

CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION 2022

British University of Egypt

22 – 29 July, Cairo, Egypt

HYPOTHETICAL CASE

before the African Court on Human and Peoples' Rights

in the case between

NGO Ashante

and

The Republic of Foyalan

1 The Republic of Foyalan is a mid-sized island state off the north west coast of Africa. Its capital, Eshe, lies on the Atlantic Ocean, and most of its 15 million people are sprinkled across cities and towns along the sea or surrounding its substantial network of rivers and lakes. Foyalan enjoys relative peace and modest prosperity, and its varied and tranquil population includes Christians (62 per cent, mostly Pentecostal), Muslims (19 per cent) and other religious and non-religious groups, and two main ethnic groups: Kubu and Nolo. The Kubu's have traditionally made a living off the sea, and mostly inhabit the coastal areas. The Nolo live in the forested inland area and predominantly rely on resources from the forest and fringe areas for their livelihoods. Geographically, Foyalan is divided into six regions, and further divided into 38 districts. The country gained independence from Rankia in 1959, but still relies heavily on Rankian and other foreign investment to capitalise industry and infrastructure. Foyalan became a member of the UN in 1960 and is a founding member of the African Union.

2 In March 2019, a new government led by a President of Kubu descent came into power, promising extensive reforms to the country's political system and economy. Before transitioning to politics, the new president, Bara Nobama, was the Africa Director of Bauxite Imperial Incorporated (Bauxite Inc.), a Rankian multinational company responsible for 13 per cent of Africa's bauxite output. Shortly after her victory at the polls, the COVID 19 pandemic started which ushered in record-breaking declines in economic growth and foreign investor profits. That year, the Foya, the country's currency, dropped in value by 32 per cent triggering job cuts in a range of sectors and panic on the state-owned stock exchange.

3 Despite these challenges, many Rankian multinationals remained in Foyalan, after Rankia's government promised to use 'soft diplomacy' to protect their financial interests. The largest sector of Rankian investment is in bauxite mining in the northern provinces, where accelerated depletion of the land is diminishing the quality of life for residents and exacerbating tensions between locals and foreign companies. Ocean and lake fishing remain lucrative businesses, formerly run exclusively by local families, but increasingly of interest to foreign investors who have the capital, boats and equipment to scale up operations and profits, and the supply chains to process and ship volumes of raw fish and fish products to foreign markets. Foreign investment is crucial to local economies, and local authorities are both dependent on and easily intimidated by powerful

multinationals. Many public officials have been reported in the press as receiving bribes from representatives of multinationals. However, no one has been prosecuted or convicted for this.

4 The Foyalan judiciary is structured in superior and lower courts. The superior courts are: a Supreme Court, a Court of Appeal and six High Courts, one for each of the regions. The Court of Appeal hears appeals from the various High Courts. The High Court hears appeals from the Regional Courts, but also has original jurisdiction. In particular, it has the power to adjudicate on the bill of rights. With the exception of matters involving constitutional questions, all appeals from the High Court have to proceed first to the Court of Appeal and from there to the Supreme Court. All constitutional questions have to be appealed directly to the Supreme Court from the court hearing the matter. The Supreme Court does not hear all appeals submitted to it, but selects cases for its consideration in line with Article 12 of the Judiciary Act. This provision was introduced in the late 1990s, when the backlog of appeals before the Supreme Court exceeded 200 cases. Since 2000, the Supreme Court on average hears 50 appeals per year, out of around 500 appeals that are submitted to it annually. All citizens have the right to access the relevant High Court to challenge the constitutionality of any legislation, or of any act of the President or any other public or private body. Foyalan courts follow a strict system of precedent, though the Supreme Court has the competence to depart from any past decision when it is 'in the interest of justice to do so'. The lower courts consist of Regional and District Courts and other specialised courts, including juvenile and family courts. The District Courts have jurisdiction over misdemeanors and small civil claims, while Regional Courts deal with felonies, capital crimes and other civil claims beyond the prescribed limit for small claims. Most cases are heard in the lower courts, which experience a massive backlog. Corruption and bribery are an issue, especially in the lower courts.

5 Foyalan is a party to the following treaties, shown below with dates of ratification:

Treaty	Ratified
UN Convention against Transnational Organised Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children	2012
UN Convention on the Elimination of all Forms of Discrimination Against Women	2008
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	2000
ILO Convention on Worst Forms of Child Labour, 1999 (No. 182)	2004
ILO Labour Inspection Convention, 1947 (No. 81)	2004
ILO Convention on Domestic Workers, 2011 (No. 189)	2011
African Charter on the Rights and Welfare of the Child	2000
African Charter on Human and Peoples' Rights	2002
Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights	2017
Protocol to the African Charter on the Rights of Women in Africa	2007
ILO Forced Labour Convention, 1930 (No. 29)	2006
Abolition of Forced Labour Convention, 1957 (No. 105)	2006
Protocol of 2014 to the Forced Labour Convention, 1930	2020
ILO Minimum Age Convention, 1973 (No. 138)	2006

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	2006
United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime	2006
UN Framework Convention on Climate Change	2002
Paris Agreement	2016
Budapest Convention on Cybercrime	2001
African Union Convention on Cyber Security and Personal Data Protection	2014

None of these treaties have been enacted in their entirety into domestic law. Limited amendment to legislation has occurred subsequent to the ratification of some treaties. When ratifying the African Charter on the Rights and Welfare of the Child, Foyalan entered the following reservation: 'Foyalan expresses a reservation to Article 2 of the Charter. Under Foyalan law a person is viewed as an adult from 16 years of age.' Foyalan deposited a declaration under Article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights on 16 June 2020.

6 Foyalan is a patriarchal society, with a centuries old tradition of an uncompensated and unregulated child apprenticeship system. In a 2003 study by the International Monetary Fund, researchers found that the apprentice system 'was a fundamental feature of Foyalan's economy, crucial for keeping thousands of families above the breadline'. In April 2019, Nobama's Ministry of Labour held an e-survey, to measure the public opinion on whether children should be compensated for their apprenticeships. 73 per cent of Foyalans voted to keep the unpaid apprenticeships in place, despite an expensive campaign to change public attitudes.

7 The Nolo group, which occupies the inland forest areas of Foyalan, has always used traditional charcoal for cooking, heating and other domestic and commercial purposes. Traditional charcoal is made from wood logs and coconut shells that are readily available in the forest areas. Sometimes this charcoal is mixed with mined coal from other countries to improve the duration of burning. The Nolo's have over the years mastered the process of traditional charcoal making, which has low construction and maintenance costs. Families passed on the skills and knowledge required for charcoal making to their children. Children in rural communities have always assisted their families in collecting wood and coconut shells during school holidays to make traditional charcoal. Cooperatives have helped develop the inland urban areas by creating export routes for traditional charcoal to neighbouring countries, which provides revenue for many families and local businesses. The proceeds from traditional charcoal contribute to family income and enable parents to cater to the educational, health and other upkeep needs of their children. Accordingly, many commercial activities in the inland-towns depend on the traditional charcoal industries from the rural areas. The bauxite industry exists in many areas alongside the traditional charcoal industry, but continues to steadily push out some of the charcoal works.

8 However, the practice of traditional charcoal making has led to a substantial depletion of the inland forests along the fringes that are inhabited by rural communities. Environmental and climate change activists have over the last decade campaigned for the government to take measures to curb the depletion of the inland forests, since these forests area is considered to be an important 'carbon sink'. These campaigns for a dramatic reduction in the use of and dependence on traditional charcoal have met with

opposition by the Nolo people, who argue that their livelihood depends on charcoal making. Some Nolo leaders have urged the government to come forward with alternative projects to create employment for the Nolo communities likely to be affected by restrictions on charcoal-making activities. Nolo people also argue that bauxite strip-mining, which persists and is not regulated, is worse on their local environment as it removes all native vegetation in the mining locations, resulting in a loss of habitat and food for local wildlife as well as significant soil erosion.

9 In December 2019, President Nobama made a statement during the United Nations Climate Change conference COP 25 in Spain at which she promised to ban the use of traditional charcoal and mineral coal due to their negative impact on climate change. The theme of COP 25 was: ‘Time to act, a call to all countries to scale up their commitments to fight climate change’. On her return to Foyalan, President Nobama issued an executive order banning the production, use and export of traditional charcoal throughout the country with effect from 1 January 2020. An enforcement infrastructure to ensure the implementation of the ban was set in place immediately. The 2020 ban, inspired by the theme of COP 25, has affected many families and businesses both in the inland rural and urban areas among the Nolo’s, with many families increasingly struggling to have enough to eat. Some families have subsequently resorted to sending their children to coastal towns to learn an alternative source of livelihood.

10 At the 2021 COP 26 in Glasgow, African countries were encouraged to end use of domestic charcoal as it leads to deforestation and pollutes the air when burned. Foyalan was singled out and congratulated as an African country that has already taken ‘positive measures’. Several countries thereafter made commitments to reduce carbon emissions by closing domestic charcoal plants and finding alternative renewable energy sources. Most countries that attended the climate change conference in 2021 made pledges to prevent all deforestation and wind down charcoal production and power plants by 2030. The African group had argued that developed countries should provide USD 700 billion in funding. While some African countries secured investments and loans to transition from coal to green energy, Foyalan failed to secure such loans because charcoal production was not specifically included and due to the government failing to follow some administrative processes.

11 Subsequent to the government’s announcement of the ban on traditional coal, local cooperatives met and decided to contact the NGO Ashante to challenge the government’s ban. Ashante is based in Foyalan, but has worked as a regional NGO since 1993 and was granted observer status by the African Commission on Human and Peoples’ Rights in 2004. After consulting with the cooperatives and local communities to understand the challenges that the ban has brought to their lives, Ashante in March 2020 filed a challenge in the High Court. It argued that the government ban violates the right to work, dignity and to participate in the economic development of Foyalan. They also note that the ban singles out charcoal making and does not cover the more devastating effects of bauxite mining. The High Court dealt expeditiously with the case because of the urgent nature of the claims and in June 2020 ruled in favour of the Ashante. The government immediately appealed to the Supreme Court, arguing that it acted in line with Article 6 of the Paris Agreement. The Supreme Court in its decision of August 2021 agreed with the government’s position that it has complied with its international commitments.

12 As the COVID 19 pandemic hit many jobs and cut the earning for many families, in June 2020, a 15-year old boy, Bourama, who lived in an inland town, Kumi, was sent by his family to learn the fishing trade from his uncle, who lived by the coast. The family identified Bourama to take up this trade because of his maturity, his ability to adjust, and his ability to swim. Bourama was eager to learn a trade which his parents assured him would secure his future, and his uncle was pleased to pass on his skills, as he had no children of his own. Shortly after Bourama's arrival, his uncle fell ill and was no longer able to work with or coach young Bourama. Another man, Al Foday, paid the uncle 5000 Foyas to take the boy to the next town, Libre, and teach him the fishing trade. In line with existing apprenticeship practices, it was agreed that the boy would work for Al Foday for the next two years for room and board without pay, but nothing was written or signed. Al Foday lived and fished on the sea, and needed good swimmers to swim under the boats and untangle the nets. He found that young boys were quick and agile and could do the job well, though six months earlier one boy, Kofi, had gotten tangled up and drowned. Bourama was working every day and was not able to attend school, but he was grateful for good meals and the opportunity to learn the trade. After three months, Braun Inc., a juridical person incorporated under the law of Rankia that has been doing business in Foyalan for decades, approached Al Foday and asked to buy his boat and personal small business. Braun Inc. was buying up everything in the area, and Al Foday agreed after getting a good offer. Most of the men who worked for Al Foday ended up working for Braun Inc. Al Foday also agreed that Bourama would work out the rest of the two-year arrangement for the foreign company. Bourama did not have any say in the matter, but he resolved to wait and see how it would work out.

13 At first, the working modalities with the new company were much the same as with Al Foday, but as the economy slowed down due to the COVID-19 pandemic, the company began to lose money, and increasing responsibilities were expected of Bourama. He was required to work from sunrise to sunset and was no longer provided with good meals, only rice and some of the scraps left after cleaning the fish. He and six other boys (all aged between 16 and 18) working for Braun Inc. tried to ask for more, but that made their manager, Ansom, angry and once a fight broke out. Two boys tried to leave but were prohibited to do so by a Braun, Inc. guard. Ansom is a Foyalan national, but has been working for Braun Inc. for many years, climbing in its ranks to the senior position he now holds. Ansom was a strict disciplinarian and told the boys that they were not allowed to leave company premises in the evenings. Ansom told them that this was because they were still young and the company wanted to keep them safe, especially since widespread unemployment had driven up rates of violent crime in the town and youths had been known to go missing. If they were found wandering the streets, he warned that they might be mistaken for runaways or troublemakers. Many of the boys were unhappy with their new working conditions but with no money and no family members nearby, they felt they had no choice but to stay with Braun Inc. Soon morale became very low among the boys, and their work habits became slow and halfhearted. Braun Inc. was concerned, and Ansom was nervous that his tenure as manager would be at risk. Ansom decided to solve the morale problem by treating the boys better. He made sure that they were fed well, gave them clean and warm bedding and even arranged sexual services for them.

14 In order to recruit young women to provide such sexual services, Ansom placed an online ad on Facebook and Instagram for young women to work as live-in maids for the company's senior employees. The ad read: 'Seeking young unmarried women as

household maids in good homes of foreign workers. Live in a nice house and receive a monthly pay of 10,000 Foyas. Only basic experience needed'. The ad also showed a photograph of a young woman in a wealthy home, and she was smiling at a man, presumed to be the owner of the home. The ad included Ansom's personal number. As the economy was in decline from COVID-19 pandemic, over 20 girls and young women applied through the online site. They ranged in age from 15 to 19 years old. Ansom asked them to send their photos and housekeeping experience to his WhatsApp account, but said nothing about sex work. Ansom picked three girls from their photos and arranged a car to pick them up and bring them to Libre. The girls were 15-year-old Alima, 17-year old Omoma and 18-year old Mariama. They did not ask for a written contract, but they did verbally confirm the wages stated in the advertisement. The girls were told that they would live in the homes of foreign workers, and that the wife of the worker would supervise their work. Upon arrival, the girls were directed to a shed and told they would be assigned to various households the next day.

15 Instead, the girls were locked up in the shed while the boys were given sexual access to them without the girls' consent. There was no birth control provided. In addition, the girls were not given the monthly pay of 10, 000 Foyas as contained in the advert. Some of the boys took advantage of this and raped or sexually assaulted the girls. When the girls protested, they were beaten or drugged by Ansom or by one of the older boys. Ansom also forced the girls to wear bikinis and underwear and took full body pictures of the girls. He then began using these photos via Facebook and Instagram targeted ads in the Foyalani language to recruit more young men with the promise of good wages and exciting times with beautiful young girls. This went on for seven months before one of the girls, Mariama, started showing signs of pregnancy. During this time, Omoma once suggested to the other girls that they try to escape and return home, but their identity documents were in Ansom's possession and they were afraid that their families would disown them if they found out that they were pregnant. A neighbour, Desiree, had been watching the house and wondering what was going on. One day Desiree saw a girl who looked pregnant in the window. She became concerned that something illegal was going on and told her pastor, John, of her concerns. Pastor John advised her that they should make this a matter of prayer while also observing the situation further.

16 After a few days, Desiree again talked to Pastor John, who was moved by Desiree's insistence, and believed that something wrong was going on. He decided to convey this information to the Libre Police Chief, Suame. Feeling some pressure from Pastor John, Suame agreed to look into the matter by referring the issue to the labour inspector under the Ministry of Labour. A labour inspector subsequently called Ansom to schedule an inspection. Before the labour inspector arrived, the girls were hidden and the boys were told by the site manager, who works under Suame's direct supervision, to say they were hired to bring beverages and lunch to the adult workers during rest periods. They were told they would be severely beaten if they said more. When the labour inspector arrived, he found boys as young as 16 working, but the work they performed was not hazardous and was often considered to be a culturally accepted way of life. He found no evidence of sex work or anything 'immoral' as alleged by Desiree. The labour inspector made no citations, although he did express concern over the fact that no one could provide him with recent inspection reports from Braun Inc.'s own compliance officers.

17 Local and national newspapers had also picked up the story, which caused some pressure on labour officials to investigate further. After an anonymous tip off, the Department of Labour's Anti-Slavery Unit conducted a night raid at the fishery. However, after the first visit by the labour inspector, and becoming aware of the media attention, Ansom and his staff worked very hard to ensure that conditions appear much improved. The Minister of Labour was quoted in the newspaper as saying that after thorough investigation, his Department was satisfied that Braun Inc. was a 'model employer'. The Director at the NGO Ashante in Libre, Jamison, saw the story in the news and realised that Braun Inc. was employing young boys for hazardous work. Ashante had long raised concerns over the fact that allegations of slavery were handled by the Department of Labour's Anti-Slavery Unit, a Unit comprised of labour law experts and social workers who lacked the resources of the police and had no criminal jurisdiction.

18 Consequently, Jamison and his team decided to investigate the allegations against Braun Inc., and they eventually came to the conclusion that the Company was secretly employing young boys for hazardous work. This conclusion was reinforced after Jamison and his team found the 'Bikini and Underwear' ads that were posted by Ansom proliferating on both Facebook and Instagram. Jamison immediately took screen shots of the ads and wrote to a complaint line at Facebook and Instagram to inquire as to why their algorithms had helped spread these ads, which directly violate Facebook and Instagram policies, instead of identifying and removing them. Within 48 hours from the time of the report, the two social media platforms sent back a reply stating that they removed the ads, but that it was difficult to identify and remove everything in a timely fashion, particularly since the ads were written in a language other than English. The two platforms promised to work on their algorithms stressing that they had already launched "search interventions" in English and Spanish, to help them with the flagging and review processes, by detecting whenever users "type in certain keywords related to certain topics" that may be associated with advertising or solicitation related to human trafficking, including sex trafficking and labour trafficking (especially domestic servitude). They also pledged to include other languages in the near future. Jamison and his team were sceptical about promises to change the algorithm because Facebook and Instagram had previously made similar promises in response to prior complaints but had not yet made any concrete interventions to address the algorithm. Ashante reported its concerns to Pastor John and started a nationwide publicity campaign to bring to national attention the forms and scope of human trafficking, asking for a commission of inquiry to be appointed.

19 Fearful of complications related to Mariama's pregnancy, Mukwe, one of Ansom's managers, without Ansom's knowledge took her to a hospital in Libre located far away from the Braun Inc. operations. For fear of his own safety, Mukwe made Mariama swear that she would not reveal his identity or tell anyone about the circumstances under which she became pregnant. After giving birth, Mariama asked to talk to an NGO social worker who happened to be present at the hospital. Mariama reached out and said she wanted to speak to her 'in confidence'. Mariama told the social worker all about the circumstances of her pregnancy, and about the boys at the fishing site. She also told the social worker that she had heard how the boys were sometimes beaten. One boy, 14-year old Massa, had been nice to her. He was young and not interested in sex, so he would talk to her instead. He told Mariama that he saw a boy, Kofi (age 13), drown, and saw a foreign worker cut the rope so the boy's body would sink to the bottom. No one knew he had

seen this. When other boys asked where Kofi was, they were told that he was an orphan but his uncle had been located and he went to live with him. Because Mariama was afraid of putting Mukwe at risk, she asked the social worker not to file an official report.

20 The NGO social worker conveyed this information to her friend, the Director from Ashante, Jamison. Jamison, in turn, shared all of these concerns with Pastor John, who again exerted pressure on the Police Chief Suame to investigate what was going on at Braun Inc., including the allegation of sexual exploitation and death of the boy who had drowned where the death had allegedly been covered up. The Police Chief sent an officer, Bob, to first go to Braun Inc.'s fishing site, but the boats were out at sea, no boys were seen, and Ansom, who introduced himself as an employee of Braun Inc. and as the person in charge, noted that nobody had been found and no one had complained of a missing boy. Ansom paid Bob 250 Foyas to 'cover his lunch' (in Ansom's words). Bob reported back to the Police Chief that 'there appears to be no evidence to substantiate the allegations'.

21 Meanwhile, Jamison organised for Mariama to be housed in a shelter run by Ashante, and after some persuasion convinced a reluctant Mariama to make a formal complaint against Ansom and Braun Inc. for rape and human trafficking with aggravated circumstances, and for the non-consensual use of her intimate photo in recruiting others into forced labour. Accompanied by Jamison, Mariama went to the Central Police Station of Libre. Jamison, who was on a collegial footing with the Police Chief, insisted that she should present the evidence directly to him. Mariama was given an opportunity to provide all the relevant evidence. In the process, she also named the boy Massa who had witnessed the drowning death of young Kofi. She also requested a paternity test, but one was never performed.

22 Alarmed by the allegations and the strength of the evidence, including screen shots of the intimate photos used in ads to recruit boys, the Police Chief decided to lead the investigation of Mariama's case. However, prior to Police Chief Suame's first visit to the shed where the women were allegedly held, officer Bob, who got wind of the impending visit, let Ansom know. Acting in great haste, Ansom sent all the girls away. When he arrived, the Police Chief found no girls who could corroborate Mariama's statement. Ansom denied all the allegations and said he did not have access to the shed. The next day, the Police Chief sent out missing person alerts to try to find the missing girls, but without success. Soon thereafter, a prosecutor agreed to proceed with a charge of human trafficking against Ansom, with Mariama and Massa as witnesses. Ansom was arrested and appeared in the criminal division of the Libre Regional Court. The prosecutor, however, refused to press charges under Article 67(2) of the Cybercrime Act, 1999, against Meta, the parent company of Facebook and Instagram, under the justification that the two platforms had removed the ads after receiving Jamison's complaint. Under Foyalalan law, a private prosecution can be instituted if a prosecutor decides not to charge a suspect. **However, no private prosecution was instituted against Meta.**

23 On 10 September 2021, the Regional Court found Ansom not guilty. The Court ruled that Mariama's evidence related to the boys was hearsay, and, based on the Evidence Act of 1981, that the testimony of Massa was not valid because he was a minor and was suffering from acute trauma of unknown origin. The Court further held that Mariama had no proof of what had happened to any of the girls, and that it was not clear where any pornographic photos were taken since the photos in bikinis and underwear

were not deemed pornographic but were merely showing a vacation-like atmosphere in the recruitment location. The Court further noted that Mariama herself was of immoral character merely seeking punitive damages against an employee of a rich foreign company. The prosecutor decided not to appeal the judgment and no one else could appeal under Foyalan law. However, the prosecutor advised Ashante that it could pursue a civil claim for the boys to recoup their loss of earnings.

24 Ashante continued its campaign to call for a commission of inquiry into human trafficking by Braun Inc. Ashante also submitted a case to the High Court, alleging numerous violations of the bill of rights, and naming Braun Inc. and the state as respondents. The High Court dismissed the case, holding that 'human trafficking' had not been proven and no viable witnesses could be found. Ashante appealed to the Supreme Court, which refused to entertain the matter, noting that a commission of inquiry would be more suitable. Acting in line with this recommendation, President Nobama on 1 October 2021 announced the establishment of a commission of inquiry on human trafficking, chaired by one of the Justices of the Supreme Court. **The Commission of Inquiry was tasked with providing the President on recommendations about how to address human trafficking in Foyalan.** Upon its inception, the Commission eagerly began preliminary investigations and subpoenaed documents and witnesses. However, due to logistical difficulties, including the challenges posed by COVID-19 pandemic, and a lack of funds earmarked in the current cycle, the Commission had by June 2022 not yet started to hear any evidence.

25 On 10 February 2022, Ashante submitted the case to the African Court on Human and Peoples' Rights, contending the following:

(a) The ban on traditional charcoal by Foyalan violates the African Charter and other international human rights law.

(b) Foyalan violated the African Charter and other international human rights law by failing to hold Braun Inc. and Ansom accountable for human trafficking.

(c) Foyalan violated the African Charter and other international human rights law by failing to hold Meta, the parent company of Facebook and Instagram, accountable for facilitating domestic servitude and sexual enslavement.

26 The African Court is scheduled to hear the case at its 2022 session, to take place in Cairo, Egypt. Prepare one written submission on behalf of the applicant (Ashante), and one on behalf of the respondent (Foyalan) by addressing the issue of jurisdiction, admissibility, merits and reparations in relation to claims (a) to (c) above.

Annex I: Relevant Legislation in Foyalán

Constitution of Foyalán, 1960, as amended in 1995:

Article 1: The Constitution is the supreme law in Foyalán.

Article 16 of the Constitution prohibits 'slavery', 'servitude' and 'forced labour'. It defines 'forced labour' to 'preclude any labour required as a result of a sentence or order of a court; or any labour required of a member of a disciplined force or service as his duties; or, to the extent that the requirement of such labour is reasonably justifiable in the circumstances of any situation arising; or any labour reasonably required as part of normal communal or other civic obligations.'

Article 172

(1) International treaties are ratified by a majority vote of Parliament. (2) Treaties can only be applied domestically once their provisions have been enacted into domestic law.

Judiciary Act, 1999

Article 12: The Supreme Court has the competence to decide which appeals to hear, based on the importance of the matter, public policy, the evolution of the system of precedent and the need to clarify constitutional provisions.

Anti-Human Trafficking Act, 2020

Article 1 defines trafficking as 'the recruitment, transportation, transfer, harboring, or receiving of persons, by means of threat or the use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or of position or any other direct or indirect unlawful means and for the purpose or result of exploitation'. Article 1 also provides that exploitation includes 'forced labour or services, slavery or practices similar to servitude.' In accordance with this Article, any person committing a crime of trafficking may be subject to imprisonment and a fine.

Article 4 provides that the following will be considered aggravating circumstances of the crime of trafficking: (i) if the crime is committed by a criminal group; (ii) if the victim is below 16 years of age, a female or a person with special needs; (iii) if the crime is of a non-national nature; (iv) if the perpetrator is a blood relative of the victim or if he is the guardian or responsible for the supervision of the victim or has authority over the victim, or if the victim is his servant; and (v) if the victim suffers an incurable disease as a result of the crime.

Children's Act, 1999

Article 1: A child is any person under the age of 16.

Article 87: Prohibition of exploitative child labour.

(1) No person shall engage a child in exploitative labour.

2) Labour is exploitative of a child if it deprives the child of its health, education or development.

Article 88: Prohibition of child labour at night

(1) No person shall engage a child in night work.

(2) Night work constitutes work between the hours of eight o'clock in the evening and six o'clock in the morning.

Article 89: Minimum age for work

The minimum age for admission of a child to employment shall be fifteen years.

Article 91: Minimum age for hazardous employment

(1) The minimum age for the engagement of a person in hazardous work is eighteen years. (2)

Work is hazardous when it poses a danger to the health, safety or morals of a person. (3)

Hazardous work includes:

- (a) going to sea;
- (b) mining and quarrying;
- (c) portorage of heavy loads;
- (d) manufacturing industries where chemicals are produced or used;
- (e) work in places where heavy machinery is used; and
- (f) work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour.

Article 100: Prohibition of using children in illicit activities

No child may work under circumstances constituting the 'worst forms of child labour', including:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in provision of armed services;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs;
- d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Signatory Companies will, and will require their Personnel to, report any instances of the activities referenced above that they know of, or have reasonable suspicion of, to Competent Authorities.

Labour Act, 2004

This Act applies to companies doing business in Foyalán. The rights of a worker include the right to: (a) work under satisfactory, safe and healthy conditions; (b) receive equal pay for equal work without distinction of any kind; (c) have rest, leisure and reasonable limitation of working hours and a period of holiday with pay as well as remuneration for public holidays; (d) form or join a trade union; (e) be trained and retrained for the development of skills; and (f) receive information relevant to the work of the worker. It also states that: "(1) An employer shall not employ a young person on a work unless a medical practitioner has certified that the young person is in good health and is medically fit for the work; and (2) Where a person fails to comply with subsection (1) that person shall be ordered by the Minister to have the medical examination conducted."

Evidence Act, 1981

Article 12(1): A person is not qualified to be a witness if that person is (a) incapable of coherent expression so as to be understood, directly or through interpretation by another person who can understand that person; or (b) incapable of understanding the duty of a witness to tell the truth. (2) A child or a person of unsound mind is competent to be a witness unless the child or that person is disqualified by subsection (1).

Commissions of Inquiry Act, 1965

Article 1: In order to investigate a matter of public concern, the President may by proclamation in the Government Gazette appoint a Judge of the Supreme Court to head a commission of inquiry. The commission has the powers of the Supreme Court to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

Article 2: Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply.

Article 3: All the evidence and addresses heard by a commission shall be heard in public: Provided that the chairman of the commission may, in his discretion, exclude from the place where such evidence is to be given or such address is to be delivered any class of persons or all persons whose presence at the hearing of such evidence or address is, in his opinion, not necessary or desirable.

Child Online Protection Act, 2018

Article 27: Indecent image or photograph of a child

(1) A person shall not (a) take or permit to be taken an indecent image or photograph of a child; (b) produce or procure an indecent image or photograph of a child for the purpose of the publication of the indecent image or photograph through a computer system; (c) publish, stream, including live stream, an indecent image or photograph of a child through a computer or an electronic device; or (d) possess an indecent image or photograph of a child in a computer system or on a computer or electronic record storage medium.

Article 28: Sex Trafficking of Children

(1) A person shall not use a computer online service, an internet service, or a local internet bulletin board service or any other electronic device to compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child in furtherance of an effort to arrange a meeting of another person with the child for the purpose of engaging in sexual intercourse, sexually explicit conduct, or unlawful sexual activity.

Article 29: Aiding and abetting of child dealing for purposes of sexual abuse

(1) An owner or operator of a computer on-line service, weblog, internet service, or internet bulletin board service shall not (a) aid or abet another person for the purpose of facilitating or encouraging the on-line solicitation of a child; or (b) permit any person to use the service of that person for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with a child, or the visual depiction of such conduct.

Cybercrime Act, 2019

Article 67: Non-consensual sharing of intimate image or photograph

(1) A natural or juridical person shall not intentionally distribute or intentionally cause another person to distribute the intimate image, photograph or visual recording of another identifiable person without the consent of the person depicted in the intimate image, photograph or visual recording and in respect of which there was a reasonable expectation of privacy both at the time of the creation of the image or visual recording and at the time the offence was committed.

(2) Any internet intermediary may not knowingly cache, host, publish or distribute material that is illegal under Section 1 of this Article. An internet intermediary is immune from liability for caching or hosting illegal material under Section 1 of this Article if the intermediary meets the following conditions:

- a. It adopts, publishes and implements a robust privacy policy that prohibits non-consensual sharing of intimate images or photographs.
- b. It does not receive a financial benefit directly attributable to the illegal material, where the intermediary has editorial control over the illegal material.
- c. It does not know the material is illegal or aware of circumstances based on which knowledge is realised.
- d. It swiftly removes the material if it becomes aware of the illegal material.