

**33RD CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION**

**UNIVERSITY OF RWANDA**

**22-27 JULY 2024, KIGALI, RWANDA**

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

**ARUSHA, TANZANIA**



**IN THE MATTER BETWEEN**

**HUMAN RIGHTS FIRST**

**(APPLICANT)**

**AND**

**THE STATE OF RANTANIA**

**(RESPONDENT)**

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**MEMORIAL FOR THE APPLICANT**

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**JULY 22, 2024**

## LIST OF ABBREVIATIONS

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**ACCPDP** African Union Convention on Cyber Security and Personal Data Protection

**ACDEG** African Charter on Democracy, Elections and Governance

**ACRWC** African Charter on the Rights and Welfare of the Child

**HRF** Human Rights First

**ICCPR** International Covenant on Civil and Political Rights

**ICESCR** International Covenant on Economic, Social and Cultural Rights

**ILOMAC** International Labour Organisation Minimum Age Convention

**ILOWFCLC** International Labour Organisation Worst Forms of Child Labour Convention

**NGO's** Non-Governmental Organizations

**UNCRC** United Nations Convention on the Rights of the Child

**UNCTCIDTP** United Nations Covenant against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

**UNGPBHR** United Nations Guiding Principles on Business and Human Rights

**VCLT** Vienna Convention on the Law of Treaties

**WRA** Workers' Rights Advocates

## INTEPRETATION

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1. *The African Charter* means the African Charter on Human and Peoples' Rights.
2. *The Court* means the African Court on Human and People's Rights
3. *The Commission* the African Commission on Human and People's Rights
4. *The Protocol* means the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights.
5. *The Rules* means the Rules of Court of the African Court on Human and People's Rights

## **INDEX OF AUTHORITIES**

### **TREATIES AND CONVENTIONS**

African Charter on Human and Peoples' Rights (Adopted, 27 June 1981; entered into force, 21 October 1986)	11, 14, 17, 18, 19, 20, 22, 24, 25, 26, 30, 32, 33, 34, 35, 36
African Charter on the Rights and Welfare of the Child (Adopted, 11 July 1990; entered into force, 29 November 1999)	27
AU Charter on Democracy, Elections and Governance	20, 31
African Convention on Cyber Security and Personal Data Protection	33
International Covenant on Civil and Political Rights (1966) 999 UNTS 171	32, 35
International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3	28
International Labour Organisation Minimum Age Convention, 1973 (No.138)	28
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	28
Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (Adopted, 10	10, 11, 12, 14

June 1998; entered into force, 25 January 2004)	
The Vienna Convention on the Law of Treaties 1969	18, 19
United Nations Convention on the Rights of the Child (Adopted, 1989: entered into force, 1990)	27

### **INTERNATIONAL TRIBUNAL RULES**

Rules of the African Court on Human and Peoples' Rights (Adopted, 28 September 2020 at Arusha, Tanzania)	10, 14
---	--------

### **INTERPRETATIVE GUIDELINES OF TREATY MONITORING BODIES**

UN Guiding Principles on Business and Human Rights (Adopted, 16 June 2016)	21, 28, 29
---	------------

### **CASES OF THE AFRICAN COURT**

<i>African Commission on Human and People's Rights v Kenya</i> (2017) 2 AfCLR 9 [60].	14
<i>African Commission v Libya</i> [2016] 1 AfCLR 153 [67].	32, 33
<i>Crosperry Gabriel and Another v United Republic of Tanzania</i> [2024] AfCLR	10
<i>Diakité v Mali</i> (2017) 2 AfCLR 118 [24]	11
<i>Human Rights Centre v Tanzania</i> [2023] AfCLR	11
<i>Ivan v Tanzania</i> (2019) 3 AfCLR 48 [41]	15
<i>John Mwita v United Republic of Tanzania</i> (2020) AfCLR [31]	12

<i>Johnson v Ghana</i> (2019) 3 AfCLR 99 [33]	14
<i>Josiah v Tanzania</i> [2019] 3 AfCLR 83 [38]	15
<i>Kambole v Tanzania</i> (2020) 4 AfCLR 460 [67]	26
<i>Lohe Issa Konate v Burkina Faso</i> (2014) 1 AFCLR 314	35
<i>Mariam Kouma and Another v Mali</i> [2018] 2 AfCLR 237 [25]	10
<i>Mugesera v Rwanda</i> (2017) 2 AfCLR 149 [20]	12
<i>Onyachi and Njoka v Tanzania</i> [2017] 2 AfCLR (2017) 65 [34]	10
<i>Oulai Marius v Republic of Côte D'ivoire</i> AfCLR(2023) [22]	13
<i>Rashidi v Tanzania</i> (2019) 3 AfCLR 13 [43]	14
<i>Tanganyika Law Society &amp; others v United Republic of Tanzania</i> (2013) 1 AfCLR 34 [106]	26
<i>Traore v Mali</i> [2020] 4 AfCLR 665 [40].	14
<i>Urban Mkandawire v Malawi</i> (2013) 1 AfCLR 283 [33]	13

#### **OTHER INTERNATIONAL JURISPRUDENCE**

Barcelona Traction, Light and Power Co, Ltd. ( <i>Belgium v. Spain</i> ), Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.	28
<i>Minority rights group international and Sos-esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Government of the Republic of Mauritania</i> Communication No: 007/Com/003/2015	29

## **QUESTIONS PRESENTED**

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**HRF respectfully requests the Court to adjudge:**

- I. Whether the withdrawal by Rantania of its article 34(6) declaration is invalid, as it violates the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians
- II. Whether Rantania violated the African Charter and other relevant human rights instruments by failing to ensure that the Omia people and child workers are protected from violations committed by the MD Ltd
- III. Whether Rantania violated the African Charter and other relevant human rights instruments by overthrowing and subsequently detaining President O’Kello
- IV. Whether Rantania violated the African Charter and other relevant human rights instruments by accessing Mr Ditan’s data on the social media platform, *The Truth*, by arresting him, and by convicting him of and sentencing him for disseminating information likely to disturb public order.

## **SUMMARY OF PLEADINGS**

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### **JURISDICTION AND ADMISSIBILITY**

The Court has jurisdiction to hear the application. On admissibility, The Applicant submits that local remedies were exhausted in the case of Mr Ditan's arrest, conviction and sentencing for disseminating information likely to disturb public order. The Applicant argues that the requirement to exhaust should be waived in the cases of potential violation of the African Charter and other relevant human rights instruments by failing to ensure that the Omia people and child workers are protected from violations committed by the MD Ltd, and President Okello's overthrowing and subsequent detention due the local remedies being reportedly ineffective.

### **MERIT A**

HRF submit that the withdrawal by Rantania of its article 34(6) declaration is invalid, as it violates the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians.

### **MERIT B**

HRF submit that Rantania violated the African Charter and other relevant human rights instruments by failing to ensure that the Omia people and child workers are protected from violations committed by the MD Ltd.

### **MERIT C**

HRF submit that Rantania violated the African charter, ICCPR, and the AU Charter on Democracy, Elections and Governance for overthrowing the government and arbitrarily detaining President O'KELLO.



## **MERIT D**

HRF submit that Rantania has violated the African Charter, ICCPR, African convention on Cyber Security and Personal Data Protection, and United Nations convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Accessing Mr Ditan's data on the Social Media account, failing to follow the right procedure when arresting him, torturing him and limiting his freedom of expression

## **PLEADINGS**

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Before we handle the substantial matters, the Respondent would like to submit on the preliminary matters including the matters on the jurisdiction and admissibility.

### **(I) JURISDICTION AND ADMISSIBILITY**

#### **A. JURISDICTION OF THE COURT**

[1]. The Applicant submits that this Court has jurisdiction to hear this application. Jurisdiction is the Court's power to hear and determine a matter.<sup>1</sup> The Court has to preliminarily establish its jurisdiction and handle any objections against the same. Article 39 (1) of the Rules of Court provides that the court will deal with the matter of jurisdiction and admissibility in accordance with the Protocol, Charter and the Rules.<sup>2</sup> The Court will only hear an application where it is satisfied that it has material, personal, temporal and territorial jurisdiction.<sup>3</sup> The Applicant submits that the Court has jurisdiction on all bases and will proceed to argue the same.

#### **1) MATERIAL JURISDICTION**

[2]. The Applicant submits that this Court has material jurisdiction to hear this application. Material jurisdiction is the power of the Court to hear 'all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol

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<sup>1</sup> BA Garner (ed-in-chief) and others *Black's Law Dictionary* (8<sup>th</sup> edn Thomson West USA 2004)

<sup>2</sup> *Crosperry Gabriel and Another v United Republic of Tanzania* [2024]

<sup>3</sup> *Mariam Kouma and Another v Mali* [2018] 2 AfCLR 237 [25]

and other relevant human rights instruments ratified by the State concerned'.<sup>4</sup> Pursuant to Article 3 (1) of the Charter, the Court has power to hear and determine matters touching on interpretation and application of the Charter, Protocol and other relevant human rights instruments ratified by the state parties.<sup>5</sup>

[3]. In this case, violations have occurred against several instruments. They include: the African Charter, the Protocol, ACDEG, ACVPPSA, ACRWC, UNCRC, ILOMAC, ILOWFCLC, ACCPDP. The Court has material jurisdiction if an application concerns alleged violations of the Charter.<sup>6</sup>

[4]. Therefore, the Applicant submits that the Court has material jurisdiction.

## **2) PERSONAL JURISDICTION**

[5]. The Applicant submits that this Court has personal jurisdiction to hear this application. The Court has personal jurisdiction where the Respondent State is a party to the protocol and has deposited the declaration under article 34(6) of the Protocol.<sup>7</sup>

[6]. The Applicant submits that the Court has personal jurisdiction given that the Respondent is a party to the Court's Protocol,<sup>8</sup> has deposited the Optional Declaration on 2<sup>nd</sup> August 2017,<sup>9</sup> and the Applicant has observer status with the Commission.<sup>10</sup>

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<sup>4</sup> *Onyachi and Njoka v Tanzania* [2017] 2 AfCLR (2017) 65 [34]

<sup>5</sup> African Charter, art 3(1)

<sup>6</sup> *Human Rights Centre v Tanzania* [2023]

<sup>7</sup> *Diakité v Mali* (2017) 2 AfCLR 118 [24]

<sup>8</sup> Facts, [3].

<sup>9</sup> *ibid*

<sup>10</sup> Facts, [5].

[7]. Article 5 (3) of the Protocol provides that Non-Governmental Organizations with observer status before the commission may access the Court. The Applicant submits that the Court has personal jurisdiction in any action instituted by an NGO if that NGO has observer status before the Commission and the State against which the action is brought has made and deposited the Optional Declaration under Article 34(6) of the Court's Protocol.

[8] Therefore, the Applicant submits that the Court has personal jurisdiction.

### **3) TEMPORAL JURISDICTION**

[9]. The Applicant submits that this Court has temporal jurisdiction to hear this application. The Court has temporal jurisdiction if the alleged violations occurred after the respondent State had ratified the Charter, the Protocol and deposited the Optional Declaration under Article 34(6) of the Protocol.<sup>11</sup> Accordingly, the Applicant contends that the Court has temporal jurisdiction as the alleged violation of human rights namely, forceful eviction of the Omia people from their ancestral lands, employment of children in mines under hazardous conditions, arrest and detention of Mr. Ditan among others, occurred from 2022 onwards.<sup>12</sup> The Respondent State ratified the Charter in 1986, the Protocol establishing the African Court in 2015 and deposited the optional declaration under article 34(6) of the Protocol in 2017.<sup>13</sup>

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<sup>11</sup> *John Mwita v United Republic of Tanzania* (2024) AfCLR [31]

<sup>12</sup> Facts, [6]-[14].

<sup>13</sup> Facts, [3].

[10]. In the event of withdrawal of the declaration under Article 34(6) of the Charter per the Court's jurisprudence, such withdrawal takes effect after 12 months.<sup>14</sup>

[11]. On 15 May 2024, President Magui announced that Rantania withdrew its declaration under article 34(6) of the Protocol.<sup>15</sup> The Applicant filed this application on 22 May 2024. 12 months has not lapsed since the withdrawal and filing of this application.

[12]. Therefore, the Court has temporal jurisdiction.

#### **4) TERRITORIAL JURIDICTION**

[13]. The Applicant submits that this Court has territorial jurisdiction to hear this application. The Court has territorial jurisdiction if the violations occurred within the territory of the Respondent state.<sup>16</sup> The Applicant submits that the Court has territorial jurisdiction since all alleged violations occurred in the territory of Rantania.<sup>17</sup>

[14]. Accordingly, the Applicant submits that the Court has jurisdiction to hear the application.

#### **B. ADMISSIBILITY OF THE APPLICATION**

[15]. The Applicant submits that this matter is admissible. An application is deemed admissible if it meets all the admissibility requirements, namely: it indicates the authors even if the latter request anonymity, is compatible with the Charter of the Organization of the African Union or the African Charter, is not written in insulting language against

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<sup>14</sup> *Mugesera v Rwanda* (2017) 2 AfCLR 149 [20]

<sup>15</sup> Facts, [18].

<sup>16</sup> *Oulai Marius v Republic of Côte D'Ivoire* (2023) [22]

<sup>17</sup> Facts, [6]-[17].

the Respondent State and its institutions or to the organization of African Unity, is not based exclusively on news disseminated through the mass media, is sent after exhausting local remedies unless it is unduly prolonged, sent within a reasonable time of exhausting local remedies or from the date the commission is seized of the matter, does not deal with cases already settled by the Respondent State in accordance with the principles of the Charter of the United Nations, Charter of the Organization of African Unity or the African Charter.’<sup>18</sup>

[16]. Article 6 of the Protocol obligates the Court to determine whether the requirements on admissibility of an application as provided for by Article 56 of the Charter, Article 6(2) of the Protocol, and rules 40 and 50 of the Rules of Court have been met.<sup>19</sup> Relevant to the present case, the requirement to exhaust local remedies is pertinent in guiding the Court as to the admissibility of the present application.<sup>20</sup> Therefore, applicant will proceed to address the said issue.

#### **I. THE EXHAUSTION OF LOCAL REMEDIES**

[17]. An application is admissible if the Applicant exhausts all local remedies,<sup>21</sup> that are in the Respondent State.<sup>22</sup> The reason for exhausting local remedies is to enable the Respondent State an opportunity to redress potential violations and to limit the

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<sup>18</sup> *Urban Mkandawire v Malawi* (2013) 1 AfCLR 283 [33]; African Charter art 56(5)

<sup>19</sup> *Johnson v Ghana* (2019) 3 AfCLR 99 [33]

<sup>20</sup> African Charter, art 56(5)

<sup>21</sup> *Traore v Mali* (2020) 4 AfCLR 665 [40].

<sup>22</sup> African Charter, art 56(5)

African Court from being a court of first instance.<sup>23</sup> Exhaustion of local remedies is only applicable with respect to remedies which are “available”, “effective” and “adequate” and if the local remedies do not meet these criteria, this admissibility requirement is waived.<sup>24</sup> On these bases, the Applicant submits that local remedies were exhausted in the cases of compensation for the Omia people and affected individual workers and on behalf of the child labourers, and Mr Ditan’s arrest and conviction for the offence of disseminating information likely to disturb public order. [I] The applicant further submits that the requirement to exhaust local remedies should be waived on the case of the constitutionality of President O’Kello’s removal from office, arrest and detention should be waived.[II]

**[I] Local Remedies were Exhausted to the Most Effective State in the Cases of Compensation for the Omia People and Affected Individual Workers and on behalf of the Child Labourers, and were exhausted in Mr Ditan’s Arrest, and Conviction for the Offence of Disseminating Information Likely to Disturb Public Order**

[18]. An application is admissible if ordinary judicial remedies have been pursued to the apex court of the Respondent state.<sup>25</sup> Therefore, for a matter to be admissible, domestic proceedings must be first exhausted.<sup>26</sup>

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<sup>23</sup> *African Commission on Human and People’s Rights v Kenya* (2017) 2 AfCLR 9

<sup>24</sup> *Rashidi v Tanzania* (2019) 3 AfCLR 13 [43]

<sup>25</sup> *Josiah v Tanzania* (2019) 3 AfCLR 83 [38]

<sup>26</sup> *Ivan v Tanzania* (2019) 3 AfCLR 48 [41]

[19]. Firstly, regarding the case of compensation of the Omia people and affected individual workers, and on behalf of the child labourers, facts reveal that a local human rights NGO 'called on the government agency responsible for overseeing mining activities, the Rantania Mining Board (RMB), to assume its responsibilities and remedy all these Human rights violations; the RMB carried out investigations, but its report dismissed the allegations as unfounded.'<sup>27</sup> The facts further reveal that 'HRF took the case to the High Court on behalf of the aggrieved community, seeking compensation for the Omia people and affected individual workers, the High Court ruled that the citizens had received compensation in kind and that, consequently, neither the government of Rantania or MD Ltd had violated the law, a decision that was upheld by the Court of Appeal on 1 May 2023.'<sup>28</sup> Facts also reveal that 'under the Constitution, the Supreme Court is the country's highest court; it can hear any matter that has been decided by the Court of Appeal.'<sup>29</sup> A report by an 'NGO, Transparency International, highlights perceptions held by most people surveyed of rampant corruption in many government bodies, and specifically mentions the Rantania Mining Board, the Rantania Prosecuting Authority and the judiciary: the report also notes that powerful officials and private companies control the judicial system to such an extent that ordinary people are denied an effective remedy, particularly in cases involving such powerful people.'<sup>30</sup> Therefore, inasmuch as the Supreme Court provides a further right of appeal, it is ineffective.

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<sup>27</sup> Facts, [7].

<sup>28</sup> Facts, [8].

<sup>29</sup> Facts, [2].

<sup>30</sup> Facts, [8].



[20]. The Applicant submits that local remedies were appropriately pursued in the given circumstances.

[21]. Secondly, concerning Mr Ditan's arrest and conviction for the offence of disseminating information likely to disturb public order, facts reveal that on 1 March 2024, 'the High Court convicted Mr Ditan for the offence of disseminating information likely to disturb public order and sentenced him to three years imprisonment without the option of a fine, the Court of Appeal confirmed Ditan's conviction on 1 May 2024.'<sup>31</sup> Given that the Respondent's Supreme Court's criminal jurisdiction is limited to appeals in which a sentence of 5 years or more has been imposed without the option of a fine.<sup>32</sup> Mr Ditan was sentenced to 3 years, therefore, the Supreme Court can't hear his appeal.

[22]. The Applicant submits that local remedies were exhausted in the circumstances aforementioned.

**[II] The Requirement to Exhaust Local Remedies should be waived on the case of the Constitutionality of President O'Kello's Removal From Office, Arrest and Detention**

[23]. For any matter to be admissible the Applicant must have exhausted local remedies of the Respondent State, and the remedy should be 'effective and sufficient, in the sense that they are capable of satisfying the complainant or of remedying the disputed situation.'<sup>33</sup> Concerning the constitutionality of President O'kello's removal from office, arrest and detention; the Applicant submits that the remedies are ineffective.

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<sup>31</sup> Facts, [18].

<sup>32</sup> Facts, [2].

<sup>33</sup> *Diakité v Republic of Mali* (2017) 2 AfCLR 118 [108]; African Charter, art 56

Facts reveal that ‘a report by the NGO, Transparency International, highlights perceptions held by most people surveyed of rampant corruption in many government bodies, and specifically mentions the Rantania Mining Board, the Rantania Prosecuting Authority and the judiciary: the report also notes that powerful officials and private companies control the judicial system to such an extent that ordinary people are denied an effective remedy, particularly in cases involving such powerful people.’<sup>34</sup>

[24]. Therefore, the Applicant submits that the requirement to exhaust local remedies be waived in this particular instance due to them being ineffective as evidence by alleged rampant corruption in the judiciary.

## **(II) SUBMISSIONS ON THE MERITS OF THE CASE**

### **A. THE WITHDRAWAL OF ARTICLE 34(6) DECLARATION BY RANTANIA.**

[25]. The Applicant submits that withdrawal by Rantania of its Article 34(6) declaration is invalid as it violates the African Charter [I] and other relevant human rights of Rantanians [II]. Article 34(6) of the Protocol provides that ‘at the time of the ratification of the Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5(3) of the Protocol : the Court shall not receive any petition under article 5(3) involving a state party which has not made such a declaration.’<sup>35</sup> Withdrawing such a declaration means that natural persons and NGO’s cannot approach the Court directly unless through the commission and the same limits several human rights of Rantanians enshrined in the African Charter and other human rights instruments as will be argued.

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<sup>34</sup> Facts, [8].

<sup>35</sup> The Protocol, art 34(6).

**I. WITHDRAWAL BY RANTANIA OF ITS ARTICLE 34(6) DECLARATION IS  
INVALID AS IT VIOLATES THE AFRICAN CHARTER**

[26]. The African Charter guarantees every person to the rights and freedoms recognized in the Charter.<sup>36</sup> From the facts, it is evident that Rantania has potentially violated several human rights by forcefully evicting Omia people, not granting remedy to the child workers, among others, and reports indicate that the judicial system is compromised thereby making attempts to acquire local remedies futile.<sup>37</sup> Facts also reveal that 'after the Applicant announced that it was holding discussions with the lawyers of O'Kello and Ditan with a view to submitting a case to the African Court; President Magui announced that Rantania withdrew its declaration under article 34(6) of the Protocol.'<sup>38</sup> With local remedies accused of being ineffective,<sup>39</sup> the withdrawal appears to be an attempt to prevent the people of Rantania from acquiring relief from the violation of their human rights.

[27]. Some of the rights enshrined in the African Charter include the right to peace, as provided under Article 23(1) of the African Charter: facts reveal that 'a report by a local NGO, The Secret, states that 20 civilians died while protesting and 30 were seriously injured.'<sup>40</sup> It is evident that there is no peace in Rantania, and withdrawing the

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<sup>36</sup> African Charter; art 2

<sup>37</sup> Facts, [6]-[7].

<sup>38</sup> Facts, [18]

<sup>39</sup> Facts, [8]

<sup>40</sup> Facts, [16]

declaration limiting NGO's and people from accessing remedy from the Court severely limits the right to peace.

[28]. The right to participate freely in the government of a country, as provided under Article 13(1) of the Charter is also threatened. Facts reveal that 'the Omia people were not consulted in

the decision-making process to evict them from their land.'<sup>41</sup> Withdrawing the Article 34(6) declaration severely limits their right to participate freely in the government of Rantania as they won't be able to get recourse against such a violation.

[29]. Consequently, withdrawal by Rantania of its Article 34(6) declaration is invalid as it violates the African Charter.

**II. WITHDRAWAL BY RANTANIA OF ITS ARTICLE 34(6) DECLARATION IS  
INVALID AS IT VIOLATES OTHER RELEVANT HUMAN RIGHTS OF  
RANTANIANS**

[30]. The African Charter permits the Commission to draw inspiration from other relevant instruments adopted by member states in the field of human rights.<sup>42</sup> The African Charter on Democracy, Elections and Governance provides that member States are to be sanctioned for any unlawful change of power which includes a coup d'état against a democratically elected government.<sup>43</sup> From the facts it is evident that the Respondent State ratified the AU Charter on Democracy, Elections and Governance in

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<sup>41</sup> Facts, [6]

<sup>42</sup> African Charter; art 60

<sup>43</sup> ACDEG; art 23

2017.<sup>44</sup> It is further evident from the facts that ‘on 19 January 2024, General Magui, together with several other army general officers, overthrew President O’Kello in a military coup d’etat.’<sup>45</sup> The government which exists in Rantania is illegitimate and the Respondent is due to be sanctioned for the same. The withdrawal of the Respondent of its article 34(6) declaration is therefore invalid because the present government came into power through illegitimate means.

[31]. The withdrawal of the Respondent of its Article 34(6) declaration is invalid as it also threatens the right to freedom of expression, as provided under Articles 4 and 6 of African Charter on Democracy, Election and Governance. Facts reveal that Rantanian citizens like Mr. Ditan who was arrested for expressing his opinion online, are faced with potential violation of their right to express themselves.<sup>46</sup> Having no recourse for the said violation severely limits the protected right to freedom of expression.

[32]. Therefore, the Applicant submits that the withdrawal by Rantania of its article 34(6) declaration is invalid as it violates other relevant human rights of Rantanians.

## **B. THE PROTECTION OF THE OMIA PEOPLE AND CHLD WORKERS.**

[33]. The Applicant submits that the Respondent violated the African Charter and other human rights instruments by failing to ensure that the Omia people [I] and child workers [II] are protected from violations committed by the MD Ltd.

### **I. THE FAILURE TO PROTECT THE RIGHTS OF THE OMIA PEOPLE**

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<sup>44</sup> Facts, [3].

<sup>45</sup> Facts, [14].

<sup>46</sup> Facts, [15].

[34]. Principle of 1 of the UNGPBHR provides that ‘States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises’.<sup>47</sup> The Respondent ‘has made a commitment to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to promote compliance with the UNGPBHR, adopted in 2011.’<sup>48</sup> It is on such a foundation that the Applicant submits that the Respondent failed to protect the rights of the Omia people from violations by the business enterprise MD Ltd particularly; the right to property,[1] cultural life,[2] freely dispose of wealth and natural resources,[3] freedom from discrimination[4] and equal protection of the law.[5]

## **1. THE RIGHT TO PROPERTY.**

[35]. The Applicant submits that the Omia people’s right to property was violated. The African Charter provides for the right to property which is guaranteed and cannot be encroached upon unless in public interest, general interest of the community or under appropriate laws.<sup>49</sup> The Court has held that ‘although addressed in the part of the Charter which enshrines the rights recognised for individuals, the right to property as guaranteed by Article 14 may also apply to groups or communities; in effect, the right can be individual or collective.’<sup>50</sup> Furthermore, the Court drew inspiration from the work of the Commission through its Working Group on Indigenous Populations/Communities that has adopted the following criteria to identify indigenous populations:

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<sup>47</sup> UNGPBHR (2011), Principle 1

<sup>48</sup> Facts, [4].

<sup>49</sup> African Charter; art 14

<sup>50</sup> n 23

- i. Self-identification;
- ii. A special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples; and
- iii. A state of subjugation, marginalisation, dispossession, exclusion, or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic.

[36]. The Court deduced that ‘for the identification and understanding of the concept of indigenous populations, the relevant factors to consider are the presence of priority in time with respect to the occupation and use of a specific territory; a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions; self-identification as well as recognition by other groups, or by State authorities that they are a distinct collective; and an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist.’<sup>51</sup>

The Omia people have priority in time with respect to the occupation and use of their territory which they have occupied and relied on for their livelihood for 100 years which includes a number of years before Rantania got independence from France in 1960.<sup>52</sup>

The Omia tribe also exhibit a voluntary perpetuation of cultural distinctiveness, which

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<sup>51</sup> n 44

<sup>52</sup> Facts, [6].

includes aspects of social organisation being that they are pastoralists.<sup>53</sup> Forceful eviction attests to the marginalization the Omia tribe have experienced.<sup>54</sup> Therefore, the Omia people qualify to be classified as a marginalised group which has rights to own property that were violated by the Respondent state.

[37]. The Applicant maintains that evictions done by the Respondent without consent of the Omia people were illegal and done purely to pursue private interests and therefore, are in violation of the Charter.

[38]. Consequently, their Omia people's right to property was violated.

## **2. THE RIGHT TO CULTURE**

[39]. The Applicant submits that the Omia people's right to culture was violated. African Charter provides for the right to take part in the cultural activities of a community and mandates States to protect the morals and traditional values of the community.<sup>55</sup> The Court held that 'protection of the right to culture goes beyond the duty, not to destroy or deliberately weaken minority groups, but requires respect for, and protection of, their cultural heritage essential to the group's identity.'<sup>56</sup> In this respect, culture should be construed in its widest sense encompassing the total way of life of a particular group, furthermore, the UN Declaration on Indigenous Peoples, states that 'indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture' and States shall provide effective

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<sup>53</sup> Facts, [6].

<sup>54</sup> *ibid*

<sup>55</sup> African Charter; art 17(2) (3)

<sup>56</sup> n 45



mechanisms to prevent any action that deprives them of “their integrity as distinct peoples, or of their cultural values or ethnic identities.’ The applicant submits that from the facts the Omia tribe has a distinct way of life centred and dependent on their land as they are pastoralists.<sup>57</sup> Therefore, the forceful eviction from the land without their consent tampers with their way of living.

[40]. Therefore, the Omia people’s right to culture was violated.

### **3. THE RIGHT TO FREELY DISPOSE OF WEALTH AND NATURAL RESOURCES**

[41]. The Applicant submits that the Omia people’s right to freely dispose of wealth and natural resources was violated. The African Charter provides for the right to freely dispose wealth and natural resources which should be exercised with the interest of the people.<sup>58</sup> The Applicant contends that the Respondent has violated the rights of the Omia to freely dispose of their wealth and natural resources by evicting them from their land and denying them access to their pastoral grounds, and MD Ltd concessions to mine on their ancestral land without their prior consent and without giving them a share of the benefits in those resources.<sup>59</sup> The Applicant also argues that the Omia’s eviction and dispossession of their land without their consent and without adequate compensation, and the granting of concessions of their land to third Parties, mean that their land has been encroached upon and they have been denied benefits deriving therefrom.

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<sup>57</sup> Facts, [6].

<sup>58</sup> African Charter; 21

<sup>59</sup> *ibid*

[42]. Consequently, the Omia people's right to freely dispose of wealth and natural resources was violated.

#### **4. THE RIGHT TO FREEDOM FROM DISCRIMINATION.**

[43]. The Applicant submits that the Omia people's right to be free from discrimination was violated. The right to freedom from discrimination is provided for by Article 2 of the African Charter which provides that provides that 'every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.'<sup>60</sup> The Court has held that, 'a distinction or differential treatment becomes discrimination, contrary to Article 2, when it does not have any objective and reasonable justification and, in circumstances where it is not necessary and proportional.'<sup>61</sup>

[44]. Facts reveal that 'MD Ltd, in collaboration with the mayor of Omi district and the army commander in Omi district, intimidated the Omia tribe to leave their ancestral lands in Omi district, leaving around a thousand people without access to adequate grazing and farmland on which their livelihoods depended.'<sup>62</sup> The applicant submits that the Omia people's right to be free from discrimination was violated as the said act of the Respondent State was not justifiable.

#### **5. THE RIGHT TO EQUAL PROTECTION OF THE LAW**

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<sup>60</sup> *Kambole v Tanzania* (2020) 4 AfCLR 460 [67]; African Charter, art 2

<sup>61</sup> *Tanganyika Law Society & others v United Republic of Tanzania* (2013) 1 AfCLR 34 [106]

<sup>62</sup> Facts, [6].

[45]. The Applicant submits that the Omi people's right to equal protection of the law as provided by Article 3 of the Charter, Article 7 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights; was violated. Facts show that 'a report by international NGOs with consultative status at the United Nations Economic and Social Council revealed that MD Ltd, in collaboration with the mayor of Omi district and the army commander in Omi district, intimidated the Omi tribe to leave their ancestral lands in Omi district, leaving around a thousand people without access to adequate grazing and farmland on which their livelihoods depended.'<sup>63</sup>

[46]. The Omi people's right to equal protection of the law was therefore violated by the Respondent State.

## **II. THE FAILURE TO PROTECT CHILD WORKERS FROM ILLEGAL LABOUR AND POOR WORKING CONDITIONS**

[47]. The Applicant submits that the Respondent State has violated its obligation to protect children's rights. State Parties to the African Children's Charter are obliged to take all the necessary measures to ensure that children are protected from all forms of economic exploitation and from performing hazardous works or works that affect their physical, mental, spiritual, moral or social development both in the formal and informal sectors.<sup>64</sup> A child is defined as every human under the age of 18 years of age.<sup>65</sup> The UNCRC provides that States should protect children from any form of economic

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<sup>63</sup> n 62

<sup>64</sup> ACRWC, art 15(1) (2)

<sup>65</sup> *ibid*; art 2

exploitation including working conditions that may be hazardous.<sup>66</sup> The ILO minimum age convention provides that admission age to any form of employment which by its nature is likely to be hazardous to the health and safety of a child should not be less than 18 years.<sup>67</sup> The ILO Worst Forms of Child Labour Convention provides that States ought to ensure the elimination of any kind of worst forms of child labour which includes, *inter alia*, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health or safety of children.<sup>68</sup>

[48]. The International Covenant on Economic, Social and Cultural Rights provides that State parties should ensure just and favourable working conditions which includes but not limited to a decent living and safe and healthy working environment.<sup>69</sup> The International Court of Justice has established that States' obligation to prohibit and eliminate slavery is an *erga omnes* obligation, which means that states are not permitted to derogate from their obligation.<sup>70</sup> The UNGPBHR protects against violations of human rights by third-parties including business enterprises.<sup>71</sup>

[49]. The African Committee of Experts on the Rights and Welfare of the Child stated that 'exploitative slavery practices against children impair their survival and

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<sup>66</sup> UNCRC, art 32 (1)

<sup>67</sup> ILOMAC, art 3(1)

<sup>68</sup> ILOWFCLC, art 3

<sup>69</sup> ICESCR, art 7

<sup>70</sup> *Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain)*, Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.

<sup>71</sup> UNGPBHR, Principle 1

development physically, intellectually, socially, spiritually, and morally.<sup>72</sup> It is evident from the facts that 'since the start of operations by MD Ltd, at least 2,000 children aged between 15 and 18 years old have been employed in mining activities, in particular as diggers and washers, extracting coltan and gold with inadequate equipment and in appalling safety conditions; although these children are not directly employed by MD Ltd, some of them are linked to contractors working for MD Ltd, while the majority are engaged with small scale artisanal mining activities that have sprung up within and around the concession owned by MD Ltd, and a report states that the children are poorly housed, fed and cared for, unable to provide for their families with 10 of them passing on as a result of poor working conditions.'<sup>73</sup> Some of the children employed are below the age of 18 years and their conditions of work are deplorable to the extent of occasioning death.

**[50].** Furthermore, Principle 1 of the UNGPBHR provides that 'States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises'.<sup>74</sup> The Respondent 'has made a commitment to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to promote compliance with The UNGPBHR, adopted in

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<sup>72</sup> *Minority rights group international and Sos-esclaves on behalf of Said Ould Salem and Yarg Ould Salem v The Government of the Republic of Mauritania* Communication No: 007/Com/003/2015

<sup>73</sup> Facts, [7].

<sup>74</sup> UNGPBHR (2011), Principle 1

2011.<sup>75</sup> The Respondent therefore had an obligation to protect the rights of the child workers from violations of their rights by the MD Ltd and other enterprises established in the North Region of Rantania.

[51]. Therefore, the Respondent violated the African Charter and other the African Charter and other human rights instruments by failing to ensure that the Omia people and child workers are protected from violations committed by the MD Ltd.

**C) OVERTHROWING AND DETAINING PRESIDENT O'KELLO BY THE MILITARY JUNTA.**

[52]. HRF submits that Rantania violated the African charter and other relevant Human rights instruments by overthrowing president O'kello [I] and subsequently detaining him [II]

**I) OVERTHROWING PRESIDENT O'KELLO IS ILLEGAL**

[53]. Under the African Charter, every citizen has the right to freely participate in the government.<sup>76</sup> This right entails either direct participation or through freely chosen representatives. Overthrowing the democratically elected president in a military coup d'etat,<sup>77</sup> is a violation of the citizen's right to participate in the government through democratically elected representatives. Every citizen has a right to self-determination.<sup>78</sup> This right entails the right to freely determine one's political status. Coup d'etat violates

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<sup>75</sup> Facts, [4].

<sup>76</sup> African charter, art 13

<sup>77</sup> Facts, [14]

<sup>78</sup> African Charter, art 20

this principle as it imposes a new government without the consent of the people. One of the illegal means of accessing and maintaining power which constitute an unconstitutional change of government, is any putsch or coup d'etat against a democratically elected government.<sup>79</sup> It follows that one of the key principles of the African Union is condemnation of unconstitutional changes of the government.<sup>80</sup> Rantania has failed to uphold one of the critical principles that promotes the rule of law and good governance by allowing the military coup d'etat and failing to prosecute the perpetrators. President O'kello seized power when Rantania was reeling economically, when there was a high rate of unemployment and huge national debt.<sup>81</sup> Increasing corporate tax by 10% was a way of combating the huge national debt that the country was in. When the military junta seized power, it introduced a reign of arbitrary arrest and detention,<sup>82</sup> torture,<sup>83</sup> terror and intimidation. Any government draws its legitimacy from the citizen's right to democratically elect their representatives, therefore, military power does not give a government its legitimacy. HRF prays that this court finds the coup d'etat a violation of the Rantanian citizens' rights to be represented by leaders of their choice and hold the perpetrators accountable.

## **II      PRESIDENT O'KELLO WAS ARBITRARY DETAINED**

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<sup>79</sup> ACDEG, art 23(1)

<sup>80</sup> AU Constitutive Act, article 4(p)

<sup>81</sup> Facts, [9]

<sup>82</sup> Facts, [14]

<sup>83</sup> Facts, [16]

[54]. Following an arrest every individual is entitled to the following rights; right to be presumed innocent, right to be informed of the charges, right to defence, right to be tried within reasonable time before an impartial court or tribunal, and right to appeal if dissatisfied.<sup>84</sup> When President O’kello is arrested, he is held incommunicado detention for 31 days.<sup>85</sup> Incommunicado detention opens a leeway for various human rights violation. Incommunicado detention inherently denies access to a legal counsel, it is a form of cruel treatment,<sup>86</sup> it is an affront to human dignity.<sup>87</sup> Every individual has a right to liberty and security.<sup>88</sup> This right entails prohibition of arbitrary arrest and detention.<sup>89</sup> An arrest and detention is arbitrary if the procedure laid down in the charter is not followed and it is not justified. The right procedure was not followed which makes the arrest and detention arbitrary, following the arrest, he is held incommunicado detention for 31 days before the house arrest. he is not tried, not even in reasonable time. Incommunicado detention amounts to gross violation of the individual’s right to liberty and security.<sup>90</sup> Rights and fundamental freedoms can only be limited for common interest, morality or collective security.

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<sup>84</sup> African Charter, art 7

<sup>85</sup> Facts, [17]

<sup>86</sup> UNCTCIDTP, art 2

<sup>87</sup> African charter, art 5

<sup>88</sup> *ibid* art 6

<sup>89</sup> n 88

<sup>90</sup> ICCPR, art 9(1); *African commission on human and peoples’ rights v Libya* [ 2013] application No 002 [84] [85]



**D) ACCESSING MR DITAN'S PERSONAL DATA AND CONVICTING HIM FOR DISSEMINATING INFORMATION LIKELY TO DISTURB PUBLIC ORDER.**

[55]. HRF duly submit that Rantania violated the African charter by accessing Mr Ditan's personal data [I] Arbitrary arresting, detaining and torturing him [II] and convicting him for disseminating information [III]

**I) ACCESSING MR DITAN'S PERSONAL DATA WAS DONE ARBITRARILY**

[56]. The primary rule is that Data subjects have a right to be informed before personal data is disclosed to third parties for the first time.<sup>91</sup> It follows that they also have a right to object the processing of their data on legitimate grounds.<sup>92</sup> When the *Truth* complied with the government orders and revealed Mr Ditan's identity, it did not inform him neither give him an opportunity to object.<sup>93</sup> The truth and the government were obligated to disclose the use as well as the disclosure of personal data. Failing to adhere to this requirement is a great violation of privacy rights and data protection guidelines. The integrity of a person encompasses physical as well as psychological integrity.<sup>94</sup> Unlawful disclosure and access of personal data is a violation of Mr Ditan's psychological Integrity.<sup>95</sup> The government has erred in issuing unlawful orders which constitute a

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<sup>91</sup> ACCPDP, Art 18

<sup>92</sup> *ibid*

<sup>93</sup> Facts, [15]

<sup>94</sup> African charter, art 4; *African Commission on Human and Peoples' Rights v Libya* [2011] 1 AFCLR 17

<sup>95</sup> n 94

violation of the basic human rights. Rantania has violated the African charter, the ICCPR and the African Convention on Cyber Security and Personal Data Protection in failing to avail an opportunity to the Data subject to respond to such allegation before the invasive measure and lack of due process which renders the whole process arbitrary.

## **II] ARBITRARY ARREST, DETENTION AND TORTURE**

[57]. Every individual has a right to liberty and security.<sup>96</sup> This right entails proscription of arbitrary arrest and detention.<sup>97</sup> An arrest or detention is arbitrary if it cannot be justified by law and the due process was not followed. The right procedure following an arrest is stated in the African charter.<sup>98</sup> The right to be heard, defended presumed innocent, represented by a legal counsel and tried within reasonable time. Mr Ditan is arbitrary arrested and detained for 12 days awaiting judgement.<sup>99</sup> We are not told whether he was represented or not, however, what follows the arrest is horrendous. Mr Ditan is mercilessly tortured by individuals in police uniform and two people in civilian uniforms surrounded by four prison guards using electrical cables that he begs for an end to the assaults.<sup>100</sup> Torture is any act by which severe pain is intentionally inflicted on

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<sup>96</sup> African Charter, art 6

<sup>97</sup> *ibid*

<sup>98</sup> *ibid*, art 7

<sup>99</sup> Facts. [15]

<sup>100</sup> Facts, [16]

a person whether physically or mentally.<sup>101</sup> This right is absolute,<sup>102</sup> at no point can it be limited.

### **III] CONVICTING HIM FOR DISSEMINATING INFORMATION LIMITS THE FREEDOM OF EXPRESSION**

[58]. As per the provisions of Article 30 of the Rantanian Criminal Act (2010), any person who disseminate information likely to disturb public order commits an offence and is liable to imprisonment for a term of not less than three ( 3) years and not more than five (5) years.<sup>103</sup> This provision limits the right to freedom of expression granted in the charter; right to receive information, express and disseminate one's opinions.<sup>104</sup> There are three requirements for restrictions to freedom of expression to be acceptable,<sup>105</sup> the restriction must be provided by law [i] the restriction must pursue a legitimate aim [ii] the restriction must be necessary and proportionate to the legitimate aim pursued [iii].

#### **i] The Restriction must be provided by law.**

[59]. It does not suffice for it to be provided by law, it must be precise and elaborate for individuals to anticipate the consequences of their actions. The phrase "information likely to disturb public order" is overly broad and vague in its definition of what it

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<sup>101</sup> UNCTCDTP, art 1

<sup>102</sup> *ibid*, art 2(2)

<sup>103</sup> Facts, [15]

<sup>104</sup> African Charter, Art 9;

<sup>105</sup> ICCPR ,art 19; *Lohe issa konate v Burkina faso* [ 2014] 1 AFCLR 314

constitutes. This creates a leeway to arbitrary and subjective application and interpretation of the law. This criminalizes a wide range of speech which may not be genuine threat to public order. Rantanian criminal act has fallen short of this. The fact that supreme court jurisdiction is limited to imprisonment of five years or more, there is a higher risk that article 30 of the Rantanian Criminal Act could be applied arbitrarily as there is no judicial scrutiny or opportunity to rectify abuses of judicial power.

**ii] The restriction must pursue a legitimate aim.**

[60]. It is not enough for the restriction to be provided by law in a concise and elaborate manner. The restriction must serve a legitimate purpose. Fundamental freedoms and rights can only be limited for the following reasons:<sup>106</sup> respect for others' rights and freedoms, collective security, morality and common interest. While maintaining public order can be a legitimate purpose, the broadness and vagueness of article 30 goes beyond what is necessary to maintain genuine public order as it criminalizes speech that does not pose a real threat. The tragic consequences do not justify the overbroad law. While the tragic loss of life, destruction of property and injuries suffered are deeply regrettable,<sup>107</sup> specific circumstances should be addressed using targeted measures, not a wide and broad blanket that criminalizes a wide range of speech. Rantanian Government has therefore failed to show that article 30 was meant to pursue a genuine and legitimate purpose.

**iii] The restriction must be necessary and proportionate to the aim pursued.**

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<sup>106</sup> African Charter, art 27(2)

<sup>107</sup> Facts, [15]

**[61].** At all material times, the restriction must be necessary and proportionate to the legitimate aim pursued. The imprisonment of up to five (5) years and a fine is disproportionately severe penalty for speech deemed to disturb public order. The Rantanian Government has failed to explore the less restrictive means such as imposing fines, issuing warning, just to mention a few. Even though the aftermath is horrendous, criminal prosecution is not the least restrictive means that is available.

## **CONCLUSIONS AND PRAYERS**

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**[62]. In light of the foregoing submissions, HRF respectfully prays this Honorable Court to find, adjudge and declare that:**

- I** The Court has jurisdiction to hear this application and the matter is admissible.
- II** The withdrawal by Rantania of its article 34(6) declaration is invalid, as it violates the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians.
- III** Rantania violated the African Charter and other relevant human rights instruments by failing to ensure that the Omia people and child workers are protected from violations committed by the MD Ltd
- IV** Rantania violated the African charter, ICCPR, and the AU Charter on Democracy, Elections and Governance for overthrowing the government and arbitrarily detaining President O'KELLO.
- V** Rantania has violated the African Charter, ICCPR, African convention on Cyber Security and Personal Data Protection, and United Nations convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Accessing Mr Ditan's data on the Social Media account, failing to follow the right procedure when arresting him, torturing him and limiting his freedom of expression

Respectfully submitted,

**COUNSEL FOR HRF, THE APPLICANT.**