

**9TH NELSON MANDELA WORLD HUMAN RIGHTS MOOT COURT COMPETITION
OHCHR, GENEVA, 18 – 21 JULY 2017**

HYPOTHETICAL CASE

**In the matter between
Sytesia Lawyers for Human Rights (SLHR)
and
the Government of Sytesia**

Version 8 January 2017

1. The Ollosian continent (Ollosia) is the largest and most populous continent on earth with a population of 4.321 billion. It has a mix of many different climates ranging from equatorial, hot deserts, subarctic to polar areas and has various races, ethnic groups, religions, cultures, economics and government systems.
2. The Ollosian Human Rights Court (OHRC) is one of the bodies that make up the Ollosian human rights system. OHRC has jurisdiction to examine allegations of human rights violations as provided for in the Ollosia Human Rights Treaty (OHRT), which was adopted in 1967. The rights contained in OHRT are similar in substance to those provided for in the American Convention on Human Rights. In addition to OHRT, the OHRC has jurisdiction to consider violation claims based on any international human rights treaty that a state has ratified. The admissibility requirements of OHRC are similar to those of the European Court of Human Rights while legal standing before the Court is governed by rules similar to those of the African Court on Human and Peoples' Rights.
3. Sytesia is a federal state on the Ollosian continent with its territory largely covered by grassy steppe, with mountains to the east and south while its northern parts run to the shores of the Andaman Sea. The Gratia is the largest ethnic group in Sytesia, constituting 77% of the population. The Luluza – who make up 16% of the population – has largely been discriminated against, notwithstanding government efforts to eliminate discrimination. The Constitution of Sytesia is the supreme law of the land and contains a Bill of Rights similar in substance to those provided for in the International Covenant for Civil and Political Rights (ICCPR). Each state has its own governor, judiciary, legislature and public administration. Sytesia's judicial structure is as follows: each state has a Trial Court and a High Court. From a state High Court, one can appeal to the Sytesia Supreme Court (SSC). There is also the Sytesia Constitutional Court (SCC), which has jurisdiction on human rights issues based on the Bill of Rights in Sytesia's Constitution and international treaties. Sytesia has ratified all international human rights treaties except the Refugee Convention which it has signed but not ratified.
4. Sytesia's capital, Begiak, is known across the globe for its majestic display of historic and ethnographic artefacts dating back to the ancient Sytesian Empire. Although Sytesia has an agro-based economy, it has lucrative mineral deposits of gold, copper, coal and molybdenum. Despite the efforts to turn around the economy of Sytesia by the current President, Mr. Li Oju, who was elected in November 2012, it continues to be ranked as a lower-middle income economy by the World Bank, with 31% of its population living on less than US\$1.25 a day.

5. Bordering Sytesia to the north-east is a country known for its attractiveness to tourists – the Republic of Ocisia. Even during the 10-year war (2003 – 2012) against Sytesia, tourists from all over the world could not resist visiting Ocisia’s majestic beaches, rivers, pagodas and its bustling capital city, Idanu. The Sytesian-Ocisian War (2003-2012) was sparked by a territorial dispute between the two countries over the lawful ownership of Cavenesia Island, known for the unique semiaquatic rice from its iconic rice paddies, its beautiful beaches and world-renown coral reefs. Cavenesia Island is of religious significance to both Sytesia and Ocisia since it is home to the Ladoomah Temple. Ladoomah – the god of Thunder – is the major religion for both nations. The dispute over Cavenesia Island dates back to 1987.
6. In December 2012, President Wu Gozleri of Ocisia and President Li Oju signed a ceasefire agreement. Both states are members of the United Nations (UN). In December 2015, the two states agreed to submit the territorial dispute to the International Court of Justice (ICJ), which has yet to rule on the matter. Meanwhile, both Sytesia and Ocisia have troops stationed on the island. In its tourism campaigns and maps, Ocisia continues to identify Cavenesia Island as part of its territory. With the help of the army and Sytesian Police (SP) special units on the Island, Sytesia treats Cavenesia Islanders as Sytesian citizens – subjecting them to the justice system of Sytesia.
7. Since the ceasefire agreement, Sytesia has enjoyed relative peace although there has been sporadic violence in its northern state of Mamdani. The violence in Mamdani is law enforcement-related as the SP now and then is involved in fire-fights with notorious local criminal gangs – in particular, the Mamdani Mafia (MM). Local newspapers have reported that MM receives weapons and drug supplies from the Islanders’ Freedom Fighters (IFF), a Cavenesia militia that continues to wage a bloody campaign for the independence of Cavenesia Island. The MM is also known for championing the superiority of the Gratia and encouraging the oppression of the Luluza. Although it has not been proven, local newspapers have also reported that MM receives its funding from Jwi Sinema, a Sytesian mogul. Jwi Sinema is the founder and sole owner of Klè Vizyèl Pwodiksyon Inc. – Clear Visual Productions (KVP), the most prominent motion picture production company on the Ollosian continent. Sinema is notorious for his verbal attacks on the Luluza community and sexual harassment allegations filed against him by an actress in 2009. The actress later withdrew the case and it was reported that Sinema paid her a large out of court settlement.
8. The Cavenesia islanders have been protesting against the presence of both the Sytesian and Ocisian troops on the island. In 1992, the former Governor of Cavenesia Island – Mr Chatur Rancho – unilaterally declared the island’s independence from Sytesia, renaming it the Democratic Republic of Cavenesia (DRC). Since then Mr Chatur Rancho has been holding local presidential elections in which he has been re-elected President of the DRC. The fairness of such elections has been questioned by many international observers.
9. The status of DRC under international law remains contested, with several UN states recognising it as a state. Among the powerful states that have recognised DRC as an independent state is the United Sacrosombre Islands (USI) from the Kontinento de Espero (KE). Kopjestan – a powerful state on Neosho continent – has

reiterated in every UN meeting that Cavenesia Island belongs to Ocisia. The Republic of Foolaughy (RF), also from KE, has backed Sytesia's claims. Mr. Chatur Rancho is wanted by Sytesia for the crimes of treason and subverting a constitutionally elected government – that is, the Government of Sytesia. During his election victory speech in November 2012, when asked whether he will recognise the government of Mr. Rancho, President Li Oju said: 'Legally speaking, Mr. Chatur Rancho is not different from that terrorist 'Notorious' Floki. He is just an example of militia leaders that the Government of Sytesia is going to bring to book'.

10. General 'Notorious' Floki is the leader of the Cavenesia militia – IFF – which, since 1998, has clashed with the armed forces of Sytesia, Ocisia and those loyal to President Chatur Rancho. In Floki's opinion, 'Chatur Rancho is as good as the other enemies of Cavenesia Island because he has failed to protect its interests by allowing foreign troops – those of Sytesia and Ocisia – to establish roots on the island'. It is thought that 'Floki' is not the leader's real name, and that he earned it because of his notorious practice of flogging women who refuse to submit to Ladoomah religious laws. Ladoomah religious laws have been condemned by human rights non-governmental organisations (NGOs) and intergovernmental organisations for being oppressive and discriminatory against women. Notwithstanding these allegations, Floki is considered a charming and charismatic leader, with large media houses and famous journalists keen to interview him to hear his side of the story.
11. After several ugly confrontations that left many civilians and combatants dead, the IFF was labelled a terrorist group by Sytesia, Ocisia and the government of Chatur Rancho. As war raged on in the island, islanders began to move either to Sytesia or to Ocisia. There is a huge number of islanders who moved to Mamdani and other states of Sytesia. Most of them have identification documents that indicate that they are citizens of the DRC. After organising themselves, a group of about 700 islanders approached the High Court of Sytesia in Begiak seeking a judicial order of refugee status. The islanders were represented by Sytesia Lawyers for Human Rights (SLHR) – a Sytesian human rights NGO that enjoys observer status in the Ollosian human rights system. On 19 December 2016, the High Court ruled that it had no jurisdiction to determine whether or not the islanders were refugees. In a press-conference, the judge who presided over the case noted as follows: 'The courts of Sytesia could not and will not say whether the applicants are refugees or not – because to do so would be to rule on whether or not the DRC is a state. The courts of Sytesia obviously do not have such powers. Nevertheless, all of us on the bench believe that the islanders are just internally displaced persons'.
12. After the High Court ruling, President Li Oju issued a communiqué directed to all the Governors of Sytesia and state departments that they should not accept DRC identification documents (IDs). Subsequently, SP set up numerous roadblocks throughout Sytesia, at which all DRC IDs were seized and summarily destroyed. The Sytesia Ministry of Home Affairs also opened several special ID centres to which those who did not have an ID were encouraged to go and have one processed. Many islanders ended up obtaining a Sytesian ID in order to get employment and avoid possible arrest. Ocisia has protested about this to the United Nations General Assembly and Security Council while the DRC continues to decry what it perceives as the 'illegal appropriation of its citizens by Sytesia'.

13. Earlier, in the winter of 2015, an IFF suicide bomber killed 117 Foolaughy soldiers in the Republic of Foolaughy (RF). This was to revenge RF's continued support of Sytesia. After that incident, the President of RF declared war on the 'IFF terrorists' and promised never to rest 'until all of them are dead'. Subsequently, Floki was listed by Foolaughy as number one on a list of the most wanted terrorists on the Ollosian continent.
14. Rumours that Floki and Sinema were close friends grew further when, in early 2016, Sinema announced his interest to serve as the Governor of Mamdani. Floki immediately endorsed Sinema's candidacy, praising him as 'the only man for the job'. Photos emerged of the two embracing each other. A few months later, it came to light that Klè Vizyèl Pwodiksyon Inc. (KVP) was going to produce a documentary titled '*The Demonised Angel: General Floki*' on the life of Floki, his political ideology and how it best serves the needs and welfare of Cavenesia Island.
15. KVP's award winning director, Jen Gua, was initially meant to direct the Floki documentary. She is well known for directing several scathing documentaries and war movies. Gua lost both of her legs in 2004 while filming a documentary in Cavenesia Island, when the convoy she was travelling in was attacked. Since then, she has directed successful movies from her wheelchair and inspired many different groups of people in Sytesia. In many city centres, there are large billboards with her photograph and the words: '*She is a strong woman, she is proudly Luluza, and she is living with disability yet a success!*' Since 2010, Gua has worked for KVP, on a contractual basis, her contract having been renewed three times. When she started preparing for the Floki documentary, she had three months left on her current contract.
16. Suspecting that KVP was going to arrange a meeting with Floki – a wanted terror suspect – Sytesia Intelligence (SI) approached Gua, asking her to assist with the arrest of Floki. Although she was aware of the meeting and had, in fact, talked to Floki over the phone, Gua refused to cooperate with SI. On the instruction of Foolaughy Intelligence (FI), SI began wiretapping KVP employees' conversations, including Sinema's phone calls. In one of Sinema's calls, SI learned of a secret meeting between KVP and Floki. In the recorded conversation between Floki and Sinema – later leaked to the media – Floki says: 'My friend, I don't like this director you have given me, I don't think she understands what this documentary is really about. I've talked to her a couple of times on the phone and I don't like her arrogance. She is disrespectful; in fact, she is an insult to Ladoomah just like the whole lot of these Luluza scum! Sinema, get rid of that woman, this is a man's job – I think you understand this. I don't want my documentary to end up erh ... a cripple – you know what I mean'. To this, Sinema responds with a loud laugh before saying: 'Don't worry my friend; I will take care of it'. The following morning, Sinema told Gua that she could not attend the meeting with Floki because it was too dangerous for a woman in Mamdani. To illustrate this point, Sinema referred to several rape cases that were reported in Mamdani that week. Two months later, Gua's contract with KVP expired and was not renewed. Some media commentators have observed that Floki's last statement was intended to mock Gua's disability.
17. On 17 April 2016, Floki smuggled himself into Mamdani with the help of the MM. The meeting had been arranged to take place in a secret MM compound located in a densely populated residential area. Having intercepted the details of the meeting, FI

planned to kill Floki using an armed drone. In a video of the whole incident, released by FI intelligence, MM members are seen armed with automatic rifles outside the compound. A few minutes into the meeting, a Hellfire missile is fired into the compound killing all KVP employees attending the meeting, three members of MM, nine civilians and severely injuring Floki. Footage later leaked to the media shows Floki crawling feebly on the rubble moments after the first missile explodes. A second missile is fired, killing Floki along with six more civilians. As soon as the dust settles, around thirty armed MM men appear in jeeps and begin looking for any survivors in the rubble, as shocked civilians look on.

- 18.** After the drone attack, President Li Oju appeared on national television and stated: 'In as much as the death of Floki is welcome to many nations including Sytesia, it is important for countries like Foolaughy to respect our territorial integrity before conducting such operations'. A local newspaper later reported that the Mamdani drone attack was a joint operation between FI and SI, and that in fact, SI agents were on standby near the compound. SLHR approached the Sytesia Constitutional Court (SCC) on behalf of civilian victims of the drone attack, alleging violations of the right to life. While SLHR based its arguments on the right to life provision in the Constitution of Sytesia, as supported by international human rights treaties ratified by Sytesia, on 31 December 2016 the SCC ruled that the laws of armed conflict (LOAC) were, in fact, applicable rather than human rights law and that accordingly, only LOAC rules and those elements of the Minnesota Protocol pertinent to investigation of death during the conduct of hostilities in an armed conflict would need to be complied with. Thus, the SCC concluded that these were 'acts of war committed by a foreign state on the territory of Sytesia' and that 'the applicant has not argued or established on what basis the SCC should find the Government of Sytesia responsible for the alleged human rights violations'.
- 19.** KVP was able to obtain a copy of Floki's documentary script, containing his handwritten notes. After consulting with senior KVP officials, Sinema appointed Takeshi Mau – a male film director from the United Sacrosombre Islands – to direct the documentary. Takeshi is acknowledged to be the only male director in the world whose experience and finesse in producing war movies and documentaries is comparable to Jen Gua's. Soon after his appointment, Takeshi and his five-member crew sailed on his yacht – the *Blueseas Angelica* – to the Cavenesia Island to familiarise themselves with the location before beginning to shoot the documentary.
- 20.** Around the same time that Takeshi was appointed the new Director of Floki's documentary, the different Sytesian states were due to elect their governors. Having contested the governorship in Mamdani, Sinema openly condemned Federal Government policy of issuing Sytesian IDs to Cavenesia Islanders. While addressing a public rally, he said: 'This is very unwise of the Government. By allowing Islanders to obtain Sytesian IDs, they are, in fact, increasing the Luluza vote. This Government continuously neglects the interests of the Gratia! I will do better.' It was around the same time that the recording of the Sinema and Floki conversation regarding Gua was leaked. Despite an outrage in the Luluza communities, among women groups and associations of people living with disabilities, Sinema continued to gain popularity. Under the direction of President Li Oju, Sytesia's Electoral Commission disqualified Sinema from standing as Governor of Mamdani on the basis that he was linked to the leader of a terrorist group – Floki. Sinema approached the SCC asking the Court to compel the Electoral Commission not only

to restore his candidacy but also to desist from its 'unprecedented public onslaught directed at voters supporting Sinema, in contravention of their constitutionally-protected democratic right to elect to public office any candidate of their choice'. The SCC restored Sinema's candidacy and ordered the Electoral Commission to forthwith stop publicising and circulating material that unconstitutionally demeans Sinema's supporters to the extent of undermining their democratic electoral expression, dignity and constitutional rights.

- 21.** On behalf of members of the Luluza community and other concerned groups, SLHR approached the SCC arguing that in terms of the Constitution of Sytesia, Sinema was unfit to be a governor and his election would violate the rights of the citizens concerned. SLHR referred to section 48 of the Constitution of Sytesia which provides as follows: 'Governors must uphold, defend, obey and respect the Constitution as the supreme law of the nation and must ensure that this Constitution and all the other laws are faithfully observed. Each governor has a duty to promote unity and peace in the nation for the benefit and well-being of all the people of Sytesia; recognise and respect the ideals and values of democracy; ensure protection of the fundamental human rights and freedoms and respect the diversity of the people and communities of Sytesia'. SLHR sought to introduce the leaked conversation between Sinema and Floki to support their allegations that Sinema is 'a bigoted, racist and sexist' individual unfit to hold an office whose duties include the protection of human rights. Sinema's lawyers argued that the evidence that SLHR sought to introduce was illegally obtained and should therefore be excluded. With one judge dissenting, on 3 January 2017, the SCC ruled in favour of Sinema, noting in addition that 'the right to vote and participate in the political processes of Sytesia is not only a fundamental right but is foundational to Sytesian democracy. The courts will not easily take away this right on the basis of unproven allegations or illegally obtained evidence'. Sinema went on to win the election. Since the announcement of the election results, MM hardliners have openly victimised and targeted members of the Luluza community.
- 22.** Meanwhile on the high seas, Takeshi and his crew made a distress call before their yacht disappeared from the radar. After making several reports to SP, KVP dispatched its own search party. After a week of searching, the search party finally found the *Blueseas Angelica* abandoned on the seashore of Cavenesia Island. Later, a video recording made on a local fisherman's cellular telephone shows the crew blindfolded, being forced into vehicles with no number plates. In his report to the local Island Police, the fisherman insisted that the captors were pirates. A week later, 6 bodies – burnt beyond recognition – were found on the island. Forensic reports from KVP private investigators suggest that the bodies belong to Takeshi and his crew. Other forensic experts have deemed the reports inconclusive.
- 23.** Takeshi's relatives have urged authorities to investigate Jen Gua, who they say had motive to attack the crew. In a press conference, Jwi Sinema retorted that this was a government conspiracy since 'the Floki documentary was going to tell it as it is, to expose grand corruption and other heinous crimes in which government officials were involved'. Three weeks later, Sinema appointed Dudu Cha as the director of the documentary '*The Demonised Angel: General Floki*' which went on to win an Academy Award. Dudu Cha became well known in 2011 when she identified herself as transgender during a live-television interview.

- 24.** After being approached by the victims' relatives, SLHR has been calling on the Government of Sytesia to investigate a possible case of enforced disappearance and unlawful killing by government agents. The Deputy Minister of Intelligence stated in a television interview: 'Of course, we are curious and may look into the matter; however, this is not a case in which Sytesia has a clear and direct obligation to investigate'. The Chief Justice of the Supreme Court of Sytesia expressed the same sentiments while delivering a speech at a judicial colloquium: 'This is a classic case in which the jurisdiction of our courts and the obligations of the state are not clear'.
- 25.** One month after the SCC Sinema ruling, Jen Gua and her lawyer approached the Mamdani High Court suing KVP for discriminating against her on the grounds of sex and disability. The High Court directed Jen Gua to approach the SCC since the case concerned the protection of human rights and the obligations of the state. Jen Gua's lawyer sought the services of SLHR, which in turn indicated that the SCC had already rejected the evidence upon which Jen sought to prove discrimination. Instead, SLHR offered to include Jen's claim in its case to the Ollosian Human Rights Court (OHRC). SLHR claims as follows:
- a) Sytesia has violated Floki, Takeshi and other victims' right to life.
 - b) Sytesia's refusal to grant Islanders refugee status and compelling them to get Sytesian IDs is inconsistent with Sytesia's obligations under international law.
 - c) Sytesia has violated Jen Gua and the Luluza people's right to non-discrimination by failing to protect Gua from KVP's discriminatory practices and allowing its founder, Sinema, to stand for election as the Governor of Mamdani.

INSTRUCTION:

Prepare memorials (on jurisdiction, admissibility, merits and remedies) for the Applicant and Respondent.