

**27TH AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION
UNIVERSITY OF GHANA, 6–11 AUGUST 2018**

HYPOTHETICAL CASE

before the African Court on Human and Peoples' Rights

in the case between

Dr Nduli Ayoze and the Luwos for Luwo Rights (LULURI)

and

The Federal Republic of Jomero (FRJ)

1. The Federal Republic of Jomero (FRJ) is a democratic republic on the African continent, with a population of 5.5 million comprising three provinces: Northern Province (NP), Central Province (CP) and Southern Province (SP). The main ethnic groups in the country, based on the 2012 national census, are the Luwos (34.5% of the total population), the Abigis (30%), and the Tangans (20%). Other groups make up the remaining 15.5%. Each of the provinces is populated largely by one of the three major ethnic groups – the Luwos in the NP, the Abigis in the CP and the Tangans in the SP. The Abigis and Tangans are mainly Christian, while the Luwos mainly follow the Afrikania tradition, which is a combination of animism, spirit worship, use of charms and *juju* and a strong belief in witchcraft. The Nii Azonto is responsible for consulting the *Luwonda*, the community spirit or god, whenever there is a problem, such as epidemics, plagues, and poor harvests, for which the community is not able to find a solution. Christian missionaries were excluded from the NP. As a result, people in the NP maintained their traditional, cultural and political systems. The NP therefore was the last of the three areas to accept and institutionalise modern education. To this day, parents encourage and prefer their children to follow their traditions and cultural practices, which had served them well for many generations.
2. FRJ, with Melovo as its capital, was formed as an independent state on 5 April 1973, after more than a hundred years of colonial rule by the United Empire (UE) of two of its three constituent parts (the territories of the CP and SP). UE colonised the area that now constitutes the SP in 1872 and in 1888 extended its rule to the adjoining CP area. The UE colonised the area making up the NP only in 1899. In 1920, the area (by then called Luwoland) became a League of Nations mandate territory administered by Zealand, another colonial power which at the time exerted administrative control over a number of colonies in Africa. Zealand administered Luwoland until 1946, when it became a UN Trust Territory. In the period between 1920 and 1946, Zealand built an extensive road and railway network in Luwoland, and constructed a number of dams. Zealand administered Luwoland through

existing traditional, political and social structures. In 1946, the UN designated Zealand as Administering Authority of Luwoland. In the run-up to FRJ's independence, in 1972, Zealand organised a referendum in Luwoland, in which the population was asked to vote in favour of either joining the CP and SP to form the FRJ, or to become part of Bukanda, a former colony of Zealand, immediately to the north of Luwoland. By 51% to 49%, registered Luwoland voters cast their votes in favour of joining the FRJ. Today, the FRJ has the following neighbours: the Republic of Alusha (in the south); Lukowe (in the west); Luluea (in the east); and the Bukanda Republic (to the north). Bukanda Republic, which borders the Mediterranean Sea, is one of the most developed countries on the African continent. It had a per capita gross national income (GNI), using the World Bank Atlas method, of US\$12,000 in 2015, and an economic growth rate of 3.7% per annum. It has the largest middle class population in Africa. Because its population is ageing, Bukanda encourages immigration of persons under 25 years old. Most of the immigrants end up as domestic workers, drivers or cooks in luxury hotels.

3. The FRJ is categorised as a low-income developing country. Its per capita GNI, calculated by using the World Bank Atlas method, was US\$1,000 in 2015. It has, for the last three years, maintained an average economic growth rate of 1.4% per annum. Of the three provinces, NP has since the time of independence to the present, remained the most underdeveloped part of the FRJ. At present, it has a literacy rate of about 29% as compared to the national average of about 65%. The school enrolment percentages in the three provinces for 2015 were as follows: for primary schools: CP (80%); SP (77%); NP (51%); for secondary schools: CP (70%); SP (60%); NP (30%). There is only one university in the country, located in Melovo. The FRJ has since its independence consistently endeavoured to remain neutral in its international relations, and to maintain good relations with all nations. It has largely succeeded and consequently allocated very limited funding to the development of its military capacity. It has a small professional military of around 3,000 men.
4. The 1973 FRJ Constitution provides for presidential and National Assembly (NA) elections to be held every five years, through direct voter participation. The 300-member NA has its seat in Melovo. Members of National Assembly (MNAs) are elected per constituency, on the basis of a first-past-the-post electoral system. The NP has 105 constituencies, the CP 95 and the SP 40. The remaining 60 MNAs are appointed by the President, based on their 'patriotism and potential to contribute to national unity' (section 177 of the Constitution). All Presidents have used section 177 to appoint close allies, thus securing a majority in the National Assembly. Under section 200 of the 1973 Constitution, the President has the power to enter into treaties or agreements on behalf of the State, but 'any such undertaking is subject to ratification by an Act of the National Assembly, supported by the majority of all MNAs'. The Constitution in section 5 provides for the resolution of disputes about matters pertaining to the 'culture of the peoples of the FRJ' through 'traditional tribunals'. The resolutions of these tribunals have to be accepted by the parties, as

there is no further appeal (for example to judicial institutions) possible. The office of the Nii Azonto is specifically recognised in the Constitution as being supreme in respect of the 'interpretation and implementation of all forms of religious observance practiced in the NP of the FRJ'. There is a High Court for each of the three provinces; and a Supreme Court, which is the highest court in respect of all judicial matters. The Supreme Court has to sit with a minimum of five Judges. The Supreme Court, presided over by the Chief Justice, is located in Melovo.

5. The National Peoples' Alliance (NPA) won the first elections in 1973, and has been in power since then. In 1980, the Annual NPA Conference decided to amend the 1973 Constitution of the FRJ to institute a one-party system. This constitutional change led to the banning of all political parties, except the NPA, strict control of the press, limited space for human rights, banning of civil society groups, the suppression of the rule of law, and severe restrictions on judicial independence. According to NPA spokeswoman, Mama Clara, the institutionalisation of the one-party system of governance and the other measures were instituted to promote national security, especially in the NP, following sporadic agitations for greater autonomy and secession by (to use her words) 'secessionist agitators'.
6. Following local and international agitations for democratic change subsequent to the fall of the Berlin Wall, the 1973 Constitution was in 1994 amended to allow for fair, free and competitive elections involving multiple distinct political parties; separation of powers between the different branches of government; the rule of law in everyday life as part of establishing an open society; and the equal protection of human rights for all people. A justiciable Bill of Rights, closely resembling the rights in the African Charter, was introduced. Under the 1994 amendments, a Judicial Service Commission was introduced to interview and recommend the names of High Court and Supreme Court Judges for appointment by the President. The 1994 amendments also introduced the Provincial Council (PC), with an equal representation of 33 Members of the PC (MPCs) per province. MPCs are elected by direct vote by the registered voters of each province. The PC has competence to adopt provincial legislation on the following matters: provincial housing, sports, primary and secondary school education, town and urban planning, historic and artistic heritage, local culture, civil defence, local transport, and local security including fire brigades. All other matters are under the competence of the national (federal) government. The share of the two tiers of government is as follows, under the 2016 budget: the national budget accounts for 72%, and the three provinces, together, for 28% of total public expenditure. Each PC elects, from among its members, a maximum of nine members of the Provincial Executive, to administer provincial expenditure. Under the Constitution, the President may declare a state of emergency if the 'life of the nation is threatened'. Such a declaration may suspend any aspects of the Constitution for a circumscribed period. Any declaration of a state of emergency has to be approved by a majority in Parliament. For the enforcement of the human rights enshrined in the amended Constitution, the FRJ National Assembly passed the Fundamental Rights Enforcement Act of 1999. The Act outlines the procedure for the enforcement of human rights in section 4, which

provides as follows: 'If any person alleges that any of the human rights provisions in the Constitution has been, is being or is likely to be contravened in relation to him or her, he or she may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the relevant High Court through a constitutional petition for redress'. Section 5 of the Act further elaborates that any constitutional petition must be heard by a panel of three High Court judges, specifically designated for that purpose by the Chief Justice from among the High Court Judges of that province.

7. FRJ is a member state of the United Nations (UN), the African Union (AU) and the Economic Community of West African States (ECOWAS). After the return to constitutional rule, on 10 December 1994, the President of FRJ simultaneously acceded to the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Subsequently, on 5 April 2010, FRJ ratified the Protocol to the African Charter on the Rights of Women in Africa and the African Charter on Democracy, Elections and Governance. On 10 December 2015, it ratified the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol); and simultaneously made the optional declaration under article 34(6) of the African Court Protocol. However, it deposited its instrument of ratification and its declaration only on 30 June 2016. Also, on 10 December 2015, FRJ became party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol). On 16 June 2016, at his inauguration, President Kunda announced the ratification and immediate deposit of the instruments of ratification of the Protocol on the Rights of Older Persons in Africa and the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development. President Kunda on this occasion also committed his government to fighting the 'scourge of human enslavement'. The FRJ also accepted the First Optional Protocol to the ICCPR, and has issued an open invitation for UN special procedures to visit the country. The FRJ is not party to any other relevant human rights treaty. The FRJ National Assembly has not voted on or enacted any legislation in respect of any of the human rights treaties ratified or acceded to by the State.
8. In the wake of independence, due to well entrenched social and political structures in the different provinces making up the FRJ, political parties were formed mainly along ethnic and geographical stratifications, although later banned in 1980: The NPA (mainly supported by the Abigi people), the Tangan Movement for God (TAMOGO) (mainly supported by the Tangan people) and the Luwo Peoples' Party (LPP) (mainly supported by the Luwos). Following the constitutional amendments of 1994, presidential elections were all won by the NPA candidate; and the PC elections in each of the provinces, overwhelmingly by the dominant party in that province. These elections were all declared "free and fair" by the Organisation of

African Unity (OAU)/ AU, as well as ECOWAS and EU observers. Since independence, the 25-member Cabinet has consisted mainly of people from the Abigi ethnic group. All Cabinets have however included between three and five prominent Tangan politicians, reflecting the limited support for the NPA by Tangans in the SP. Over the years, there has been very little support for the NPA among Luwos in the NP.

9. In the cosmic belief of the Luwo, older women (mostly widowed) are often accused of being responsible for calamities in the community, which are thought to have been orchestrated through witchcraft. When arrested, they are supposed to be brought before the Nii for trial by ordeal. However, for past generations, the Nii, through the message from the gods, decided to establish camps (called 'isolated safe areas') for such women, instead. At these camps, the accused 'witches' are subjected to ritual processes by the Nii to determine their culpability or otherwise, and to undergo cleansing. The 'witches' survive by collecting firewood, kneading beads or working in nearby farms, where they often depend for their survival on food contributions and other assistance. The women accused of witchcraft are not allowed to bring along any of their own children to the camps. The Nii also later on allowed orphaned girls from nearby communities to stay in the camp and attend to the needs of the women, especially when they fall sick. Some of these girls settled in the camps. Yet, these girls also suffer from various violations of their rights. They have little or no access to education, health care and food and sometimes are ambushed and raped when they go out to fetch water or firewood for the older women. They face stigmatisation and neglect in the community. About 950 women and 125 girls live in 'isolated safe areas'. Each of these camps is not guarded or fenced in; the women and children are free to leave if they want to. The Nii has made it well understood that a spell would be cast on anyone leaving, or anyone from the community who comes close to the camp. At some stage, three years ago, the government sought to close down the facility but was unsuccessful because most of the women themselves expressed a preference for remaining, because they had nowhere to go where they could feel safe. The Nii also expressed his disapproval of closing down the camps, on the stated basis that the present situation has grown from and has attained equilibrium in society.
10. In 2015, Maame Saa, a 67-year old mother of two children and grandmother to five grandchildren, was accused of witchcraft and sent to one of these camps. One of these grandchildren, Ataasa, aged 13, was living with his grandmother, due to the death of his mother (to whom Maame's son was married). The community in which Maame lived accused her of killing her husband, also aged 67, who died of AIDS earlier that year, through witchcraft. Members of her community beat her up, set her house ablaze and sent her to the 'witches' camp'. The police did not intervene, as they feared to transgress in the religious domain where the Nii is viewed as holding sovereign power. Once before, a year earlier, when police intervened to prevent a woman from being escorted to the 'witches' camp', a police station in the same village where Maame is from, was set on fire.

11. Ataasa then went to live with a relative, Auntie Mansah. When he realised the truth about what happened to his grandmother, a year later, Ataasa was outraged, and contacted Luwos for Luwo Rights (LULURI), a non-governmental organisation based in the NP. LULURI enjoys observer status with the African Commission. Its aim is to advance the rights of all Luwo people, in line with international human rights norms. Although Ataasa wanted 'justice from a court', as he told his Auntie Mansah, LULURI advised that the matter be taken **before a traditional tribunal established under section 5 of the FRJ Constitution**. Ataasa agreed that the matter be referred. With the Nii and other community leaders, as well as a representative from LULURI present, the traditional tribunal resolved that the constitutional imperative of supremacy of the Nii in spiritual matters settled the matter. The tribunal concluded: 'As the Nii not only supported but actually initiated the camps, any relevant individual interest has to be subservient to the collective interest in upholding spiritual harmony'.
12. In the fourth presidential election, held on 1 June 2016, the NPA candidate, Kene Kunda, won 50.5% of the popular vote, with the people of the NP voting overwhelmingly for the LPP candidate, Dr Nduli Ayoze. The AU, ECOWAS and EU observers declared the election as "free and fair". Dr Ayoze disputed the election results, claiming irregularities and vote rigging as well as unlawful intimidation of LPP voters. He cited records kept by various official LPP electoral observers, as reported in local newspapers and on social media. Subsequently, the LPP submitted a petition to the FRJ Supreme Court, alleging a violation of the right to sovereignty of the people of the NP to elect their political representatives and the right to run for political office, as provided for in the 1973 Constitution (as amended). However, the Supreme Court dismissed the case on procedural grounds. The LPP corrected the procedural errors and re-submitted the petition within the stipulated period. The Supreme Court still did not hear the case, claiming a lack of quorum, because the President suspended one of the Supreme Court Judges a week before the 2016 presidential elections. The President cited allegations of corruption being investigated by **a constitutionally-mandated** presidential investigative task team as the basis for the suspension. The President subsequently appointed a Judge from the High Court of CP to sit as 'temporary Judge' on the Supreme Court, without having received recommendations from the Judicial Service Commission. **The Judicial Service Commission has not set in motion any process, as the Supreme Court Judge was 'suspended' and not permanently removed**. When he made this announcement, the President invoked his presidential prerogative to resolve issues of this nature in the best interest of the Republic. However, the LPP disputed the appointment, invoking nepotism, as it has been established that the newly appointed justice, although a senior advocate, is the President's wife's daughter-in-law from a previous marriage.
13. On 16 June 2016, Kunda was sworn in as the third President of the FRJ. On the same day, mass demonstrations against President Kunda took place in the NP, where youths set up road blockades and burnt tyres in public places. In response to the protest, the spokesperson of the LPP, Mr Anansi Ono, wrote on Twitter: 'The

protest by the youth in the Northern Province is a protest for the political, economic and social freedom of the Luwo people. It is against decades of economic underdevelopment, political castration and neglect by the federal government and the NPA.' Clashes between the police and protesters ensued, with the youth burning down government offices, schools and popular clubs. Following these clashes, two youths died, and at least 20 of them were admitted to hospital, many of them with bone fractures and internal injuries. In a statement read out on behalf of the Chief of Police, it was stated that the Police used only 'rubber bullets' and tear gas, in order to stop the protest. One member of the Police Service died during the clashes, and three others were admitted to hospital with minor injuries. Key traditional leaders in the NP (who are not office bearers of the LPP) were arrested and detained under suspicion of encouraging the protest. On 25 December 2016, during Christmas mass, there was an attempted assassination of the President in the main cathedral of Melovo. No one was injured and a suspect, Mima Malima, was arrested. Since her arrest, her whereabouts have been unknown. Following months of unrest, Dr Ayoze publicly declared: 'Ours is a fight for independence from colonial rule and subjugation. Our desire is to form an independent state and restore the dignity of our people by all means necessary'.

14. On 3 January 2017, the LPP submitted the matter to the ECOWAS Court of Justice, alleging violations of the right to self-determination under the African Charter, as well as the political rights of the people of NP related to the elections of 1 June 2016. On 10 March 2017, the ECOWAS Court struck out the case on the basis of lack of jurisdiction, 'in line with the political questions doctrine'.
15. Following the December bombing, agitation turned increasingly violent. In February 2017, the LPP was banned. Dr Ayoze subsequently fled into exile in the neighbouring Bukanda Republic. These developments led to increased national and international calls in support of the secession of the NP from FRJ. As the secessionist movement grew and the socio-economic conditions of the youth from NP did not improve, the youth of NP began to seek greener pastures outside the country. Many of them ended up in the nearby Bukanda Republic, or used Bukanda as a transit route to get to Europe. An agency called *Go Abroad for Development* (GAD) exploited the situation. GAD advertised online and on posters distributed around NP that it will help young boys and girls learn a vocational trade in Bukanda and facilitate migration to Europe for a better life. In its advertisement campaign, GAD also added that the people of NP in the diaspora will be in Bukanda and Europe to receive the young people and help them secure well-paying jobs after their vocational training. However, GAD in actual fact used forged papers to facilitate the movement of these teenagers through FRJ's borders into Bukanda. Prior to departure from NP, their families are required to pay a sum of US\$3,000, per family, to GAD online. On arrival in Bukanda, the girls are forced to work as domestic servants in Bukanda and as sex workers in Europe, while the boys are forced to work in plantations in both Bukanda and Europe.

16. FRJ is keen to promote trade and investment in the country through a free movement policy including limited border screening, which attracts a continuous stream of traders from the region. Having taken note of the rise in human trafficking from the NP, the government introduced awareness, sensitisation and civic education **about the phenomenon of human trafficking** in the school curricula of that province. In particular, the government targeted the secondary school curriculum, to reach young people at an age when they are, as teenagers, susceptible to be exposed to trafficking.
17. Since 2014, LULURI has been campaigning for FRJ to adopt a law that criminalises human trafficking and sets out the legislative and policy framework for both the prevention of trafficking, and protection of victims. LULURI also campaigned for the training of all members of the FRJ Police Service to investigate, arrest and prosecute GAD agents in FRJ, as well as the training of immigration officers at the borders to enable them easily **to** detect forged documentation. In January 2016, the Office of the President made a declaration committing his government to implementing the recommendations of LULURI on adopting legislative and policy frameworks to combat trafficking, but rejected, due to inadequate available funds, the recommendation on the training of the police and immigration officers. In the same statement from the Office of the President, FRJ assured the population that the government intends to establish a bilateral agreement with Bukanda to tackle the menace of human trafficking across the border of the two states. However, to date, there has been no update on any of the declarations made in that statement.
18. Between February and April 2017, about 16 trafficked NP teenagers escaped from several Bukanda homes, brothels and plantations where they were enslaved and found refuge in LULURI's safe house in Bukanda. In July 2017, LULURI instituted a class action on behalf of the hundreds of teenagers trafficked from FRJ, but the High Court rejected the action, on the basis that LULURI lacked standing to bring the matter to court. **None of these teenagers subsequently attempted to re-introduce this action in their personal capacity.**
19. Exiled in Bukanda, Dr Ayoze had set up a guerrilla camp to train some militants to fight for the secession of the NP from FRJ. A small group of young men, originally from the NP, who had escaped the conditions of forced labour, joined the militants. Ataasa illegally crossed the border and also joined the militants. Armed-Luwos-in-Exile (ALIE) was formed, and conducted low scale bombings against police stations especially in CP. ALIE returnees infiltrated their original communities and stimulated the manufacture of local arms as well as use of improvised weaponry. This enabled them to create safe havens for planning, organising, training, and preparing operations against the government of FRJ. They cooperated with other criminal organisations in the face of dwindling funds and resources. In its most audacious operation in early 2017, ALIE members blew up a pipeline for the supply of oil to the NP.

20. In early 2017, the African Commission conducted a 'promotional mission' to FRJ. In its report (dated 7 June 2017), it is established that FRJ has a Police Service of only around 29,000 members and 110,000 private security personnel. The report further revealed that most of the private security personnel are employed by unlicensed security companies that are operating illegally in the country. The report further noted that the federal government has not enacted any legislation or regulation on the operation of private security companies, apart from the requirement, **under the FRJ Police Services Act**, that they must be registered as **'private security company operating within FRJ'** with the federal Ministry of Police.
21. The capacity of the security services has been overstretched by the ongoing insecurity in the country. Because of the limited number of police officers, the FRJ government contracted Doom Security Services (DSS), a private security company owned by the brother-in-law of the President, to patrol trouble spots across FRJ in order to protect civilians and arrest suspected militants. **DSS is registered with the federal Ministry of Police.** DSS was engaged by the government of FRJ as an independent contractor without any further supervision or control over **its** activities in FRJ. It is speculated that more than 3,000 young men, suspected of being militants, are being kept in overcrowded detention facilities by DSS. Some of the detainees in DSS detention facilities have died under unexplained circumstances. Recent investigative reports by respected undercover journalist Abbas Manasseh allege that many of the suspects in DSS detention facilities had been subjected to starvation and sleep deprivation in a bid to retrieve potential information about the resistance. The investigation report was serialised in the *Daily Read* newspaper for many weeks and broadcast by several radio and television stations. This led to weeks of outcry among opposition politicians from NP and international human rights organisations calling for investigations into the treatment of detainees in DSS facilities. Both DSS and the government denied the allegations but pressure from international human rights organisations compelled the government to agree to investigate the allegations.
22. The Parliament of FRJ subsequently, in February 2016, **without any consultation**, by a narrow majority vote passed the Office of Special Prosecutor (OSP) Act of 2016, citing the need for expedited action because of the unrest. The OSP Act empowers the President to appoint a Special Prosecutor, subject to the approval of Parliament, to investigate the allegations. According to section 3 of the OSP Act, the Special Prosecutor is mandated to take the 'necessary action to dispose of the matter'. The President also appoints the governing board of the OSP. The power of appointing the Special Prosecutor and board members of the OSP may be delegated by the President to the Attorney General. The OSP was established as an institution independent of the Attorney General's Office because of the politically sensitive nature of the matters it is mandated to handle. Mr Kwame Abudu Andani, a distinguished legal practitioner, who is a former law partner of the President, was appointed **by the Attorney General, duly delegated by the President**, as the Special Prosecutor to investigate the allegations. After three weeks of investigation, the OSP in September 2017 released a report clearing DSS of all wrongdoing.

23. On 10 December 2017, Dr Ayoze, as leader of the LPP, submitted the following matters to the African Court on Human and Peoples' Rights, asking it to make the following findings:

- (a) The NP is entitled to external self-determination in the form of secession.
- (b) FRJ is responsible for committing acts of torture.

24. On 23 December 2017, LULURI submitted the following matters to the African Court, requesting it to make the following findings:

- (a) FRJ's failure to adopt adequate measures to prevent human trafficking violates the African Charter and relevant international human rights treaties.
- (b) FRJ violates the African Charter and relevant international human rights treaties by allowing 'witch' camps to operate on its territory.

25. *The African Court on Human and Peoples' Rights decided to join and hear the two matters together, on 7, 8 and 11 August 2018. As a team, prepare arguments for:*

(a) *The two Applicants on the two issues indicated above:*

- *First Applicant: Dr Ayoze (to be prepared and argued by one team member)*
- *Second Applicant: LULURI (to be prepared and argued by the other team member)*

Set out the arguments in two separate parts of the memorial, one part for each applicant. In each part, (i) prepare arguments on the two issues indicated above, and (ii) deal with jurisdiction, admissibility, the merits and the appropriate remedial order.

(b) *The Respondent – The Federal Republic of Jomero (FRJ) – on the two issues indicated above. In your memorial, deal with jurisdiction, admissibility, the merits and an appropriate remedial order*