
32ND CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION

KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY

3 – 9 SEPTEMBER 2023, KUMASI, GHANA

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

ARUSHA, TANZANIA



IN THE MATTER BETWEEN

GOZANGA HUMAN RIGHTS ASSOCIATION (GoHRA)

(APPLICANT)

AND

THE STATE OF SENTSIFIA

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

JULY 30, 2023

LIST OF ABBREVIATIONS

AC	Appeal Cases
ACCNN	African Convention on the Conservation of Nature and Natural Resources
ACmHPR	African Commission on Human and Peoples' Rights
AfCLR	African Court Law Reports
ACPCC	African Union Convention on Preventing and Combating Corruption
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLR	African Human Rights Law Reports
APDH	Actions pour la Protection des Droits de l'Homme
AU	African Union
AUILR	American University International Law Review
CADE	Convention Against Discrimination in Education
cf	Compare
CHRAJ	Commission on Human Rights and Administrative Justice
CSMR	Centre for Sexual Minority Rights
CSO	Civil Society Organizations
EctHR	European Court on Human Rights
EMT	Economic Management Team
Fam	Family Court Reports
FCR	Family Court Reports
FIDH	International Federation for Human Rights
FSHS	Free Senior High School
GaHC	Gambia High Court

GoHRA	Gozanga Human Rights Association
HRC	Human Rights Council
IACHR	Inter–American Commission on Human Rights
IACtHR	Inter–American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
NGO	Non–Governmental Organization
No	Number
OSP	Office of the Special Prosecutor
PCIJ	Permanent Court of International Justice
SERAC	Social and Economic Rights Action Center
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNTS	United Nations Treaty Series
WHO	World Health Organisation
ZHR	Zimbabwe Human Rights

INTERPRETATION

1. *The African Charter* means the African Charter on Human and Peoples' Rights.
2. *The African Court Rules* means the Rules of Court of the African Court on Human and Peoples' Rights.
3. *The African Charter on Public Values and Principles* means the the African Charter on Values and Principles of Public Service and Administration.
4. *The Articles on State Responsibility* means the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001.
5. *The Commission* means the African Commission on Human and Peoples' Rights.
6. *The Court* means the African Court on Human and Peoples' Rights.
7. *The Court's Protocol or African Court Protocol* means the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights.
8. *The Nairobi Guidelines* means the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.
9. *The Principles on Reparation* means the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
10. *The Revised ACCNN* means the Revised African Convention on the Conservation of Nature and Natural Resources.

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QUESTIONS PRESENTED

Sentsifia respectfully requests the Court to adjudge:

- I. Whether the Court has jurisdiction and the matter is admissible.
- II. Whether Sentsifia violated the African Charter and other international human rights norms by failing to hold Mr Putin Yeungo accountable for illegal mining and Mr Nsana Adongo accountable for corruption.
- III. Whether Sentsifia violated the African Charter and other relevant human rights treaties in its treatment of the children and GoHRA's 20 senior staff members at The Villa.
- IV. Whether Sentsifia violated the African Charter and other relevant international human rights law by its decision to run the FSHS policy only in the 150 less endowed schools.
- V. Whether Sentsifia violated the African Charter and other relevant international human rights law for refusing to register the Center for Sexual Minority Rights under the NGO Registration Act.

SUMMARY OF PLEADINGS

JURISDICTION AND ADMISSIBILITY

Sentsifia concedes to the jurisdiction of the Court to hear the application. On admissibility, Sentsifia concedes that local remedies were exhausted in the illegal mining and CSMR cases but argues that despite local remedies being available, effective and sufficient in Sentsifia, GoHRA has failed to exhaust them in the cases of Nsana's corruption, the street children and GoHRA's 20 senior members and the FSHS policy. Further, Sentsifia argues that the CSMR case is inadmissible because the submission after 11 months of the exhaustion of local remedies is unreasonably belated.

MERIT A

Sentsifia has not violated the African Charter, the African Charter on Public Values and Principles, ACPCC, ICCPR and the Revised ACCNN because it did not breach its duty to prosecute Putin Yeungo for illegal mining and to compensate the victims of the illegal mining, and to investigate and prosecute Nsana for corruption.

MERIT B

Sentsifia has not violated the African Charter, ACRWC and ICCPR by accommodating and vaccinating the children and GoHRA's senior members at The Villa.

MERIT C

Sentsifia has not violated the African Charter, ICCPR, ICESCR and UNESCO CADE because the limitation of the FSHS policy to only the 150 schools is not discrimination in education and thus, did not breach the right to education.

MERIT D

Sentsifia submits that the refusal to register the CSMR under the NGO Registration Act is not discriminatory and does not breach the CSMR members' freedom of association.

PLEADINGS

(I) JURISDICTION AND ADMISSIBILITY

A. JURISDICTION OF THE COURT

[1]. In every application before the Court, the Court must conduct a preliminary examination of its jurisdiction,¹ whether contested or not.² In *Mariam Kouma and Another v Mali*,³ the Court held that an application will only be heard if it successively satisfies itself that it has material, personal, temporal, and territorial jurisdiction.⁴ Sentsifia concedes to the jurisdiction of the Court on all four bases.

(1) Material Jurisdiction

[2]. The Court's material jurisdiction pertains to all matters concerning the application and interpretation of the African Charter, the Court's Protocol and other human rights instruments ratified by the Respondent State.⁵ The Court has material jurisdiction because all the matters submitted by GoHRA,⁶ call for the application and interpretation of the African Charter, the Court's Protocol, the African Charter on Public Values and Principles, ACPCC, ACRWC, UNESCO CADE, ICCPR, ICESCR, and the Revised ACCNN ratified by Sentsifia.⁷

¹ African Court Rules 2020, rule 49(1).

² *Wanjara v Tanzania* [2020] 4 AfCLR 673 [31].

³ [2018] 2 AfCLR 237 [25].

⁴ See also, *Jebra Kambole v Tanzania* [2020] 4 AfCLR 1 [16].

⁵ African Court Protocol, art 3(1).

⁶ Facts, [27].

⁷ Facts, [9].

(2) Personal Jurisdiction

[3]. The Court will have personal jurisdiction in an action instituted by an NGO if that NGO has observer status before the Commission and the State against whom the action is brought has made and deposited the Optional Declaration required under Article 34(6) of the Court's Protocol.⁸ Since Sentsifia, a party to the Court's Protocol,⁹ has deposited the Optional Declaration on 5 July 2019,¹⁰ and GoHRA has gained observer status with the Commission in February 2015,¹¹ the Court has personal jurisdiction.

(3) Temporal Jurisdiction

[4]. As far as time is concerned, the Court's jurisdiction extends to only those matters that occur after the dates the African Charter, the Court's Protocol and the Optional Declaration under Article 34(6) of the Court's Protocol, came into force for the Respondent.¹² The events leading to the alleged violations in the cases of the street children and GoHRA's senior staff members,¹³ the FSHS policy,¹⁴ and the CSMR¹⁵ occurred after Sentsifia had ratified the African Charter in 2005,¹⁶ the Court's Protocol in

⁸ African Court Protocol, art 5(3); *Yogogombaye v Senegal* [2009] AHRLR 315 [34].

⁹ Facts, [9].

¹⁰ *ibid.*

¹¹ Facts, [8].

¹² *African Commission v Kenya (Ogiek Case)* [2017] 2 AfCLR 9 [64].

¹³ Facts, [19], [22].

¹⁴ Facts, [5], [20].

¹⁵ Facts, [24]–[26].

¹⁶ Facts, [9].

2017,¹⁷ and made the Optional Declaration.¹⁸ Hence, the Court has temporal jurisdiction. Sentsifia deposited the Optional Declaration under Article 34(6) of the Court's Protocol on 5 July 2019,¹⁹ a year after the illegal mining and the emergence of the events of Nsana's corruption, in June 2018.²⁰ Nonetheless, the Court has temporal jurisdiction. In *Kijiji Isiaga v Tanzania*,²¹ the Court held that where the alleged violation is continuous, it will have temporal jurisdiction. An alleged violation is continuous if having occurred earlier, it persists after the dates the African Charter, the Court's Protocol or Optional Declaration enters into force for the Respondent State.²² To this end, since the illegal mining and corruption subsisted even after Sentsifia deposited the Optional Declaration,²³ the Court has temporal jurisdiction.

(4) Territorial Jurisdiction

[5]. The Court will assume territorial jurisdiction if the alleged violations occurred within the territory of the Respondent State.²⁴ Since all the alleged violations occurred within the territory of Sentsifia, the Court has territorial jurisdiction.

[6]. Accordingly, Sentsifia concedes to the Court's jurisdiction to hear the application.

¹⁷ Facts, [9].

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ Facts, [12].

²¹ [2018] 2 AfCLR 218 [37].

²² *Onyango and Others v Tanzania* [2016] 1 AfCLR 507 [66].

²³ Facts, [9], [12]–[15].

²⁴ *Konaté v Burkina Faso* [2014] 1 AfCLR 314 [41].

B. ADMISSIBILITY OF THE APPLICATION

[7]. Article 6(2) of the Court's Protocol mandates the Court to rule on the admissibility of cases, taking into account the provisions of Article 56 of the Charter. In *Beneficiaries of Norbert Zongo et al v Burkina Faso*,²⁵ the Court held that an application is inadmissible if it does not meet all the requirements in Article 56 of the African Charter. In this case, the exhaustion of local remedies²⁶ and submission within reasonable time requirements,²⁷ are in contention. Therefore, Sentsifia will proceed to address them in order.

I. THE EXHAUSTION OF LOCAL REMEDIES

[8]. An application is admissible if the Applicant exhausts all local remedies (i.e., ordinary judicial remedies)²⁸ in the Respondent State.²⁹ The purpose of exhausting local remedies is to afford the Respondent State an opportunity to redress the alleged violations and to prevent the Court from being a court of first instance.³⁰ For this reason, an Applicant is mandatorily required to exhaust local remedies where they are available, effective and sufficient.³¹ Sentsifia concedes that local remedies were exhausted in the cases of the illegal mining and the CSMR [1] but contends that while local remedies are available, effective and sufficient in Sentsifia [2], GoHRA has failed to exhaust them in

²⁵ [2013] 1 AfCLR 197 [84].

²⁶ African Charter, art 56(5).

²⁷ African Charter, art 56(6).

²⁸ *Traore v Mali* [2020] 4 AfCLR 665 [40].

²⁹ African Charter, art 56(5).

³⁰ *Ogiek Case* (n 12) [94].

³¹ *African Commission v Libya* [2016] 1 AfCLR 153 [67].

the cases concerning Nsana's corruption, the street children and GoHRA's senior members, and the FSHS policy [3].

(1) Local Remedies were Exhausted in the cases of the Illegal Mining and CSMR

[9]. An application is admissible if the Applicant has pursued local remedies to the apex court of the Respondent State.³² In *Jonas v Tanzania*,³³ the Court held that the application was admissible because the Court of Appeal, Tanzania's highest court was seised with the matter. *First*, regarding the illegal mining case, 'an association of potentially displaced persons sued in the High Court on 15 January 2021.³⁴ The High Court awarded US\$ 3.5 million damages to the association.³⁵ On appeal, the Court of Appeal in April 2022 and the Supreme Court in July 2022 upheld the High Court's decision.³⁶ Accordingly, local remedies were exhausted. *Second*, in the CSMR case, Aisha challenged the decision of the Department of Social Welfare and Development not to register the CSMR before the Aseda High Court.³⁷ The High Court in dismissing Aisha's action, upheld the reasons of the Department.³⁸ On appeal, the Court of Appeal and the Supreme Court affirmed the High Court's decision.³⁹ Therefore, local remedies were exhausted.

³² *Josiah v Tanzania* [2019] AfCLR 83 [38].

³³ [2017] 2 AfCLR 101 [44].

³⁴ Facts, [14].

³⁵ *ibid*.

³⁶ *ibid*.

³⁷ Facts, [26].

³⁸ *ibid*.

³⁹ Facts, [26].

(2) Local Remedies are Available, Effective and Sufficient in Sentsifia

[10]. An Applicant must exhaust local remedies where they are available, effective and sufficient.⁴⁰ Local remedies are available if they are accessible without impediments; they are effective if they offer a prospect of success; and are sufficient if they are capable of redressing the violation.⁴¹

[11]. Local remedies are available in Sentsifia. Sentsifia has a structured and effectively functioning five-tier court system, with the Supreme Court being the highest appellate court in all matters.⁴² The Supreme Court has interpretative and supervisory jurisdiction.⁴³ Except procedural requirements, there are no insurmountable conditions in accessing the courts in Sentsifia. The High Court is opened to all persons, natural and juristic, to seek redress for human rights violation.⁴⁴

[12]. Regarding effectiveness, bringing claims before the local courts offers a prospect of success. There are equal chances of either succeeding or losing in a suit. For instance, the High Court in February 2021 ruled in favour of the association of potentially displaced persons in the suit seeking redress for the harm caused by the illegal mining; and on appeal, the Court of Appeal and Supreme Court upheld the decision of the High Court.⁴⁵

⁴⁰ *Jawara v Gambia* [2000] AHRLR 107 [32].

⁴¹ *African Commission v Libya* (n 31).

⁴² Facts, [6].

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ Facts, [14].

Although in the CSMR case, Aisha's action was dismissed by the local courts,⁴⁶ this was because the Department's refusal to register the CSMR was justified under the Sentsifian Constitution.⁴⁷ Accordingly, this one incident cannot muddle the effectiveness of local remedies in Sentsifia.⁴⁸

[13]. Concerning sufficiency, the local remedies in Sentsifia are capable of redressing the alleged violations. Under Sentsifia law, both civil and penal remedies exist. On civil remedies, the High Court has the jurisdiction to grant orders appropriate to enforce or secure human rights.⁴⁹ For example, in the suit instituted by the association of potentially displaced persons, the High Court awarded US\$ 3.5 million damages in their favour.⁵⁰ Currently, Nsana is under investigation for corruption.⁵¹ If found culpable, he will be prosecuted, convicted and punished under Sentsifia law.⁵² This depicts the existence of penal remedies. Hence, local remedies are sufficient in Sentsifia.

[14]. Consequently, local remedies in Sentsifia are available, effective and sufficient.

⁴⁶ Facts, [26].

⁴⁷ *ibid.*

⁴⁸ cf Shelton Dinah, 'The Jurisprudence of the Inter-American Court of Human Rights' (1994) 10 *AUILR* 333, 345.

⁴⁹ Constitution of Sentsifia (Annex I), art 33(2).

⁵⁰ Facts, [14].

⁵¹ Facts, [17].

⁵² See OSP Act (Annex I), s 5(a)(b); Criminal Offences Act (Annex I), ss 179, 180.

(3) GoHRA failed to Exhaust Local Remedies in the cases concerning Nsana's Corruption, the Street Children and GoHRA's 20 Senior Members, and the FSHS Policy

[15]. In Nsana's case, investigations are underway.⁵³ Yet, GoHRA has impetuously brought the instant application.⁵⁴ Local remedies encapsulate not only judicial remedies but also, administrative remedies.⁵⁵ In *Tsatsu Tsikata v Ghana*,⁵⁶ the Commission held that a matter will be inadmissible if it is pending before an authorized body in the Respondent State. Likewise, in *Laurent Metongnon and Others v Benin*,⁵⁷ the Court established that 'exhaustion of local remedies implies not only that the Applicant utilizes local remedies, but also that the Applicant awaits the outcome thereof'. Accordingly, to the extent that the matter is pending before the OSP,⁵⁸ an authorized prosecution body,⁵⁹ Nsana's case is inadmissible. Indisputably, the OSP's investigations have been slow-paced. However, GoHRA is not exonerated of its duty to exhaust local remedies in Sentsifia. In *Silvia Arche and Others v Mexico*,⁶⁰ the IACtHR held that where the factors accounting for the prolongation of local remedies are not directly attributable to the

⁵³ Facts, [17].

⁵⁴ Facts, [27].

⁵⁵ *FIDH and Others v Senegal* [2006] AHRLR 119 [44].

⁵⁶ [2006] AHRLR 112 [39].

⁵⁷ [2022] Application No 031/2018 [51].

⁵⁸ Facts, [17].

⁵⁹ OSP Act, ss 2, 5.

⁶⁰ [2005] Application No 1176/03 [26]–[28].

Respondent State, the requirement to exhaust them will still be applicable.⁶¹ In this case, most of the corruption allegations against Nsana were lodged by anonymous persons who left no traces of personal contact nor documents to buttress the allegations.⁶² This has made it necessary for the OSP to collect firsthand data before launching full scale investigation.⁶³ This has caused the delay in the OSP's investigative process without any fault on Sentsifia's part. Accordingly, the requirement to exhaust local remedies cannot be waived because the delay is unimputable to Sentsifia. Therefore, local remedies were not exhausted.

[16]. In the case of the street children and GoHRA's 20 senior members, the facts reveal that after the High Court dismissed GoHRA's suit for want of standing, it appealed to the Court of Appeal.⁶⁴ Though no date has been set for hearing,⁶⁵ GoHRA as a diligent Applicant should have invoked the supervisory jurisdiction of the Supreme Court for a directive⁶⁶ ordering the Court of Appeal to hear GoHRA's case promptly. For failing to explore this option while the matter is still pending,⁶⁷ the case is inadmissible.

⁶¹ FIDH, 'Admissibility of Complaints before the African Court: Practical Guide' (2016) 56.

⁶² Facts, [17].

⁶³ *ibid.*

⁶⁴ Facts, [23].

⁶⁵ *ibid.*

⁶⁶ Under a Supreme Court's supervisory jurisdiction, it can order for the expeditious trial of a case to prevent injustice: *British Airways v Attorney-General* [1997–98] 1 GLR 55.

⁶⁷ Facts, [23].

[17]. Lastly, regarding the FSHS case, GoHRA sought the advice of a senior advocate who opined that a successful challenge against the FSHS policy was slim.⁶⁸ As a result, GoHRA abandoned its constitutional challenge against the FSHS policy.⁶⁹ An Applicant bears the onus to at least attempt to exhaust local remedies in the Respondent State.⁷⁰ Therefore, merely casting aspersions on the potency of available local remedies does not relieve the Applicant of the duty to exhaust.⁷¹ For not approaching any court, GoHRA has failed to exhaust local remedies. Therefore, the FSHS case is inadmissible.

II. SUBMISSION WITH REASONABLE TIME

[18]. An Applicant is required to submit the application within reasonable time from the date of exhausting local remedies.⁷² Reasonable time is assessed on a case-by-case basis,⁷³ and the Court does not apply a fixed time limit.⁷⁴ Even so, an Applicant must show cause why the application was not submitted immediately after the exhaustion of local remedies.⁷⁵ The CSMR case was submitted 11 months (June 2022–May 2023) after the Supreme Court dismissed Aisha’s appeal.⁷⁶ GoHRA has not proved any

⁶⁸ Facts, [23].

⁶⁹ *ibid.*

⁷⁰ *Omary and Others v Tanzania* [2016] 1 AfCLR 383 [49].

⁷¹ *Peter Chacha v Tanzania (admissibility)* [2014] 1 AfCLR 398 [144].

⁷² African Charter, art 56(6).

⁷³ *Gombert v Cote D’Ivoire* [2018] 2 AfCLR 270 [36].

⁷⁴ *Cheusi v Tanzania* [2020] 4 AfCLR 219 [65].

⁷⁵ *Anthony and Kisite v Tanzania* [2019] 3 AfCLR 470 [49].

⁷⁶ Facts, [26].

demonstrable factors accounting for its tardiness in submitting the application. Therefore, the submission of the CSMR case is unreasonably belated and is inadmissible.

[19]. Accordingly, the application is admissible in respect of the illegal mining case but inadmissible in the cases of Nsana's corruption, the street children and GoHRA's senior members, the FSHS policy and the CSMR.

(II) SUBMISSIONS ON THE MERITS OF THE CASE

A. THE ACCOUNTABILITY OF MR PUTIN YEUNGO FOR ILLEGAL MINING AND THE ACCOUNTABILITY OF MR NSANA ADONGO FOR CORRUPTION

[20]. Sentsifia did not fail to hold Putin Yeungo accountable for illegal mining [I] and Nsana Adongo accountable for corruption [II] and therefore, has not violated the African Charter and other human rights norms.

I. SENTSIFIA HELD PUTIN YEUNGO ACCOUNTABLE FOR ILLEGAL MINING

[21]. Sentsifia recognises its duty to protect the rights entrenched in the African Charter.⁷⁷ Truly, this protective duty comprises of a due diligence to prosecute human rights violators,⁷⁸ and afford the victims of human rights violations adequate remedies.⁷⁹ Contrary to GoHRA's belief, Sentsifia did not breach its due diligence duty to prosecute Putin Yeungo for illegal mining [1] and to recompense the victims of illegal mining [2]. Consequently, it has not violated the victims' rights to satisfactory environment and life [3] and to reparations [4].

(1) Sentsifia did not Breach its Duty to Prosecute Putin Yeungo for Illegal Mining

[22]. Admittedly, a state has the duty to prosecute human rights abusers,⁸⁰ including those who cause environmental degradation, as part of the state's duty to protect the environment.⁸¹ In observing its international human rights obligations, a state is permitted

⁷⁷ African Charter, art 1; *Thomas v Tanzania* [2015] 1 AfCLR 465 [135].

⁷⁸ *ZHR NGO Forum v Zimbabwe* [2006] AHRLR 128 [146].

⁷⁹ *ibid* [159]; UN Guiding Principles on Business and Human Rights (2011), Principle 25.

⁸⁰ *ZHR NGO Forum* (n 78) [70], [160].

⁸¹ See Revised ACCNN, art 2; *SERAC v Nigeria* [2001] AHRLR 60 [52].

to count on the cooperation of another state.⁸² Thus, an extradition arrangement where one state entrusts its prosecutorial duty to another state in the spirit of comity is not abhorred.⁸³ On these premises, Sentsifia argues that it discharged its duty to prosecute because Camelot duly prosecuted and punished Putin Yeungo for illegal mining. The facts show that Sentsifia, a close ally of Camelot,⁸⁴ extradited Putin to Camelot whose laws on illegal mining are comparatively harsher than Sentsifia's, for prosecution.⁸⁵ In honour of their arrangement, Camelot prosecuted and sentenced Putin Yeungo to 15 years imprisonment.⁸⁶ Therefore, Sentsifia discharged its duty to prosecute Putin Yeungo for illegal mining.

[23]. Sentsifia observes that Putin Yeungo has since received pardon.⁸⁷ Nonetheless, this cannot operate to negative the fulfilment of Sentsifia's duty to prosecute because the pardon by Camelot is an after-the-fact conduct which Sentsifia did not sanction and thus, cannot be attributed to it. Under international law, the conduct of a state is only attributed to another state if that other state in the knowledge of the circumstances of the conduct assist, aids, or facilitates;⁸⁸ and/or directs, controls or coerces⁸⁹ the state to commit the conduct. In this case, none of these instances apply to Sentsifia as far as the pardon

⁸² AU Constitutive Act, art 3(e)(k); UN, *Principles on Reparation* (December 2005), [4].

⁸³ *Principles on Reparation*, [5].

⁸⁴ Facts, [3].

⁸⁵ Facts, [13].

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ Articles on State Responsibility, art 16.

⁸⁹ Articles on State Responsibility, arts 17, 18.

granted to Putin Yeungo is concerned. Accordingly, considering that post-trial processes like the execution of punishment is not part of the prosecutorial processes,⁹⁰ the pardon cannot be attributed to Sentsifia. Consequently, the pardon should not be projected to defeat Sentsifia's diligent steps in the circumstances.

[24]. Therefore, Sentsifia did not breach its duty to prosecute Putin for illegal mining.

(2) Sentsifia did not fail to Compensate the Victims of the Illegal Mining

[25]. In compliance with Sentsifia's duty to compensate the victims,⁹¹ the local courts have awarded the victims US\$ 3.5 million damages.⁹² Therefore, Sentsifia's decision not to sue Adryx Ltd and Angold PLC for the environmental degradation,⁹³ is inconsequential. Regrettably, Sentsifia is yet to pay the damages.⁹⁴ However, since Sentsifia's economy is currently in shambles,⁹⁵ that does not constitute a breach of its duty to compensate.

(3) The Alleged Violation of the Rights to Satisfactory Environment and Life

[26]. Sentsifia acknowledges its obligation to protect the environment, and to protect the right to life of persons⁹⁶ by protecting the environment.⁹⁷ Sentsifia however argues that since it has not breached the duty to prosecute Putin Yeungo for illegal mining, it has not violated the victims' rights to satisfactory environment and life.

⁹⁰ See generally, *Updated Justice Manual*, Department of Justice, USA (20 June 2018).

⁹¹ *ZHR NGO Forum* [146], [159]; UN Guiding Principles (n 78), Principle 25.

⁹² Facts, [14].

⁹³ Facts, [12].

⁹⁴ Facts, [14].

⁹⁵ Facts, [18], [20].

⁹⁶ African Charter, art 4; ICCPR, art 6(1).

⁹⁷ ACmHPR, General Comment No 3: *The Right to Life* (Article 4) 2015, [3].

(4) The Alleged Violation of the Victims' Right to Reparations

[27]. Admittedly, victims of human rights violations have the right to reparations.⁹⁸ States are thus bound to provide remedies to victims of human rights violations.⁹⁹ Since Sentsifia has granted the victims' US\$ 3.5 million damages and also, relocated them, it has not violated their right to reparations.

II. SENTSIFIA HELD NSANA ADONGO ACCOUNTABLE FOR CORRUPTION

[28]. Sentsifia has not breached its duty to combat corruption [1] and therefore, has not violated the right to development [2].

(1) Sentsifia has not Breached its Duty to Combat Corruption

[29]. Sentsifia recognises its duty to combat corruption.¹⁰⁰ Indeed, forming part of the duty to combat corruption is the obligation to investigate and prosecute corruption allegations.¹⁰¹ Sentsifia has not reneged on this duty because it has investigated and is still investigating Nsana for corruption. The facts reveal that President Ragnar tasked CHRAJ,¹⁰² 'one of the most efficient institutions in Sentsifia and Africa at large',¹⁰³ to investigate Nsana for corruption. After CHRAJ concluded its investigations and found Nsana not guilty,¹⁰⁴ Sentsifia in response to the demands of the CSOs reopened

⁹⁸ ICCPR, art 2(3)(a).

⁹⁹ *SERAC* (n 81) [46].

¹⁰⁰ African Charter on Public Values and Principles, art 12(1); ACPCC, arts 2(1).

¹⁰¹ IACHR, Corruption and Human Rights in the Americas (6 December 2019) 99, [263].

¹⁰² Facts, [15].

¹⁰³ Facts, [7].

¹⁰⁴ Facts, [17].

investigations through the OSP, whose investigations are ongoing.¹⁰⁵ Regrettably, the OSP's investigations has slightly prolonged. However, this is not a deliberate act on Sentsifia's part. Evidently, the allegations were unbuttressed and the complainants did not leave personal contact.¹⁰⁶ In *Rodriguez v Honduras*,¹⁰⁷ the IACtHR ruled that in determining whether a state has discharged its obligations regarding investigations, the efforts that the state has exerted in conducting the investigations must be considered. Accordingly, the delay in the OSP's investigations should not singularly overshadow Sentsifia's diligent posture in unearthing the root of the corruption allegation against Nsana. Consequently, Sentsifia has not breached its duty to combat corruption.

(2) The Alleged Violation of the Right to Development

[30]. Article 22(2) of the African Charter requires states to ensure the enjoyment of the right to development. In this regard, states are duty-bound to combat corruption and all public irregularities.¹⁰⁸ Since Sentsifia has not breached its duty to combat corruption, it has not violated the right to development of the rural communities.

[31]. Accordingly, Sentsifia has not violated the African Charter, the African Charter on Public Values and Principles, ACPCC, ICCPR and the Revised ACCNN by failing to hold Putin Yeungu accountable for illegal mining and Nsana Adongo for corruption.

¹⁰⁵ Facts, [17].

¹⁰⁶ *ibid.*

¹⁰⁷ [1988] Series C No 4.

¹⁰⁸ ACPCC, art 2(1).

B. THE TREATMENT OF THE CHILDREN AND GoHRA's 20 SENIOR MEMBERS

[32]. Sentsifia did not violate the African Charter and other human rights treaties in its treatment of the Children [I] and GoHRA's 20 senior members [II].

I. THE TREATMENT OF THE CHILDREN AT THE VILLA

[33]. States must advance the best interest of children¹⁰⁹ and protect their rights.¹¹⁰ The housing of the children at The Villa advanced their best interest [1] and the vaccination of the children was necessary [2].

(1) The Housing of the Children at The Villa Advanced their Best Interest

[34]. States are obligated to provide alternative care for unaccompanied children.¹¹¹ The children who were unaccompanied were rounded up and accommodated at The Villa, fed and well catered for by the government.¹¹² Considering that Aseda, Sentsifia's capital and a major city¹¹³ was indefinitely locked down,¹¹⁴ the children were prone to insecurity, starvation, and unsafe environment. Therefore, the rounding up and housing of the children at The Villa was indispensable to their care, maintenance and protection. Regrettably, after the vaccination, the children were returned to the street.¹¹⁵ Even so, GoHRA's application is confined to the treatment of the children at The Villa.¹¹⁶ In *APDH*

¹⁰⁹ ACRWC, art 4; UNCRC, art 3.

¹¹⁰ African Charter, art 18(3).

¹¹¹ ACRWC, art 25(2); UNCRC, art 20(2).

¹¹² Facts, [19].

¹¹³ Facts, [1].

¹¹⁴ Facts, [19].

¹¹⁵ Facts, [22].

¹¹⁶ Facts, [27].

v Cote D'Ivoire,¹¹⁷ the court upheld the *ne ultra petita* rule¹¹⁸ and noted that it can only make findings on matters submitted before it.¹¹⁹ Accordingly, Sentsifia urges the Court to disregard any plea on the restreting of the children and instead, give preeminence to Sentsifia's diligent efforts in advancing the best interest of the children while at The Villa. Consequently, Sentsifia sufficiently advanced the best interest of the children at The Villa.

(2) The Vaccination of the Children was Necessary

[35]. States have the duty to protect the health of all persons.¹²⁰ By this, states are bound to implement measures necessary to contain the spread of pandemics like the Covid-19 disease.¹²¹ The children lived on the streets of Aseda where multitudes trooped in during the "Year of Return" festival, two months after the outbreak of the Covid-19 in Sentsifia.¹²² The probability that these children were exposed to the disease was very high and cannot be discounted. The vaccination was necessary to immune the children against the Covid-19, a dreadful disease which according to the WHO, has killed almost seven million people worldwide.¹²³ Though there were some protestations, the vaccination of the children was still lawful. In administering therapeutic vaccines to a child,

¹¹⁷ [2016] 1 AfCLR 668 [37].

¹¹⁸ The rule states that an adjudicative body shall not decide on issues other than those that are submitted to it: *The Barcelona Traction Case* [1970] ICJ Reports 3 [49].

¹¹⁹ See also, *Thomas* (n 77) [80].

¹²⁰ African Charter, art 16; ICESCR, art 12(1).

¹²¹ See International Health Regulations (Third Edition) 2005, arts 2, 15(1)(2).

¹²² Facts, [18], [19].

¹²³ <<https://covid19.who.int/>> accessed 20 June 2023.

the best interest of the child is paramount.¹²⁴ Therefore, a health officer will be justified to treat a child without obtaining consent if it is necessary to protect the child's health and life.¹²⁵ Accordingly, since it was necessary to protect the children against the Covid-19, the lack of voluntary consent by the children does not make their vaccination unlawful. Consequently, Sentsifia protected the rights to health and life of the children.

II. THE TREATMENT OF GoHRA's 20 SENIOR MEMBERS AT THE VILLA

[36]. The detention of GoHRA's 20 senior members was justified [1] and the vaccination was necessary [2].

(1) The Detention of GoHRA's 20 Senior Members at The Villa was Justified

[37]. Sentsifia acknowledges the right of an individual to liberty and to the security of the person.¹²⁶ This right proscribes the arbitrary arrest and detention of persons.¹²⁷ However, an arrest and detention of a person for a wrong in accordance with law is not arbitrary.¹²⁸ GoHRA's senior members blatantly defied the Directive, when despite the lockdown, they embarked on public demonstration against the Directive issued by the government.¹²⁹ Therefore, since the Directive equals a legislation, the arrest and detention of GoHRA's senior members at The Villa was lawful.¹³⁰

¹²⁴ *Re J (A Minor) (Wardship: Medical Treatment)* [1991] Fam 33, 46 (emphasis added).

¹²⁵ *Re E (A Minor) (Wardship: Medical Treatment)* [1992] FCR 219.

¹²⁶ African Charter, art 6.

¹²⁷ *ibid.*

¹²⁸ *Penessis v Tanzania* [2019] 3 AfCLR 593 [108].

¹²⁹ Facts, [19].

¹³⁰ *ibid.*

[38]. Although the Directive limited the freedoms of persons temporarily, it was not an unjustified derogation measure. Indeed, the African Charter does not permit derogation measures in emergency circumstances.¹³¹ Nonetheless, it permits the restriction of rights in common interest.¹³² Similarly, the ICCPR permits State Parties to restrict the rights of persons to secure public health and safety.¹³³ To the extent that the Directive was meant to contain the Covid–19 disease,¹³⁴ it was a necessary public health measure and not an unjustified derogation measure.

[39]. The non–arraignment of GoHRA’s senior members was justified. The Directive, an administrative containment measure, did not prescribe offences and punishment. As such, prosecuting GoHRA’s senior members on its basis would have been unlawful. Although Sentsifia kept GoHRA’s senior members at The Villa for some time,¹³⁵ this was necessary to deter the public from undermining the Directive. Without the implementation of a compliance measure like the “detention”, the public would have disobeyed the Directive, carried on usual public life and become indefensibly vulnerable to the Covid–19, which would have had dire consequences on Sentsifia. The “detention” was thus necessary to deter the public. Consequently, the non–arraignment of GoHRA’s senior members was justified.

[40]. Therefore, the detention of GoHRA’s 20 senior members at The Villa was justified.

¹³¹ *Commission Nationale v Chad* [2000] AHRLR 66 [21].

¹³² African Charter, art 27(2).

¹³³ ICCPR, art 12(3); *Denton v The Director–General et al* [2006] AHRLR 241 (GaHC).

¹³⁴ Facts, [19].

¹³⁵ Facts, [22].

(2) The Vaccination of GoHRA's 20 Senior Members was Necessary

[41]. Sentsifia acknowledges its duty to respect the freedom of thought and conscience of GoHRA's senior members, including religious freedom¹³⁶ and the right to determine their course of life.¹³⁷ However, individual rights are subject to the common interest of the public.¹³⁸ GoHRA's senior members clustered to protest when the Covid-19 was at its peak in Sentsifia.¹³⁹ The probability that they had contracted the disease was very high. Thus, the vaccination was necessary to protect their life and health and the public against possible carrier transmission. Hence, Sentsifia did not violate the freedom of thought and conscience of GoHRA's senior members.

[42]. Accordingly, Sentsifia did not violate the African Charter, ACRWC, ICCPR and UNCRC in its treatment of the Children and GoHRA's 20 senior members at The Villa.

¹³⁶ African Charter, art 8; ICCPR, art 18(1).

¹³⁷ See *Jehovah's Witnesses of Moscow v Russia* [2010] Application No 302/02 (ECtHR).

¹³⁸ African Charter, art 27(2).

¹³⁹ Facts, [18], [19].

C. THE LIMITATION OF THE FSHS POLICY TO 150 LESS ENDOWED SCHOOLS

[43]. Sentsifia submits that the limitation of the FSHS policy is not discriminatory [1] and does not violate the right to education [2].

(1) The Limitation of the FSHS Policy is not discriminatory

[44]. Admittedly, discrimination against persons is prohibited.¹⁴⁰ Indeed, all persons are entitled to equal treatment, including treatment in education¹⁴¹ without distinction as to social origin.¹⁴² However, the differential treatment of persons is justified if it is premised on a legitimate objective.¹⁴³ The limitation of the FSHS policy to only the 150 less endowed schools, though a differential treatment in character, is justified.

[45]. The outbreak of the Covid-19 has gravely affected Sentsifia, a mid-sized country with a dependency ratio of 67%.¹⁴⁴ In particular, the Covid-19 has caused economic stagnation, galloping inflation, decline in foreign investment profit, currency depreciation, job cut across the private sectors, and panic on the state-owned stock exchange.¹⁴⁵ To salvage Sentsifia's economy 'as the pandemic grew and continued to impact negatively on the economy of Sentsifia', President Ragnar on the advice of the EMT increased export and import duties, corporate taxes and implemented the e-levy policy.¹⁴⁶ Sadly, the

¹⁴⁰ African Charter, art 2; ICCPR, art 2.

¹⁴¹ UNESCO CADE, arts 1, 3(a).

¹⁴² *ibid*; *Ogiek Case* [137].

¹⁴³ *Ogiek Case* [139].

¹⁴⁴ Facts, [1].

¹⁴⁵ Facts, [18].

¹⁴⁶ Facts, [20].

pooled revenue was miniscule and ‘failed to mitigate the current economic hardship in Sentsifia’.¹⁴⁷ Still eager to revitalise Sentsifia’s dying economy,¹⁴⁸ President Ragnar as a last-ditch effort began to cut down the number of flagship programmes across the public sectors.¹⁴⁹ As a result, the FSHS policy was limited to the 150 less endowed schools.¹⁵⁰ This was to help Sentsifia ‘to divert adequate resources to other sectors of the economy where there is a dire need for support’.¹⁵¹ Accordingly, the limitation of the FSHS policy to the 150 less endowed schools was necessary and thus, justified.

[46]. Consequently, the limitation of the FSHS policy is not discrimination in education.

(2) The Limitation of the FSHS Policy does not Violate the Right to Education

[47]. ‘Every individual has the right to education’.¹⁵² This right obligates states to ensure equality of treatment in access to education.¹⁵³ Sentsifia has not violated the right to education of the pupils of the other 12,850 schools not covered by the FSHS policy because the limited implementation of the policy is not discriminatory.

[48]. Accordingly, Sentsifia has not violated the African Charter, ICCPR, ICESCR, and UNESCO CADE in limiting the FSHS policy to the 150 less endowed schools.

¹⁴⁷ Facts, [20].

¹⁴⁸ Facts, [20], [21].

¹⁴⁹ Facts, [20].

¹⁵⁰ Facts, [21].

¹⁵¹ *ibid.*

¹⁵² African Charter, art 17(1); ICESCR, art 13(1).

¹⁵³ ACmHPR, *Nairobi Guidelines* (November 2010), [71].

D. THE REFUSAL TO REGISTER THE CSMR UNDER NGO REGISTRATION ACT

[49]. Sentsifia submits that the non-registration of the CSMR is not discriminatory [1] and not violative of the freedom of association [2].

(1) The Non-registration of the CSMR is not discriminatory

[50]. Sentsifia recognises its duty to afford equal protection of the law to all persons,¹⁵⁴ and to not discriminate on grounds of sex,¹⁵⁵ including sexual orientation.¹⁵⁶ Be that as it may, a differential treatment is only discriminatory if it is without legitimate objective, and is not necessary and proportional.¹⁵⁷ Sentsifia's refusal to register the CSMR meets these requirements. *First*, the refusal to register the CSMR has a *legitimate objective* because it fosters the Sentsifian traditional and cultural values of heterosexualism,¹⁵⁸ a core African cultural value,¹⁵⁹ in accordance with Sentsifia's duty to promote and protect the cultural and traditional values recognised by the Sentsifian community.¹⁶⁰ *Second*, the refusal to register the CSMR is *necessary* because it is the only means by which Sentsifia could have stopped Aisha from ruining its ancient cultural and traditional values. Registering the CSMR will amount to greenlighting Aisha to disorient the moral and

¹⁵⁴ African Charter, art 3(2).

¹⁵⁵ African Charter, art 2.

¹⁵⁶ *ZHR NGO Forum* [169]; *Toonen v Australia*, [1994] Communication No 488/1992 [8.4].

¹⁵⁷ *Ogiek Case* [139].

¹⁵⁸ The Sentsifian Unnatural Offences Act abhors same sex relations. See Facts, [2].

¹⁵⁹ Marc Epprecht, "Bisexuality" and the Politics of Normal in African Ethnography' (2006) 48 *Anthropologica* 187, 188.

¹⁶⁰ African Charter, art 17(3).

cultural upbringing of the Sentsifian children and youth. *Third*, the refusal to register the CSMR safeguards heterosexualism, a traditional and cultural value well-regarded by all members of the Sentsifian society;¹⁶¹ and thus, preserves the unique cultural identity of Sentsifia. Conversely, allowing Aisha's pro-LGBTIQ+ laws advocacy will mortify the traditional and cultural patterns of Sentsifia and advance the parochial interest of the CSMR members only.¹⁶² Consequently, the refusal is proportional.

[51]. Accordingly, the Department's refusal to register the CSMR is not discriminatory.

(2) The Alleged Violation of the Freedom of Association

[52]. All persons have the freedom to associate.¹⁶³ However, the enjoyment of this freedom is subject to public morality¹⁶⁴ and the need to preserve and strengthen positive African cultural values.¹⁶⁵ Since the Department's refusal to register the CSMR is necessary to preserve heterosexualism, and thus, is not discriminatory, Sentsifia has not violated the CSMR's freedom of association.

[53]. Accordingly, Sentsifia has not violated the African Charter and ICCPR in refusing to register the CSMR under the NGO Registration Act.

¹⁶¹ Facts, [2].

¹⁶² Facts, [25].

¹⁶³ African Charter, art 10(1); ICCPR, art 22(1).

¹⁶⁴ African Charter, art 27(2); ICCPR 22(2).

¹⁶⁵ African Charter, art 29(7).

(III) SUBMISSIONS ON REPARATIONS

[54]. Admittedly, under international law, ‘any breach of an engagement involves an obligation to make reparation’.¹⁶⁶ Thus, by Article 27(1) of the Court’s Protocol, where a violation of human or peoples’ rights is established, the Court shall grant reparations, including the payment of fair compensation, restitution or guarantees of non–repetition.¹⁶⁷ However, since in this matter, no violation of the African Charter and other human rights instruments has occurred, Sentsifia requests that (a) the Court declines the GoHRA’s prayer for reparations and (b) the Court orders the GoHRA to bear all the cost incurred by Sentsifia in this matter.

¹⁶⁶ *Chorz’ow Factory* [1928] PCIJ Series A, No. 17, p. 29; James Crawford, *The ILC’s Articles on State Responsibility* (Cambridge 2002) 147.

¹⁶⁷ See *Mtikila v Tanzania (reparations)* [2014] 1 AfCLR 72 [27].

CONCLUSIONS AND PRAYERS

[55]. In light of the foregoing submissions, Sentsifia respectfully prays this Honourable Court to find, adjudge and declare that:

- I.** The Court has jurisdiction and the matter is partly admissible and partly inadmissible.
- II.** Sentsifia has not failed to hold Mr Putin Yeungu accountable for illegal mining and Mr Nsana Adongo accountable for corruption and therefore, has not violated the African Charter and other international human rights norms.
- III.** Sentsifia has not violated the African Charter and other relevant human rights treaties in its treatment of the children and GoHRA's 20 senior staff members at The Villa.
- IV.** Sentsifia has not violated the African Charter and other relevant international human rights law by its decision to run the FSHS policy only in the 150 less endowed schools.
- V.** Sentsifia has not violated the African Charter and other relevant international human rights law for refusing to register the Center for Sexual Minority Rights under the NGO Registration Act.

Respectfully submitted,

COUNSEL FOR SENTSIFIA, THE RESPONDENT.