

HYPOTHETICAL CASE

BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

UBUNTU CENTRE FOR RIGHTS PROTECTION (UCRP) V. THE REPUBLIC OF KUNTA KINTEH

1. The Republic of Kunta Kinteh is a small West African nation. Current estimates put the population of the country at about 1.9 Million. In the West and North of Kunta Kinteh, it shares a border with the Republic of Ariwa, and in the East shares a border with the Republic of Maloka. The Republics of Ariwa and Maloka share a deep cultural history with Kunta Kinteh going back hundreds of years, although Kunta Kinteh was colonised by Great Britain while Ariwa and Maloka were colonized by France.
2. Kunta Kinteh has 6 ethnic groups with the three major ones being the Mawu, Wada and Vuga ethnic groups. All the ethnic groups in Kunta Kinteh had lived peacefully for centuries. Kunta Kinteh 's population is made up of about 85% Muslims and about 10% Christians. Most of the Christians are from the minority Pere ethnic group. The rest of the population practice traditional religions.
3. Kunta Kinteh is a thriving tourist destination primarily because of its beautiful, pristine coastline. Tourism contributes a large percentage of Kunta Kinteh's GDP but the country also relies on the export of rice and groundnuts, as well as remittances from Kuntas based abroad. Kunta Kinteh's GDP for 2021 was assessed to be 5 Billion US Dollars.
4. Kunta Kinteh's legal system is based on the English common law. There are three levels of Superior Courts of record: the High Court, the Court of Appeal and the Supreme Court, with the Supreme Court being the highest appellate court. Below this level of courts are the Magistrate Courts which have criminal jurisdiction over crimes for which the punishment prescribed by law is not more than five (5) years.
5. Under the 1997 Constitution of Kunta Kinteh, all civil and political rights are enforceable, similar to those protected under the International Covenant on Civil and Political Rights (ICCPR). On the other hand, rights protected in the International Covenant on Economic, Social and Cultural Rights (ICESCR) are provided for in the Constitution as Directive Principles of State Policy and are not enforceable in the local Courts.
6. Kunta Kinteh gained independence from Great Britain in 1960 and President Yakub Eyanre, a member of the Mawu ethnic group, became the first democratically elected President of the country. A new Constitution came into effect also at this time. Under the Constitution, the National Assembly of Kunta Kinteh is the legislative arm of

government. The Constitution did not provide term limits for any elected office holders. However, Presidential and National Assembly Elections are to be held every five years.

7. Kunta Kinteh ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10th July, 1980. Kunta Kinteh also ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on 8th September 1985; the Convention on the Rights of the Child (CRC) on 15 October 1990; and the International Convention for the Protection of All Persons from Enforced Disappearance on 10th March, 2007. In July 2009, Kunta Kinteh ratified the Rome Statute creating the International Criminal Court (ICC). Kunta Kinteh signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in July 1990 but is yet to ratify the Convention.
8. In terms of African instruments, Kunta Kinteh ratified the African Charter on Human and Peoples' Rights (ACHPR) on 12th July 1983; the African Charter on the Rights and Welfare of the Child (ACRWC) on 28th February 2001; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 13th September 2005. Kunta Kinteh also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (ACtHPR) on 29th September 1999 but did not at this time make the declaration in terms of Article 34 (6) of the Protocol. Kunta Kinteh is a member of the Economic Community of West African States (ECOWAS) and the African Union (AU).
9. In July 1995, President Yakub Eyanre was elected to his eighth consecutive term in office as the President of Kunta Kinteh. Shortly after this, some disgruntled members of the Kunta Kinteh National Army organised a successful coup d'état and unseated Yakub Eyanre as President. This group of soldiers was led by Colonel Waris Eleribu. Colonel Eleribu took over as Interim President of Kunta Kinteh and suspended the 1960 Constitution. He also disbanded by military decree all political parties in Kunta Kinteh. He told Kuntas that his group was compelled to unseat the corrupt politicians who had held the country in servitude for so long. He also promised that his group would only lead the country for a transitional period of 2 years by which time a new Constitution would be adopted, and elections held for the Office of the President, and for members of the National Assembly. He immediately set up a Constitutional Drafting Committee that comprised some of the nation's best lawyers and legal academics.
10. However, in December 1996, Interim President Eleribu informed Kuntas that he would be standing as a presidential candidate in the next elections, scheduled for March 1997. He also announced the creation of a political party called the Kunta Kinteh Patriotic Front (KKPF) on whose platform he would be running. A group of politicians allied with the government of former President Eyanre set up a political party which was named the

Kunta Kinteh Democratic Congress (KKDC). A third political party was also registered and called the United Kunta Kinteh Progressive Party (UKKPP).

11. Elections were held in March 1997 and were largely deemed to be free and fair by both national and international elections observers. Colonel Eleribu's KKPF won the Presidential elections by 53% of the vote. The KKPF also secured 65% of the seats in the National Assembly. The KKDC won 30% of the National Assembly seats. Waris Eleribu was sworn in as President for a 5-year term in June 1997. This also marked the coming into effect of the newly adopted 1997 Constitution of the Republic of Kunta Kinteh.
12. In 2002, President Eleribu contested and won the Presidential elections with 80% of the votes. His party, the KKPF also won 90% of the National Assembly seats. However, the elections were alleged to be marred by several malpractices. There were reports of intimidation of voters, as well as stuffing of ballot boxes. The opposition KKDC party contested the results of the presidential elections before the Supreme Court, which has original jurisdiction to determine election petitions arising from the presidential elections. The Supreme Court found that the allegations of widespread voter intimidation and rigging were not proven, and thus affirmed the electoral victory of President Eleribu.
13. The General Secretary of the KKDC, Tobias Bolly, convened a press conference where he criticised the elections and the decision of the Supreme Court. About an hour after the press conference, Tobias Bolly was arrested at the KKDC Secretariat in Kunta Kinteh's capital city, Jinda when armed policemen numbering about fifty stormed the building. Mr. Bolly was taken to an unknown destination. After a week in which neither his family nor his lawyers had access to him, the KKDC decided to organise a public protest march to demand his release. Hundreds of people came out to join the protest march which was held in Jinda on 28th June, 2002. The Kunta Kinteh Police Force tried at first to disperse the protesters using tear-gas but a few minutes later started shooting at the protesters. Fifty protesters were killed in the process. Also, several key officers of the KKDC party were arrested and detained for 13 days at the Central Prison in Jinda.
14. In July 2002, shortly after the swearing-in ceremony of President Eleribu, Tobias Bolly and the arrested KKDC officers were released. Mr. Bolly was so sick and had to immediately be flown to the United Kingdom for medical treatment. Unfortunately, he died a day after his arrival to the United Kingdom. The autopsy report revealed that his body bore several marks of torture.
15. In January 2007, the Chairman and Presidential candidate of the KKDC, Chief Bada Masi arrived on a flight from the United States where he had gone to meet with Kuntas in the diaspora to seek support for his presidential ambition towards the March 2007 elections. A few minutes after leaving the airport, accompanied by his wife and driver, his car was attacked by unknown gunmen wearing black masks. He was shot in the chest and he died on the spot. His driver was also shot and he too died on the spot. His wife

was shot in the arm and was rushed to the hospital by good Samaritans. She survived the shooting and was discharged from the hospital after two weeks.

16. President Eleribu was re-elected to a third term in office in the March 2007 elections. Once again, there were many reports of electoral malpractices during the elections. Shortly after he was sworn into office, the National Security Service (NSS) arrested several journalists who were critical of Eleribu's governance style. Many of them were severely beaten at the premises of the NSS and were then subjected to sham trials in which they were jailed for between 10 to 15 years each on treason charges. Between 2007 and 2016, there were about 25 reports of disappearances of President Eleribu's political opponents.
17. On 19th February 2011, Kunta Kinteh prominent journalist, Maria Omowe, was arrested by agents of the National Security Service at her office in Jinda. She was taken to the NSS headquarters where she was interrogated about an article she had written. The said article accused the Vice President, of embezzling about 1 Million US Dollars, meant for the building of a specialist hospital in Jinda. She was released two days after her arrest. However, sometime in April 2011, a video started to circulate on social media in which Ms. Omowe, now in exile in Nigeria, claimed that during the time she was at the NSS headquarters, she was raped by two of the NSS officers. The NSS Director-General appeared on TV to dismiss Ms. Omowe's allegations as unfounded, and meant to discredit the Service. No investigations were carried out into the rape allegations.
18. On the 14 May 2011, 71 Malokan men were found dead along the banks of Jinda River with bullet-wounds to the back of their heads. Kunta Kinteh Diaspora online TV reported that the notorious Jackal Regiment of the regime was responsible for the summary execution of these men. The Malokans were on their migratory journey to Europe, and had been mistaken for mercenaries. In response, the Republic of Kunta Kinteh issued a press statement denying the allegations that it summarily executed 71 Malokans. The UN Special Rapporteur on extra-judicial killings called on the Government of Kunta Kinteh to investigate the death of the migrants and where necessary compensate the families of the victims.
19. In January 2012, following the second limb of the suggestion, the Government of Kunta Kinteh indicated desire to cooperate with the Government of Maloka to investigate the incident and compensate the victims. In 2014, the Government of Kunta Kinteh offered to pay US\$ 2 Million to the Government of Maloka as compensation for the 'mysterious death of 71 Malokans in Kunta Kinteh.' The Government of Maloka rejected the compensation and called it an 'insult' to the victims. The Malokan Government further called on Kunta Kinteh to be more serious with her obligations and provide 'sufficient reparations'.

20. In December 2016, the two opposition parties, the KKDC and UKKPP formed an alliance to contest the March 2017 elections against President Eleribu's KKPF. The alliance nominated Mr. Sulu Bambo as its presidential candidate. The elections which were held on 18th March 2017 witnessed a high voter turn-out, especially among Kunta Kinteh's youth. The Chairman of Kunta Kinteh's Electoral Commission announced on 19th March 2017 that the opposition alliance had won the elections and declared Mr. Bambo as the President-Elect. In the evening of the same day, President Eleribu came on national TV and declared the annulment of the March 2017 elections on the grounds of voter fraud. He announced that a new date would be announced for the elections to be re-conducted.
21. After a lot of international pressure on him to vacate the Office of the President, coupled with the threat by the Governments of Ariwa and Maloka to deploy military force to unseat him, President Eleribu left office in July 2017 and immediately went into exile in the Republic of Kitiko, in Central Africa.
22. On assumption of office in July 2017, President Bambo promised to run a government that respects and promotes the human rights of all persons in Kunta Kinteh without distinction, and to ensure that all victims of human rights violations during the out-going regime get justice. Some of the first key steps taken under his administration was establishing the Kunta Kinteh National Human Rights Commission (KKNHRC) to facilitate the promotion and protection of human rights in Kunta Kinteh; and setting up a Constitutional Review Commission to review the current 1997 Constitution and come up with a new Constitution that, *inter alia*, better respects and protects human rights in Kunta Kinteh. The Government of President Bambo also embarked on comprehensive security sector reforms, as well as setting up of a Commission of Inquiry to look into the fraudulent financial dealings of the past administration. **The Government also made the declaration under Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.**
23. In December of 2017, the Kunta Kinteh Ministry of Justice presented a Bill to the National Assembly to establish a Truth, Justice and Reconciliation Commission (TJRC), whose main objectives were, to create an impartial historical record of the human rights abuses of the past government; promote healing and reconciliation; address impunity; and grant reparations to victims of human rights abuses.
24. The TJRC was established, started its sittings in July 2018 and completed its work in June 2021. Many victims of human rights violations under President Eleribu's administration appeared before the TJRC to testify to the violations they suffered. The wives of Tobias Bolly and Chief Bada Masi appeared before the TJRC and testified that since their husbands died, there has been no investigation or prosecution of those responsible. Maria Omowe also appeared before the TJRC to testify about how NSS

officials raped her. Several officials involved in human rights violations also came to testify before the TJRC. One of those officials was Mr. Fareed Dongo, the head of the NSS under President Eleribu. Mr. Dongo confessed that he had ordered the torture of several journalists. He also admitted that under his supervision, Mr. Tobias Bolly had been injected with a slow poison before his release. He said he did all these on the instructions of former President Eleribu.

25. Another official, Mr. Dudu Banga, who had been the Inspector General of Police, confessed to the TJRC that he had acted under President Eleribu's orders and arrested 10 KKDC youth members and handed them over to the President's special guards in September 2011. Some members of the President's special guards testified to the TJRC and confessed to being involved in the killings of President Eleribu's political opponents, including the 10 KKDC youth members. They led TJRC officials to the piece of land in President Eleribu's village where the remains of the victims had been buried.
26. The TJRC submitted its report to President Bambo in October 2021. The report recommended the creation of an Extra-Ordinary Criminal Chambers within the Courts of Kunta Kinteh to try President Eleribu and other officials responsible for gross human rights violations. However, in view of the confessions of Mr. Dongo and Mr. Banga, the TJRC recommended that they be given an amnesty and used as prosecution witnesses in the trial of President Eleribu.
27. About a week after the TJRC report was submitted to the Government, the Kunta Kinteh Ministry of Justice (MOJ) released a statement indicating that it had charged six men with murder, who had been members of President Eleribu's special guards. According to the MOJ statement, investigations carried out by the Kunta Kinteh Police Force revealed these men to be the killers of Chief Bada Masi. The charges were filed at the High Court in Jinda and the trial is on-going.
28. The Government of Kunta Kinteh released a white paper on the TJRC report in January 2022, accepting all recommendations in the TJRC report. The Government immediately indicated that it would start looking for international financial and technical assistance to set up the Extra-Ordinary Criminal Chambers.
29. In March 2022, President Bambo won the Presidential elections and was sworn into office in July 2022 for a second term as President. In his speech during the swearing-in ceremony, he remarked that his government had been able to secure pledges from international partners to donate about 60% of the funds needed for the Extra-Ordinary Criminal Chambers. He promised to ensure that all the needed funds are secured and that the Extra-Ordinary Criminal Chambers should be in operation by July 2024.
30. Since President Bambo took office, the Ubuntu Centre for Rights Protection (UCRP), a pan-African NGO, which had been operating in Jinda since 1998, has been supporting the

victims of human rights violations of President Eleribu's regime. The UCRP has observer status with the African Commission on Human and Peoples' Rights(ACmHPR).

31. Many of the victims of the human rights violations are not pleased with the slow steps the government of Kunta Kinteh has taken towards bringing President Eleribu and his accomplices to justice, and have instructed UCRP to file a case on their behalf before the African Court on Human and Peoples' Rights (ACtHPR).
32. UCRP has filed an application to the Court for the determination of the following issues:
 - a. The Republic of Kunta Kinteh has violated the rights to remedy and reparation of the victims of human rights violations under President Eleribu's administration in violation of the ACHPR and other human rights treaties Kunta Kinteh is a State party to;
 - b. The Government of Kunta Kinteh is responsible for the violation of the right to life of the 71 Malokan migrants under the ACHPR and human rights treaties to which Kunta Kinteh is a State Party;
 - c. The amnesty given to Mr. Fareed Dongo and Mr. Dudu Banga is a violation of the rights of their victims under the ACHPR and other human rights treaties to which Kunta Kinteh is a State Party;
 - d. The Government of Kunta Kinteh is responsible for the violation of the rights of Maria Omowe to dignity and to freedom from torture under the ACHPR, and other human rights treaties to which Kunta Kinteh is a State Party.

The Parties are to address the Court on jurisdiction, admissibility and merits of the case.