

**4<sup>TH</sup> EDITION OF THE SIR DAWDA KAIRABA JAWARA INTERNATIONAL HUMAN RIGHTS  
MOOT COURT COMPETITION 2023**

**HYPOTHETICAL CASE**

**BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**BETWEEN**

**CENTER FOR LEGAL SUPPORT (CLS)**

**AND**

**REPUBLIC OF KEMITE**

1. The Republic of Kemite is a coastal State in West Africa with a population of 36 million people. The country borders the Republic of Kumujan on the North, the Republic of Secoya in the South and the Republic of Rappalah on the East. Fisheries account for a little bit over 18% of the GDP of these four States. Kemite was colonized by Great Britain until 1951 when it obtained independence through a popular uprising. However, since its independence, the country has witnessed three (3) military takeovers. In 1967 through the ballot box a democratically elected government was chosen and since then the country has had six (6) changes of Government through the ballot box. In 1980, a group of young people, mostly from the Bailo region in the South of the country, started a secessionist movement that continues to agitate for the independence of Bailo from Kemite. While this group did not pose a significant threat to the stability of the country at the time, they were nonetheless seen as a group of 'bandits' that survive on extortion and kidnapping for ransom in the forests of Bailo.
2. The Republic of Kemite was one of the poorest countries in West Africa until it discovered oil and gas in the Bailo in 2004. Its GDP grew from \$50 Billion to over \$300 Billion in 2023. According to the 2020 UNDP Human Development Index Report, Kemite was among the rapidly developing countries in Africa precipitated by significant oil and gas revenues from Bailo. However, due to huge infrastructural development projects and mismanagement of resources, the country accumulated a significant domestic and foreign debt estimated at \$178 Billion..
3. Kemite has a presidential system of Government with legislative powers vested in the Legislature, judicial powers in the Courts, and executive powers in the President. Kemite also has a Constitutional Court that is empowered by its 1998 Constitution to interpret and enforce the Constitution. Section 35 of the Kemite Constitution stipulates that when any matter that calls for the interpretation and enforcement of the Constitution arises before the lower courts, the matter must be referred to the Constitutional Court for determination. As a former British colony, Kemite applies the common law system, the principles of equity in the administration of justice and is a dualist state in its application of international instruments. The Bill of Rights Chapter of the 1998 Constitution reflects the provisions of the International Covenant on Civil and Political Rights while economic, social and cultural

rights are contained in Chapter 18 as Directive Principles of State Policy. Consequently, Chapter 18 incorporates access to basic healthcare, basic and compulsory education and access to social security. The Constitution ousts the jurisdiction of the courts to entertain matters relating to the enforcement of the Directive Principles.

4. Most of the natural resources in Kemite are located in the region of Bailo inhabited mostly by the Molo indigenous tribe estimated at 1 million people. The Molo tribe is predominantly animist and worship their ancestors through regular rituals. The Molo religious belief system is polytheistic as they worship multiple gods and goddesses. Each deity represents various aspects of life, nature, and the spiritual realm. They also observe annual festivals such as the Shu-komo which attracts thousands of Molos to celebrate the descending of their supreme god Mbaba on earth. This festival is the most important religious activity of the Molos and they have performed these rituals for over 500 years in the deep forests of Bailo, particularly in Rumu-Komo, the place where they believed Mbaba descended. Artisanal fishing and farming are the major economic activities of the Molos. They depend on these activities for their livelihood. On the other hand, the Manna tribe is the largest ethnic group in Kemite forming 75% of the population. The Manna tribe are mostly Muslims or Christians and all the leaders of Kemite since independence have been either Manna Muslims or Christians, who perceive Molos as pagans and idolaters and often discriminate against them.
5. When oil and gas were discovered in Bailo in 2004, a private company, the Greater Belt Petroleum Ltd (GBP) was granted license to explore oil and gas in areas surrounding Rumu-komo, considered a sacred land by the Molos. The licenses granted to GBP cover the entire Southern Region. The license was negotiated with the Government and traditional chiefs of the Molo people who were promised schools, potable water, employment and healthcare facilities as compensation for allowing the drilling activities on their sacred land. Initially, the Molos were apprehensive about this development and opposed exploration activities, especially in areas they consider sacred. However, through negotiations with traditional chiefs, an agreement was struck between the Government, GBP, the National Oil Company (NOC) and the affected communities.
6. This agreement dubbed the 'November Pack', created a commitment from the Government and GBP to establish a De-commissioning Fund, in which GBP and Government will pay 1% of Oil proceeds to cater for de-commissioning, funding for skills and training, infrastructural development and environmental sustainability. The National Environmental Agency was tasked to manage this which was also ringed-fenced to prevent the Government from using it for unrelated matters. Within a decade since the exploration of oil and gas commenced, the Government of Kemite, using the De-commissioning Fund, built 25 primary schools, 14 high schools and roads and provided electricity in Bailo. The CEO of GBP at the 2017 Board of Directors Meeting highlighted that there are plans to also build a University in Bailo to help create the next generation of highly skilled employees in the oil and gas industry.

7. Following the discovery of oil and gas, the country enacted the Environment Protection and Biodiversity Act (EPB) of 2005, the Anti-Pollution Act of 2006 and the Environmental Offences Act of 2006. The EPB Act provides a framework for the protection of Kemite's environment, including its biodiversity along with natural and culturally significant places.. The Act also created the framework for the application and processing of approvals for major projects in Kemite. However, the Government has been widely criticized for the non - enforcement of the EPB Act and related regulations.
8. Kemite has ratified numerous regional and international legal instruments as follow: the African Charter on Human and Peoples' Rights (African Charter) on 7 December 2001; the International Covenant on Civil and Political Rights (ICCPR) on 18 March 1990; International Covenant on Economic, Social and Cultural Rights (ICESCR) on 3 July 1990; 1968 African Convention on the Conservation of Nature and Natural Resources (ACCNNR) in 1975 and 2003 Revised Algiers Convention in 2008; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol) on 8 July 2010; International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD) on 18 September 1992; Convention on the Rights of the Child (CRC) on 13 August 1998; African Charter on the Rights and Welfare of the Child (ACRWC) in March 2014; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on 17 July 2016 and made article 34(6) declaration on 25 February 2018. In acceding to the CRC, Kemite entered a reservation against Article 23 of the Convention to the extent that 'due to resource constraints Kemite is unable to guarantee the full realisation of the rights under Article 23 of the Convention. A similar reservation was entered in relation to Article 13 of the ACRWC.
9. Since 2006, there had been reports of negative environmental impacts of the oil and gas explorations. In January 2012 the Center for Legal Support (CLS), a Pan-African civil society organization in Kemite, in its annual report on the "Impact of Oil and Gas Operations in the Bailo Region, 2012" reported that GBP's oil and gas extraction practices in Bailo had left a trail of environmental devastation. The report documented that the once-pristine rivers that provided sustenance to the Molos were now contaminated with toxic waste and oil spills. The lush forests, which once held great spiritual significance, were bulldozed to make way for oil rigs and pipelines, decimating crucial wildlife habitats and sacred sites. The air, once fresh with the scent of blooming flora, now reeked of noxious fumes, endangering the health of the entire community. The report went further to highlight that:

*"GBP exhibited a shocking disregard for the Molo cultural heritage. The oil company callously bulldozed sacred burial sites and worship centres, desecrating the final resting places of the Molo ancestors and demolishing the spiritual heart of the community."*
10. A similar report by Amnesty International revealed that the Molos have the highest proportion of people living in extreme poverty and poverty rates rose as a result of the

decline in fishing and farming. The report also revealed that funding for education in the Bailo region is the lowest in the country with low enrolment and completion rates in secondary schools and tertiary institutions. The report further revealed that Bailo has a growing youth population experiencing high rates unemployment with widening gender gaps in the areas of education, health and employment.

**11.** The unveiling of these reports triggered an unprecedented demonstration in an area of the regional capital of Bailo, Nnantumbe. The protest was characterized by the burning of buildings and destruction of public property. In the process, four GBP oil and gas facilities were set ablaze and state security officials responded with force resulting in the death of 43 civilians due to gunshot wounds and hundred others were arrested and detained at different detention facilities. Following these incidents, the African Union called on the Government of Kemite to handle the situation through appropriate domestic processes and avoid further escalation. The Government investigation reported that the destruction of the GBP facilities was carried out by the secessionist movement in Bailo. It also highlighted that some of the deaths could be attributed to the movement. Consequently, 27 members of the movement were listed as wanted by the Government.

**12.** In response to these allegations, on 18 June 2012, the President of Kemite made a rare appearance on national TV. In his speech to the nation, President Kyiola Ndembasi said:

“...as we address pressing concerns emerging from Bailo, we must also recognize the significant role that the oil and gas industry plays in our country's economy. The extraction and production of oil and gas have been vital pillars of our economic growth and development, creating countless jobs, driving innovation, and fueling progress in various sectors. It is essential that we strike a balance between the needs of our economy and the well-being of our indigenous communities. Therefore, together, we will forge partnerships that promote sustainable development while safeguarding the rich cultural heritage of our indigenous populations.”

**13.** On 20 June 2012, President Kyiola ordered his Minister of Environment to table the issue before the Parliamentary Committee on Development to look into matters arising from Bailo and make appropriate recommendations. However, the Committee deferred the matter to the next legislative year due to budgetary constraints. In March 2013, it held hearings on the impact of the oil and gas operations in Bailo. The Committee invited 46 witnesses, including dozens of experts on environment, health, and education, representatives from Bailo and policymakers. The Committee, in its report to the President noted with concern the level of environmental destruction and social instability caused by the presence of GBP and other companies in Bailo. The committee recommended the cancellation of the operating licenses of all the companies. Though this particular recommendation was not implemented, the Government promised that any further environmental destruction would be met with the “full force of the law.”

- 14.** In December 2014, as Kemite prepared to expand its oil and gas operations, the President announced that the Molo tribes along the Atlantic coast and the deep forest will be evacuated from their ancestral lands to a new settlement near the Kotu Mountains. Several consultations were held with the local and traditional leaders of Bailo to convince their people to leave the forests and the Atlantic coast as those places are becoming extremely dangerous due to the presence of chemicals and pollution from industrial activities. The inhabitants were promised schools, health centres and running water in their new settlement. However, negotiations halted when the local chiefs withdrew from the negotiations citing the significance of their ancestral lands to their identity and spirituality.
- 15.** By 2015, the once-clear streams in the forests of Bailo turned murky as toxic waste from exploration sites and oil spills continued to flow into the streams, and an acrid smell permeated the air, triggering coughs and headaches among Molos with children the most vulnerable to the environmental pollution as they played in the contaminated streams, unaware of the effect of the toxic chemicals. As the days turned into months, an alarming number of children in Bailo began to suffer from mysterious health issues, and their eyesight started to decline. Tombong, a bright-eyed and curious girl, was among those affected. At the age of seven, she was known for her inquisitive nature and infectious laughter, but, soon after the oil and gas operations began in her community, her joyful spirit dimmed, and her once sparkling eyes grew hazy. Her mother, Mabinta, watched helplessly as Tombong's world slowly shrank with each passing day.
- 16.** In 2014, the Front for Environmental Justice (FEJ) brought a class action in the High Court of the Southern Region on behalf of the Molos alleging environmental degradation and lack of corporate accountability on the part of the oil companies. However, the matter could not proceed as it was later discovered that FEJ had no standing as it was not registered with the Government Bureau responsible for NGO affairs. Consequently, the matter was struck out. FEJ appealed against the decision before the Court of Appeal who referred the case to the High Court in 2018 for retrial and asked FEJ to regularize its status. Due to resource constraints, FEJ could not pursue the matter any further.
- 17.** The Government commissioned a study to determine the extent of the environmental impact of oil and gas operations. The study was conducted by national and international experts who conducted extensive tests on air, water, and soil samples. The results were devastating, confirming the presence of hazardous chemicals and neurotoxins such as benzene, toluene, and xylene. The report suggested that cumulative exposure to these toxic substances could be responsible for visual impairments and other health issues among the children resident in Bailo. The report disclosed the pollutants disrupted the delicate balance of the nervous systems and caused irreversible damage to the retina of the eye, resulting in blindness. The report recommended immediate relocation of the communities to a safer environment, far away from the oil and gas operations. However, the move to evacuate them from their ancestral land was met with stiff resistance.

- 18.** On 19 December 2018, the Government dispatched military personnel to forcefully evacuate all those living in the forests of Bailo and around the Atlantic Coast to the Kotu Mountains where temporary shelters were provided by the Government while waiting for the construction of permanent homes for them through the De-commissioning Fund. However, those that refused to be evacuated had their huts bulldozed to the ground. The following day, Tombong's father accepted to move to the new shelter, accompanied by his entire family of four wives and eighteen children, so that he could try and find cure for Tombong and some of his other children who become visually impaired due to the environment. Following several visits to a hospital it was found that the damage to Tombong's eyes was permanent. Tombong and all the other children that moved to the new settlement were put in Government schools which did not have any special arrangements to support students that were visually impaired. As a result, the Molo children were not provided with textbooks in braille and other relevant facilities, including a teacher competent to teach them braille.
- 19.** In August 2018, the country was hit by a massive tsunami that destroyed buildings, affecting the electricity supply, operation of public services and infrastructure across the country. The floods resulted in the death of over 542 people across the country, mostly women and children. It was estimated that the country lost nearly \$5 Billion worth of infrastructure and assets and would need twice that amount for reconstruction and recovery. The disaster coincided with a period when oil prices were at an all-time low. The Government announced a series of austerity measures in response to the economic challenges faced by the country as a result of the flood and low oil prices. These measures included significant reductions in public spending across various sectors, including health and education. The Government said the cuts were needed to prevent a debt burden that could stifle their already struggling economy.
- 20.** In October 2019, the UN Special Rapporteur on Extreme Poverty and human rights reported that due to the budget cuts, public hospitals and clinics in Kemite were experiencing a shortage of essential medical supplies and inadequate staffing levels, and were using outdated equipment. This has led to longer waiting times, compromised healthcare quality and, in some cases increased death rate most of which were preventable. The report further highlighted that the education sector was also suffering greatly due to budget cuts with many schools lacking proper infrastructure, textbooks, and qualified teachers. As a result, the quality of education has declined, leading to decreased educational outcomes and limited opportunities for the younger generation.
- 21.** In one of their community awareness-raising activities on the rule of law in Bailo, CLS decided to look into the plight of Tombong and the other Molo children suffering from visual impairment. After a thorough research and further gathering of information in Bailo, on 18 December 2019, CLS filed a suit in the High Court of Kemite on behalf of Tombong and other Molo children citing violations of their rights to health, education, housing and development. The State opposed the application on the basis that those claims were not justiciable in Kemite and the evacuation was necessary. The High Court ruled in favour of

CLS and ordered the State to provide the necessary healthcare services to Tombong and the other children and put in place proper educational facilities but opined that the evacuation was in the best interest of the Molos. The State appealed against the judgment in the Constitutional Court which later set aside the decision of the High Court but declined to make any pronouncements on the merits. The Constitutional Court ruled that such matters are better handled by the Executive and Legislative organs of Government.

**22.** Following the decision of the Constitutional Court, CLS filed a communication to the African Commission on Human and Peoples' Rights in Banjul on behalf of Tombong and all the other Molo childre and requested the Commission to investigate the matter and provide applicable remedies. After further consideration, the Commission referred the matter to the African Court on Human and Peoples' Rights (African Court) for determination. The matter is set for hearing before the African Court in December 2023. The Court is set to hear and determine the following issues:

- (i) Standing and the admissibility of the case before the African Court on Human and Peoples' Rights;
- (ii) That the failure of Kemite to provide accessible education to children with disabilities from Bailo constitutes a violation of the right to education;
- (iii) That Kemite violated the African Charter and other human rights treaties when it did not hold GBP accountable for the environmental degradation in the Bailo.
- (iv) That the effects of the austerity measure on the hospitals in Kemite constitutes a violation of the African Charter and other human rights instruments ratified by Kemite;
- (v) That Kemite violated the African Charter and other human rights treaties by its evacuation of the Molos.

Prepare memorials for CLS and Kemite. In each instance, deal with jurisdiction, admissibility, the merits and the appropriate remedial orders.