Court is contained in an article published in the Today newspaper.[49] In this regard the African Commission in the *Zimbabwe* case explained that it cannot rely on newspaper articles to establish facts where no statements by victims were "*made under oath or corroborated by sworn affidavits*."[50]

32. In the alternative, to the extent that this Honourable Court finds that it can rely on this newspaper report, the Respondent submits that it did not fail in its duty to exercise due diligence as it took measures subsequent to the publication of that article to address the concerns raised over food shortages by implementing a universal income grant.[51]

(III) ATOLLIZEA DID NOT VIOLATE THE AFRICAN CHARTER AND OTHER RELEVANT TREATIES BY AUTHORISING THE CONSTRUCTION OF THE MARINA BY WORLD MARINA

33. The United Nations Convention on Biological Diversity (hereafter the "CBD") and resolutions of the UN General Assembly affirms the sovereignty of states to exploit their biological resources pursuant to their own environmental policies.[52]

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[49] Hypothetical Facts par 8.
[50] n 45 above par 176.
[51] Hypothetical Facts par 8 see also General Comment No. 12 on the right to adequate food (Article 11 of the International Convention on Economic, Social and Cultural Rights (12 May 1999) par 32 where the CESCR pointed with approval to such grants.
[52] See *inter alia* The United Nations Convention on Biological Diversity, Article 3 and UN General Assembly Resolution 1803 (XVII).

34. In acknowledgment of state sovereignty, the ECtHR, in *James and Others v the UK*, recognised that the margin of appreciation available to a state in implementing social and economic policies should be a wide one.[53] The Respondent submits that the State of Atollizea should therefore be allowed to enjoy broad discretion in implementing policies of the above-mentioned nature and subsequently interference in this instance should be limited.

35. The objectives and obligations of the CBD also take into account that "*economic and social development and eradication of poverty are the first and overriding priorities of the developing countries.*"[54] The Respondent submits that should this Honourable Court find that it gave greater weight to economic development goals than to environmental development this would not amount to a violation of Atollizea's international obligations under the CBD.

36. The ECtHR in *Kyratos v Greece*,[55] also held that although pollution resulting from urban development can in certain instances amount to a violation of a state's international obligations a "*general deterioration of the environment*" would not in itself give rise to a violation of a state's international obligations.[56] The Court further emphasised that the impact of development on animal life in swamps would not give rise to a violation of the rights guaranteed under the European Convention on Human Rights either.[57] Similarly, the Respondent submits that the potential impact of the Marina's construction on polyps would not give rise to a breach of its obligations under the African Charter.

[53] n 28 above par 46.
[54] UN General Assembly, *UN Conference on Environment and Development: resolution / adopted by the General Assembly*, 22 December 1989.
[55] ECtHR, *Kyratos v Greece*, Judgment, Application No 41666/98 (2005).
[56] n 55 above par 52.
[57] n 55 above par 52.

37. The ECtHR in *Taşkin and Others v Turkey,*[58] emphasised that when determining issues that have the potential to have a significant impact on the environment sufficient information should be made available to the community and that sufficient weight should be given to the community's comments in the decision making process.[59] The Respondent submits that sufficient information regarding the project has been given to the community of Sambuka in the form of pamphlets which have been distributed on a regular basis in addition to their active involvement in the Environmental Impact Assessment.[60]

38. The African Commission in *Centre for Minority Rights Development v Kenya*,[61] held:

> "T*he state has a duty to actively consult with the said community according to their customs and traditions*. *This duty requires the state to both accept and disseminate information, and entails constant communication between the parties.*"[62]

The Respondent consulted with the Sambuka Council of Elders, who indicated that the community was in favour of the project, prior to authorising the construction of the Marina.[63] Consultation with the community through the Council of Elders is the acceptable method in accordance with the customs and traditions of the people of Sambuka.[64] The Respondent therefore submits that due weight was given to the community's views prior to the authorisation of construction.

39. The Respondent accordingly submits that authorising the construction of the Marina was compatible with it exercising its sovereignty over its natural resources and in

[58] ECtHR, *Taşkin and Others v Turkey*, Judgment, Application No 9654/02 (2004).
[59] n 58 above par 119 and 120 see also ECtHR, *Hatton and Others v the UK*, Grand Chamber judgment, Application no. 36022/97 (2003).
[60] Hypothetical facts par 12.
[61] ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya,* Communication no. 276/03 (2009).
[62] n 61 above par 289.
[63] Hypothetical Facts par 1.
[64] Hypothetical Facts par 1.

line with its overriding priorities of economic development. Therefore, authorisation of the construction is not in violation of the Respondent's international obligations.

(IV) ATOLLIZEA DID NOT VIOLATE THE AFRICAN CHARTER IN ARRESTING KONA AND THE EDITOR OF THE SAVE ATOLLIZEA TIMES FOR SPREADING FALSE NEWS

40. The Respondent submits that while it has an obligation under international law to protect freedom of expression it has a similar duty to protect persons in its jurisdiction from unlawful attacks upon their honour and reputation.[65]

41. It is an established international norm that a limitation on freedom of expression must meet three requirements namely: (i) the restriction must be prescribed by law; (ii) the restriction must serve one of the prescribed purposes listed in the text of human rights instruments and (iii) the restriction must be necessary to achieve the prescribed purpose.

42. The ECtHR in *Sunday Times v The United Kingdom*,[66] held that to meet the first requirement of being "*prescribed by law*" it is required that the law must have a basis in domestic law, be adequately accessible, and be formulated with sufficient precision.[67]

43. The Respondent submits that the limitation of the right to freedom of expression to prevent the spread of false news is based in Atollizea's domestic law in Section 11 of the Criminal Procedure Act (hereafter the "CPA"). The UNHRC has also expressed the view that a limitation on freedom of expression enshrined in legislation would generally satisfy the requirement that a law must be widely

[65] Conte & Burchill "Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee" (2nd Edition) p 221.
[66] ECtHR, *Sunday Times v the United Kingdom*, Judgment, Application No 6538/74 (1979).
[67] n 66 above.

accessible.[68] The Respondent therefore submits that Section 11 of the CPA meets the requirement of being adequately accessible.

44. With regard to the second requirement, the Zimbabwean Constitutional Court's finding in *Madanhire and Another v Attorney General* is instructive as it emphasised that although the offence of criminal defamation *"operates to encumber and restrict freedom of expression*" it "*undoubtedly falls into the category of permissible derogations as a protective provision for reputations, rights and freedoms of other persons*."[69]

45. This dictum can be applied to other international instruments as evidenced by Article 19 (a) of the ICCPR, which similarly provides for the limitation on freedom of expression in the interest of promoting "*respect of the rights or reputations of others*". The African Commission in *Media Rights Agenda v Nigeria*,[70] held that the right to freedom of expression can be limited where it is necessary "*in respect of the rights of others, collective security, morality and common interest*."[71] Therefore, the Respondent submits that the limitation serves the prescribed purposes in international human rights treaties namely, protecting persons from unlawful attacks upon their honour and reputation.

46. The application of Section 11 of the CPA is limited by requiring the State to prove both that the accused had knowledge of the fact that the news published or broadcasted was false and that the accused had the intention of misinforming the public or creating panic.[72] The Respondent therefore submits that the provisions of Section 11 of the CPA are not overbroad and are proportional to the interest which it seeks to protect, namely the prevention of an unlawful attack upon the honour and reputation of its citizens.

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[68] UNHRC, General Comment 34 par 24.
[69] Zimbabwe Constitutional Court, *Madanhire v Attorney General* [2005] ZACC 02, 7
[70] ACHPR, *Media Rights Agenda v Nigeria* Communication Nos 130/94 and 152/9 (1998)
[71] n 70 above par 68.
[72] Hypothetical Facts par 2.

47. The Respondent accordingly submits that section 11 of the CPA is not in conflict with the African Charter and that the provisions of the CPA are legitimate and legal, wherefore the arrest and detention of Kona and the Editor of the Save Atollizea Times is also legitimate and legal.

PRAYERS:

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

1. The complaint in respect of the privatisation decision and the construction of the Marina be declared inadmissible.
2. Alternatively, that the alleged human right violations arising from the privatisation decision are not attributable to the Respondent.
3. Alternatively, that the authorisation of the Marina was well within the Respondent's sovereignty.
4. The arrest of Kona and the Editor was legal and compatible with the Respondent's international obligations.
5. Any further and/or alternative relief this Honourable Court may deem appropriate.

Respectfully Submitted,

Agents for the Republic of Atollizea.

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3. The International Covenant on Economic, Social and Cultural Rights, 1966.
4. The Protocol to the African Charter Establishing the African Court on Human and People' Rights, 2008.
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, *Africa Legal Aid v The Gambia,* Communication 209/97 (2000).
8. ACHPR, *Anuak Justice Council v Ethiopia*, Communication 299/05 (2006).
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16. Zimbabwe Constitutional Court, *Madanhire v Attorney General* [2005] ZACC 02.

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17. ECtHR, *Hatton and Others v the UK*, Grand Chamber judgment, Application no. 36022/97 (2003).
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24. ICJ, *Nicaragua v Unites States of America*, Judgment, I.C.J Report (1986).

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25. CAT, *Gerasimov v Kazakhstan*, Communication 433/10 (2012).
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28. UNHRC, *Aduayom v Togo*, Communication 422/90 (1996).

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30. UNHRC, *P.S. v Denmark,* Communication No. 397/1990 (1992).

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31. Commission on Human Rights, fifty-second session, Report of the Special Rapporteur on violence against women, its causes and consequences: "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms" (1996).
32. General Comment No. 12 on the right to adequate food, Article 11 of the International Convention on Economic, Social and Cultural Rights, UN Doc. E/C.12/1999/5 (1999).
33. United Nations, General Assembly Resolution 1803 (XVII).
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