

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

IN THE MATTER BETWEEN

HUMAN RIGHTS FIRST

AND

THE STATE OF RANTANIA

MEMORIAL FOR THE RESPONDENT

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

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 Labour 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

WRA- Workers' Rights Advocates

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

1. *Umuhoza v. Rwanda* [2018] AfCHPR 73
2. *Umuhoza v Rwanda Application 3/2014 Ruling on Jurisdiction 3 June 2016*(ruling on jurisdiction)
3. *Michelot Yogombaye V Republic of Senegal*, Application No 001/2008
4. *Bernard Anbataayela Mornah v1. Republic of Benin, Burkina Faso, Republic of Côte d'Ivoire, Republic of Ghana, Republic of Mali, Republic of Malawi, United Republic of Tanzania, Republic of Tunisia, and Sahrawi Arab Democratic Republic, Republic of Mauritius (Interveners)*, Application No. 028/2018, Judgment, 22 September 2022
5. *Femi Falana V. The African Union*, Application No 001/2011

CASES OF THE AFRICAN COMMISSION

1. *Civil Liberties Organisation v Nigeria* (2000) AHRLR 188 (ACHPR 1995)
2. *Ceesay v The Gambia*, (2000) AHRLR 101 (ACHPR 1995)
3. *Association Que Choisir Benin v Benin* (2005) AHRLR 43 (ACHPR 2005).
4. *Prince v South Africa* (2004) AHRLR 105 (ACHPR 2004)

OTHER INTERNATIONAL JURISPRUDENCE

1. *Samaraka People V Suriname*, [2007] Inter-American Court of Human Rights

BOOKS AND ARTICLES

1. C Heyns and M Killander, 'Compendium of Key Human Rights Documents of the African Union', (2010) *Pretoria University Law Press, Fourth Edition*.

SUMMARY OF FACTS

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.

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.

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.

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.

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:

A. the African Court has jurisdiction to adjudicate the issues before it, in the context of Rantania's withdrawal of its declaration under Art 34(6) ACtHR Protocol.

B. the issues are admissible before the court pursuant to Article 56 of the African Charter.

II. Whether the withdrawal of its art 34(6) declaration is invalid and violates the African Charter and other relevant human rights instruments by undermining the vested rights of Rantanians.

III. 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.

IV. Whether Rantania violated the African Charter and other relevant human rights instruments by overthrowing and subsequently detaining President O'Kello

V. 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.

Preliminary Issues

2. The Respondent State submits that this Honourable court lacks jurisdiction to adjudicate this matter given that Rantania withdrew from its declaration under Art 34(6) of the ACtHR Protocol. Moreover, the Respondent State raises an objection to admissibility on the basis of non-compliance with Article 56 (5) of the Charter and Rule 40 (5) of the Rules.

Claim A

- I. 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. The retraction is an exercise of sovereignty and independence.

Claim B

- II. Rantania fulfilled its human rights obligations by providing sufficient compensation to the Omia people and insuring the children were protected according to international law.

Claim C

- III. Rantania's actions of overthrowing and detaining President O'Kello are justiciable, reasonable and consistent with international law.

Claim D

- IV. Accessing and deleting Mr. Ditan's data as, arresting him, convicting him and sentencing him for disseminating information likely to disturb public order is justiciable and consistent with the African Charter and other relevant human rights instruments.

JURISDICTION OF THE COURT

3. As established in Art 3(2) of the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights (hereinafter to be referred to as "the Protocol") and Rule 26(2), In the event of a dispute as to whether or not the Court has Jurisdiction, the court shall decide in accordance to Rule 39(1) and Rule 52(7) of the Rules by conducting a Preliminary examination of its Jurisdiction in accordance with the African Charter, the Protocol and the Rules.¹ On this basis, the Respondent State raises the following objections to the jurisdiction of the Court.

Objection to Personal Jurisdiction (*Ratione Personae*)

4. Article 5(3) of the Protocol provides that, "The Court may entitle relevant Non-Governmental Organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this protocol". Furthermore, Article 34(6) of the Protocol provides that "At the time of ratification of ratification of this Protocol or anytime thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5(3) of this Protocol. The court shall not receive any petition under article 5(3) involving a State Party which has not made such a declaration. This is reiterated in the case of *Michelot Yogombaye V Republic of Senegal* and *Femi Falana v African Union*² where the Court Stated that direct access to the Court by a Non-Governmental Organisation is subject to the deposit by the Respondent State of a declaration authorizing such a case to be brought before the Court.³

¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Article 3(2)

² *Femi Falana v The African Union*, Application No 001/2011, [61]

³ *Michelot Yogombaye v Republic of Senegal*, Application No 001/2008, [34]

5. The Applicant in this matter (Human Rights First) is an NGO with observer status in the African Commission on Human and Peoples Rights.⁴ Implying therefore that personal jurisdiction is contingent on a valid declaration by the Respondent State accepting the competence of the Court to hear matters from NGOs.⁵ The Respondent State withdrew from its declaration under Art 34(6) of the Protocol by presidential decree on 15 May 2024 and subsequently deposited a notice with the AU Legal Counsel in Addis Ababa on 17 May 2024.⁶ This was done prior to the submission of the Application by HRF on 22 May 2024.⁷ In the case of *Bernard V The Republic of Benin & Others* the Court noted, “International law is essentially product of the consensual undertaking of States and its consensual nature is the highest manifestation of the States sovereignty and independence.”⁸ In light of this, the Respondent avers that Rantania exercised its sovereignty and independence by withdrawing from its declaration under Article 34(6) prior to the submission by the Applicant. Therefore, the applicant in this matter lacks *Ratione Personae*.

⁴ Facts para 5.

⁵ Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, Article 34(6)

⁶ Facts para 18.

⁷ Facts para 19.

⁸ *Bernard Anbataayela Mornah v. Republic of Benin, Burkina Faso, Republic of Côte d’Ivoire, Republic of Ghana, Republic of Mali, Republic of Malawi, United Republic of Tanzania, Republic of Tunisia, and Sahrawi Arab Democratic Republic, Republic of Mauritius (Interveners)*, Application No. 028/2018, Judgment, 22 September 2022 [65]

ADMISSIBILITY

6. In terms of Article 6(2) of the Protocol, “the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.”⁹ Furthermore, Rule 50(2) of the Rules, which in substance restates the content of Article 56 of the Charter, provides the criteria for admissibility. On this basis, the Respondent State raises objections to the admissibility of the Application with regard to Rule 50(2)(e) of the Rules.¹⁰

The issue on overthrowing and detaining President O’Kello is still pending in local courts.

7. HRF did not wait for the set date of President O’Kello’s trial hence failing to comply with the local remedies rule provided for in Article 56 (5) of the Charter and Rule 40 (5) of the Rules.¹¹ In the case of *Ceesay v The Gambia* a local remedy was defined as any domestic legal action that may lead to the resolution of the complaint at national or local level.¹² The applicant could have presented this matter before the High Court of Rantania however they chose to approach the African Court before the matter was resolved locally.¹³ As held in the case of *Association Que Choisir Benin v Benin*¹⁴ case that is pending before national courts is regarded as inadmissible before an international court. The African Court has emphasized its role as a court of last resort in the cases *Tanganyika Law Society v. United Republic of Tanzania*¹⁵ and *Lohé Issa Konaté v. The Republic of Burkina Faso*.¹⁶ These cases stress that the African Court

⁹ Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, Article 6(2).

¹⁰ African Court on Human and Peoples’ Rights. (2020). Rules of Court. Rule 50 (Admissibility of Applications).

¹¹ African Charter, Article 56(5).

¹² *Ceesay v The Gambia*, (2000) AHRLR 101 (ACHPR 1995).

¹³ Facts para 17.

¹⁴ (2005) AHRLR 43 (ACHPR 2005).

¹⁵ *Tanganyika Law Society and The Legal and Human Rights Centre v. United Republic of Tanzania and Reverend Christopher R. Mtikila v. United Republic of Tanzania* (2013) AfCHPR 002/2013 (AfCHPR).

¹⁶ *Lohé Issa Konaté v. The Republic of Burkina Faso* (2014) AfCHPR 003/2014 (AfCHPR).

requires exhaustion of local before it can adjudicate matters, giving domestic legal systems the opportunity to settle grievances before international bodies intervene. The applicants failed to fulfil this requirement since the case on overthrowing and detaining President O'Kello is still pending in local courts still pending before the High Court and a determination has not yet been made.¹⁷

¹⁷ Facts para 17.

MERITS

CLAIM A: Rantania' s retraction of the article 34(6) declaration from the African Court Protocol is a valid expression of its state sovereignty and does not violate the African Charter or related human rights agreements.

Sovereignty and Withdrawal Rights

8. In the case of *Ingabire Victoire Umuhoza v. Republic of Rwanda*" the court held that "while the declaration pursuant to Article 34(6) emanates from the protocol which is subject to the law of treaties, the declaration itself is a unilateral act that is not subject to the law of treaties. Therefore, the Vienna Convention does not apply to the declaration under Article 34(6)" Furthermore, neither the Protocol nor the Charter contain provisions for denunciation of the Protocol or withdrawal under Article 34(6). Provisions relating to similar declarations under the International Court of justice¹⁸, the European Court of Human Rights¹⁹ and the Inter-American Court of Human Rights²⁰ point to these declarations being optional. The Respondent State therefore posits that the withdrawal represents an act of sovereignty since the declaration under the Protocol are optional.²¹ The Respondent State therefore only needs to issue a notice of withdrawal for it to be valid.

Legal Validity of Rantania's withdrawal

9. The withdrawal made by President Magui is binding internationally as he made it in his capacity as Rantania's head of State.²² This aligns with the principle of subsidiarity that states that a declaration must be made by an authorised official.²³

¹⁸ Article 36(2) of the Statute of the International Court of Justice.

¹⁹ Article 46 of the European Convention on Human Rights of 1950 and before entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring control machinery established thereby.

²⁰ Article 62(1) of the American Convention on Human Rights.

²¹ *Ingabire Victoire Umuhoza v. Republic of Rwanda*" (Application No. 003/2014) [54].

²² Facts para 14.

²³ Supra n11, principle 4.

International law recognizes that the Head of State can represent the State and their unilateral actions carry the weight of international commitments.²⁴ Rantania deposited the notice of withdrawal with the AU Legal Counsel thereby fulfilling the requirements for a valid withdrawal.²⁵

Non-Retroactivity and Impact on Vested Rights

10. The withdrawal does not have a retroactive effect on cases that were submitted prior to the withdrawal date. This ensures that the rights of individuals who have already brought cases before the African Court are not adversely affected, maintaining the integrity of the legal process and upholding the principle of legal certainty. The withdrawal does not undermine the vested rights of Rantanians as it does not affect their ability to access justice or seek remedies for human rights violations through other available mechanisms, both domestically and internationally. The state ensures that alternative legal avenues remain available and effective for the protection of human rights, in accordance with its obligations under the African Charter.

²⁴ Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Judgment of 3 February 2006, Jurisdiction of the Court and Admissibility of the Application, [46].

²⁵ Facts para18.

CLAIM B: Rantania is fulfilled its human rights obligations by providing sufficient compensation to the Omia people and ensured that the children are protected, in accordance with national and international laws.

State Responsibility and Private Actors

11. The State of Rantania recognizes the principle of due diligence under international law, which obligates it to prevent, investigate, punish, and provide remedies for human rights abuses within its territory. Rantania argues that it has fulfilled its due diligence obligations by providing compensation²⁶ in kind to the Omia people, thus addressing any potential adverse impacts caused by MD Ltd's operations.
12. The recognition and restoration of traditional lands to indigenous peoples, which were involuntarily lost, is essential for states to uphold considering the special relationship that indigenous communities have with their territories²⁷. This relationship is not only integral to their cultural identity but also vital for their survival as a community²⁸. Refusal to acknowledge and restore these lands must be justified by objective and reasonable grounds²⁹, as mere private possession by an individual or entity is not enough to excuse the expropriation of indigenous lands.
13. In the case at hand, the expropriation of land was deemed necessary for development. The expansion of mining activities by MD³⁰ Ltd falls within the ambit of a public purpose, as it will potentially contribute to the economic development of the country. The affected victims were not left to suffer after their land was encroached. They were

²⁶ Facts para 8.

²⁷ UNDRIP; ILO-169-Indigenous&TribalePeoples;CESCR-GC26;IACtHR SawhoyamayaCommunity[127-130];IACtHR Mayagna(Sumo)Community[151];IACtHRMoiwanaCommunity[134];ACommHPR EndoroisWelfareCouncil[209];ACtHPR-OgiekReparations[107-108].

²⁸ UNDRIP ;ILO-169-Indigenous&TribalePeoples;CESCR-GC26;IACtHRYakyeAxaCommunity;ACommHPR-EndoroisWelfareCouncil.

²⁹ Samaraka People V Suriname, [2007] Inter-American Court of Human Rights.

³⁰ Facts para 6.

provided with modern housing units with access to schools³¹ and other facilities to cater for their survival.

14. The respondent therefore notes that it was necessary to use the land of the Omia people for mining as it would positively impact on the economic system and they were fairly compensated for this which is what is provided for by international law.

Adequacy of Compensation

15. The compensation provided was in the form of modern state-funded housing units and access to government schools³², which demonstrates Rantania's commitment to ensuring the welfare of the Omia people post-displacement. The respondent asserts that this compensation aligns with the African Charter's provisions on property rights and the right to development, as it ensures the Omia people's access to adequate living standards and education.

Engagement with International Obligations

16. Rantania's actions are consistent with the African Charter on Human and Peoples' Right and other international treaties it has ratified. The state has undertaken reforms to attract foreign direct investment in the mining sector, which is crucial for its economic development, while also striving to uphold human rights standards. The State of Rantania has not violated the African Charter or its international obligations. It has acted within the bounds of national and international law by providing compensation to the Omia people and by not being directly involved in the alleged human rights violations by MD Ltd. The state's actions demonstrate a balance between promoting economic development and protecting human rights.

³¹ Facts para 6.

³² Ibid.

Protection of rights of children

17. States must advance the best interests of the child and protect their rights³³. Because children are vulnerable it is incumbent upon the respondent to ensure that the best interest is prioritized. Rantania ensured that the rights of the children of the Omia tribe were protected. The RMB carried out investigations into allegations of child labour in mining³⁴. The reports by the mining board dismissed these allegations because they were unfounded. ³⁵A thorough research was conducted and there was no evidence to substantiate the claims made by the Confidential. By conducting this investigation and responding to violations of human rights, the respondent upheld its duty under international law to investigate violations of human rights including the rights of children. If the mining board had found evidence of child labour or any other violations of the right of children the respondent would have taken measures that would have effectively contributed to the physical, psychological and emotional well-being of the children. The respondent would have also addressed these violations and taken appropriate measures to hold those responsible accountable for their actions.
18. The respondent recognizes that it has a duty to investigate into human rights violations and ensure that mining activities are conducted in accordance to the law. The findings of the investigations may have determined that the allegations were unfounded, but this showed a commitment to upholding our mandate and protecting the rights of children.

³³ Convention on the Rights of the Child, art 3.

³⁴ Facts para 7.

³⁵ Ibid.

CLAIM C: The detention of President O’Kello is in compliance with national and international law as it was necessary action for preserving public order and national security during ongoing corruption and embezzlement investigations.

International Law Considerations

19. While Rantania is a signatory to various international human rights treaties, the state maintains the right to take necessary actions within its domestic legal framework, especially when it concerns high-ranking officials and matters of state integrity. The state would argue that its actions are not in violation of the African Charter or other relevant human rights instruments, as they are taken in the interest of justice and public welfare.

20. President O’Kello was involved in corruption and embezzlement³⁶ therefore overthrowing him was necessary to uphold core values and principles of democracy. It is clear that he not only abused his power and authority for personal gain but also betrayed public trust. This betrayal of the public trust undermines the democratic principles on which the government is built thereby eroding the legitimacy of President O’Kello.

21. Rantania already had a national debt it was recovering from³⁷. President O’Kello had promised the people that the increase in taxes was a bid to improve the economic situation of the country³⁸ yet this is not what was happening. Money intended to fund government projects to better the economy was used for his personal gain instead. Overthrowing him was a necessary means to remove the corrupt president from office and restore accountability, transparency and legitimacy of the government and to the citizens.

³⁶ Facts para 17.

³⁷ Facts para 11.

³⁸ Ibid.

22. The respondent would therefore conclude that the detention of President O’Kello is a lawful act carried out in accordance with Rantanian law and international legal obligations, aimed at upholding the rule of law and safeguarding the nation’s interests. The actions are deemed necessary and proportionate to the seriousness of the allegations and the potential risks to national security and public order.

Right to liberty

23. Rantania's decision to limit President O’Kello's right to liberty was justified as it falls within the parameters set by international law and agreements. The right to liberty is not absolute³⁹ and may be restricted by a state in accordance with the law, and preventive detention is recognized as a legitimate form of state control over individuals within its jurisdiction⁴⁰.

24. Preventive detention, as defined by the International Commission of Jurists, involves the deprivation of a person's liberty by order of the Head of State or other executive authority for the purpose of safeguarding national security or public order⁴¹. It is not a punitive measure⁴² but rather a precautionary one aimed at preventing harm before it occurs⁴³. This type of detention is considered necessary in cases where an individual poses a clear and serious threat to society that cannot be contained by other means.

25. The Human Rights Committee has acknowledged the existence of preventive detention in certain circumstances, recognizing that it may be necessary to protect the

³⁹ ICCPR, Article 4(2).

⁴⁰ 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.

⁴¹ International Commission of Jurist. States of Emergency: Their Impact on Human Rights (1983), 304.

⁴² Union of India v Paul Nankan & Another (2003) INSC 516.

⁴³ R v Halliday (1917) AC 216.

safety and well-being of the public⁴⁴. In such cases, administrative detention may be justifiable even if it involves holding an individual without charge or trial⁴⁵.

26. It is the respondent's contention that detaining President O'Kello was justified pursuant to the principle of preventive detention. Mr O'Kello is guilty of corruption and embezzlement⁴⁶. Because of this it was necessary to detain him before trial to prevent him from using his position of power to avoid accountability for his action so justice would prevail. This is also necessary to uphold the rule of law and to ensure that individuals in power are held accountable for their actions.

⁴⁴ International Covenant on Civil and Political Rights General Comment No. 8: Article 9, Adopted at the Sixteenth Session of the Human Rights Committee on 30 June 1982.

⁴⁵ Clair Macken, 'Preventive Detention and the Right to Liberty and Security under the International Covenant on Civil and Political Rights', 1966 (2005) Adelaide Law Review 1,3.

⁴⁶ Facts para 11.

CLAIM D: Mr. Ditan's conviction for spreading information that could disrupt public order as lawful is consistent with national and international law as trial was fair, adhered to the Rantanian Criminal Act, and respected his rights throughout the process.

Limitation to the right to privacy that protects personal data

27. The right to privacy that protects personal data is not absolute. This is supported by the Malabo Convention⁴⁷ and the International Convention on Civil and Political Rights⁴⁸ which state that interference to the right to privacy must not be arbitrary and unlawful. Implying therefore that lawful and non-arbitrary restrictions may be permissible.⁴⁹ Though not on data privacy, the case of sets the *Prince v. South Africa* (2004) criteria of necessity, legitimacy and proportionality for the limitation of the right in question.⁵⁰ The Respondent State submits that its actions in regard to Mr. Ditan's conviction were lawful, necessary to achieve a legitimate aim and proportionate. Hence, Rantania's actions are justiciable and reasonable.

Lawfulness of the Rantania ordering the identity of Mr. Ditan to be revealed

28. The African Charter recognises people's rights to national and international peace and security.⁵¹ Furthermore Rantania's domestic legislation under article 30 of the Rantanian Criminal Act criminalizes the dissemination of information likely to disturb public order.⁵² The information disseminated by Mr Ditan via the social media platform, *The Truth* led to a protest characterized by abstraction of traffic and destruction of property.⁵³ Drawing on Article 19(3) of the ICCPR and the jurisprudence of the African

⁴⁷ African Union Convention on Cyber Security and Data Protection, Article 11.

⁴⁸ ICCPR, Article 17.

⁴⁹ International Convention on Civil and Political Rights, Article 17.

⁵⁰ *Prince v South Africa* (2004) AHRLR 105 (ACHPR 2004).

⁵¹ African Charter, Article 23(1).

⁵² Facts para 15.

⁵³ Facts para 14 & 15.

Commission on Human and Peoples' Rights, as well as other international and regional human rights bodies, the Court held that the phrase 'within the law' in Article 1(2) of the Charter allows for restrictions on freedom of expression, provided that such restrictions are legally prescribed, pursue a legitimate aim, and are necessary and proportionate in a democratic society. Given that the information incited a violent protest and contravened with the Rantanian Criminal Law Act identifying Mr Ditan was both reasonable and justiciable under national and international law standards.⁵⁴

29. The right to freedom of expression is a fundamental aspect of individual self-development within a democratic society, but it is not an absolute right without limitations. In the case of *Lohe Issa Konate v Burkina Faso*, the Court emphasized that restrictions on freedom of expression may be justified under certain circumstances. Drawing on Article 19(3) of the ICCPR and the jurisprudence of the African Commission on Human and Peoples' Rights, as well as other international and regional human rights bodies, the Court held that the phrase 'within the law' in Article 1(2) of the Charter allows for restrictions on freedom of expression, provided that such restrictions are legally prescribed, pursue a legitimate aim, and are necessary and proportionate in a democratic society.

⁵⁴ International Convention on Civil and Political Rights, Article 19(3).

PRAYERS

30. For the forgoing reasons, the Respondent State requests this honourable court to adjudge and declare that:

- I. The Court does not have jurisdiction to determine this matter and that the case is not admissible before the Court hence dismiss the case;
- II. Rantania's retraction of the article 34(6) declaration from the African Court Protocol is a valid expression of its state sovereignty and does not violate the African Charter or related human rights agreements.
- III. Rantania fulfilled its human rights obligations by providing sufficient compensation to the Omia people and ensured that the children are protected, in accordance with national and international laws.
- IV. The detention of President O'Kello is complies with national and international law as it was necessary action for preserving public order and national security during ongoing corruption and embezzlement investigations.
- V. Mr. Ditan's conviction for spreading information that could disrupt public order as lawful is consistent with national and international law as trial was fair, adhered to the Rantanian Criminal Act, and respected his rights throughout the process.

Respectfully submitted,

Counsel for the Respondent.