

33RD CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION

UNIVERSITY OF RWANDA

22- 27 JULY 2024 KIGALI

BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE CASE BETWEEN

HUMAN RIGHTS FIRST

(APPLICANT)

AND

THE STATE OF RANTANIA

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

TEAM NUMBER:45

LIST OF ABBREVIATIONS

ACHPR African Charter on Human and People's Rights

ACtHR African Court on Human and People's Rights

ACtHR Protocol Protocol to the African Charter on Human and People's Rights on
the Establishment of an African Court on Human and People's Rights

AHRLJ African Human Rights Law Journal

AHRLR African Human Rights Law Report

Art Article

AU African Union

CRC Convention on the Rights of the Child

DRP Democratic Party of Rantania

GDP Gross Domestic Product

HRF Human Rights First

IACHR Inter-American Commission on Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

ILO International Labor Organization

MD Ltd	Mining for Development Ltd
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
RMB	Rantania Mining Board
RPRM	Rantania Peoples' Revolutionary Movement
RRP	Rantania Republican Party
UN ECOSOC	United Nations Economic and Social Council
UN	United Nations
Wrt	With regard to

LIST OF AUTHORITIES

TREATIES AND CONVENTIONS

1. *African Charter of Public Service and Administration Values and Principles (in 2012).*
2. *African Charter on Human and Peoples' Rights (African Charter) (in 1986).*
3. *African Charter on the Rights and Welfare of the Child (in 2013).*
4. *African Convention on Cybersecurity and Personal Data Protection (in 2021).*
5. *AU Charter on Democracy, Elections and Governance (in 2017).*
6. *ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (in 2010).*
7. *ILO Minimum Age Convention, 1973 (No. 138) (in 1999).*

8. *ILO Worst Forms of Child Labour Convention, 1999 (No. 182) (in 2000).*
9. *International Covenant on Civil and Political Rights (ICCPR) (in 2000).*
10. *International Covenant on Economic, Social and Cultural Rights (ICESCR) (in 2000).*
11. *Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (in 2015), and made a declaration under art34(6) of the Protocol (on 2August 2017).*
12. *Revised African Convention on the Conservation of Nature and Natural Resources (in 2018).*
13. *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1988).*
14. *United Nations Convention on the Rights of the Child (in 1998).*
15. *Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 33.*

SOFT LAW INSTRUMENTS

1. *Basic Principles and Guidelines on the Right to a Remedy and Reparations for victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law. Resolution 60/147 (15 December 2005).*
2. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment General Assembly Resolution 43/173.*
3. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001.*
4. *The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, adopted in 1976 and updated in 2011.*

5. *The United Nations Guiding Principles on Business and Human Rights*, adopted in 2011.
6. *UN Human Rights Committee (HRC), CCPR General Comment No. 13: Art14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, 13 April 1984.
7. *Resolution 57/221 on Strengthening of the rule of law* on 27 February 2003.
8. *Resolution 58/180 on Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization* on 17 March 2004.
9. *United Nation Declaration on the Rights of Indigenous Peoples. General Assembly (2007).*
10. *United Nations (Economic and Social Council). (1984). Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*

DOMESTIC LEGISLATION

1. *Rantanian Criminal Act (2010).*

CASE LAW

CASES OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

1. *African Commission v Lybia* (Application No. 002/2013)
2. *Ajavon v. Benin* (Application No. 027/2020) [2021] AfCHPR 11
3. *Josiah v. Tanzania* (Application No. 053/2016) [2019] 3 AfCLR 83
4. *Konaté v Burkina Faso* [2014] 1 AfCLR 314 [41]
5. *Mulindahabi v. Rwanda*, (Application No. 009/2017) [2020] 4 AfCLR 350
6. *Mussa and Mangaya v Tanzania*, (Application No. 014/2015) [2019] 3 AfCLR 629

7. *Noudehouenou v. Benin*, (Application No. 001/2022) [2023] AfCHPR 32
8. *Victoria Ingabire Umuhoza v. Rwanda* (Application No. 003/2014) [2018] AfCHPR 73
9. *Yogogombaye v. Senegal*, (Application No. 001/2008) [2009] AfCHPR 4

CASES OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

1. *Article 19 v. State of Eritrea*, (2007) AHRLR 73 (ACHPR 2007)
2. *Centre for Minority Rights Development(Kenya) and Minority Rights Group International on behalf of Endrois Welfare Council v Kenya* communication 276/2003
3. *Civil Liberties Organisation v Nigeria* (2000) AHRLR 186 (ACHPR 1995)
4. *Constitutional Rights Project v Nigeria*, Comm. 140/94, 141/94, 145/95, 13th ACHPR AAR Annex V (1999-2000)
5. *Jawara v. The Gambia*, (2000) AHRLR 107 (ACHPR 2000)
6. *Scanlen and Holderness v. Zimbabwe*, (ACHPR), (2009) AHRLR 289
7. *Southern Africa Human Rights NGO Network (SANGONeT) v. Tanzania*, (2010) AHRLR 113

OTHER INTERNATIONAL JURISPRUDENCE

1. *Chorzów Factory Case* [1928] PCIJ Series A, No. 17 (PCIJ)
2. *Shchetko and Shchetko v. Belarus*, Communication No. 1009/2001, U.N. Doc. A/61/40, Vol. II, at 69 (HRC 2006)
3. *Yakye Axa Indigenous Cmty. v. Paraguay*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 147 (June 17, 2005).
4. *Djibouti v France*, Judgment, 2008 I.C.J. (June 4).

NATIONAL DECISIONS

1. Obbo v Attorney General 2004 1 EA 265 SCU
2. Madanhire & Another v Attorney General Judgement No. 2/14 CCZ

BOOKS AND ARTICLES

1. Černič, J. L. State Obligations Concerning Indigenous Peoples' Rights to Their Ancestral Lands: Lex Imperfecta' (2012-2013). *American University International Law Review*, 28, 1129.
2. J Crawford, Brownlie's Principles of Public International Law, (8th edition, Oxford University Press 2012).
3. James Crawford, The ILC's Articles on State Responsibility (Cambridge 2002)
4. John O'Connor, Good Faith in International Law (Dartmouth 1991).
5. Kabano, J., & Özer, A., Revisiting democracy as a right protected by international law: challenges brought by African military coups. *Çankırı Karatekin Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi*, 13(3), 1245-1274. (2023).
6. Michael Akehurst, Withdrawal from International Organisations, 32 Current Legal Prob. (1979).

SUMMARY OF FACTS.

1. A national census carried out in 2022 projected the population of the landlocked Republic of Rantania in Central Africa to be 20 million. The country is divided into five regions; the Central, East, North, South, and West. All five have centralized governments and unitary states, but they also each have distinct economic and developmental characteristics.
2. The main pillars of Rantania's economy are mining, agriculture, gas exports, and foreign aid. However, the country's economic stability depends on foreign investment, thus ongoing changes are required to enhance the business environment and attract more foreign direct investment, particularly in the mining sector.
3. The Constitution of Rantania guarantees civil and political rights in line with international standards, including the African Charter on Human and Peoples' Rights. Its ratification of numerous human rights instruments serves as evidence of this. Human rights violations persist even after these conventions have been ratified, particularly in the mining sector. Rantania is home to a number of political parties, the most prominent of which being the Rantania Republican Party (RRP). It has been charged with running the nation unfairly and opaquely. Human rights organizations, such as Human Rights First (HRF), have recorded examples of political repression and civil rights breaches and have expressed concern about the erosion of democratic ideals.
4. First, recent political developments like President O'Kello's election bolstered reform expectations. However, his administration's attempts to solve economic concerns through tax measures have caused public protests and outcry, resulting in a strong the government's response. The suppression of these demonstrations resulted in a military

coup led by General Magui and subsequent civil unrest, underscoring the fragile political stability of Rantania and the urgent need for resolution.

5. A number of issues, including pervasive corruption, deep-rooted human rights violations, and uncertain political environments, stand in the way of Rantania's quest for both political stability and economic prosperity. National and international actors must collaborate to support inclusive growth, protect fundamental rights, and promote accountable governance in order to handle these complex concerns.

QUESTIONS BEFORE THE COURT

1. The questions before this Honourable court are the following:
 - I. Whether the withdrawal of its art34(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 ARGUMENTS.

2. The applicant posits that this Honourable court has jurisdiction to adjudicate this matter.

With regard to admissibility, the applicant exhausted local remedies in the case of the Omia people and Mr. Ditan. In case of withdrawal and President O'Kello the local remedies provided by the respondent state are ineffective and insufficient.

Claim A

- I. This withdrawal undermines the legal protections and guarantees previously afforded to individuals within Rantania, thus infringing upon their established rights and diminishing the efficacy of regional human rights mechanisms.

Claim B

- II. Contrary to its obligations under the African Charter and other human rights instruments the respondent state failed to protect the Omia tribe and child workers from violations.

Claim C

- III. Rantania's actions of overthrowing and detaining President O'Kello undermine the principles of democracy and the rule of law, which are essential components of a just and fair society. The arbitrary detention also violated his right to liberty.

Claim D

- IV. Accessing and deleting Mr. Ditan's data on The Truth without his consent violates his right to privacy and freedom of speech.

JURISDICTION OF THE COURT

3. There are four elements that determine the Court's ability to hear a case: personal, material, temporal, and territorial jurisdiction¹ as was established in *Abubakari v Tanzania*².

Material Jurisdiction

4. The Court's Protocol grants the Court material jurisdiction in all matters concerning the application and interpretation of the African Charter, the Protocol and other relevant human rights instruments ratified by the Respondent State³. The applicant contends that the court has material jurisdiction because the withdrawal of Rantania of its art34(6) declaration⁴, its failure to protect the Omia tribe⁵, unlawfully detaining President O'Kello⁶ and arresting and convicting Mr. Ditan⁷ call for the interpretation and application of the African Charter, Court's Protocol, ICCPR, CRC and ACRWC which Rantania has ratified.

Temporal jurisdiction

5. Regarding temporal jurisdiction, the rule is that the alleged violations must have occurred after the dates the African Charter, the Court's Protocol and the Optional Declaration under Art34(6) of the Court's Protocol, came into force for the Respondent⁸. Events leading to the

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

² *Abubakari v Tanzania* [2013] AFCHPR 35 at par 34.

³ African Protocol, art 3(1).

⁴ Facts para 18.

⁵ Facts para 6, 7.

⁶ Facts para 14.

⁷ Facts para 18.

⁸ *African Commission v Kenya (Ogiek case)* [2017] 2 AfCLR 9 [64].

violations against the Omia Tribe, the children, President O’Kello and Mr. Ditan occurred after Rantania had ratified the African Charter, Courts Protocol and the Declaration under art34(6)⁹. The court has temporal jurisdiction.

Personal Jurisdiction

6. 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 Art34(6) of the Court’s Protocol¹⁰. HRF has observer status¹¹ before the commission and can institute cases to the African Court.. Rantania still has an obligation to give notice of not less than 12 months of its intention before effectively withdrawing from the treaty¹². The withdrawal is not yet effective until May 2025

Territorial jurisdiction

7. On territorial jurisdiction, the Court held in Konaté v Burkina Faso¹³, that it would have territorial jurisdiction over a case if the alleged violations occurred in the territory of the Respondent State. The alleged violations occurred in Rantania, thus the Court has jurisdiction.

⁹ Facts para 3.

¹⁰ African Court Protocol, art 5(3), Yogogombaye v. Senegal, Application No [2009] AfCHPR 4.

¹¹ Facts para 5.

¹² Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 Art56. See also; Michael Akehurst, Withdrawal from International Organisations, 32 Current Legal Prob. (1979) pg149-50.

¹³ Konaté v Burkina Faso [2014] 1 AfCLR 314 [41].

ADMISSIBILITY

8. The decision in *Yogogombaye* suggests that the court has no jurisdiction where the state has not declared its acceptance of the courts authority. Rantania has withdrawn from such a declaration which could potentially prevent Human Rights First from bringing the matter before the African Court¹⁴.
9. The doctrine of forum prorogatum involves the acceptance of jurisdiction by a state before an international court through active participation in legal proceedings¹⁵. In the case of *Yogogombaye*¹⁶, Senegal's decision to defend the case was seen as implicit consent to the court's jurisdiction, despite the lack of a formal signed declaration. By virtue of preparing a defense the respondent state accepts the competence of the court to adjudicate the issues brought before it.
10. Article 6(2) of the Protocol mandates this court to rule on admissibility giving due regard to article 56 of the African Charter. The Applicant contends that the requirements enunciated in article 56 of the Charter that domestic remedies should be exhausted¹⁷, has been established for reasons outlined below. This entails the availability of local remedies that are effective¹⁸, provide reasonable possibilities of success¹⁹ and adequate to redress the violations²⁰. Lack of independence of the judiciary is an indication of ineffective remedies.
- I. Wrt to **Claim A**, the Respondent State's courts are not empowered to hear disputes concerning interpretation and application of the Charter, the Protocol and other human

¹⁴ Facts para 18.

¹⁵ Separate opinion of Judge Fatsah Oruergouz in *Yogogombaye v. Senegal*, Application No [2009] AfCHPR 4.

¹⁶ Ibid.

¹⁷ Article 56(5).

¹⁸ *Jawara v Gambia* AHRLR 107(ACHPR 2000).

¹⁹ *Art19 v Eritrea* AHRLR 73 (ACHPR 2007).

²⁰ *Scanlen and Holderness v Zimbabwe* 2009 ACHPR 289.

rights instruments. The applicant therefore argues that this claim is admissible before this Honourable court.

- II. Wrt to **Claim B**, HRF took the matter to the High Court and appealed to the Court of Appeal²¹. In any event, approaching these courts was ineffective as the judicial system was controlled by powerful officials and private companies²².
- III. Wrt **Claim C**, the overthrow of President O'Kello and his replacement by General Magui suspends the normal functionality of the judicial system hence the need to look for regional remedial action by approaching this court.
- IV. Wrt **Claim D**, following the decision of the High Court, Mr. Ditan appealed to the court of Appeal which confirmed the conviction made by the High Court²³ and failed to offer prospects of success. In light of the unavailability of further avenues for appeal, all domestic remedies have been duly exhausted.

²¹ Facts para 8.

²² Ibid.

²³ Facts Para 18.

MERITS

CLAIM A: The withdrawal by Rantania of its Art34(6) declaration is invalid as it violates the African Charter and other relevant Human Rights instruments by undermining the vested rights of the Rantanians.

Violation of the African Charter

11. While it is stated that Rantania is a signatory to various human rights instrument, its recent action to withdraw disrupts its commitment to uphold and respect human rights. The Charter grants individuals and NGOs the right to directly access the African Court on Human and Peoples Rights²⁴.
12. By unilaterally revoking a declaration that was previously made in accordance with the Charter, Rantania is denying its citizens the right to access the mechanisms set out in article 34(6) for submitting individual complaints to the African Court on Human and Peoples' Rights²⁵.

Contravention of International Obligations

13. The respondent acted in bad faith in withdrawing from art 34(6) of the Protocol. In determining the legal effect of a unilateral declaration of a state, its actual content as well as the circumstances in which it was made must be considered²⁶. The withdrawal was effected several months after condemnation of events taking place in Rantania.

²⁴ Art 34(6), Court Protocol.

²⁵ Michael Akehurst, Withdrawal from International Organisations, 32 Current Legal Prob. (1979).

²⁶ John O'Connor, Good Faith in International Law (Dartmouth 1991).

Moreover, it was after Human Rights First had expressed its desire to bring human rights violations cases before the African Court²⁷. The sequence appears deliberate.

14. The Africa Court Protocol does not contain any provision on the withdrawal from either the Court Protocol or the declaration contained in it. The Bronstein²⁸ decision is the authority for the proposition that argues for a reasonable time and notice for withdrawal from treaties that contain no termination provision. A formal notice is required for the sake of judicial security and to prevent the abrupt suspension of rights which would inevitably impact the rights of individuals and NGO's²⁹. The ECHR and the IACtHR provide for notice periods of six and twelve months respectively and the applicant hopes that this court applies a similar standard to withdrawal³⁰. The respondent should therefore serve a 12-month notice of withdrawal for this withdrawal to be valid³¹.
15. The principle of *pacta sunt servanda*³² dictates that states must abide by the treaties they have ratified including respecting the commitments made therein. The withdrawal contravenes this fundamental principle as it is a breach of the state's treaty obligations under the Charter.
16. This withdrawal results in retroactive denial of the rights of the children and the people of the Omia tribe as it undermines the effectiveness of the African Court. This could lead to a regression in the protection of human rights in the region and undermine the progress made in promoting and defending these rights. This withdrawal should have no effect to cases pending before this court based on the principle of non-retroactivity³³.

²⁷ Facts para 18.

²⁸ Bronstein v Peru Judgement of September 24, 1999.

²⁹ Umuhoza v Rwanda Application 3/2014 Ruling on Jurisdiction 3 June 2016(ruling on jurisdiction).

³⁰ Supra n28.

³¹ Mulindahabi v Rwanda 2020 4 AfCLR 350.

³² Michael Akehurst, Withdrawal from International Organisations, 32 Current Legal Prob. (1979).

³³ Art 70 1(b) Vienna Convention on the Law of Treaties.

CLAIM B: Rantania violated the Omia people's right to property, development and protection against child labour by failing to ensure that their rights were protected.

Violation of rights of the Omia People

17. Their connection with land is not merely a matter of possession and production but a material and spiritual element which they must fully enjoy to preserve their cultural heritage.

Right to property.

18. Companies such as MD Ltd are required to respect human rights³⁴. Responsibility to respect human rights is a global standard required from business enterprises. MD Ltd had a responsibility to respect the Omia people's right to property. The principle of state responsibility makes states responsible for internationally wrongful acts³⁵. Rantania has a substantive obligation relating to conduct of third parties that is to ensure businesses do not violate human rights.

19. The expansion of MD Ltd's mining activities into the Omi district resulted in the loss of their land thereby violating the right to property³⁶ protected in the African Charter. To guarantee limitation of the right to property, Rantania has to ensure effective participation of the Omia people in conformity with their customs developments on their land, a prior environmental and social impact assessment and reasonable benefit of any plan within their territory³⁷. The applicant argues that no participation was allowed, neither was there any assessment on the environmental and social impact of the activities in Omia nor did the Omia people

³⁴ GP 11 of Guiding Principles on Business and Human Rights.

³⁵ Art1 Responsibility of States for Internationally Wrongful Acts (2001).

³⁶ African Charter, Article 14.

³⁷ Samaraka People v Suriname, [2007] Inter-American Court of Human Rights.

enjoy reasonable benefit of this. The fact that these components were absent is a clear violation of the right to property by the respondent state.

20. Indigenous peoples must be consulted by the government, particularly when handling delicate matters like land³⁸. Rantania had an obligation to obtain prior informed consent from the Omia people regarding the use of its land but it did not. Consultations were only done post eviction but they did not give their consent yet their views were not respected by the respondent.

The right to development

21. The encroachment into and eviction of the Omia people from their land was a violation of their right to development. This involve the right to participate and benefit from development plans, this was not the case for the Omia people. The fulfillment of the right to development hinges on meeting five key criteria: it should be fair, non-discriminatory, inclusive, responsible, and open, with fairness and freedom to choose being central concepts in the right to development³⁹.
22. In the event that the respondent argues that it provided modern housing facilities, it should be noted that development is not solely about the government providing housing for specific individuals or communities. Rather, it's about empowering people to make their own choices about where to live. The state should not arbitrarily dictate where an individual must live simply because housing options are available.

Right to a remedy

³⁸ Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities (Twenty-eighth session, 2003). See also ILO Convention 169 which states: 'Consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.'

³⁹ Arjun Sengupta, 'Development Cooperation and the Right to Development,' Francois-Xavier Bagnoud Centre Working Paper No. 12, (2003), See also UN Declaration on the Right to Development, UN GAOR, 41st Sess, Doc. A/RES/41/128 (1986), article 2.3, which refers to 'active, free and meaningful participation in development.'

23. The right to a remedy for victims is a tenet of every judicial system⁴⁰. They were entitled to compensation⁴¹ for lost land but they were not compensated⁴². The High Court ruled that they had received compensation in kind and this was upheld by the Court of appeal. Relocation was an option only with their free and informed consent⁴³ which they did not give⁴⁴. The fact that the Omia people were not compensated for the violations they incurred was a violation of the international laws ratified by the respondent.

Failure to ensure the protection of child workers

24. A child is any person under the age of 18⁴⁵ and employing anyone below amounts to child labour. At least 2000 children between 15 and 18⁴⁶ worked in mining which is extremely dangerous for children. Their developing systems make them particularly vulnerable to the effects of dust and chemicals. In allowing the exploitation of child laborers without adequate protection, and support, Rantania has disregarded fundamental principles of children's rights.

25. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's development⁴⁷. Allowing children to work in hazardous exposes them to physical danger which hinders their right to survival and development⁴⁸. By subjecting child workers to exploitative labor practices without proper security measures, the respondent has failed to contribute to the

⁴⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparations for victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law. Resolution 60/147 (15 December 2005).

⁴¹ Art11(2), UNDRIP.

⁴² Facts para 6.

⁴³ Art16, Convention 169.

⁴⁴ Facts Para 6.

⁴⁵ Art2, Worst Forms of Child Labour Convention, 1999 (No. 182), see also Art1 UNCRC, Art2 ACRWC

⁴⁶ Facts para 7.

⁴⁷ Art15, ACWRC.

⁴⁸ Art8 (2), CRC.

effective abolition of child labour and to take immediate measures to secure the elimination of the worst form of child labour as a matter of urgency⁴⁹.

26. The RMB was called upon to investigate the matter and remedy all violations but they dismissed this on the basis that the allegations were unfounded because its officials had been bribed by MD Ltd⁵⁰. States have a duty to combat corruption⁵¹. It is incumbent upon states to fulfill their obligation to combat corruption through the diligent investigation and prosecution of allegations of corrupt practices⁵². The respondent made no efforts to diligently investigate into the matter.

⁴⁹ ILO Worst Forms of Child Labour Convention, 1999 (No. 182) (in 2000).

⁵⁰ Facts para 7.

⁵¹ African Charter on Public Values and Principles, art 12(1).

⁵² IACHR, Corruption and Human Rights in the Americas (6 December 2019) 99, [263].

CLAIM C: Rantania undermined core principles of democracy by overthrowing President O’Kello and his subsequent detention was a violation of his right to liberty and to a fair trial.

Principles of democracy

27. The overthrow of President O’Kello involves the forced removal of a democratically elected leader by military force⁵³, bypassing the will of the people and the electoral process. By seizing power through a coup the respondent disregarded the principle of democratic governance that power should be derived from the consent of the governed⁵⁴.
28. This is contrary to the process of democratization initiated by the international community, such as the demand for free, fair and independent elections to legitimately choose those who hold power⁵⁵.
29. The overthrow of President O’Kello through a coup results in the dissolution of democratic institutions as martial law suspends constitutional principles thereby undermining the duty of states to ensure constitutional rule⁵⁶.
30. President O’Kello’s long term goal was for the tax increase to finance government policies such as free primary and secondary education⁵⁷. This meant that more children would be able to go to school thereby eliminating child labour and respecting the rights of children. This is why the big companies incited members to overthrow the President⁵⁸ so they would continue exploiting the rights of the children.

Right to a fair trial

⁵³ Facts para 14.

⁵⁴ Art17, African Charter on Democracy, Declaration on the Principles Governing Democratic Elections in Africa.

⁵⁵ Kabano, J., & Ozer A., Revisiting democracy as a right protected by international law: challenges brought by African Military Coups.

⁵⁶ Art5, African Charter on Democracy.

⁵⁷ Facts para 12.

⁵⁸ Facts para 13.

31. The right to a fair trial includes the right to be tried within a reasonable time and the presumption of innocence until proven guilty⁵⁹. The accused has a right to be brought before an impartial court within a reasonable time⁶⁰. What amounts to a reasonable time depends on a case by case basis. General Magui stated that President O'Kello would be detained until investigations and trials were completed⁶¹ without specifying a timeline. The applicant avers that the time is rather unreasonable as it constitutes an arbitrary prolonged detention.

Right to liberty

32. Every person has the right to liberty and no one shall be deprived of his liberty except in circumstances provided by the law⁶². While being placed under house arrest⁶³ may seem less severe than being in a traditional prison, it still restricts the individual's freedom and movement. President O'Kello and his family were confined to a small government-owned house in the North Region⁶⁴, which violates this right.

33. An arrested person also has the right to be informed of the charge under which he is being arrested⁶⁵. President O' Kello was arrested without being informed of the charge and detained incommunicado in an unknown location⁶⁶. His arrest was conducted without a legal basis as he was to be detained until investigations were finalised. The fact that other officers were released while President O'Kello remained under house arrest further violates his right to liberty.

⁵⁹ African Charter, Art7, ICCPR, Art14.

⁶⁰ Art 9 (3), ICESR.

⁶¹ Facts para 17.

⁶² International Covenant on Civil and Political Rights (adopted 16 December, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art 9; ICESR Art9(1); African Charter, Art6.

⁶³ Facts para 17.

⁶⁴ Ibid.

⁶⁵ Art 9(2 ICESR); Resolution on the Right to Recourse and Fair Trial, the African Commission on Human and Peoples' Rights, meeting in its Eleventh Ordinary Session, in Tunis Tunisia, from 2 to 9 March 1992; [2] (b).

⁶⁶ Facts para 14.

CLAIM D: In accessing MR Ditans data on the social media platform ‘The Truth’ by arresting him and by convicting him of and sentencing him for dissemination information likely to disturb public order, the respondent violated Mr. Ditans right to privacy, freedom from torture and freedom of expression.

Right to privacy.

34. Personal data⁶⁷ is protected under arbitrary interference under the right to privacy⁶⁸. While states are allowed to limit fundamental human rights, such measures should have a legal basis, be necessary and proportionate to achieve a legitimate aim⁶⁹. It can also interfere if the data subject gives his/her consent⁷⁰. In casu, these requirements were arguably unmet.

Legal basis

Limitations on the right to privacy should have a legal basis. States shall only engage in communication surveillance that is authorised by law. Evidence suggests that government’s order to the social media platform, The Truth, to reveal Mr. Ditan identity⁷¹ and delete his information online was not based on any law. Despite its obligation under international law, the respondent invaded Mr. Ditan’s privacy without a legal basis.

Necessity and proportionality

Interference must be necessary in a democratic society and must be proportionate to the legitimate aim pursued. Mr. Ditan was simply trying to alert the Rantanian of the kind of government they had. His actions did not interfere with the rights of others rather he was

⁶⁷ ICCPR, Article 17 SRPrivacy-A/74/277[3]; ECtHR-Amann [65]; REDESCA-Internet [204].

⁶⁸ ECtHR-S&Marper [103]; SRPrivacy-A/HRC/49/55[8]; ACommHPR FreedomofExpression [40]; IACommHRFontevecchia.

⁶⁹ United Nations (Economic and Social Council). (1984). Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

⁷⁰ Art 13, African Convention on Cybersecurity and Data Protection in (2021).

⁷¹ Facts Para 15.

alerting them of the violations that occurred. The governments justification that this account was used to incite violence was not sufficient to warrant such drastic action.

Freedom from torture

35. The physical assault perpetrated against Mr. Ditan constitutes a grave violation of the African Charter⁷² and ICCPR⁷³. These instruments unequivocally prohibit any form of torture, cruel, inhuman, or degrading treatment, regardless of the circumstances. For an act to be considered as torture, there must be an intentional infliction of pain on a person, and the act must be carried out by a state or public official or any person under the authority of the State punishing him for an act he has committed⁷⁴. The video showing Mr. Ditan being severely beaten by uniformed officers raises concerns of torture and ill treatment of detainees. He was beaten not only once but twice at different times. He was beaten with electric cables by two people to the point where he begged for mercy⁷⁵. The applicant avers that the beating of Mr. Ditan and remaining in custody when others were released⁷⁶ in a bid to punish him was intentional and the use of electric cables is a disproportionate use of force and a violation of the right to freedom from torture.

Freedom of expression

36. Every individual shall have the right to express and disseminate his opinions within the law⁷⁷. The right to freedom of expression is one of the fundamental rights protected by international human rights law, the respect of which is crucial and indispensable for the free development of the human person and to create a democratic society⁷⁸. In

⁷² Art 5, African Charter.

⁷³ Art 7, ICCPR.

⁷⁴ Art 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987.

⁷⁵ Facts para 16.

⁷⁶ Ibid.

⁷⁷ Art 9, African Charter, Article 17 ICCPR.

⁷⁸ *Ajavon v Benin* 2019 AfCLR 130.

*Madanhire and another v. Attorney General*⁷⁹, the Zimbabwean Constitutional Court also stated that:

“There can be no doubt that the freedom of expression, coupled with the corollary right to receive and impart information, is a core value of any democratic society deserving of the utmost legal protection”⁸⁰

37. For infringement of this right to be justifiable, it should be lawful disproportionate and must serve a legitimate purpose⁸¹.
38. The Applicant does not dispute that the conviction was based on national law of Rantania however, the applicant challenges the nature of law as it is vague and very broad⁸². The provision within Rantania's criminal code that criminalizes the dissemination of information likely to disturb public order⁸³ represents a further violation of international human rights standards. It is no question that the said conviction and sentence of the Applicant constitute a restriction on his freedom of expression for the purpose of Art9 (2) and in terms of Art19 (3) of ICCPR. Such legislation is overly broad, vague, and susceptible to abuse, as it can be arbitrarily applied to suppress dissent and silence legitimate expressions of opinion.
39. The mention of "law" in Art9 (2) of the Charter and other provisions of the Charter should be understood in accordance with international human rights norms⁸⁴. These norms mandate that domestic laws authorizing limitations on rights and freedoms must be clear,

⁷⁹ Zimbabwean Constitutional Court, *Madanhire and another v Attorney General*, Judgment No. CCZ 2/14.

⁸⁰ Constitutional Rights Project v Nigeria Communication No 145/95 (1999) and Uganda Supreme Court, *Obbo v Attorney General* [2004] 1 EA 265 (SCU).

⁸¹ *Noudehouenou v Benin* 2020 4 AfCLR 726.

⁸² Human Rights Committee, *A v. Australia*, 30 April 1977, para.9, E: Inter-American Human Rights Committee.

⁸³ Art 30 Rantanian Criminal Act (2010).

⁸⁴ *Konaté v Burkina Faso* Application No 004/2013 (2014). see also ACHPR, *Malawi African Association v Mauritania*, Communication no. 210/98 (2000).

predictable, and consistent with the objectives of the Charter and international human rights treaties, and must apply universally⁸⁵.

40. The conviction did not serve a legitimate purpose as it was only aimed at suppressing criticism so the general public would not be informed about the situation in the country and the way General Magui ended up President. Mr. Ditan simply wanted to inform the public about the political situation and a call for peaceful elections⁸⁶.
41. Restrictions made on freedom of expression must be strictly necessary in a democratic society and proportionate to the legitimate purpose pursued by imposing such restrictions. The punishment imposed upon Mr. Ditan was not proportionate to the crime he was convicted for. Under the Criminal Act, dissemination of information amounted to a punishment of imprisonment for not more than 5 years. Before being proven guilty, he was assaulted by two civilian people using electric cable and the High Court sentenced him to prison without an option of a fine.

⁸⁵ Umuhoza v. Rwanda [2018] AfCHPR 73.

⁸⁶ Facts para 14.

REPARATIONS

42. Violation of international laws requires reparations to be made⁸⁷. This includes compensation payment, restitution, or assurances of non-repetition⁸⁸ as part of the reparations granted by the Court following a violation of human or peoples' rights. Accordingly, the applicant requests the court to order the respondent to hold MD Ltd for violating the rights of the Omia people and children. The respondent should also compensate the victims for loss of ancestral land and restore their land to them, compensate the children for physical and mental harm incurred while they were working for MD Ltd and to investigate into the allegations for corruption by MD Ltd and RMB. President O'kello to be compensated for he infringement of his right to liberty and Mr. Ditan to be compensated for being arbitrarily arrested⁸⁹.

⁸⁷ Chorz'ow Factory [1928] PCIJ Series A, No. 17, p. 29; James Crawford, *The ILC's Articles on State Responsibility* (Cambridge 2002) 147.

⁸⁸ *Mtikila v Tanzania* (reparations) [2014] 1 AfCLR 72 [27].

⁸⁹ Art 9(5), ICESR.

PRAYERS

43. In light of the foregoing submissions, HRF respectfully prays this Honourable Court to find, adjudge and declare;

- I. The court has jurisdiction and the matter is admissible
- II. The withdrawal by the State of its Art34(6) declaration is invalid and urges the court to order the State to restore the Art34(6) declaration and to respect and uphold the rights guaranteed therein.
- III. The restoration of ancestral land to the Omia tribe and protection of children by prohibiting all forms of child Labour
- IV. Immediate release of O'kello from detention and house arrest.
- V. The immediate release of Mr. Ditan.
- VI. The court should be alive to the exigencies of justice, and the applicants therefore pray that the Rantania Government undertakes reparations as a necessary corollary of its breach of an international obligation and in accordance with principles of state responsibility, in the following forms:
 - i. The victims of the human rights violations be compensated for the harm occasioned them, compensation which should aim to return them to the position they would have been if the violations had not occurred, as established in Chorzow Factory⁹⁰ (Jurisdiction) as restitution in integrum.

Respectfully Submitted,
Counsel for the Applicant.

⁹⁰ Chorz'ow Factory [1928] PCIJ Series A, No. 17, p. 29.

