

HYPOTHETICAL CASE

2ND EDITION OF THE SIR DAWDA KAIRABA JAWARA HUMAN RIGHTS MOOT COURT COMPETITION 2021

BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

BETWEEN

THE PLATFORM FOR THE RIGHTS OF MIGRANT WORKERS (PRMW)

AND

THE REPUBLIC OF CAYORR

1. The Republic of Kaabu, one of the smallest countries along the Coast of West Africa, is surrounded by its more prosperous neighbor, the Republic of Cayorr in the East and in the North. On the South, it shares a 300-kilometer border with the Islamic Republic of Nubia. Before colonialism, the three countries were part of the same kingdom for centuries before its eventual fall to the British Empire in 1889 resulting to the partitioning of the kingdom into three different countries.
2. The Republic of Kaabu, with a population of 10 million people, gained independence in 1967 from Britain. In 1970, three years after Kaabu gained independence, the country was engulfed in a bloody civil war waged on tribal and religious lines resulting in the death of hundreds of thousands of her citizens, mainly from the Nungu tribe; and led to the destruction of public and private properties. In 1980, a military Junta seized power from the civilian Government promising to end the civil war but the country's economic situation took a nose dive after the implementation of poor economic and monetary policies by the Junta. Kaabu is also hugely indebted with debt to GDP ratio at 120 percent of GDP. The debt portfolio of Kaabu ballooned during the military rule as the Junta embarked on populist 'white elephant' infrastructure projects that failed to yield the expected returns. As a result, Kaabu experienced the highest inflation rate in Africa at 500% resulting in the virtual abandonment of the Kaabu Shillings, the country's currency, for the US dollars.
3. Kaabu is blessed with enormous natural resources. Kaabu has natural resources such as gold, diamonds, bauxite, uranium and various other minerals. It is also reported that the country has deposits of oil and gas even though no discovery has been made. Most of the natural resources in Kaabu are located in the southern region of Banfora inhabited mostly by the Nungu tribe which is close to Cayorr. The Nungu tribe are predominantly Christians and they make up 75% of the population of the Banfora Region and 15% of the entire population of Kaabu. The Bissa tribe is the largest ethnic group in Kaabu with 75% of the population identifying as Bissas. The Bissa tribe are predominantly Muslims and all the leaders of Kaabu since independence have been Bissa Muslims.

4. In 1982, while under military rule, the Government of Kaabu announced the discovery of gold and diamond deposits in the Banfora Region. This situation led to an influx of mining companies mainly from the Republic of Cayorr. Because the Nungu people were less educated and live in the most economically deprived region, they were effectively excluded from the mining operations in the Banfora region. After several protests against their exclusion from the mining activities, they were violently suppressed by the Government, coupled with the devastation of their farm lands by mining activities, the Nungu tribe were forced to migrate to Cayorr, where they were able to find jobs in the agricultural and the construction sectors.
5. From 2010-2018, Kaabu received over 8000 returnee migrants from Nubia and several other countries. Most of the returned migrants are people that have exhausted their asylum claims in those countries. Due to public outcry over the deportation of Kaabu citizens, the Government in 2018 imposed a moratorium on receiving of returnees alleging that migrants contribute significantly towards their GDP and due to high unemployment among young people, it is unable to guarantee their meaningful reintegration into Kaabu society. The regional block has responded that it will impose visa restrictions on Kaabu for non-compliance with international migration pacts.
6. The Republic of Cayorr, on the other hand, has had the good fortune of never having experienced a military coup or civil unrest. This has been credited mainly to its homogeneity. More than 90% of the population of Cayorr are Muslims, with 95% identifying as Bissas. This homogeneity has been to the advantage of Cayor. Since its independence from Britain, the country has moved from an underdeveloped country to a middle-income country. In 2015, reflecting on the strong income growth of Cayorr over the past decades, the World Bank announced that Cayorr's gross national income (GNI) per capita increased from \$1,020 in 2010 to \$2,000 in 2020, exceeding the threshold for lower-middle-income status. According to the UN Human Development Index Report of 2018, Cayorr has been able to lower unemployment to 5%, increase growth in the economy's productive sectors, leverage booming tourism and service sectors, and mining activities in Kaabu. The Report credited Cayorr' s progressive economic policies as the main driver of its success story. Data from the Cayorr Ministry of Finance indicated that 15% of the country's revenue comes from mining activities in the Banfora Region of Kaabu where Cayorr state-owned investment companies (CIC) are awarded substantial mining rights.
7. Cayorr operates a presidential system of Government with legislative powers vested in a unicameral legislature, judicial powers in the courts, and executive powers in the President. Cayorr also has a Constitutional Court that is empowered by its 1990 Constitution to interpret and enforce the constitution. Section 35 of the Cayorr Constitution stipulates that when any matter that calls for the interpretation and

enforcement of the Constitution arises before lower courts, the matter must be referred to the Constitutional Court for determination. As a former British colony, Cayorr applies the common law system, the principles of equity in the administration of justice and has dualist leaning in dealing with international instruments.

8. Cayorr ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) on 6th August 2006; the Migration for Employment Convention on the 8th April 1985; the Migrant Workers (Supplementary Provisions) Convention on 10 April 1985; the African Charter on Human and Peoples' Rights (African Charter) on 4th November 1988; the International Covenant on Civil and Political Rights on 16th February 1979; the International Covenant on Economic, Social and Cultural Rights on 26th April 1980; the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa on 17 July 2006; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa on the 12th June 1998; the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD) on 3rd February 1980; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 June 1990; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on the 15th August 1990, the Convention on the Rights of the Child on 13 September 1992 and the African Charter on the Rights and Welfare of the Child in March 2000. Cayorr ratified the ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment (1979/1980) in 1992 and the Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment (1985/1989) in 2000.
9. Cayorr has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on 12 June 2010 and made article 34(6) declaration on the 25 February 2018. However, due to unprecedented cases filed against Cayorr in the African Court on Human and Peoples' Rights, the Government has announced that it will no longer allow individuals and non-governmental organizations to directly file complaints against it before the African Court on Human and Peoples' Rights. The government deposited the instrument of withdrawal on the 16 July 2021, just over few years after it first deposited 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. The Government asserts that the withdrawal was intended to prevent exploitation of the individual complaint procedure by criminals and foreigners.
10. In 2016, Cayorr was awarded the right to host the 2021 African Cup of Nations for the first time in its history and the Government. Through a press release dated 12 June 2016, announced that it will be constructing 6 different stadia at different cities in the

country to host the historic games. Faced with a short deadline to complete the construction of the 6 stadia and a shortage of labour, the Government of Cayorr engaged in the recruitment of Nungus from Kaabu who are known for their hard work and resilience to harsh working conditions; and who will be willing to accepting lower wages for their labour.

11. Muminatu, a single mother of two from the Banfora Region and of Nungu extraction, lost her farmland to mining activities in 2015. Her husband was killed during one of the protests against mining activities in the Banfora Region. On the 12 June 2016, the Government of Cayorr issued a Press Release inviting eligible migrants to take up jobs in Cayorr and the Press Release appears to target the Nungu people. Muminatu and many of her peers heard about the Press Release over a local radio station and left the remote village of Kaidugu in Banfora to seek greener pastures in Cayorr. Through the assistance of her cousin, Banfo Danjo, who is now the leader of the civil society organization, the Platform for the Rights of Migrant Workers (PRMW) in Cayorr, Muminatu was issued an entry permit.
12. According to Cayorr's Immigration Act of 1975, every non-Cayorr national residing in the country must hold a residential permit, and cannot be employed without a work permit. The Act prescribed a fine of one million Cayorr Shillings or imprisonment for a term of three years for violation of immigration laws. Section 25 of the Immigration Act confers power on the Director General of Immigration to grant and revoke work and residential Permits. Both the work permit and the residential permit can be revoked only where the person has been convicted of an offence under the Immigration Act. Section 17 of the Act prescribes that if a non-national is granted a residential permit to engage in employment in Cayorr, the said permit shall terminate upon the revocation of the person's work permit.
13. With the help of Banfo Danjo, Muminatu secured a job at one of the luxurious hotels in Kayak, the capital of Cayorr. For the first three months of her stay in Kayak, Muminatu and her two children, Enzo, six-year-old, and Django, 9 years old, were living with Banfo Danjo and his family. She eventually moved out after she has made enough money to afford the rent in Kayak. Django was diagnosed with dyslexia, a learning disability that has seen him repeat 2nd grade twice. Muminatu was advised to engage the services of an expert to boost Django's learning difficulty for a moderate fee. Six months into the therapy, Django showed signs of improvement.
14. In the 3rd quarter of 2018, Cayorr's economy went into a recession owing to falling oil prices as its economy mainly depends on revenues from oil and gas upstream activities. In order to avoid plunging the economy into a deeper recession, the Cayorr Government decided to cut spending. While the economy was in a recession, the cost of hosting the African Cup of Nations ballooned from USD 2 billion to USD 4 billion.

When this fact became public, the Cayorr President, Lubila Toso, a Bissa Muslim, was forced to cut further spending after he received a barrage of criticisms from the local and international press. The Minimum Wage Act 2010 provides a mandatory minimum wage to be paid to any worker in the labour force without distinction as to nationality. The Act prescribed a punishment for any employer who pays an employee below the minimum wage prescribed in the Act.

15. Given that 95% of the labour force employed in the construction of the six stadia are Nungu people from Kaabu, the President who enjoys a majority in Parliament sent to the National Assembly a bill to amend section 2 of the Minimum Wage Act 2010 by removing non-Cayorr nationals under the purview of the Act. The amendment was swift and passed on the 17 April 2019. When the construction workers heard about the passage of the Minimum Wage (Amendment) Act and its implication on their income, they sent a delegation comprising leaders from each construction site across the country to meet Banfo Danjo and PRMW for advice.
16. On behalf of PRMW, Banfo Danjo wrote a letter dated 25 April 2019 seeking an audience with the Minister of Labour to which he received no reply. He also made phone calls to the Minister's office line and each time he was told the Minister was in a meeting. On the 29 April 2019, Banfo Danjo applied to register a trade union, the Nungu Workers Union to collectively bargain on behalf of the Nungu workers but the application was rejected and the reply from the Registrar of Trade Unions was that the proposed Nungu Workers Union is a 'tribal political party and not a trade union' and that "non-nationals cannot register a trade union in Cayorr". Faced with these obstacles, the leadership of the workers convened a meeting on the 30 May 2019 at the headquarters of the PRMW and it was resolved at this meeting that they should embark on a sit-down strike on Labour Day, the 1 May 2019.
17. On the 1 May 2019, the PRMW issued a Press Release announcing that the workers at the construction sites will be embarking on an indefinite strike commencing 1 May 2019 until further notice. Faced with huge sunken investment and a looming deadline, the Cayorr Government issued a Press Release condemning the sit-down strike and called it "an attempt to sabotage the country's efforts to host the historic Nations Cup."
18. The Minister of Labour Billy Mansa was quoted by the Mirror Newspaper of 2 May 2019 as saying:

"the Government of Cayorr will not allow a rag tag group of aliens to sabotage the hosting of the Africa Cup of Nations. Can you imagine? We gave these ungrateful people jobs, food, shelter and saved them from their savage country and this is how they want to pay us back. If they don't get back to work as soon

as possible, we will put them on buses and dump them into their impoverished country”.

19. One month into the sit-down strike, the Immigration Department made the following announcement in the public Gazette dated 5 June 2019:

“The Immigration Department informs the general public, especially immigrant workers, that a new system has been put in place to make the application process for work permits more efficient and fool-proof. Consequently, all holders of valid work permits should reapply through the new system for a re-issuance of the work permit. All migrant workers are therefore granted a period of 14 days to regularize their work permits or risk the revocation of their permits.”

20. The PRMW and the workers saw this announcement from Immigration Department as a tactic by the Cayorr Government to pressure them to suspend the strike and get back to work. They advised their members to abstain from reapplying for the new work permit as it is a ploy to exploit them. On the 20 June 2019, true to his threats, the Director General of Immigration acting under section 25 of the Immigration Act revoked all previous work permits and ordered his officials to detain “undocumented migrant workers” for a period of 30 days which should be automatically renewable for another 30 days. On the 25 June 2019, the Immigration Department mobilized and coordinated a large force of security forces to raid the shanty towns that host migrant workers. Muminatu and her two children with scores of other migrant workers were arrested and taken to a detention center at the outskirts of Kayak. Sanitary conditions at the detention centers were undignifying as there was no running water and there were only two toilets for an overcrowded facility. Muminatu and her two children were housed in a very small cell in the detention center awaiting their expulsion from Cayorr.
21. When PRMW heard about this development, it filed a law suit at the High Court seeking an order restraining the Director General from deporting the migrant workers back to Kaabu. The suit also sought a declaration from the High Court that the Minimum Wage (Amendment) Act is discriminatory and therefore violates the human rights of migrant workers, and the proposed expulsion of migrant workers is inconsistent with Cayorr’s international human rights obligations. On the 1 July 2019, the High Court granted the restraining order but declined jurisdiction on the other issues and referred same to the Constitutional Court for determination.
22. On the 5 July 2019, PRMW filed a complaint to the African Commission on Human and Peoples’ Rights Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa to intervene and help resolve the standoff. On the 10th of July 2019, the Special Rapporteur visited Cayorr and met with the migrant

workers, the leadership of PRMW and President Toso. After the visit, the Special Rapporteur wrote a Report to the African Commission on Human and Peoples' Rights and copied the relevant parties.

23. In her Report dated 25 July 2019, the Special Rapporteur stated at page 15 "that the fundamental principle of equality and non-discrimination is of a peremptory nature and binds all States regardless of any circumstance or consideration such as the migratory status of a person". The Report concludes that "Cayorr thus has the obligation to respect and guarantee the labour rights of all workers, including those of undocumented migrant workers. The Report went further to say that "the migratory status of a person cannot constitute a justification to deprive him or her of the enjoyment and exercise of human rights, including those of a labour-related nature" and that "Cayorr may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving its public policy goals, whatever these may be, including those of a migratory character."
24. On the 8 July, Muminatu through her lawyer Barrister Moses filed a law suit on her behalf and that of her children in the High Court for their release. However, the Court declined jurisdiction on account that the petitioner does not have standing to bring claims on behalf of Muminatu and her children. The Court relied on section 37 of the Cayorr Constitution which provides that any person who alleges that his/her rights are violated in relation to himself or herself may apply to the High Court for a redress. Barrister Moses filed his appeal in the Court of Appeal out of time and the Court refused to grant him leave to file out of time.
25. On the 10 September 2019, with observer status with the African Commission on Human and Peoples' Rights, PRMW submitted an application to the African Court on Human and Peoples' Rights for the determination of four issues. The matter has been set down for hearing on 27 October 2021. Prepare written memorials and argue the case for PRMW and the State of Cayorr, respectively, on the following issues:
 - (i) That the continued detention of Muminatu, Enzo, Django and similarly-placed migrant workers in detention centers in Cayorr violate the relevant human rights treaties which Cayorr has ratified including the ICRMW.
 - (ii) That the Minimum Wage (Amendment) Act is discriminatory and therefore violates violate the relevant human rights treaties which Cayorr has ratified including the ICRMW.
 - (iii) That the Cayorr's Government's refusal to allow migrant workers to register a trade union violate the relevant human rights treaties which Cayorr has ratified including the ICRMW.

- (iv) That the proposed expulsion of the detained migrant workers violate the relevant human rights treaties which Cayorr has ratified including the ICRMW.

The parties are expected to address the Court on jurisdiction and admissibility.