
33RD CHRISTOF HEYNS AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION

UNIVERSITY OF RWANDA

22-27 JULY 2024, KIGALI, RWANDA

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

ARUSHA, TANZANIA



IN THE MATTER BETWEEN

HUMAN RIGHTS FIRST

(APPLICANT)

AND

THE STATE OF RANTANIA

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

LIST OF ABBREVIATIONS

ACCPDP African Convention on Cybersecurity and Personal Data Protection

ACRWC African Charter on the Rights and Welfare of the Child

AUCDEG African Union Charter on Democracy, Elections and Governance

HRF Human Rights First

NGO's Non-Governmental Organizations

VCLT Vienna Convention on the Law of Treaties

WRA Workers' Rights Advocates

INTERPRETATION

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

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QUESTIONS PRESENTED

Rantania 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

JURISDICTION AND ADMISSIBILITY

Rantania concedes to the jurisdiction of the Court to hear the application. On admissibility, Rantania concedes that local remedies were exhausted in the case of Mr Ditan's arrest, conviction and sentencing for disseminating information likely to disturb public order. However, Rantania argues that despite local remedies being available, effective and sufficient in Rantania, HRF has failed to exhaust them 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.

MERIT A

The withdrawal by Rantania of its article 34(6) declaration is valid, and does not violate the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians.

MERIT B

Rantania did not violate the African Charter and other relevant human rights instruments of the Omia people and child workers.

MERIT C

Rantania has not violated the African Charter or any other human rights instrument by overthrowing president Okello as the citizens were exercising their participatory rights in

the government. Subsequently detaining the president was justified as a measure to protect him.

MERIT D

Rantania has not violated the African charter or any other human rights instruments by Accessing Mr Ditan's data on the social media, Arresting him and convicting him for disseminating information that disturbed public order as this was a measure to promote public order and the rule of law.

PLEADINGS

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

JURISDICTION OF THE COURT

A. JURISDICTION OF THE COURT

[1]. The Respondent submits that this Court has jurisdiction to hear this application. Jurisdiction is the Court's power to hear and determine a matter.¹ 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, African Charter and the Rules.² The Court will only hear an application where it is satisfied that it has material, personal, temporal and territorial jurisdiction.³ The Respondent concedes to the Jurisdiction of the Court on all four bases.

1) MATERIAL JURISDICTION

[2]. The Respondent submits that the 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

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

² *Crosperry Gabriel and Another v United Republic of Tanzania* [2024]

³ *Mariam Kouma and Another v Mali* [2018] 2 AfCLR 237 [25]

and other relevant human rights instruments ratified by the State concerned'.⁴ Article 3 (1) of the Charter, provides the Court 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.⁵ The Court has material jurisdiction if an application concerns alleged violations of the Charter.⁶

[3]. In this case, violations have occurred against several instruments. They include: the African Charter, the Protocol, AUCDEG, ACVPPSA, ACRWC, UNCRC, ILOMAC, ILOWFCLC, ILOITPC, ACCPDP.

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

2. PERSONAL JURISDICTION

[5]. The Respondent submits that the 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 optional declaration under article 34(6).⁷ Article 5(3) of the Protocol permits relevant NGO's with observer status before the Commission and individuals to institute cases before it directly.⁸ NGO's can acquire observer status

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

⁵ African Charter, art 3(1)

⁶ *Human Rights Centre v Tanzania* AfCLR [2023]

⁷ *Diakité v Mali* (2017) 2 AfCLR 118 [24]

⁸ The Protocol, art 5(3).

before the Commission upon applying for the same, and it permits them to do several things such as participate in the proceedings of the commission.⁹

[6]. The Respondent is a party to the Court's Protocol,¹⁰ has deposited the Optional Declaration on 2nd August 2017,¹¹ and the Applicant has observer status with the Commission.¹²

3. TEMPORAL JURISDICTION

[7]. The Respondent submits that the Court has temporal jurisdiction to hear this application. 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.¹³ Accordingly, the Respondent 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.¹⁴ The Respondent State ratified the Charter in 1986, the

⁹ Resolution on the Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and People's Rights in Africa-ACHPR/Res.361(LIX)2016

¹⁰ Facts, [3].

¹¹ *ibid*

¹² Facts, [5].

¹³ *John Mwita v United Republic of Tanzania* (2024) AfCLR [31]

¹⁴ Facts, [6]-[14].

Protocol establishing the African Court in 2015 and deposited the optional declaration under article 34(6) of the Protocol in 2017.¹⁵ Therefore, the Court has temporal jurisdiction.

4. TERRITORIAL JURIDICTION

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

[9]. Accordingly, Rantania concedes to the Court's jurisdiction to hear the application.

ADMISSIBILITY OF THE APPLICATION

[10]. The Respondent submits that the matters in this case are partially admissible.

[11]. 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 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

¹⁵ Facts, [3].

¹⁶ *Oulai Marius v Republic of Côte D'ivoire* (2023) AfCLR [22]

¹⁷ Facts, [6]-[17].

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.’¹⁸

[12]. 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.¹⁹

[13]. 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.²⁰

[14]. The Respondent submits that the Applicant has not exhausted all local remedies.

[15]. Local remedies were exhausted in the case of Mr Ditan’s arrest and conviction for the offence of disseminating information likely to disturb public order.

[16]. However, local remedies were not exhausted in the cases of compensation for the Omia people and affected individual workers and on behalf of the child labourers, and the constitutionality of President O’Kello’s removal from office, arrest and detention.

I. THE EXHAUSTION OF LOCAL REMEDIES

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

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

¹⁹ *Johnson v Ghana* (2019) 3 AfCLR 99 [33]

²⁰ *Traore v Mali* [2020] 4 AfCLR 665 [40].

²² African Charter, art 56(5)

African Court from being a court of first instance.²³ Local remedies in Rantania are available, effective and sufficient in[1] Rantania concedes that local remedies were exhausted in the case of Mr Ditan's arrest, conviction and sentencing for disseminating information likely to disturb public order [2] HRF has failed to exhaust them 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.[3]

1. Local Remedies are Available, Effective and Sufficient in Rantania

[18]. The Respondent submits that local remedies are available, effective and sufficient in Rantania. Rantania has a structured and fully functioning Court system with the Supreme Court being the highest court with mandate to hear appeals from the Court of Appeal, 'the country's High Courts, located in each of the five Regions, have original jurisdiction over all matters, including all human rights matters (except for the constitutionality of national legislation), and the Court of Appeal is not a court of original jurisdiction but is competent to hear all appeals against High Court judgments.'²⁴

[19]. The Respondent submits that local remedies are also effective because bringing claims before the local courts offers prospects of success. There are equal chances for succeeding or failing in a suit. For example, 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

²³ *African Commission on Human and People's Rights v Kenya* (2017) 2 AfCLR 9.

²⁴ Facts, [2].

Appeal confirmed Ditan's conviction on 1 May 2024.²⁵ Furthermore, on 10 May 2024, O'Kello's lawyers submitted a case to the High Court in the North Region, contesting the constitutionality of President O'Kello's removal from office, arrest and detention, and the High Court scheduled the hearing of this matter for 10 February 2025.²⁶

[20]. The Respondent further submits that the local remedies are sufficient because they are capable of redressing the alleged violations. Under Rantanian law, both civil and penal remedies exist. For example, on penal remedies, 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.'²⁷ On civil remedies, facts reveal that the Applicant '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 nor MD Ltd had violated the law, a decision that was upheld by the Court of Appeal on 1 May 2023.'²⁸

[21]. In ***African Commission on Human and People's Rights v Kenya***,²⁹ the Court held that the rule of exhaustion of local remedies is only applicable with respect to remedies which are "available", "effective" and "adequate" and if the local remedies do

²⁵ Facts, [18].

²⁶ Facts, [17].

²⁷ Facts, [18].

²⁸ Facts, [8].

²⁹ *ibid*

not meet these criteria, this admissibility requirement is dispensed with. Local remedies are available if they are accessible without impediments; they are effective if they offer a prospect of success; and are sufficient if they are capable of redressing the violation.³⁰

[22]. Consequently, local remedies in Rantania are available, effective and sufficient.

2. **Local Remedies were Exhausted in the case of Mr Ditan's Arrest, Conviction and Sentencing for Disseminating Information likely to Disturb Public Order.**

[23]. The Respondent submits that local remedies were exhausted in the matter of Mr Ditan's arrest and detention. 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.'³¹ 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.³² Mr Ditan was sentenced to 3 years, therefore, the Supreme Court can't hear his appeal. Therefore, local remedies were exhausted. In ***Josiah v Tanzania***,³³ the Court held that an application is admissible if ordinary judicial remedies have been pursued to the apex court of the Respondent state. Similarly, in ***African Commission on Human and***

³⁰ *African Commission v Libya* [2016] 1 AfCLR 153 [67].

³¹ Facts, [18].

³² Facts, [2].

³³ [2019] 3 AfCLR 83 [38]

People's Rights v Kenya,³⁴ the Court held that for a matter to be heard, local remedies must have been pursued the matter through appropriate domestic proceedings.

3. HRF has not exhausted local remedies in the case 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.

[24]. The Respondent submits that there are cases where the Applicant did not exhaust local remedies. In the case of President Okello's overthrowing and subsequent detention, the High Court scheduled the hearing of this matter for 10 February 2025.³⁵ Yet, the applicant has abruptly brought the instant application.³⁶ In *Laurent Metongnon and Others v Benin*,³⁷ the Court established that 'exhaustion of local remedies implies not only that the Applicant utilizes local remedies, but also that the Applicant awaits the outcome thereof'. Therefore, the requirement to exhaust local remedies has not been dispensed.

[25]. In the case 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, the Applicant took the case to the High Court on behalf of the aggrieved community, seeking compensation for the Omia

³⁴ (2017) 2 AfCLR 9.

³⁵ n 26

³⁶ Facts, [19].

³⁷ [2022] Application No 031/2018 [51].

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 nor MD Ltd had violated the law, a decision that was upheld by the Court of Appeal on 1 May 2023.³⁸ The Supreme Court is the highest court in Rantania with the capability to hear appeals from the Court of Appeal.³⁹ The applicant did not appeal to the Supreme Court which is the apex court in Rantania.

[26]. Similarly in the case of the children, acts reveal that 'on behalf of the child laborers, the applicant approached a national trade union, WRA, for assistance; on 1 June 2023, WRA submitted a representation under article 24 of the ILO Constitution to the International Labour Office alleging Rantania's failure to ensure protection of children against human rights abuses by MD Ltd and after examining the representation and the government statement, the tripartite committee set up by ILO Governing Body made some recommendations, as indicated in its report of 24 December 2023.'⁴⁰ Facts reveal, 'the country's High Courts, located in each of the five Regions, have original jurisdiction over all matters, including all human rights matters (except for the constitutionality of national legislation), and the Court of Appeal is not a court of original jurisdiction but is competent to hear all appeals against High Court judgments.'⁴¹ The applicant did not explore the option of the High Court on behalf of the child workers.

³⁸ Facts, [8].

³⁹ Facts, [2].

⁴⁰ n 32

⁴¹ Facts, [2].

[27]. In *Josiah v Tanzania*,⁴² the Court held that an application is admissible if ordinary judicial remedies have been pursued to the apex court of the Respondent state. Therefore, local remedies have not been exhausted.

[28]. Accordingly, the application is admissible in respect of the case of Mr Ditan's arrest, conviction and sentencing for disseminating information likely to disturb public order but inadmissible 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.

II) SUBMISSIONS ON THE MERITS OF THE CASE.

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

[29]. The Respondent submits that withdrawal of its article 34(6) declaration is valid. The withdrawal does not violate the African Charter and other human rights instruments, and does not violate the rights of Rantanians.

[30] Rantania is aware of its obligation to protect the rights of its citizens as enshrined in the African Charter.⁴³ The Protocol requires that the Respondent have made the declaration under Article 34(6) for NGO'S like the Applicant to file an application before

⁴² [2019] 3 AfCLR 83 [38]

⁴³ African Charter, art 1

the Court.⁴⁴ 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.’⁴⁵ Withdrawing such a declaration means that natural persons and NGO’s cannot approach the Court directly.

[31]. Article 42(2) of the VCLT provides that the termination of a treaty can only take effect as a result of the application of the provisions of the treaty.⁴⁶ In the matter of **Mwita v Tanzania** the Court held that upon depositing an instrument withdrawing its declaration under Article 34 (6) of the Protocol with the African Union Commission, the withdrawal takes effect after 12 months.⁴⁷

[32]. Therefore, an avenue exists for a state party to withdraw its article 34(6) declaration with it taking effect after 12 months, this is what the Respondent exercised by withdrawing its declaration on 15th May 2024 and the same is therefore valid.⁴⁸

[33]. The Respondent further submits that there still exists an avenue to approach the Court through the Commission even if a state party has withdrawn its article 34(6)

⁴⁴ Protocol to the African Charter on Human and People’s Rights on the establishment of an African Court on Human and People’s Rights, art 34(6); *African Commission on Human and Peoples’ Rights v Libya* [51]

⁴⁵ African Court Protocol, art 34(6).

⁴⁶ The Vienna Convention on the Law of Treaties 1969

⁴⁷ *Mwita v Tanzania* (2020) 4 AfCLR 112 [3-5]

⁴⁸ Facts, [18].

declaration.⁴⁹ In *African Commission on Human and People's Rights v Kenya*⁵⁰ the Court held that 'unlike for individuals and NGOs, the Protocol does not require the Respondent to have made the declaration under Article 34(6) for the Commission to file Applications before the Court.'

[34]. Furthermore, Rantania is not only alive to the rights of its people, but also has relevant laws and systems to ensure they are protected.⁵¹ Therefore, there exists local remedies for alleged human rights violations and if dissatisfied the Commission can file a case before the Court for remedy even if the Article 34(6) declaration is withdrawn.

[35]. Therefore, Rantania's withdrawal of its Article 34(6) declaration is valid and neither does it violate the African Charter and other relevant human rights instruments nor does it undermine the vested rights of the Rantanians.

B. THE PROTECTION OF THE OMIA PEOPLE AND CHILD WORKERS.

[36]. The Respondent submits that it took necessary measures to protect the Omia People and child workers. 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.⁵² The Rantanian government granted

⁴⁹ Coalition for an Effective African Court on Human and People's Rights 'States Withdrawals From Article 34(6) of the African Protocol' (2020) 1 African Court Coalitions Discussions 1, 2 https://www.african-court.org/wpafc/wp-content/uploads/2020/11/ACC-Publication_Volume-1_2020_ENG.pdf> (9 JUNE 2024)

⁵⁰ (2017) 2 AfCLR 9 [60].

⁵¹ Facts, [3].

⁵² African Charter, art 14; *Ajavon v Benin* (2019) 3 AfCLR 130

concession for mining in a bid to improve the economy.⁵³ To cushion the effects the mining would have the Rantania government announced that a modern state-funded housing unit would be provided to each of the displaced families, in close proximity to government schools however, during a meeting called by community leaders, 300 of the community members rejected the offer of new settlements.⁵⁴ Compensation was also given as shown by the facts that ‘the Applicant 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 nor MD Ltd had violated the law, a decision that was upheld by the Court of Appeal on 1 May 2023.’⁵⁵

[37]. With regards to the rights of children, the Respondent submits that it took necessary measures to protect the children in Rantania. The standard of care with respect to children’s rights is basically a level of protection preventing detrimental acts on children.⁵⁶ 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.⁵⁷

⁵³ Facts, [6].

⁵⁴ n 48

⁵⁵ Facts, [8].

⁵⁶ AF Eriksen and EB Hansen *Human Rights in Child Protection: Implications for Professional Practise and* (Macmillan USA 2018) 8

⁵⁷ ACRWC, art 15(1) (2)

Facts reveal, ‘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 my MD Ltd.’⁵⁸

[38]. Furthermore, Rantania took necessary measures to ensure that children were protected as facts reveal the ‘Rantania Mining Board carried out investigations, but its report dismissed the allegations as unfounded.’⁵⁹ The Applicant also approached a national trade union, Workers’ Rights Advocates (WRA), for assistance, and on 1 June 2023, WRA submitted a representation under article 24 of the ILO Constitution to the International Labour Office alleging Rantania’s failure to ensure protection of children against human rights abuses by MD Ltd, and after examining the representation and the government statement, the tripartite committee set up by ILO Governing Body made some recommendations, as indicated in its report of 24 December 2023.⁶⁰

[39]. Consequently, Rantania has not violated the African Charter and other relevant human rights instruments as measures were taken to remedy, compensate, and ensure the Omia people and child workers from the work done by the MD Ltd.

C. OVERTHROWING AND SUBSEQUENT DETENTION OF PRESIDENT

O’KELLO

⁵⁸ Facts, [7].

⁵⁹ *ibid*

⁶⁰ *ibid*

[40]. Rantania did not violate the African charter and the other human rights instruments by overthrowing president O'kello [I] and subsequently detaining him [II]

I. OVERTHROWING PRESIDENT O'KELLO WAS JUSTIFIED.

[41]. The state of Rantania recognize military coup d'etat as one of the ways of accessing and maintaining power which constitute unconstitutional changes of government.⁶¹ It also acknowledges that every individual has a right to participate freely in the government of his country,⁶² either freely or through democratically elected representatives. A coup is a form of direct participation in the government. Reports from various successful coups shows that coups result from poor governance that makes a government lose its legitimacy in the eyes of the people.⁶³ Mr O'kello's regime is coupled by unlawful dismissal of workers such as the country's Chief of Defence staff, General Magui and Head of intelligence,⁶⁴ Over taxation which increases the cost of living leading to relocation of multinationals and loss of jobs.⁶⁵ The life of the citizens has become unbearable that the government has lost its legitimacy in the eyes of the people. There are several acts by the head of states or government that qualify as violations of the African Democracy Charter; Constitutional manipulations,

⁶¹ AU Charter on Democracy, Elections and Governance, art 23; AUCDEG, art 23;

⁶² African Charter, art 13;

⁶³ Faith Pepela *Coups; Direct democracy or threat to democracy?*

⁶⁴ Facts, [13]

⁶⁵ Facts, [11]

mismanagement, embezzlement, and corruption.⁶⁶ The president is alleged of Embezzlement and corruption,⁶⁷ he is violating the principle and the goal of the African Democracy Charter of promoting good governance and the rule of law. A coup is a threat to democracy and the rule of law where it is coupled with several human rights violations. The coup that took place in Rantania was very peaceful that no one was killed.⁶⁸ In addition, there are efforts to restore the civilian government and the constitutional order: the arrested politicians are released and a promise that the deposed president would be released upon completion of investigations is made by General Magui.⁶⁹ Therefore, the Respondent submits that overthrowing President Okello was justified.

II. DETENTION OF PRESIDENT O'KELLO WAS JUSTIFIED.

[42]. Rantania submits that the detention of President Okello was justified. Rantania acknowledges that every individual has a right to liberty and security.⁷⁰ This right encompasses the prohibition of arbitrary arrest and detention.⁷¹ An arrest and Detention of a person is said to be arbitrary when it cannot be justified by the law and the due

⁶⁶ AM Mangu *African Civil society and Promotion of the African charter on Democracy, Elections and Governance* by

⁶⁷ Facts,[17]

⁶⁸ Facts, [14]

⁶⁹ Facts, [17]

⁷⁰ African Charter, art 6.

⁷¹ *ibid*

process was not followed. The arrest of the president and subsequent detention was meant to protect him from a crowd of at least five thousand people who were protesting against his leadership.⁷² It is also clear that the detention was temporary as it was meant to last until the pending investigation was finalized.⁷³ Rights and fundamental freedoms of a person may be limited for collective security, morality and common interest.⁷⁴ Mr O'kello's right was limited for a legitimate aim, common interest. Had he not been arrested the aftermath of the protest would have been harrowing. Arrest and detention is only arbitrary where it is not prescribed by law, does not serve a legitimate purpose and is not necessary and proportionate.⁷⁵

**D. ACCESSING MR DITAN'S DATA AND CONVICTION FOR DISSEMINATING
INFORMATION LIKELY TO DISTURB PUBLIC ORDER**

[43]. The Respondent submits that it did not violate the African charter and other relevant human rights instruments as accessing Mr Ditan's data on the social media account was justified [I] Mr Ditan's rights were not violated during the arrest [II] and; Article 30 of the Rantania criminal Act does not limit the freedom of expression. [III]

**I) ACCESSING MR DITAN'S DATA FROM THE SOCIAL MEDIA
ACCOUNT WAS JUSTIFIED.**

⁷² Facts, [14]

⁷³ *ibid*

⁷⁴ n1, art 27(2)

⁷⁵ *Jawara v Gambia* [2000] AHRLR 107 [59]

[44]. Rantania submits that accessing Mr. Ditan's data from the social media account was justified. Rantania acknowledges that every individual has a right to privacy. It follows that every data subject has a right to be informed before their personal data is disclosed to third parties, and object on legitimate grounds.⁷⁶ These rights are however not absolute. Right to be informed before personal data is disclosed to third parties is based on purpose; marketing. Ditan's data was not disclosed for the aforementioned reason, it was disclosed for public order, safety and peace. Accessing Mr Ditan's data is driven by necessity. The aftermath of his actions is appalling; horrendous protest that leads to the death of twenty (20) civilians and thirty (30) were seriously injured.⁷⁷ Looking at the latter, what legitimate ground could he have adduced. Rantania recognizes the right to privacy and holds it so dearly to her heart but not to the extent of allowing deprivation of other's rights and freedom. In fact, it appears that this was the last option the state had in order to maintain public order and safety. The police cautiously tried to disperse the angry protesters by use of tear gas.⁷⁸ The situation was not manageable, five members of the police force were seriously injured and their van set on fire.⁷⁹ The state of Rantania prays that this court will find it not in violation of the said human rights instruments as it was driven by necessity.

II] MR DITAN'S RIGHTS WERE NOT VIOLATED DURING THE ARREST

⁷⁶ African Convention on Cybersecurity and Personal Data Protection, art 18; ACCPDP art 18.

⁷⁷ Facts, [16]

⁷⁸ Facts, [15]

⁷⁹ *ibid*

[45]. Rantania submits that Mr.Ditan's rights were not violated during the arrest. It is an offence to disseminate information likely to disturb public order.⁸⁰ The right of an arrested person to be heard entails; the right to an appeal, right to be presumed innocent, right to be defended by a counsel and the right to be tried within reasonable time.⁸¹ Rantania duly submit that none of these rights were violated. Mr Ditan is tried and convicted one month after the arrest, he appealed to the court of appeal and still lost. He is represented by a lawyer and he is presumed innocent.⁸² The only reason Mr Ditan cannot appeal to the Supreme court is because the constitution, which is the supreme law, dictates so.⁸³

III] ARTICLE 30 DOES NOT LIMIT THE FREEDOM OF EXPRESSION.

[46]. The Respondent submits that Article 30 of the Rantania Criminal Act does not limit the freedom of expression. Article 30 of the Rantania Criminal Act criminalizes dissemination of information likely to disturb public order.⁸⁴ The provision undoubtedly restricts certain expressions that may disturb public order. it is therefore justifiable, necessary, and proportionate to achieve public order. The restriction must be provided

⁸⁰ Rantanian Criminal Act (2010), art 30; RCA,

⁸¹ African Charter, art 7;

⁸² Facts, [17]

⁸³ Facts, [2]

⁸⁴ Facts, [15]

by law [i] it must serve a legitimate purpose [ii] and it must be necessary and proportionate to the legitimate aim sought [iii].⁸⁵

i] The restriction must be provided by law.

[47]. Freedom of Expression is one of the fundamental rights and freedoms protected under the charter.⁸⁶ This right is not absolute. Limitation must have a legal basis to prevent arbitrary encroachment by the government. The restriction has been provided by Article 30 in an elaborate and clear manner that people can foresee the consequences of the violations.

ii] The restriction must serve a legitimate purpose.

[48]. The African charter does not lay down a derogation clause.⁸⁷ It does not mean that limitations of rights and fundamental freedoms entrenched in the charter can be justified by mere emergency or special circumstance. Legitimate reasons for limiting any right or fundamental freedom are provided for by the law;⁸⁸ due regard to the rights of others, collective security, morality, and common interest. The restriction in Article 30 seeks to achieve public order in the country. This falls within the brackets of collective security and common interest, hence justified. Where the restriction is necessary, it

⁸⁵ *Lohe Issa Konate v Burkina Faso* (2014) 1 AFCLR 314

⁸⁶ African Charter, art 9;

⁸⁷ *ibid*

⁸⁸ African Charter, art 27(2)

should be as minimal as possible.⁸⁹ Imprisonment of utmost 5 years and a fine is the least restrictive measure for a crime that threatens national security and order.

iii] Restriction must be necessary and proportionate to the legitimate aim sought.

[49]. Mr Ditan's actions risked disturbing the public order and invoking violence, which happened. Imprisonment of up to Five years and a fine is the least restrictive measure for actions that threaten public order and safety. Looking at the aftermath of his actions, the law was quite lenient. His actions led to the death of 20 civilians and 30 were seriously injured, if anything, the Respondent opines that he should have been charged with murder.

⁸⁹ Amnesty International v Sudan (2000) AHRLR 107

CONCLUSIONS AND PRAYERS

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

- I** The Court has jurisdiction to hear this application but the matter is inadmissible due to the failure of HRF to exhaust local remedies in the cases of compensation for the Omia people and affected individual workers and on behalf of the child labourers, and the constitutionality of President O’Kello’s removal from office, arrest and detention.
- II** The withdrawal by Rantania of its article 34(6) declaration is valid, and does not violate the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians.
- III** Rantania did not violate the African Charter and other relevant human rights instruments of the Omia people and child workers.
- IV** Rantania has not violated the African Charter or any other human rights instrument by overthrowing president Okello as the citizens were exercising their participatory rights in the government. Subsequently detaining the president was justified as a measure to protect him
- V** Rantania has not violated the African charter or any other human rights instruments by Accessing Mr Ditan’s data on the social media, Arresting him and convicting him for disseminating information that disturbed public order as this was a measure to promote public order and the rule of law

Respectfully submitted,

COUNSEL FOR RANTANIA, THE RESPONDENT.