

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 RESPONDENT

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. 1249.*
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.*

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. *Givemore Chari v Zimbabwe (Communication No. 351/07, 11th Extra-ordinary Session).*
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. *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan* February 2013, ACHPR, 386/2010.
7. *Abubakar v Ghana* (2000) AHRLR 124 (ACHPR 1996).
8. *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR 2007).
9. *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).
10. *Front for the Liberation of the State of Cabinda v Angola* Communication 328/06.

AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

1. *Kijiji Isiaga v Tanzania* App. No. 032/2015.
2. *APDF & IHRDA v Mali* App. No 046/2016.
3. *APDH v. Republic of Cote d'Ivoire*. App. No. 001/2014.

HUMAN RIGHTS COMMITTEE

1. *Lubicon Lake Band v Canada* Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990).

EUROPEAN COURT OF HUMAN RIGHTS

1. *Cestaro v Italy* [2015] ECHR 352.
2. *Ireland v U.K* (1979-80) 2 ECHR 25r.

INTERNATIONAL COURT OF JUSTICE

1. *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America* 1986 I.C.J. 14).

MUNICIPAL LAW

1. *R v Gough*

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 Peoples Congress v Zaire*, 2007.
4. *Torture in International Law; A guide to jurisprudence*; Association for the Prevention of Torture.

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, 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 of the Constitution 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

1. Respondent submits that in the absence of any proof of human violations and denial of their right to participate in government, the claim for self-determination has no merit.

CLAIM B

2. Respondents submits that the alleged acts of DSS cannot be attributed to the State and consequently FRJ is not responsible for any acts of torture.

CLAIM C

3. Respondent submits that it adopted adequate measures to prevent human trafficking and hence did violate the African Charter and other relevant human rights treaties

CLAIM D

4. Respondent submits that it did not violate the African Charter and other relevant human rights treaties by allowing 'witch' camps to operate on its territory

SUBMISSION BY FEDERAL REPUBLIC OF JOMERO

PART I

STATEMENT ON JURISDICTION

1. Per Article 3(1) of the *Protocol*¹, the jurisdiction of the *Court* shall extend to all cases and disputes submitted to it concerning the interpretation and application of the *African Charter*², it is the submission of the Respondent that the *Court* has no personal jurisdiction. The ICCPR³ provides for individual petitions pursuant to the First Optional Protocol⁴. However, in *Lubicon Lake Band v Canada*⁵, the Committee⁶ ruled that an individual could not bring a case in pursuant of a claim for people's right

¹Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights. Adopted in 1998. Came into force in 2004.

² African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981

³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series

⁴ UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights, 19 December 1966, United Nations, Treaty Series

⁵ Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990).

⁶ United Nations Human Right Committee

under Article 1 of the ICCPR⁷ which concerns the right to self-determination. Respondent avers that Dr. Ayoze cannot suo motu bring a claim with respect to the external self-determination.

STATEMENT ON ADMISSIBILITY

2. Article 6(2) of the *Protocol*⁸ provides that all claims must satisfy the standard of admissibility in Article 56 of the *African Charter*⁹. Respondent State submits that Applicant violated Article 56(4)¹⁰ and Article 56(5)¹¹
3. Regarding Article 56(4)¹² Respondent submits that the Applicant's claim for the acts of torture was based exclusively on the investigative reports by the

⁷ Supra note 2

⁸ Supra note 1

⁹ Supra note 2

¹⁰ *African Charter*

¹¹ supra

¹² supra

investigative journalist. The *Commission*¹³ in *Jawara v Gambia*¹⁴ espoused that the issue should not be whether the information was gotten from the media, but whether the information is correct. However, in this instant case, the media report does not corroborate the findings of the OSP.

4. Regarding Article 56(5)¹⁵ Respondent submits that Applicant did not exhaust all local remedies. Although, there are no local remedies in respect for the claim of self-determination, Respondent submits that the right to self-determination of NP was solved when in the run up to the FRJ's independence the NP voted to join the CP and SP to form FRJ.
5. Respondent avers that with respect to the alleged acts of torture, the Applicant did not exhaust all local remedies before bringing the issue before this *Court*.

¹³ The African Commission on Human and People's Right

¹⁴ AHRLR 107 (ACHPR 2000)

¹⁵ *African Charter*

Section 4 of the 1999 Fundamental Rights Enforcement Act provides that in the event of human right violation, the victim can apply to the High Court for redress. In *Givemore Chari v Zimbabwe*¹⁶, the commission stated that it can only conclude a local remedy is ineffective if there is proof beyond a reasonable doubt that the remedy would not redress the violation(s) alleged. The *Commission* ruled that the complainant did not make attempts to test the available remedies in the respondent state, as is required. Respondent submit that the Applicant failed to test the available remedies.

SUMMARY OF ISSUES

6. Whether or not the NP is entitled to external self-determination in the form of secession

¹⁶ (Communication No. 351/07, 11th Extra-ordinary Session)

7. Whether or not FRJ is responsible for committing acts of torture.

MERITS

(A) NP IS NOT ENTITLED TO EXTERNAL SELF-DETERMINATION IN THE FORM OF SECESSION

I. CLAIM FOR SELF-DETERMINATION HAS NO MERIT

8. The right to self-determination is inalienable under Article 20(1).¹⁷
9. In *Gunme and others v Cameroun*¹⁸, the Commission was of the view the right to self-determination cannot

¹⁷ Supra note 2

¹⁸ (2009) AHRLR 9 (ACHPR 2009)

be exercised in the absence of proof of massive violation of human rights under the *African Charter*.

10. In *Katangese Peoples' Congress v Zaire*¹⁹, a claim was brought under Article 20(1) of the *African Charter*. The *Commission* declared that the case had “no evidence of violation of human rights under the *African Charter* and hence in the absence of any evidence of such violation, a claim of self-determination has no merit.” The *Commission* further posited that, “concrete evidence of violations of human rights to the point that the territorial integrity of the State party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13(1).”

11. Following the view of the *Commission* in the *Katanga* case, the right to self-determination of the people of the NP would be understandable where there are tangible

¹⁹ (2000) AHRLR 72 (ACHPR 1995)

evidence violations of human rights and where there is evidence ascertaining the denial of the people the right to participate in government as guaranteed under Article 13(1) of the *African Charter*.

12. Respondent submits that in the absence of any proof of human violations and denial of their right to participate in government, the claim for self-determination has no merit.

II. Alleged violation of human rights in the African Charter

a. Violation of Article 4

13. Applicant allege that the Respondent State violated Article 4 of the *African Charter* by way of the deaths and injuries caused to the youths. It is the submission of the Respondent that under Article 11²⁰ although every individual have the right to assemble freely with others, this right is subject to necessary restrictions

²⁰ *African Charter*

especially in the interest of national security, safety and the rights and freedoms of others. Respondent aver that the action by the Police in paragraph 13 was a necessary restriction and in the interest of national security.

Violation of Article 22

14. Respondent submit that it has not violated Article 22 of the *African Charter*. It avers that FRJ is a low-income developing country with a growth rate of 1.4% per annum and hence the realization of the right to development is a big challenge to the Respondent State which is a developing country with scarce resources. This was the view of the *Commission* in the *Gunme case*²¹

²¹ Supra note 21

III. Alleged denial of right to participate in government

20. It was the view of the *Commission* in the *Gunme case*²² that in a claim for self-determination, there must also be evidence of denial of the right to participate in government as guaranteed in Article 13(1)". Respondent submit that the NP is duly represented in the National Assembly, the Provincial Council and the Applicant had a chance to contest in the National Elections, a reflection of the right to freely choose its representatives.

B) FRJ IS NOT RESPONSIBLE FOR COMMITTING ACTS OF TORTURE

I. Acts of DSS does not amount to torture

21. Article 5 of the *African Charter* and Article 7 of the ICCPR prohibits acts of torture.

²² supra

22. In the case of *Ireland v UK*²³, suspected terrorists who were detained by the government were subjected to wall standing, deprivation of food, drink, and sleep. The ECHR found that the techniques caused intense physical and mental suffering to the persons subjected thereto, but did not necessarily cause actual bodily injury but amounted to inhuman and degrading treatment. However, this treatment was not considered serious enough to amount to "torture," Although per paragraph 21 of the hypothetical case, the suspects were deprived of sleep and food, however, it is submission of the respondent that those acts do not amount to torture. The respondents therefore submit that DSS did not commit acts of torture.

II. FRJ is not responsible for the acts of torture.

²³ (1979-80) 2 EHRR 25r

23. The respondents contend that, granted but not admitting that the acts amount to torture FRJ is not responsible. Article 8 of *ARS/WA* provides that the conduct of a person or group of persons acting on the instructions of, or under the direction or control of, a state can be attributed to the state in question. The ILC in its general comment on Article 8 stated that if conduct is merely incidental to the operation, or was carried out in a manner that exceeded the state's direction or control, the state will not be responsible.

24. In the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*²⁴ the Court took the view that “*for the alleged violations to give rise to state responsibility, it must be proved that the US ‘had effective control of the military or paramilitary operations in the course of which the alleged violations were committed’*”

²⁴ 1986 I.C.J. 14

25. Per paragraph 21 of the hypothetical facts, DSS was engaged by the FRJ government as an independent contractor and conducted its activities with no supervision or effective control by the government. Thus their acts cannot be attributed to the State and consequently FRJ is not responsible for any acts of torture.

IV. FRG conducted investigations into the acts of torture

26. Respondent submits that failure by applicants to accept the findings of the OSP does not mean a breach of duty to investigate into the acts of torture.

27. Respond submits that it took due diligence in the conduct of the investigations. In *Zimbabwe Human Rights NGO Forum*

*v Zimbabwe*²⁵, the *Commission* indicated that an ineffective investigation will not automatically lead to a finding of a violation; it considers that an investigation with an ineffective result does not establish a lack of due diligence by a State. Rather, the test is whether the State undertakes its duties seriously.

28. The respondents submit that the FRJ government with due diligence conducted an investigation into the matter through the OSP who after the investigation cleared DSS of all wrongdoing and as such did not violate any international obligation. By so doing, the State discharged its mandate under the Robben Island Guidelines.

V. The OSP's findings were not biased

29. Respondent aver that the findings of the OSP was impartial and fair. In the case of *R v Gough*²⁶, the House of

²⁵ (2006) AHRLR 128 (ACHPR 2006)
[1993] HL26

Lords dismissed the appeal and set out the test for bias. The test for bias where apparent bias was alleged was whether there was a real danger of bias.

30. Paragraph 22 of the hypothetical case indicates that, the office of the OSP was established by an Act of Parliament and was established as an institution independent of the Attorney General's office due to the politically sensitive nature of the matters it was intended to handle. The power of appointment was delegated by the President to the Attorney General, which indicates the quest of the President for a fair and impartial report. Respondent submits that the relationship between the President, Mr. Abudu Andani and the owner of DSS does not give rise to a real danger of bias and hence the findings of the OSP cannot be deemed to be bias.

PRAYER

Respondent request this Court to:

- i. Declare that the grievances of NP cannot be resolved through secession
- ii. Declare that FRJ is not responsible for the acts of torture
- iii. Award costs to the Respondent for financial burden incurred in court processes.

PART II

STATEMENT OF JURISDICTION

31. Article 3 of the Protocol extends the *Court's* jurisdiction to all cases and disputes submitted to it concerning the interpretation and application of the *African Charter*. In the case of *Mkandawire v. The Republic of Malawi*²⁷ the *Court* held that it was clothed with material, personal, territorial and temporal jurisdiction to hear the matter. The Respondent State submits that this *Court* has jurisdiction to hear the present case because it concerns the application of the *African Charter* and other relevant human right instruments ratified and acceded by the Respondent.

ADMISSIBILITY

²⁷ App. No. 003/2011

32. Article 56²⁸ provides the grounds under which a communication can be admitted by the Commission. Article 56(5)²⁹ provides that all local remedies must be exhausted unless the procedure will be unduly prolonged. Article 56(6)³⁰ provides that the communication is submitted within a reasonable period from the time the *Commission* was seized of the matter.

33. The *Commission* in the case of *Civil Liberties Organisation v Nigeria*³¹, held that the communication was inadmissible since the applicants failed to exhaust local remedies

34. The Respondent State submits that the Communication should be declared inadmissible on the grounds that the conditions in Article 56(5) and 56(6)³² have not been met by the Applicants.

²⁸ *African Charter*

²⁹ *supra*

³⁰ *supra*

³¹ Communications No. 151/96 (ACHPR 1999)

³² *African Charter*

35. The applicants contend that Section 4 of the FRJ Constitution guarantees the right of persons whose rights have been abused or likely to be abused to seek redress in the High Court.

36. While the case of the applicant was thrown out for lack of capacity, the victims who were actually clothed with such capacity failed to refer the case against the perpetrators of the alleged acts of human trafficking to any national courts to obtain redress.

37. As held by the *Commission* in the case of *Jawara v Gambia*³³, the objective of the condition of exhaustion of local remedy is to allow States to remedy in conformity with its local legislation, the alleged human right violation before it is brought before an international body.

³³ (2000) AHRLR 107

38. In *Article 19 v Eritrea*³⁴, the *Commission* opined that “*it was incumbent on the Complainant to take all necessary measures or at least, to exhaust local remedies*”.

39. The Respondent State submits that in failing to refer the issues to the local courts, the applicant did not provide the local courts with the opportunity to adjudicate on the matter, the local remedies have not been exhausted.

40. The Respondent State further contends that, the condition under Article 56(6)³⁵ were not complied with by default since Article 56(5)³⁶ was not met.

³⁴ (2007) AHRLR 73

³⁵ *African Charter*

³⁶ *Supra*

SUMMARY OF ISSUES

41. Whether or not FRJ's failure to adopt adequate measures to prevent human trafficking violates the *African Charter* and other relevant human rights treaties

42. Whether or not FRJ violated the *African Charter* and other relevant international human rights treaties by allowing 'witch' camps to operate on its territory

C) FRJ DID NOT VIOLATE THE AFRICAN CHARTER SINCE IT ADOPTED ADEQUATE MEASURES TO PREVENT HUMAN TRAFFICKING.

I. Inadequate Finance

44. Respondent avers that the rejection of the recommendation to train immigration officers is not a violation Article 10 of the *Palermo Protocol*³⁷.

45. Respondent submits that Article 2(1) of ICESCR requires states to take steps to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights. It further posits that the reference to resource availability reflects a recognition that the realization of these rights can be

³⁷ 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

hampered by a lack of resources and can be achieved over a period of time³⁸.

46. In *Osman v The United Kingdom*³⁹ as affirmed in *Rantsev*⁴⁰, the impossible and disproportionate test was used. It was held that the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible burden on the authorities and also recognized that there are limits to what the state can actually do because of other demands on its resources.

47. Flowing from the above, Respondent State submits that the rejection of the recommendation to train immigration officers was based on inadequate funds⁴¹ and hence is not a breach of obligation.

³⁸ CESCR, General Comment No.11 [10] CESCR, General Comment No.13

³⁹ ECtHR- (Application no. 23452/94)

⁴⁰ Application no. 25965/04, Council of Europe: ECHR, 7 January 2010

⁴¹ FACTS [17]

II. Awareness and sensitization

48. The respondent submits that it has not been complacent in taking adequate measures to prevent human trafficking and thus has not violated the African charter and relevant international human rights treaties.

49. Respondent submits that while Article 9(2) of the *Palermo Protocol* and Article 13(5) of the *Organized Crime Convention*⁴² enjoins State parties to adopt comprehensive prevention strategies, the *Legislative Guide for the Implementation of the Palermo Protocol*⁴³ posits that such comprehensive preventive measures is not only limited to a general population but also a more targeted group who are at high risk of victimization.

⁴²UN General Assembly, United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly, 8 January 2001

⁴³ Legislative Guide for The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. United Nations Office on Drugs and Crime; 2005

50. Respondent submits that introducing the awareness and civic education about the phenomena of human trafficking into the secondary school curriculum⁴⁴, was a conscious effort targeted at specific groups at high risk of victimization and hence, was not complacent in discharging its obligation under Article 1 of the *African charter* and the *Palermo Protocol*.

⁴⁴ Facts [16]

D) FRJ DID NOT VIOLATE THE AFRICAN CHARTER AND RELEVANT INTERNATIONAL HUMAN RIGHT TRETIES BY ALLOWING THE “WITCH” CAMPS TO OPERATE ON ITS TERRITORY.

I. The operation of the witch camps is not a form of discrimination.

51. In the case of *Shirin Aumeeruddy-Cziffra and 19 Other Mauritanian Women v Mauritius*⁴⁵, the Human Rights Committee in finding a violation of Articles 2(1) and 3 of the ICCPR considered that a distinction based on gender was not in itself conclusive. The determining factor was that no ‘sufficient justification’ had been given for such a distinction. The European court in the *Belgian Linguistic Case*⁴⁶ held that, the principle of equality of treatment was violated if the distinction made had no objective or

⁴⁵ Communication No. 35/1978 CCPR/C/12/D/35/1978, IHRL2577 (UNHRC).

⁴⁶ case No. 02 (1968) 1 EHRR 252.

reasonable justification, did not pursue a legitimate aim and was not proportionate to the aim pursued.

52. Per paragraph 9, the camps served as isolated safe areas for the women accused of witch craft. These women were subjected to violence and torture on their accusation and were expected to undergo a trial by ordeal. The camps however provided safety for these women by protecting them from the unfavorable conditions in the wider community. The women confirmed this safety when they challenged the government's earlier efforts to close down the camps.

53. The Respondent State submits that, although differential treatment is a prerequisite for discrimination, it is not in itself sufficient to establish a case of discrimination.

54. The isolation of the women into the "witch camps" merely constitutes a differential treatment which is justified

by its legitimate aim of protecting the lives of persons accused of witchcraft. Comparing their stay in the camps to the violence they were likely to face in the community, the Respondent State asserts that the operation of the camps were proportionate to the aim of safety pursued. The entry into the camps was not based on one's gender but rather on the fact that she was accused of being a witch. The operation of the "witch camps" are therefore not discriminatory and do not violate the *African Charter* and other international human right treaties.

II. The operation of the witch camps is in accordance with Article 17(2) of the African Charter, Article 15 of the ICESCR and Article 27 of the ICCPR

55. Article 17(2) of the *African Charter* provide, "every individual may freely take part in the cultural life of his community. Article 15(1) (a) of the ICESCR provides; the

States Parties to the present Covenant recognize the right of everyone to take part in cultural life. Article 15(2) of the ICESCR states the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

56. In its *General Comment No. 21 on Article 15 of the ICESCR*⁴⁷, the Committee on Economic, Social and Cultural Rights indicated that the right to take part in cultural life implies that ‘cultural heritage must be preserved, developed, enriched and transmitted to future generations’.

57. The respondents submit that, the operation of the “isolated safe areas” is a well-established cultural expression of the Luwo community which forms part of its

⁴⁷ (CESCR) General Comment 21 21 Dec. 2009, E/C. 12/GC/21.

belief in witchcraft and has attained social equilibrium. This culture is distinct to the Luwo people and forms part of their cultural identity. While condemning the accusation and the maltreatment associated with the belief in witchcraft, the Respondent submits that the witch camps serves as a positive aspect of the Luwo culture which must be maintained and preserved. The Respondent State thus submits that the FRJ did not violate the African Charter by ensuring the enjoyment of the right to culture of the Luwo Community guaranteed under the *African Charter*, ICCPR and ICESCR.

III. Limitation of rights in the “isolated safe areas” is justified

59. Article 27(2) of the *African Charter* provides that, the rights and freedoms of each individual shall be exercised

with due regard to the rights of others, collective security, morality and common interest.

60. In *Constitutional Rights Project and Others v Nigeria*⁴⁸ the court held that, in order to justify the limitation of rights of individuals, the aim of limitation must be legitimate, necessary and proportionate.

61. Although the isolate safe areas limited some rights of the inmates, the Respondent contends that such limitations were justified. The Respondent submits that the limitations of the individual rights of the inmates was in the collective interest of upholding spiritual harmony⁴⁹ thus in compliance with the common interest requirement under Article 27(2) of the *African Charter*.

62. The Respondent further submits that the limitations of the rights of the inmates were founded in law since the activities within the camp constitutes a religious

⁴⁸ (2000) AHRLR 227 (ACHPR) 1999

⁴⁹ Paragraph 11.

observance and the Nii who established these camps had supremacy in the interpretation and implementation of religious observances⁵⁰. They were therefore legitimate.

63. The limitations of the rights of the inmates of the camps are therefore justified on the basis of its compliance with Article 27(2) of the *African Charter*, legitimacy and proportionality.

64. It is also the contention of the Respondent that the limitations were proportionate since the operation of the witch camps (isolated safe areas) offered more protection than allowing the “witches” to continue living in the community. The Nii in a bid to protect the accused persons established the isolated safe areas as a safe haven to eliminate the violence faced by the persons accused of witchcraft to warrant such limitation. The safety of the

⁵⁰ Paragraph 4.

camps is further evident in the women's resistance of the government's efforts to close down the camps⁵¹.

PRAYERS

The Respondent State prays the court to; adjudge and declare that

1. Declare that FRJ has adopted adequate measures to prevent human trafficking in accordance with its obligations under the African Charter and relevant international human right treaties.
2. Declare FRJ has not violated the African Charter and relevant international human right treaties by allowing the operation of "witch" camps on its territory.
3. Award costs to the Respondent for financial burden incurred in court processes.

⁵¹ Paragraph 9

Humbly submitted,

Agent for *the Federal Republic of Jomero* (Respondent)