

## Hypothetical case for the 2014 World Human Rights Moot Court Competition

1. Kopjestan is a mountainous country with a population of about 12 million people and is situated in the west of the Neosho continent. It shares a border with Lundris in the east, Wastak in the north and the Republic of South Downs in the south. Before 1965, these four countries were part of a federation known as Marukazstan. The federal government was in Lundris. After an intense civil war that started in the 1950s, Marukazstan was dissolved in 1965, and the four countries became independent.
2. Kopjestan is a constitutional republic based on the dictates of Kopjestan culture. Kopjestan has two major ethnic groups: the Wasu dominating the northern part of the country, and Suwa in the southern part. The culture and traditions of these two ethnic groups are to a large extent similar, as both are influenced by Kopjestan religion. Kopjestanians worship Yolona, the god of Clouds and their religion is called Yolonism. The country's official language is Kopjekat which is spoken by approximately 95% of the Kopjestan population.
3. Kopjestan has the third largest GDP per capita and sixth largest nominal GDP on the Neosho continent. From 1990 to 2000, Kopjestan's GDP annual growth rate averaged 7.9%, which made it one of the fastest growing economies on the Neosho continent. However, growth slowed to 2% when the Kopjestan's economy was affected by a civil war that started in 2008. During 2011 to 2013, lack of fiscal reforms and widespread corruption resulted in an unprecedented high inflation of 87%. Since the start of 2014, Kopjestan's economy has been recovering owing to some investment policies instituted by the Kopjestan Minister of Development.
4. Kopjestan's Constitution provides the basic legal framework of the country. It sets out the main principles of governance, which are heavily influenced by Kopjestan culture. Men in Kopjestan enjoy power over women. They control the country's means of production and they are responsible for making all important decisions. Since 2003, there have been intensive debates among Kopjestanians on Kopjestan

culture and what it entails. Some of the debates are shown on national television. On 14 December 2013, there was a debate between Professor Murry Kunyepar and Professor Hazvinur Bassah – both of whom are well published – on what Kopjesta culture says in relation to the position of women in society. Professor Murry argued that in general Kopjesta culture elevates men as the leaders of mankind and demands women to submit to men and respect them at all times. In noting the importance of culture, Professor Murry made reference to Section 27 of the Kopjesta Constitution which provides as follows:

*State obligation*

Culture and tradition is the core of Kopjesta society. The state shall aspire to strengthen and maintain cultural values. The state shall ensure a unified educational curricula based on the tenets of national culture and existing Kopjesta traditions that teaches the younger generation to become useful members in the building of their society, members who love their country and are proud of Kopjesta history.

*Citizen obligation*

Everyone shall observe the values of Kopjesta society and respect its traditions and culture. It is the duty of every citizen to value and preserve the rich heritage of our culture, promote harmony and the spirit of common brotherhood amongst all the people of Kopjesta.

On the other hand, Professor Hazvinur gave various examples of inconsistencies and distortions on Kopjesta culture arguing that if correctly understood and applied, Kopjesta culture and tradition is based on fairness and demands equal treatment of every human being.

5. The President of Kopjesta is directly elected for a seven year term. Since 2005, universal suffrage for both sexes has been applied throughout Kopjesta for all citizens who have reached 18 years of age. Before then, only men were allowed to vote. In the 2006 presidential **and parliamentary** election, out of the 90 parliamentary seats, 28 were won by women candidates. Since 1965, Kopjesta has been under the rule of Jack Praiser. Jack Praiser came to power when he was in his early thirties. After winning the 2006 presidential election, Jack Praiser appointed Catherine Pendo as the Vice-President. As a woman, Catherine Pendo has been advocating for the rights of women in Kopjesta.

6. The Bill of Rights in the Kopjesta Constitution contains civil and political rights. Socio-economic rights are also provided for, subject to progressive realisation. Rights in the Kopjesta Constitution mirror those in the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. The Kopjesta Constitution provides for the independence of the judiciary and a Kopjesta Constitutional Court, which adjudicates on **all human rights issues lodged before it by a Kopjesta citizen(s) or human rights organisations registered in Kopjesta**. Out of 75 judges in Kopjesta, 14 are women.
7. Kopjesta's Constitution also provides for a Kopjesta Council of the Wise, a tribunal that deals exclusively with administrative cases which are disputes concerning the exercise of public power by state officials. The Council of the Wise stems from old Kopjesta royal traditions. When Kopjesta kings were confronted with difficult situations, they would consult a group of ten men considered to be the fountain of wisdom. Even after the formal recognition of the Council of the Wise in 1987, only men may serve on it. For a decision of the Council of the Wise to be binding, it must be passed unanimously. The Kopjesta High Court of Appeals may be approached if one is aggrieved with a ruling of the Council of the Wise. In 2013, the Kopjesta High Court overturned 29 decisions made by the Council of the Wise. The majority of the cases were related to women's rights. If an application is filed as an urgent application, it can be heard within a week by the Kopjesta High Court. The Court, however, determines whether an application qualifies as an urgent application.
8. There is a high level of militarism in Kopjesta. All men aged 25 and above are obliged to serve in the army for a period of one month per year. The Armed Force of Kopjesta (AFK) – consisting of the army, navy and air force – is the largest standing military force on the Neosho continent, to which almost a third of the country's total budget is allocated.

9. Kopjestan joined the United Nations in 1966 and the Neosho Union in 1970. It is also a member of Western Neosho Economies (WNE). In a quest to promote human rights on the continent, the Heads of States of the Neosho Union adopted the Neosho Convention on Human Rights (Neosho Convention) in 1978, which provides in Article 22 for the establishment of the Neosho Human Rights Commission (Neosho Commission). Rights in the Neosho Convention mirror those in the American Convention on Human Rights. Article 3 of the Neosho Convention is a replica of Article 6 of the International Covenant on Civil and Political Rights. Later, in 1983, the Heads of States negotiated a Protocol to the Neosho Convention on the establishment of the Neosho Human Rights Court (Neosho Court). In part, the Neosho Protocol provides as follows:

*Article 3 – Jurisdiction*

The jurisdiction of the Neosho Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of Neosho Convention and any other relevant Human Rights instrument ratified by the State parties. In the event of a dispute as to whether the Neosho Court has jurisdiction, the Court shall decide.

*Article 5 – Locus standi*

The Neosho Court may receive applications from any person, group of individuals, or non-governmental organisation claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Neosho Convention or any other relevant human rights instrument ratified by the State concerned.

*Article 7 – Admissibility of cases*

The Neosho Court may only accept an application where domestic remedies have been exhausted in line with the rules of international law, the application is submitted within a reasonable time after exhaustion of local remedies and the applicant has not been or is not being heard by another competent international court.

10. Kopjestan ratified the 1978 Neosho Convention on Human Rights (ratified in 1981); the 1990 Neosho Convention on Refugees, which resembles the 1974 Organisation of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (ratified in 1993); and the Neosho Protocol accepting the jurisdiction of the court (ratified in 1985). In 1993, Kopjestan hosted the negotiation of the Convention

for the Protection and Assistance of Internally Displaced Persons in Neosho (CPAIDPN) which came into force in 1996 (ratified in 1997). CPAIDPN is similar in content to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

**11.** Kopjesta also ratified the following international human rights instruments: the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified in 2005); the 1966 International Covenant on Civil and Political Rights (ICCPR) (ratified in 1970); the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratified in 1970); the 1951 Convention relating to the Status of Refugees (ratified in 1973) and the 1967 Protocol to the Convention relating to the Status of Refugees (ratified in 1977); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ratified in 1994).

**12.** When ratifying CEDAW, Kopjesta entered reservations as follows:

*In general*

In case of contradiction between any term of the Convention and underlying Kopjesta culture, Kopjesta is not under an obligation to observe the contradictory terms of the Convention.

*In particular*

i. The State of Kopjesta hereby expresses its reservation with regard to article 7(b) and (c) of the Convention to the extent they are inconsistent with Kopjesta culture. If not, the provisions are fully implemented in Kopjesta.

ii. The state of Kopjesta does not consider itself bound by article 9(2) and article 29 (1) of the Convention.

**13.** Notwithstanding ratification of CEDAW in 2005 and amendment of Section 9 of the Kopjesta Constitution which provides for equal treatment, men and women still do not have equal status in Kopjesta as Kopjesta women are subordinate to men. Although it is not prescribed by law, in many parts of Kopjesta, women still seek the written consent of their husbands to enter important transactions. In a television

program called 'Legal Talk' broadcasted on Kopjesta National Television (KNT), a Kopjesta woman, Vacadzee Dzicamayi, had this to say when asked why she had to get a written consent from her husband to get a bank loan when the law does not require this: 'It is not about the law, it is about Kopjesta culture and many of us we don't want to go against it, well, some women respect it out of fear. The Kopjesta family structure is generally hierarchical with the husband as the head of the family. We are used to that, it is our society. So the inequality is culturally determined, as a woman I know for example, that tradition requires me to be the last person to eat when food is served. I know your law says I am free to wear trousers but I am also aware of the price I have to pay – not only to men – but to my fellow women.' A national survey done by a local non-governmental organisation in 2012 revealed that about 85% of women who applied for bank loans without their husbands' written consent were turned down for reasons that were not treated as important in cases where women supported their applications with their husbands' written consent.

- 14.** Human rights in Kopjesta have been the subject of controversy and international condemnation. Between 1987 and 2013, the Neosho Court of Human Rights decided more than 563 judgments against Kopjesta in respect of human rights violations, particularly regarding the right to life, right to equality and right to non-discrimination.
- 15.** Since the early 1990s, the Kopjesta government has been faced with a number of demonstrations. In response, it promulgated the 1997 Kopjesta Public Order and Good Behaviour Act, which provides in Section 3 that any persons intending to hold a public meeting or demonstration must give three weeks' notice to local police. According to Section 4 of the Act, marching or protesting on the Revolutionary Square is prohibited. The Revolutionary Square used to be an open space where the first government of Kopjesta was inaugurated in 1966. It is situated near the Kopjesta State House. During the civil war that resulted in the dissolution of the Marukazstan Federation in 1965, the Revolutionary Square was the centre for Kopjesta politics. In Kopjesta, it is thus well-known not only as a place where the first government of Kopjesta was inaugurated, but as a symbol of the Kopjesta's

struggle for independence. In the late 1970s, Jack Praiser's government built the Kopjestan Court of Liberty and a museum at the Revolutionary Square. On the walls of the Court of Liberty are collections of drawn, painted, engraved and sculpted pictures showing events or characters of Kopjestan history as back as the Marukazstan Federation era. The Court of Liberty is used for many political functions such as meetings of parliamentarians. Since 1989, the Neosho Heads of States meet in the Court of Liberty for their annual sessions. It was also in the Court of Liberty that an important provision of the Kopjestan Constitution on the right to equality was tabled, discussed and amended. A year after ratifying CEDAW, the Kopjestan Parliamentarians met in the Kopjestan Court of Liberty and amended Section 9 of the Kopjestan Constitution, which now reads as follows:

*Section 9 – Right to non-discrimination*

- a) Everyone has a right to equal protection of the law. No one shall be discriminated on the grounds of race, ethnicity, gender, nationality, sex, political affiliation or any other status.
- b) The state shall always be governed by dictates of justice, consultation, and equality. To that end it shall take steps to ensure full participation of women in all spheres of national life and renounce practices that are derogatory to the dignity of women.

The museum at the Revolutionary Square serves as a tourist attraction as it houses various valuable Kopjestan cultural artefacts. The museum has paintings dating back to the 18th century. It also exhibits paintings and statues portraying battles since the 18th century in which Kopjestan armies had won important victories. One of the aims of the Kopjestan Public Order and Good Behaviour Act is, according to its Preamble, to protect many of the historical valuables situated at and housed in the Revolutionary Square buildings and to preserve its history.

- 16.** The Kopjestan Police Act governs the use of force by law enforcement officials in Kopjestan and provides as follows:

*Section 5 - Scope of application*

This Act shall apply to all law enforcement officials. Law Enforcement Official means any officer, agent, or employee of the State, unit of local government authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of

criminal law, or authorized by law to supervise sentenced criminal offenders. Such officers include police officers, judicial officers, prosecutorial officers and State patrol officers. The following categories are generally considered outside the scope of the Act and are ineligible: Private correctional officers, private police officers, private college and university police officers, emergency medical personnel, and fire and rescue personnel.

*Section 2 – Use of force by law enforcement officials*

Where non-violent means are ineffective to secure a lawful arrest, foil escape from lawful custody or achieve any lawful end, law enforcement officials may use all reasonable means necessary which includes killing in cases of extreme necessity. In cases where persons involved in an unlawful assembly refuse to take heed of verbal warnings to disperse, law enforcement officials may proceed to use force which may include lethal force. Any law enforcement official who, in good faith, causes injury or death in the course of executing their lawful duties shall be exempted from liability.

- 17.** The Wasu population in Kopjestan has for a long time felt discriminated against and has contended that most of the government's policies are skewed towards favouring the Suwa population in the south. In 1984, having failed to secure influential public office, Wasu men started organising meetings in which they would discuss the politics of Kopjestan. The meetings were subsequently banned by Jack Praiser's government.
- 18.** In 1985, Mauka Daudi – a respected Wasu man popularly known as 'Balad' meaning 'The Father' for his leadership skills – founded a political organisation known as the Wasu Movement for Democracy (WMD). Although the inequality and class distinction in Kopjestan made WMD very popular, it did not secure positions in the government. Supporters of Balad – known as Baladists – proposed power rotation between the Suwa in the south and the Wasu in the north while some extreme Wasuits proposed a complete break away from the south, to form a new state of Northern Kopjestan.
- 19.** In early 2006, after losing presidential elections for the third time, WMD started arming local Wasu men. By late 2008, WMD had a full-fledged armed wing and in December of the same year armed hostilities broke out between government forces

and WMD's military wing. WMD justified its resort to armed violence by referring to what it termed 'the excesses of Suwa dominance and oppression.'

**20.** Some extreme Suwa men joined the conflict fighting on the side of the government forces. In the early days, fighting occurred mainly in the mountains of Kopjestan, but, as the conflict intensified, it began to occur in villages and towns placing many civilians in harm's way. Government forces, police, members of the WMD military wing and Suwa men who had joined the conflict went to the homes of perceived enemies and harassed wives and children asking them about the whereabouts of their husbands or fathers. Violence against women – including rape – became rampant. Many women subsequently pleaded with their husbands not to join a conflict which was causing such victimisation of women. Their pleas were generally either ignored or other men – frustrated by the conflict – decided to vent their anger against their wives or women in general. As the conflict grew more gruesome, many civilians were displaced. Kopjestan built 23 Internally Displaced Persons (IDPs) camps to accommodate civilians who were left homeless.

**21.** Left with nowhere else to turn, most women in Kopjestan gathered in different places of worship where they discussed their woes. Some men in the Kopjestan government stated that women should learn to live by Kopjestan culture and stop arguing with their men. Many Kopjestan women, however, continued discussing the situation of women, seeking some solutions to the violence they were experiencing every day. After some difficulties, they managed to establish an organisation known as Women Against Violence (WAV), which was subsequently registered as a non-governmental organisation in 2009. Notwithstanding the challenges faced by women, WAV campaigned for peace and was instrumental in lobbying for the cessation of hostilities in Kopjestan.

**22.** With the intervention of many international organisations, a peace agreement was negotiated in 2010 between Jack Praiser's government and Balad's WMD. During these negotiations, WAV attempted to participate in the process but was side-lined

and ignored as men who were leading the negotiations considered it culturally inappropriate to involve women in such discussions. One member of the Council of the Wise who was leading the negotiations was quoted in a local newspaper saying: 'Our ancestors have said it before, where a woman rules, streams run uphill. Many things have gone wrong since 2006 when we started allowing women in power. It is time to get the house in order'.

**23.** WAV wrote a petition directed both to WMD and Jack Praiser's government. It argued that WAV has a right to participate in the peace negotiations because of its undisputed role in promoting peace in Kopjistan. It also noted the right of women in general to participate in the political activities of their country. Jack Praiser's government responded noting that the peace negotiations were between the two parties to the conflict, namely the WMD and the government.

**24.** WAV approached Kopjistan's Constitutional Court over the matter but was referred to the Council of the Wise as the judges found that it was an issue relating to 'administration.' Although the Council of the Wise had previously ruled in favour of disadvantaged groups and communities in Kopjistan, the leadership of WAV decided not to approach it as they anticipated that they would receive an unfavourable judgement since some of the men who had decided to exclude women from the peace negotiations were also members of the Council of the Wise.

**25.** During the negotiations for peace, an agreement was reached that there should be a unity government while the country prepared for free and fair elections to be held in three years. Countries that had imposed economic sanctions on Kopjistan subsequently lifted them hoping for the success of the unity government. Although Jack Praiser and Ballard agreed to share equal power in the governance of Kopjistan, many political analysts argued that Ballard was subordinated by Jack Praiser for the whole of the unity government's duration.

**26.** Communities affected by violence started petitioning for the prosecution of those who were responsible for gross international human rights and humanitarian law violations during and after the armed conflict. They also argued that such persons should neither occupy public office nor stand for elections in 2013. With the help of some renowned international organisations working for transitional justice, the government prioritised peace and rebuilding the country. The Kopjestan Truth and Reconciliation Commission (KTRC), with the primary aim of reconciling the population, was established. As part of their mandate, the commissioners in KTRC, who are all men, urged the people of Kopjestan to forgive one another and prioritise peace.

**27.** Ms Christina Beehive, a human rights advocate, has been leading a group of demonstrators. Since 2011, these demonstrators have been going to different government offices where they chant 'we want justice' throughout the day. Their complaint is that there have not been adequate investigations and prosecutions for gender based crimes. The demonstrators have become so well known in Kopjestan that they are now referred to as the 'We Want Justice' group (WWJ). In October 2011, WWJ was subsequently registered as a non-governmental organisation under the Kopjestan Civil Societies Act. After its registration, WWJ opened a Victim's Desk where victims of gender based violence were encouraged to come and report. The majority of women who were victimised during the armed conflict came forward and described their ordeals to WWJ. They even indicated the names of the perpetrators. By the end of November 2011, about 260 incidents of violence against women had been documented at the WWJ Victim's Desk. WWJ presented a petition to the Kopjestan government requiring investigation of the recorded incidents. The Deputy Minister of Police wrote to WWJ directing the NGO to leave police work to the Kopjestan Police. In part, his letter read: 'We note with concern that for the past months your Victim's Desk has turned into a Police Charge Office, going well beyond your mandate in terms of the Kopjestan Civil Societies Act. Police work is for Kopjestan Police force. Any matters relating to the breaking of the law and investigation thereof must be reported to the police. Your interference compromises our work. We therefore require you to direct all criminal matters to the police and

stop taking statements from witnesses. Attached to this letter is the Minister of Police's Directive requiring you to close the Victim's Desk and direct all matters to the police.'

28. WWJ subsequently handed its files with recorded incidents and statements of victims of violence to the Police. A Commissioner to whom the file was handed indicated that most of the statements were compromised since witnesses were not cautioned that **their statements may be given in evidence in a court of law**. On 10 December 2011, Jack Praiser stated on national television as follows: 'Do not get me wrong, we believe in the rule of law, but criminal prosecution of individuals is not the priority of Kopjistan right now. Rather, let us focus on establishing peace and rebuilding the country in terms of KTRC.' WWJ continued to protest what it perceived as the deliberate non-prosecution of men who victimised women. Notwithstanding the President's utterances, on 3 November 2011, an attempt was made by the Director of Public Prosecution to charge Balad with crimes against humanity and war crimes. However, the charges were subsequently dropped within a week of their initiation as Balad and Wasuits threatened 'to go back to mountains.'

29. In July 2012, WWJ filed an application in the Kopjistan Constitutional Court seeking an order that the government was required to respect its international obligations by conducting a transparent investigation and prosecution of those responsible for the gross violations of human rights. The application cites 17 incidents where the government has been approached by way of petitions to investigate cases of violence against women. In all the cases, the government has indicated that prosecution at the moment will jeopardise important transitional justice processes like peace building. The government argues that it needs to rebuild justice structures that will allow proper administration of justice. In November 2012, the Kopjistan Constitutional Court ruled that although the WWJ's case had merit, the government's decision not to prosecute was largely administrative and might be reasonable and the best institution to deal with such matters was the Council of the Wise. WWJ's lawyers have not been paid for services rendered and are yet to file an

application with the Council of the Wise. Between the year 2011 and 2013, Jack Praiser's government concentrated on peace building and rebuilding the country.

**30.** Periodically, Jack Praiser went around Kopjestan campaigning in preparation for the 2013 election. Government officials visited Kopjestan's Hozastan province which is situated in the north of the country. Jack Praiser himself visited internally displaced persons' (IDPs) camps in Hozastan like the Mhofustan Camp where the majority occupants are Wasu. Many issues need urgent attention in these camps, especially health and sanitation issues which are in a bad state. **IDPs complain that they do not have adequate access to clean water which has resulted in many falling sick. There is also no adequate provision of medical care and food shortage is rampant.** About 300 000 people have been living in IDP camps for almost three years. Women and children constitute about 85% of IDPs living in these camps.

**31.** Meanwhile, in 2012, an armed conflict broke out in the neighbouring country of Wastak which has been under the rule of Sean Timba since its independence in 1965. Sean Timba is a good friend of Jack Praiser. Local newspapers in Kopjestan have occasionally published photographs of the two on fishing trips. The conflict in Wastak was largely influenced by the uprising in Kopjestan as marginalised groups in Wastak claimed that they were fighting for the same justice and equal treatment sought by the Wasu people in Kopjestan. The indiscriminate nature of the conflict in Wastak caused an influx of Wastakians in the seemingly stable but volatile Kopjestan. Although it is not government policy, many of the Wastakians have been allowed to join IDPs in the Mhofustan Camp as it is the only place where they can find shelter. Since the arrival of thousands of Wastakians in Mhofustan, the situation has gone from bad to worse as the government maintains the quantity of food and medical supplies provided to these camps at pre-2012 levels.

**32.** When President Jack Praiser visited Mhofustan Camp, Tarver Kussy Erie – who was nominated to represent the IDPs – handed a signed petition to the President in which the IDPs asked for urgent provision of basic amenities and for the government

to come up with resettlement plans as soon as possible. They specifically mention the cholera outbreak in the beginning of 2013 which claimed 23 lives. Further, the majority occupants of these IDP camps complain that they are tired of living there since they feel as if they are in prison. Women also complained of the continued gender based violence and in particular rape. Jack Praiser promised that he would personally see to it that amenities would be provided and that all criminal matters would be investigated. He urged the occupants of Mhofustan Camp to vote for him in the 2013 presidential election.

**33.** On 5 January 2013, 27 girls from Wastak Girls High School visited Kopjestan on a field trip sponsored by their school. Among the girls were three close relations of Sean Timba, the president of Wastak. Somewhere near Mhofustan Camp, the 27 girls including their teacher were surrounded by seven armed Kopjestan men who subsequently gang raped them. The incident was widely publicised and many politicians condemned it. Jack Praiser appeared on national television condemning the incident in the following words: 'We cannot tolerate such outrageous, preposterous behaviour. Even wild beastly animals are better than such persons. We are not going to show any mercy for such criminals who not only undermine the integrity of women but embarrass us and strain relationships with our good friends.' By 11 January 2013, suspects were arrested and brought before the Kopjestan High Court for trial. The trial lasted five days and the accused were found guilty and were sentenced to death in accordance with Kopjestan law. Some non-governmental organisations claimed that the trials were unfair since the accused persons were not allowed adequate legal representation. One local NGO applied to the Kopjestan High Court for a stay of execution but the application was dismissed on technical grounds. Executions were carried out on 21 January 2013.

**34.** Elections were held in Kopjestan on 16 February 2013 and Jack Praiser's party emerged as the winner. WMD contested the election results claiming that the elections were not free and fair and had been rigged. Some UN member countries re-imposed economic sanctions on Kopjestan. Although he won the general election,

Jack Praiser's party attracted little support in Hozastan. Out of the 2 million voters in Hozastan constituency, only 23 people voted for Jack Praiser's party.

- 35.** Since the election results, rations allocated to IDPs have decreased dramatically. The Minister of Finance explained that this was a result of the renewed economic sanctions. Since 2011, a company from Wastak owned by Sean Timba's wife has been providing transport in Hozastan Town in the form of luxurious coaches. For unknown reasons, on 24 February 2013 the buses stopped operating in Hozastan Town. Many IDPs who had long relied on these buses to get to work subsequently lost their jobs. The situation in these camps continued to worsen.
- 36.** With the help of two paralegals from Wastak who joined Mhofustan Camp in 2012, IDPs and refugees in Mhofustan Camp approached the Kopjestan Constitutional Court claiming that the government was violating their right to food, health and adequate housing. The Kopjestan Constitutional Court ruled that the complainants' papers were out of order as half of the individuals listed in the application as complainants have no legal standing before the Court. The Kopjestan Constitutional Court only accepts applications from citizens of Kopjestan, but the application included names of refugees whose legal status in Kopjestan has not been determined.
- 37.** Economic situations of many families in Kopjestan have gone from bad to worse. Instances of domestic violence with women being mostly the victims of their discontented husbands have increased. In 2013 alone, WAV recorded over 20,000 cases of domestic violence of which less than a third have been investigated and prosecuted by the authorities. WAV believes the ineffectiveness is because many police officials are men who according to Kopjestan culture do not see anything intrinsically wrong with a man 'disciplining' his wife. UN Women has for a long time condemned the treatment of women in Kopjestan. In 2013, the United Nations

Special Rapporteur on Violence against Women requested to visit Kopjestan but has not received any reply.

**38.** On 5 March 2013, the Minister of Development and Resource Management and the Minister of Finance went to address the IDPs in Mhofustan Camp. The Minister of Finance announced that the government was under severe financial constraints and that many of the promises that had been made were only going to be acted upon later as the government faced more pressing issues. In any event, the government's legal section advised that the government can only 'progressively realise economic rights.' In relation to resettlement, government officials notified IDPs that the only available place where there could be resettled was in the southern part of Kopjestan. Many IDPs, the majority of whom are Wasu, are not comfortable going to the southern part which is dominated by the Suwa and have therefore chosen to remain in IDP camps. Tarver Kussy Erie, along with about 200 IDPs, stood up and started throwing objects at police armoured vehicles. In panic and fearing the worst, police asked the government officials to wear gas masks as they started firing teargas to disperse the IDPs whom they felt were getting too close for the safety of the Ministers. As the majority of the IDPs fell on the ground, dizzy, vomiting, uncontrollably tearing and profusely coughing as a result of the tear gas that continued to be released in large amounts, police also began using water cannons. After several minutes of continued use of tear gas and water cannons, many people lay unconscious on the ground. Ambulances were called in to rush some people to nearby hospitals. Later that afternoon, 13 people were confirmed dead from head injuries suspected to have been caused by teargas cartridges. Three doctors from Nyatwer Provincial Hospital reported that the cause of death for some IDPs was the tear gas itself which was inhaled in large quantities. Tarver Kussy Erie was among the people who died that day. His post-mortem showed that the cause of death was the impact of a high-velocity water cannon to his chest on close range. The Commissioner of Kopjestan Police has questioned the accuracy of these reports. Sergeant Biller Tee – the officer who led the operation on 5 March 2013 – was quoted in a local newspaper expressing remorse for the tragic event: 'We are very sorry for what happened in Mhofustan Camp, we did not intend to cause the death

of anyone. The situation was explosive, and most of the officers were junior. It was their first time being faced with such a situation and having to use tear gas and water cannons.'

- 39.** Tensions started mounting in Kopjestan as the majority of the Wasu population and many discontented groups demanded the immediate resignation of Jack Praiser. Under the leadership of Balad, WMD planned what became known as the People's March, with WMD specifically protesting the election results. WMD invited all other discontented citizens of Kopjestan to join the People's March. WWJ, concerned about the lack of investigation and accountability both before and after the conflict, joined the People's March to support the protest against the government. IDPs and migrants from Wastak joined the People's March protesting the decision on the shelving of their petition and the death of IDPs in Mhofustan Camp on 5 March 2013. WAV joined the march to voice their discontentment at their exclusion from the political discussions to find a solution for the troubled country. They feel their rights to participate in the politics of their country and formulation of transitional justice measures was violated insofar as they were also victims of gender based violence which has come to characterise the country. These groups wore different kinds of T-shirts and raised different kinds of banners. The march was planned for 10 March 2013, the day Jack Praiser was scheduled to deliver a victory speech at the Revolutionary Square. On 10 March, about 900 people marched to the Revolutionary Square where the President was scheduled to deliver his speech. Since 1988, heavily armed security guards have been guarding the Revolutionary Square and the neighbourhood. The security guards are employees of a private security company called Chinyavada Security Force (CSF) whose black uniforms have a huge red scorpion sign on the back. CSF is an international security company with its headquarters in Wastak. Most of the senior officers of CSF are of Wastak nationality.
- 40.** The Kopjestan Minister of Police, Dour Locks, was informed of the situation that was building up at the Revolutionary Square and ordered the deployment of police officers to the scene. Owing to traffic jams that characterise most Kopjestan cities, it was difficult for police to reach the Square in time. Before police could arrive, the

situation became threatening. Locks subsequently called the owner of CSF, Googu Louvoo, who happened to be his childhood friend, and asked his security guards to back up the police force. Three sides of the Square were manned by police riot squads while the fourth was manned by CSF. Around noon, demonstrators started to move slowly towards Revolutionary Square. The crowds appeared to engulf the whole Square. Sergeants leading the police squads and CSF were asked by Locks to warn the crowds to disperse. Owing to CSF sergeants' Wastakian accent and poor command of the Kopjestan language, the demonstrators on the side of the square manned by the CSF had some difficulties comprehending their warnings. After a number of miscommunications, a CSF sergeant fired warning shots into the air.

- 41.** The crowd became agitated and started throwing stones at the guards and police. The police responded by firing rubber bullets first into the surrounding area and subsequently at the protestors. A few rifles and shotguns were seen in the crowd and fire was directed at the police and CSF guards. Petrol bombs were also thrown at police vehicles. Some protestors barricaded the president's motorcade. CSF guards armed with automatic weapons started firing live ammunition into the crowds who started retreating, some joining the protesters who had barricaded the President's motorcade. More back up was called in from the army who deployed a special force known as the Green Bombers trained specifically to deal with special extreme situations of violence. They had armoured vehicles equipped with loudspeakers which continuously bellowed the words 'put your arms down or you die.' It was only after an hour that the President's motorcade could pass.
- 42.** Later that night, the national television broadcasted that 227 protestors, 16 security guards and 9 police officers had died from the clash at Revolutionary Square. It was also reported that a huge number of protestors including their leadership had been arrested. Balad and Christina Beehive were among those arrested. The national television also broadcasted video footage taken by cell phones that shows six protestors being arrested and put in a police van. When the van starts moving, the six men physically attack three police officers who were sitting with them at the back of the van. As the driver stops the van, the six men jump out and start running away.

Two of them have their hands tied behind their backs but that does not stop them from running. The three police officers sprawl unconscious on the back of the van. The police driver gets out of the van and fires warning shots in the air calling on the six men to stop. When they do not stop, he guns them all down. Two of them were killed on the spot and the other four died later in hospital from excessive bleeding. It is also reported on national television that the sergeant who commanded the CSF on the day of the march has been flown back to Wastak where he is facing disciplinary proceedings at CSF Headquarters.

**43.** The international community condemned the massacre at Revolutionary Square. The United Nations High Commissioner for Human Rights urged the government of Kopjestan to respect its human rights obligations. Eighteen countries who are members of the United Nations also announced new sanctions on Kopjestan.

**44.** In September 2013, WWJ petitioned the Minister of Police to arrest and prosecute police officials who were responsible for unlawful deaths during the protest. In a press conference, Locks, accompanied by the Minister of Justice, Innocent Jure, emphasized that investigations were underway. When journalists questioned why it was taking so long for any arrests to occur and why so little information about the investigations had been made public, Locks responded that most of the information was sensitive as it involved high-ranking officers who, if it became known to them that they were being investigated, would jeopardise investigations.

**45.** In May 2014, during the Human Rights Council's 25th Session held in Geneva, Switzerland, Kopjestan presented a report on the human rights situation in the country wherein it highlighted the challenges it faced and noted some impressive achievements of the government in promoting human rights. It also noted that the government was in the process of establishing a commission of inquiry to investigate gender related violence, due to start operating in January 2015. During this session, the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons, who had visited Kopjestan IDP camps in November 2013, presented his report. This report notes that in as much as there were some positive aspects in

Kopjesta's IDP camps, the country's treatment of IDPs is not in conformity with the United Nations Guiding Principles on Internal Displacement. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions also presented his thematic report on the protection of the right to life during law enforcement and argued for the need for a concerted effort to bring domestic laws on the use of force – especially lethal force by police – in line with the international standards.

**46.** In May 2014, WWJ made an application to the Kopjesta High Court asking the court to order the government to investigate the use of force by government law enforcement officials and agents in Mhofustan Camp and at the Revolutionary Square and disclose to the public the results of such investigations. WWJ filed its application as urgent, but the Court ruled that it is not urgent and has since then assigned it a hearing date of 19 December 2014.

**47.** On 7 June 2014, WAV, WWJ, WMD and other human rights organisations held a meeting to find a solution to the plethora of issues being faced by Kopjestans. One of the recommendations was to approach the Neosho Human Rights Court. WWJ was nominated to represent all the organisations and a power of attorney was drafted and signed by all the parties. On 4 August 2014, WWJ filed its application with the Registrar of the Neosho Human Rights Court citing the Government of Kopjesta as the respondent. The application asks the Court to declare the following:

- i. The Government of Kopjesta's exclusion of women from the peace negotiations violated Kopjesta women's rights and is inconsistent with Kopjesta's international obligations.
- ii. The Government of Kopjesta's failure to adequately investigate, prosecute and punish perpetrators of violence against women is inconsistent with its international obligations.
- iii. The Government of Kopjesta's failure to respect socio-economic rights of IDPs and Wastak refugees living in camps is inconsistent with its international obligations.

- iv. The Government of Kopjestan excessively used force in relation to the Mhofustan rioters and the Revolutionary Square protestors in violation of the right to life of the deceased persons.

**48.** The Neosho Court of Human Rights has allocated 9 and 10 December 2014 as days on which parties present their oral arguments before the Court.

### **Instruction**

Prepare heads of argument on admissibility and merits for both the Applicant (We Want Justice) and the Respondent (Government of Kopjestan).

### **Suggested websites**

Students advised to consult the following websites:

[www.use-of-force.info](http://www.use-of-force.info)

<http://www.securitycouncilreport.org/un-documents/women-peace-and-security/>

<http://www.unhcr.org/pages/49c3646c146.html>

<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>

<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Resolutions.aspx>

<http://www.ohchr.org/EN/issues/Women/SRWomen/Pages/SRWomenindex.aspx>

<http://www.ohchr.org/en/Issues/Women/SRWomen/Pages/RashidaManjoo.aspx>

<http://www.unhcr.org/pages/49c3646c8.html>

<http://www.unbrussels.org/agencies/unhcr.html>

<http://www.unhcr.org/cgi-bin/texis/vtx/home>