

**27th African Human Rights Moot Court Competition**

**University of Ghana, Legon**

**6 – 11 August 2018, Accra, Ghana**

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

**IN THE MATTER BETWEEN**

**DR NDULI AYOZE AND THE LUWOS FOR LUWO RIGHTS (LULURI)**

**AND**

**THE FEDERAL REPUBLIC OF JOMERO (FRJ)**

**MEMORIAL FOR THE APPLICANT**

## LIST OF AUTHORITIES

### INTERNATIONAL TREATIES AND CONVENTIONS

1. *African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).*
2. *African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), 11 July 2003.*
3. *Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, 10 June 1998.*
4. *UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 124.*
5. *UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.*

6. *UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999.*
7. *UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.*
8. *African Charter on Democracy, Elections and Governance (ADC), 15 February, 2012).*

## **UNITED NATIONS RESOLUTIONS AND OTHER DOCUMENTS**

1. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001.*
2. *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa; Practical Guide for Implementation, 2002.*

3. *Travaux Préparatoires Travaux préparatoires (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).*

#### **DOMESTIC LAW**

1. *1973 Constitution of the Federal Republic of Jomero.*
2. *Fundamental Rights Enforcement Act, 1999.*
3. *Police Services Act of Federal Republic of Jomero.*
4. *Office of the Special Prosecutor Act, 2016.*

#### **CASE LAW**

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

1. *Dawda Jawara v. the Gambia (2000) AHRLR 107.*
2. *Gunme and others v Cameroon (2009) AHRLR 9 (ACHPR 2009).*

3. *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria (Ogoniland case), Communication 155/96.*
4. *Zitha & Zitha v. Mozambique (Communication 361/08).*
5. *Katangese Peoples' Congress v Zaire Comm. 75/92, 8th ACHPR AAR Annex VI (1994-1995).*
6. *John D. Ouko v Kenya (2000) ACHPR.*
7. *Centre for Minority Rights Development and Anor v. Kenya Communication 332/06.*
8. *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan February 2013, ACHPR, 386/2010.*
9. *Abubakar v Ghana (2000) AHRLR 124 (ACHPR 1996).*
10. *Article 19 v Eritrea (2007) AHRLR 73 (ACHPR 2007).*
11. *Wetsh'okonda Koso and Others v Democratic Republic of the Congo (2008) AHRLR 93 (ACHPR 2008).*
12. *Organisation Mondiale Contre la Torture and Others v Rwanda (2000) AHRLR 282*

13. *Lawyers for Human Rights v Swaziland (2005) AHRLR*  
66 (ACHPR 2005).

14. *Egyptian Initiative for Personal Rights v. Egypt,*  
*Decision, Comm. No. 334/2006 ACmHPR, Mar. 2011).*

### **AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS**

1. *Abubakari v. United Republic of Tanzania, Application*  
*No. 007/2013.*

### **EUROPEAN COURT OF HUMAN RIGHTS**

1. *Chowdury and Others v. Greece ECtHR- Application*  
*No. 21884/15, 30 March 2017.*

### **INTER-AMERICAN COURT OF HUMAN RIGHTS**

1. *Velásquez Rodríguez v Honduras, Inter-Am. Ct. H. R*  
*(Ser. C) No. 4 (1988).*

### **HUMAN RIGHTS COMMITTEE**

1. *Kennedy v Trinidad and Tobago; Communication No*  
*845/1998; 26th March 2002.*

## **COMMITTEE AGAINST TORTURE**

1. *Blanco Abad v Spain*, CAT Communication No. 59/1996, 14 May 1998.
2. *Ali v Tunisia* (2008) AHRLR 15 (CAT 2008).
3. *Ben Salem v Tunisia* (2007) AHRLR 54 (CAT 2007).

## **IRAN – UNITED STATES CLAIMS TRIBUNAL**

1. *Hyatt International Corporation v Government of the Islamic Republic of Iran*; 37 Iran –U.S. C.T.R.

## **MUNICIPAL LAW**

1. *Re Pinochet* (1998-1999) HOL.
2. *R v Sussex Ex Parte McCarthy*; [1924] 1KB 256.

## **BOOKS AND ARTICLES**

1. Abass, Ademola, *Complete International Law: Text, Cases and Materials*. Oxford University Press, 2012.
2. Roya M. Hanna, *Right to Self-Determination in Re Secession of Quebec*, 23 Md. J. Int'l L. 213 (1999).
3. Mhango O. Mtendeweka, *Recognizing a Right to Autonomy for Ethnic Groups under the African Charter*

*on Human and Peoples' Rights: Katangese People's  
Congress v Zaire, 2007.*

4. *Torture in International Law; A guide to jurisprudence;  
Association for the Prevention of Torture.*

## LIST OF ABBREVIATIONS

### ABBREVIATION

### PHRASE

***African Charter*** *African Charter on Human and Peoples' Rights*

***ARSIWA*** *Articles on Responsibility on States Intentional Wrongful Acts*

***Bukanda*** *Republic of Bukanda*

***Commission*** *The African Commission on Human and Peoples Rights*



<b>CP</b>	<i>Central Province</i>
<b>Court</b>	<i>The African Court on Human and Peoples' Rights</i>
<b>CEDAW</b>	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>
<b>DSS</b>	<i>Doom Security Services</i>
<b>FRJ</b>	<i>Federal Republic of Jomero</i>
<b>ICCPR</b>	<i>International Convention on Civil and Political Rights</i>
<b>ICESCR</b>	<i>International Convention on Economic, Social and Cultural Rights</i>
<b>LPP</b>	<i>Luwo's People's Party</i>
<b>Maputo Protocol</b>	<i>Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa</i>
<b>NP</b>	<i>Northern Province</i>
<b>OSP</b>	<i>Office of the Special Prosecutor</i>
<b>Palermo Protocol</b>	<i>Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.</i>

**SP** *Southern Province*

**UNCAT** *United Nations Convention Against  
Torture and Other Cruel  
Inhuman and Degrading Treatment  
or Punishment*

## **STATEMENT OF FACTS**

The Federal Republic of Jomero (FRJ) which is located on the African continent with Melovo as its capital, gained independence in 1973, and has three provinces namely the Central Province (CP) made up of the Abigi ethnic group, the Southern Province (SP) made up of the Tangan ethnic group and the Northern Province (NP) inhabited by the Luwos. The Luwos have the largest population and practice the Afrikania tradition with the other groups practising Christianity. Section 5 designates the resolution of cultural disputes to the traditional tribunals from which there is no further appeal. The Nii Azonto is constitutionally

recognised as being supreme in spiritual matters in the NP. In the belief system of the Luwos, older women are accused of witchcraft and kept in camps. Government's attempt to close down the facility has been unsuccessful due to the unwillingness of the women to leave.

Elections held in 2016 saw the ruling NPA candidate Kene Kunda winning by 50.5% of the total votes in comparison to his LPP competitor Dr. Ayoze. ECOWAS, AU and EU observers declared the elections free and fair. Go Abroad for Development (GAD) deals in human trafficking and LULURI (Luwos for Luwo Rights) campaigned for the FRJ to adopt laws that criminalise human trafficking, the prevention and protection of victims since 2014. FRJ declared in 2016 their commitment to implement their recommendations. Dr Ayoze set up a guerrilla camp in Bukanda called Armed Luwos In Exile who conduct low scale bombings including the blowing up of a pipeline supplying oil to the NP.

Doom Security Services (DSS) is a private security company owned by a family member of the President is contracted by FRJ to patrol trouble spots. There are rumours of unexplained deaths and overcrowding in DSS detention centres. The Office of the Special Prosecutor was called to investigate the matter and is headed by Mr Kwame Abudu Andani who is a former law partner of the President, the DSS was cleared of all wrongdoing.



## **SUMMARY OF ARGUMENT**

### **CLAIM A**

Applicant avers that on the authority of Katanga Peoples' Congress v Zaire and Gunme and others v Cameroon, NP is entitled to external self-determination.

### **CLAIM B**

Applicant submits that by virtue of the principle of State Responsibility, the respondent State is responsible for the acts of torture committed by DSS.

### **CLAIM C**

Applicant avers that, FRJ failed to adopt adequate measures to prevent human trafficking hence violating the African Charter and other relevant human right treaties.

### **CLAIM D**

Applicant avers that the operation of the witch camps facilitated the separation of old women from their communities

thus discriminating against the old women in the Luwo community. Also, the conditions in the witch camps grossly violated the basic human rights of the inmates guaranteed under the African Charter and other international human right treaties.

## **PART I – SUBMISSION BY DR. AYOZE**

### **STATEMENT OF JURISDICTION**

1. Article 3(1) of the *Protocol*<sup>1</sup> provides that *the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter.*
2. The subject matter of the hypothetical case concerns the interpretation and application of the *African Charter*<sup>2</sup> which the respondent State has acceded to hence the Court has material jurisdiction.
3. In the case of *Yogogombaye v. Senegal*<sup>3</sup>, the Court held that, *“to hear a case brought before it directly by an individual against a State party, there must be compliance with Article 5(3) and Article 34(6) of the Protocol”.*

---

<sup>1</sup> Protocol to the African Charter on the Establishment of the African Court on Human and Peoples’ Rights. Adopted in 1998. Came into force in 2004.

<sup>2</sup>African Charter on Human and Peoples’ Rights. Adopted in 1981. Came into in 1986

<sup>3</sup> Appl. No. 1/2008, ACtHPR, Judgment (15 Dec. 2009)



4. Article 5(3) of the *Protocol* provides that, “*the Court may entitle relevant Non-Governmental Organizations with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of the Protocol*”
5. Article 34(6) of the *Protocol* provides that, “*at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State Party which has not made such a declaration*”
6. Applicant thereby submits that the *Court*<sup>4</sup> has personal jurisdiction given the fact that the respondent State has made the requisite declaration under Article 34(6) of the *Protocol*.

---

<sup>4</sup> Ibid n.1

7. The *Court* has temporal jurisdiction because the violations continued after the entry into force of the *African Charter* in the respondent State.
8. The *Court* has territorial jurisdiction as all named violations were committed within the territory of the FRJ.
9. In *Abubakari v Tanzania*<sup>5</sup>, this *Court* held that flowing from consideration of material, personal, temporal and territorial jurisdiction, it was seized with jurisdiction to hear the case.

#### **STATEMENT OF ADMISSIBILITY**

10. Article 6(2) of the *Protocol* provides that the *Court* shall rule on the admissibility of cases taking into account the provisions of Article 56 of the *African Charter*. *The Commission*<sup>6</sup> in *Zitha & Zitha v Mozambique*<sup>7</sup> posited that where one of the conditions of Article 56 of the

---

<sup>5</sup> Appl. No. 007/2013

<sup>6</sup> The African Commission on Human and People's Right

<sup>7</sup> Comm. No. 361/2008 (ACmHPR, Mar. 2011)

*African Charter* was not met, it will declare the communication inadmissible, unless the complainant showed sufficient justification.

11. Applicant submits that it has fulfilled all seven elements set out in Article 56. Nonetheless, shall proceed to address the elements of exhaustion of exhausting local remedies as stated under Article 56(5).

12. The *Commission* in the case of *SERAP v. Nigeria*<sup>8</sup> espoused that the local remedy must be available, effective and sufficient.’ Nevertheless, for the local remedy to fulfill these criteria, the *Commission* elaborates in *Jawara v The Gambia*<sup>9</sup> ‘A remedy is considered *available* if the petitioner can pursue it without impediment, it is deemed *effective* if it offers a prospect of success, and it is found *sufficient* if it is capable of redressing the complaint.’

---

<sup>8</sup> (2008) ACHPR para 45

<sup>9</sup> AHRLR 107 (ACHPR 2000)

13. Applicant submits that there are no local remedies to exhaust with respect to claim for self-determination in the form of secession because it is a matter for an international forum and not a domestic one, thus cannot be determined by a domestic court.

14. Regarding the second claim, applicant submits that local remedies were unavailable. In *Jawara v Gambia*<sup>10</sup>, the *Commission* posited that, “*The existence of a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of a generalised fear for his life, local remedies would be considered to be unavailable to him.*” The Applicant submits that having been forced into exile following increasing agitation and banning of the LPP, local remedies could not be available to him.

---

<sup>10</sup> *ibid*

## **SUMMARY OF ISSUES**

Applicants request the *Court* to determine:

15. Whether or not the NP are entitled to external self-determination in the form of secession
16. Whether or not FRJ is responsible for committing acts of torture

## MERITS

### (A) NP IS ENTITLED TO EXTERNAL SELF-DETERMINATION IN THE FORM OF SECESSION

#### I. Right to self-determination is inalienable.

17. Applicant submits that the NP of the FRJ is entitled to external self-determination in the form of secession. Article 20(1) of the *African Charter*, Article 1 of the ICCPR<sup>11</sup> and Article 1 of the ICESCR<sup>12</sup> guarantee the right to self-determination of all peoples.

18. In the case of *Gunme and Others v Cameroun*<sup>13</sup>, the *Commission* held that the people of Southern Cameroon qualified to be referred to as a 'people' because they manifest numerous characteristics and affinities which include a common history, linguistic

---

<sup>11</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series

<sup>12</sup> International Convention on Economic, Social and Cultural Rights, 1976

<sup>13</sup> *Ibid* n.12

tradition, territorial connection and political outlook with a separate and distinct identity. The Applicant submits that the people of NP satisfy the requirements above since they have a distinct tradition and unique cultural practices peculiar to them.

19. Per Article 20(2) the 'peoples' must be oppressed. In *Katangese Peoples' Congress v Zaire*<sup>14</sup>, the *Commission* declared that the case had no evidence of violation of human rights and hence a claim of self-determination has no merit. The *Commission* further posited that concrete evidence of violations of human rights should be coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13(1).<sup>15</sup>"

---

<sup>14</sup> Supra

<sup>15</sup> Ibid n.2

## **II. Violations of human rights by FRJ**

### **a. Violation of Article 4 of the African Charter**

20. Article 4 of the *African Charter* guarantees an individual's right to respect for his life and the integrity of his person. In *Sudan Human Rights Organisation and Another v. Sudan*<sup>16</sup> the Commission held that "*it is the duty of the state to protect human life against unwarranted or arbitrary actions by public authorities as well as by private persons. The duty of the state to protect the right to life...include prohibition of arbitrary killing by agents of the state.*" Per paragraph 13 of the hypothetical case, demonstrations undertaken by the youths in the NP ended up in two youths dying with at least 20 of them being admitted to hospital. By virtue of these deaths applicant submits that the respondent State breached Article 4 of the *African Charter*.

---

<sup>16</sup> (2009) AHRLR 153 (ACHPR 2009)



**b. Violation of Article 6 of the African Charter**

21. Article 6 guarantees the right to liberty and to the security of his person. In *Organisation Mondiale Contre la Torture and Others v Rwanda*<sup>17</sup>, it was held that the arrests and detentions by the Rwandan government based on grounds of ethnic origin constituted arbitrary deprivation of the liberty of an individual, a violation of Article 6. Per paragraph 13 of the hypothetical case, key traditional leaders in the NP were arrested and detained under suspicion of encouraging these protests without being charged or trialed. Applicant submits that the arrest and detention of the key traditional leaders of the NP violates Article 6 of the *African Charter*.

**c. Violation of Article 7 of the African Charter and Article 14 of the ICCPR**

---

<sup>17</sup> (2000) AHRLR 282 (ACHPR 1996)

22. Article 7 of the *African Charter*<sup>18</sup> guarantees the right of the individual to be deemed innocent until proven guilty and to be tried within a reasonable time by an impartial court or tribunal. This is affirmed in Article 14 of the ICCPR<sup>19</sup>. Applicant submits that the arrest of Mima Malima contravenes Article 7 of the *African Charter* and Article 14 of the ICCPR due to the fact that the respondent State did not undertake to investigate the matter to ascertain the veracity of the suspicion. Besides, since her arrest, her whereabouts is unknown. In *Zitha & Zitha v Mozambique*<sup>20</sup>, the Commission held that failure to investigate an enforced disappearance constituted a continuing violation of the Charter.

**d. Violation of Article 10(1) of the African Charter**

---

<sup>18</sup> supra

<sup>19</sup> Ibid n.13

<sup>20</sup> Ibid n.7

23. Article 10(1) of the *African Charter* guarantees the right to freedom of association. This law was tested in the case of *Ouko v Kenya*<sup>21</sup> where the complainant was forced to flee his country because of his political opinions and political persecutions. The *Commission* held that there was a violation of Article 10(1). Applicant submits that the banning of the LPP compelled the applicant to subsequently flee to Bukanda and hence a violation of Article 10.

**e. Violation of Article 22 of the African Charter and Article 11 of the ICESCR**

24. Article 22 of the *African Charter* and Article 11 of the ICESCR<sup>22</sup> guarantees the right to economic development and the right to adequate standard of living respectively. The applicant submits that the

---

<sup>21</sup> (2000) AHRLR 135 (ACHPR 2000)

<sup>22</sup> Ibid n.14

failure of FRJ to take appropriate steps resulted in the negative socio-economic conditions that compelled the youth to seek greener pastures in Bukanda. Further the tweet by Mr. Anansi Owo in paragraph 13 corroborates the above.

### **III. Denial of the People the right to participate in government.**

25. While Article 13(1) of the *African Charter* guarantees the right to participate freely in government, Article 3(11) of the *African Charter on Democracy*<sup>23</sup> enjoins States parties to strengthen political pluralism and recognizing the role, rights and responsibilities of legally constituted political parties including opposition parties. Per paragraph 15 of the hypothetical case, LPP was banned hence a clear indication of denial of the Luwo's the right to participate in government.

---

<sup>23</sup> African Charter on Democracy, Elections and Governance, 2012

Applicant further aver that since independence, the 25-member cabinet of the Respondent State has consisted mainly of people from the Abigi ethnic group with a few prominent Tangan politicians featuring with no representation of people from the NP.

26. Thus, the applicant submit that since there has been massive violation of the human right of the peoples of NP and they have been deprived of the right to participate in government, they are entitled to external self-determination in the form of secession.

**B) FRJ IS RESPONSIBLE FOR COMMITTING ACTS OF TORTURE**

**I. Acts of Doom Security Services (DSS) amounts to torture**

31. Article 5 of the *African Charter* and Article 7 of the ICCPR prohibits acts of torture. Per Article 1 of *UNCAT*<sup>24</sup>, for an act to be considered as torture, there must be an intentional infliction of pain on a person, and the act must be carried out by a state or public official or any person under the authority of the State for the purposes of obtaining some information from the victim.

33. Applicant avers that the deprivation of sleep and starvation of the 3,000 suspected militants following their

---

<sup>24</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987

arrest by DSS in a bid to retrieve potential information was intentional, hence constitute acts of torture.

## **II. FRJ is responsible for the acts of DSS by virtue of the Principle of State Responsibility.**

34. The principle of State Responsibility makes a State responsible for internationally wrongful acts.

35. Article 5 of *ARSIWA*<sup>25</sup> makes States responsible for acts of a person or entity which is not an organ of state but empowered by the law of the state to exercise elements of the governmental authority.

36. In its comment on Article 5, the International Law Commission indicated that, the formulation of Article 5 clearly limits it to entities which are empowered by internal law to exercise governmental authority. An entity is covered even if

---

<sup>25</sup> Draft articles on Responsibility of States for Internationally Wrongful Acts, 2001

its exercise of authority involves an independent discretion or power to act. There is no need to show that the conduct was in fact carried out under the control of the State.<sup>26</sup>

37. Therefore, since DSS is acting on behalf of the Respondent State, the Respondent State is responsible for the acts of DSS.

### **III. Breach of duty to investigate**

37. Article 19 of the *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa* provides that States shall conduct investigations into all allegations of torture and shall be conducted promptly and impartially.

38. The Committee against Torture stressed in *Blanco Abad v Spain*<sup>27</sup> that “ promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious

---

<sup>26</sup> *ibid*

<sup>27</sup> CAT, Communication No. 59/1996, 14<sup>th</sup> May 1998



effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.”

39. Applicants therefore submit that, the several weeks of delay by the Respondent State before initiating investigation into the matter was therefore a breach of Robben Island Guidelines.

#### **PRAYER**

40. Applicant requests this Court to:

- i. declare that the NP is entitled to self-determination in the form of secession
- ii. declare that FRJ is responsible for the acts of torture

Humbly submitted,

Agent for Dr. Nduli Ayoze (Applicant)

## PART II – SUBMISSION BY LULURI

### STATEMENT OF JURISDICTION

41. The jurisdiction of the *Court* as set out in Article 3(1) of the *Protocol* extends to all cases and disputes on human rights concerning the interpretation and application of the *African Charter*.

42. In *Kijiji Isiaga v Tanzania*<sup>28</sup>, the *Court* held that it was clothed with jurisdiction to hear the case considering the material, personal, temporal and territorial aspects of its jurisdiction in relation to the matter.

43. The applicant submits that, the *Court* has material jurisdiction because the acts complained of by the applicant violates the *African Charter* and other international human right treaties ratified by the Respondent State. The case brought before the *Court* by the applicant concerns the violation of the

---

<sup>28</sup> App. No. 032/2015

obligations of FRJ enshrined in the *African Charter* and other international instruments ratified by it. The subject matter therefore concerns the interpretation and application of the *African Charter* and other instruments ratified by the Respondent thus the court has material jurisdiction to hear the case.

44. In relation to personal jurisdiction, the applicant submits that the court has jurisdiction over both the applicant and respondent. This is so because the Respondent State has ratified the protocol and also made the required declaration pursuant to Article 34(6) as read together with Article 5(3) of the *Protocol*<sup>29</sup>. In the case of *APDF & IHRDA v Mali*<sup>30</sup> the *Court* held that, it had personal jurisdiction since the Respondent State was a party to the *Protocol*, and had made the optional declaration prescribed under Article 34(6); and that the

---

<sup>29</sup> Paragraph 7 of the facts.

<sup>30</sup> App. No 046/2016(para 37).

Applicants had an observer status before the *Commission*. The applicants thus submit that the making of the declaration gives direct access to the applicant, as an NGO which enjoys observer status at the *Commission*, to bring a claim against the Respondent State as a State party to the *Protocol*.

45. The *Court* also has temporal jurisdiction. In the case of *Malawi African Association v Mauritania*<sup>31</sup>, the *Court* was deemed to be within jurisdiction since the violations that occurred prior to the entry into force of the *African Charter* continued after the entry into force of the *African Charter*. The applicants thus submit that, while the violations occurred prior to the FRJ acceding to the *African Charter*, the violations and their residual effects continued after FRJ acceded to the *African*

---

<sup>31</sup> (2000) AHRLR 149 (ACHPR 2000)

*Charter*. The court is therefore clothed with jurisdiction to hear the matter.

46. Finally, *the Court* has territorial jurisdiction<sup>32</sup> as all named violations complained of were committed within the territory of FRJ.

#### **ADMISSIBILITY**

47. Article 6(2) of the *Protocol* mandates the *Court* in ruling on the admissibility of cases to take into account the provisions of Article 56 of the *African Charter*. Article 56 of the *African Charter* sets out a cumulative test of seven requirements which must be met in order for a case to be admissible.<sup>33</sup>

48. In *Zitha & Zitha v. Mozambique*<sup>34</sup>, the Commission held that, in the absence of any one of these

---

<sup>32</sup> App. No. 001/2014 (*APDH*) v. *Republic of Cote d'Ivoire*.

<sup>33</sup> Article 56(1)-(7).

<sup>34</sup> *Ibid* n.7

requirements, the communication will be declared inadmissible unless the complainant showed justifiable grounds for such absence.

49. The applicant submits that it has fulfilled all seven elements set out in Article 56. Nonetheless, shall proceed to address the elements of exhaustion of local remedies as stated under Article 56(5) as well as 56(6) which requires the applicant to bring the action within reasonable time.

50. The Commission in *Front for the Liberation of the State of Cabinda v Angola*<sup>35</sup> stipulated that, “*the fact that the complainant has no legal standing before the Angolan courts, that most of its members live abroad and are considered terrorists by the government, leads to the conclusion that chances of the complainant exhausting*

---

<sup>35</sup>Communication 328/06

*local remedies have been practically rendered impossible by fear of prosecution.”*

51. Thus, the applicants contend that it was impossible to exhaust local remedies. This is because the applicant under domestic laws lacked capacity under Section 4 of the Fundamental Rights Enforcement Act of 1999 to bring the matter to court.

52. Concerning the requirement of reasonable period provided by Article 56(6), in the case of *Dr. Farouk Mohamed Ibrahim v. Sudan*<sup>36</sup> the *Commission* espoused that “reasonable time is computed from the time when the communication was submitted to the *Commission* after exhaustion of local remedies, or when the complainant immediately realizes that local remedies are not available, sufficient or effective.” The *Commission* further asserted that ascertaining the

---

<sup>36</sup> (Communication 386/10, 13th Extra-ordinary Session)

notion of reasonable time within the *Commission*, depends on the circumstances of every case.

53. Since the High Court rejected the action of LULURI on the basis that they lacked standing, from July 2017 to 23<sup>rd</sup> December, 2017 is a reasonable time within which the applicant brought its case.

#### **SUMMARY OF ISSUES**

54. Whether or not violates the African Charter and relevant international human right treaties by failing to adopt adequate to prevent human trafficking.

55. Whether or not FRJ violates the African Charter and relevant international human right treaties by allowing the operation of “witch” camps on its territory.



## MERITS

**A) FRJ's FAILURE TO ADOPT ADEQUATE MEASURES TO PREVENT HUMAN TRAFFICKING VIOLATES THE AFRICAN CHARTER AND OTHER RELEVANT INTERNATIONAL HUMAN RIGHTS TREATIES.**

### **I. Failure to criminalize human trafficking in FRJ**

56. Article 5 of the Palermo Protocol<sup>37</sup> requires States to adopt legislative measures to establish as criminal offences the conduct of human trafficking.

57. In paragraph 17 of the facts, the applicant since 2014 has been advocating strongly to the respondent State to adopt laws that criminalize human trafficking in FRJ, this recommendation is in line with Articles 5, and 6 of the *Palermo Protocol* and CEDAW respectively. Per

---

<sup>37</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000

paragraph 7 of the facts, the Respondent State has not voted on or enacted any legislation in respect of any of the human rights treaties ratified or acceded to by the State.

**iii. Poor Border Measures**

58. The applicant further submits that the Respondent's implementation of a free movement policy which included limited border screening in paragraph 16 encouraged trafficking and thus a violation of Article 11(1) of the *Palermo Protocol*.

**iv. Failure to train immigration officers and other law enforcement agencies**

59. Article 10(2) of the *Palermo Protocol* requires State Parties to provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.

60. Applicant submits that the respondent State failed to discharge this obligation, thus constitutes a violation.

Even upon recommendation by the applicant, the respondent State rejected it.

### **Awareness and sensitization**

61. Article 9(5) of the *Palermo Protocol* enjoins State party to “adopt or strengthen legislative or other measures, such as educational, social or cultural measures...” According to the *Travaux Préparatoires*<sup>38</sup> each State Party shall take measures to ensure that it provides or strengthens information programmes to promote awareness among the public at large, including potential victims and their families, of the causes and consequences of trafficking in persons.

62. Although per paragraph 17, the respondent introduced awareness, sensitization and civic education about the

---

<sup>38</sup> Travaux préparatoires (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I)

phenomenon of human trafficking in the secondary school curricula of that province, applicant avers that such measure limited to the secondary school with an enrolment of 30% rendered the sensitization ineffective.

**B) FRJ VIOLATES THE AFRICAN CHARTER AND RELEVANT INTERNATIONAL HUMAN RIGHTS TREATIES BY ALLOWING “WITCH CAMPS” TO OPERATE ON ITS TERRITORY**

**I. Violation of Obligation to eliminate discrimination against Women and Girls.**

63. The Applicant submits that, the Respondent State is obliged under Article 18(3), (4) of the African Charter and Article 2 of CEDAW to eliminate all forms of discrimination on its territory and protect inter alia, the rights of women, children and older persons in its territory.

64. In *Association of Victims of Post-Election Violence v Cameroun*<sup>39</sup>, the Court classified State obligation into diligence and result. The applicant thus submit the Respondent State has obligations of both diligence<sup>40</sup> and result<sup>41</sup>, not to allow the operation of witch camps on its territory.

65. The applicant further submits that, the operation of witch camps amounts to discrimination against older women on grounds of sex and age by facilitating their exclusion from their communities and restricting their freedom of movement.

66. Per Paragraph 7 of the agreed facts, the FRJ has not enacted any legislation in relation to any of the human rights treaties it has ratified or acceded. The Respondent State's failure to enact laws to prohibit the operation of the witch camps and its related harmful

---

<sup>39</sup> Communication No. 272/2003, (ACHPR 2009).

<sup>40</sup> Take legislative measures.

<sup>41</sup> Take other measures necessary.

practices in furtherance of its duty of diligence therefore violates the African Charter and other international treaties.

### **III. Conditions in the witch camps violate fundamental human rights**

67. The conditions in the “witch” camps violate the right to dignity, physical and psychological integrity of the inmates guaranteed under Article 5 of the African Charter.

68. The arrest and detention of the aged women by the Nii Azonto on grounds of their sex and age alone violates their right to liberty and non-discrimination under Articles 2 and 6 of the African Charter also guaranteed under the ICCPR, CEDAW and CRC.

69. Applicant further avers that the threat by Nii Azonto to cast a spell on the inmates of the camp restricts their freedom of movement guaranteed under the Article 12

of the African Charter also guaranteed under the ICCPR.

70. Applicant submit that the girls' lack of access to education in the camps violate their rights to education under Article 17 of the African Charter and Articles 28 and 29 of the CRC. The camps further exposed the girls to rape in violation of their right to be protected from sexual exploitation in Article 34 of the CRC.

## **PRAYERS**

The Applicant prays the court to;

- i. declare that FRJ's failure to adopt adequate measures to prevent human trafficking violates the African Charter and relevant international law treaties.
- ii. declare that FRJ violates the African Charter and relevant international human right treaties by allowing "witch" camps to operate on its territory.

iii. Order FRJ to award due reparation to the injured parties.

Humbly submitted

Agent for LULURI (Second Applicant)