

**24TH AFRICAN HUMAN RIGHTS MOOT COURT COMPETITION
UNIVERSITY OF ZAMBIA, 5 – 10 OCTOBER 2015**

**HYPOTHETICAL CASE TO BE ARGUED
before the African Court on Human and Peoples' Rights**

The case between the African Commission on Human and Peoples' Rights (concerning the case submitted by Active Help International) and the Government of the United Republic of Mongu (URM)

1. The United Republic of Mongu (URM) is a small land-locked country with a population of 3.3 million people. It is located in the south-eastern part of Africa and is divided into 20 Districts in 10 Provinces. URM is a developing country, which relies heavily on international aid. The current governing party, the Mongu Liberation Movement (MLM), has been in government since independence in 1965.
2. The 1990 Constitution of URM, which amended the 1965 Independence Constitution, provides for all the human rights that are contained in the ICCPR. It further provides that "all treaties, including human rights treaties, duly ratified or acceded to by URM, form part of the law of the land". The 1990 Constitution introduced multi-party elections. These elections were all subsequently held, and passed the muster of Organisation of African Unity (OAU)/African Union (AU) observers. A report issued in January 2012 by Liberty House, a local civil rights group, notes that URM only partially respects these rights, especially in relation to public protests. Since 2012, there have been sporadic protests in various provinces arising from public dissatisfaction about the increase in gas prices, failed national health insurance programmes and the award by the University of Nokeyema (UNINOK) of an honorary doctorate degree to the President's wife in December 2012. 75% of these protests turned violent and gained significant coverage both in local and international news.
3. Three weeks after the report by Liberty House, the Parliament of URM passed the Peaceful Assemblies Act, requiring anyone 'who engages in any form of public assembly that may reasonably lead to an act or acts of public violence' to request prior permission from the District Prefect. Requests for permission have to be submitted to the Office of the Prefect at least 48 hours before the planned event. Introducing this legislation in Parliament, the Minister of Public Safety explained that the legislation was adopted 'in order to prevent chaos and catastrophes on the road to national development.' As part of his statement, the Minister made reference to a February 2012 report by a non-governmental organisation, Peace Centre in Seychelles, concluding that 'countries that experience violence and conflicts are slow to develop.' In March 2012, Speak-Out, a local NGO advocating for democracy in Mongu instituted an action at the Supreme Court challenging the Peaceful Assemblies Act as a violation of civil liberties but in July 2012, the Supreme Court dismissed the case without giving any reasons.
4. In various national and international fora, the URM government has consistently expressed commitment to the development of the country. In the decade from 2000 to 2010, the average growth in GDP was 3%. More recently, from 1 March 2013 to 28 February 2014, the GDP of the country increased by 3.5 per cent. The percentage of the national budgetary allocation dedicated to education and health (jointly) increased from 20% in 2000, to 25% in 2010, and to 28% in 2013.

5. URM is a member state of both the United Nations (UN) and the African Union (AU). As at 2012, URM had ratified all the human rights treaties of the two institutions except the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (Protocol to the African Court). On 10 October 2013, URM ratified the Protocol to the African Court without making the optional declaration under article 34(6) of the Protocol. URM has accepted all optional individual complaints mechanisms under UN human rights treaties, and has issued an open invitation for UN special mechanisms to visit the country.
6. The 1990 Constitution of URM provides for two levels of courts: High Courts (in each Province) and the Supreme Court. Cases concerning civil and political matters have to be instituted before the relevant High Court. All appeals on these matters lie to the Supreme Court. Matters of a constitutional nature may be instituted only before the Supreme Court. The Supreme Court then decides whether to deal with the matter or refer it to the High Court for a prior hearing. The Constitution, in section 77, also states that only "a person whose rights have been, are being, or are likely to be infringed" can seize the Court in any civil, criminal or constitutional matter. However, the Constitution also allows the Chief Justice to issue Enforcement Rules to regulate "the practice and procedure for the purpose of section 77". Under these Rules, issued in 2012, Rule 2 provides as follows: "Courts must encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. Human rights activists, governmental organizations and others may institute human rights litigation as applicants acting in the public interest". The High Courts and Supreme Court have generally followed a literalist approach to interpretation, and have on no occasion interpreted constitutional rights as containing elements of socio-economic rights. Writing in 'Legal Apogee', the official law journal of the legal profession soon after the issuance of these Rules, Professor Fop, an emeritus professor at Goldbelt University (GU), expressed the view that the Enforcement Rules are "mere guidelines and should not override well-established judicial precedents". This journal did not cover any further article on this topic. Due to financial constraints, the law journals of the various universities only appear irregularly, with none appearing since 2012.
7. URM is rich in natural resources. Mining is the major economic activity in URM, contributing more than 78% to the country's gross domestic product. Among its resources are asbestos, gold, diamonds and nickel. In URM, the Kankoyi district in the Central Province has the highest deposit of asbestos. Huge oil deposits have recently been discovered in the Northwest Province. Small and medium scale mines are located all around URM. After media reports appeared about poor working conditions in various mines across the country, the government of URM in 2010 passed the Mining Safety Act, requiring all mining companies to provide annual reports on the working conditions in their mines. These reports have to be submitted to the highest civil servant in the Department of Mines, the Director-General. Failure to submit these reports results in deregistration along with a fine equivalent to 5% of the defaulting mining company's profits in the previous year. The Mining Safety Act requires that, if a miner dies as a result of a mine accident, half his yearly salary should be paid to his estate. This amount is much smaller than the amount to be paid in respect of all other deaths resulting from occupational accidents: Under the Occupational (Other than Mines) Safety Act, an amount equivalent to a yearly salary has to be paid to the deceased's estate. Since 2010, the Department of Mines has conducted visits to mines that had been in the news for especially bad conditions. From 2010 to 2014, it visited more than half of the mines in the country. As the Standard Minerals Limited (SML) gold mine in the Goldbelt Province had not been the subject of any negative news reports, it had not been subjected to any inspection during this period.

8. The biggest mining company operating in URM is SML, which is run as a joint venture between the government of URM, which owns 45% of the shares; and Deep Gold Mineral Resources, a foreign private company, which owns the remaining 55% of the shares. SML began its operations in URM in 1970. It runs two major mining operations: a chrysotile (white) asbestos mine located in Kankoyi District in Central Province and a gold mine in the Goldbelt Province. Over the past 10 years, the profits realised by SML have increased from 20% of its initial investment in the first year of conducting business in URM, to 300% of that investment, by 2014. As part of its social responsibility, it built the Goldbelt University and gives 2 per cent of its annual profit to the University.
9. The SML mine in Kankoyi District is the largest chrysotile (white) asbestos mine on the continent. It covers a surface area of more than 30 square kilometres. This particular mine has been in existence for over 15 years.
10. In May 2012, a 16 year-old resident of Kankoyi District, Likando Moremi, was diagnosed with advanced lung cancer, with no more than 2 months to live. The diagnosis was made in the Kankoyi Public Hospital, where Likando's parents took him after they got very worried due to his endless coughing. Likando and many of his classmates walked past the SML mine every morning for the last ten years on their way to school. Likando was subsequently admitted to the Kankoyi Private Hospital, run and financed by a charity-based organisation, Nurses without Boundaries, because there was no room in any of the state-run hospitals for anyone suffering from terminal cancer. The Central Provincial medical guidelines, issued to the Superintendents of all provincial hospitals, direct that "in providing hospital space, hospitals are to be guided by the prognosis of patients". In a *Daily News* article, the Central Provincial Chief Medical Director explained that these guidelines were necessary as there were hundreds of cases of severe conditions and as the hospitals were overstretched, hospital spaces and full regime of treatments had to be given to patients who stood a good chance of recovery from their conditions. At the time Likando was diagnosed with advanced lung cancer, there was already a long waiting list of people who were waiting to undergo treatment for various conditions including heart surgeries and kidney transplants. Likando was provided with basic palliative care, and died a month later. According to the autopsy report conducted by the State, Likando's health condition may have been partially due to passive smoking. According to newspaper reports, based on an analysis of autopsy reports, at least 10 children (under the age of 18) had succumbed to respiratory diseases and lung cancer over the past two years in Kankoyi District. In response, the Public Relations Officer of the SML asbestos mine expressed regret at these deaths, but said that the mine has reliable information that Likando's father smoked cigarettes, and that this factor was a co-contributor, if not the main reason for Likando's death.
11. In July 2012, Likando's parents lodged a case against the SML copper mine in the Supreme Court, alleging a violation of their son's right to health. The Supreme Court decided to refer the matter to the Central province High Court. The High Court rejected the claim on the ground that the right to health is not justiciable under the country's Constitution, as the Court's jurisdiction is restricted to the civil and political rights in the Constitution. In an obiter dictum, the Court remarked that had the case been based on an alleged violation of the right to life, the Court may have read the right to health into the right to life.
12. In the Goldbelt Province, the SML runs a major gold mine. Although this gold mine has caused very little harm to the environment, many workers have become very disgruntled by the operations of the SML gold mine. The reports submitted by SML to the Director-General of the Department of Mines for the years 2010 to 2013 presented the working conditions in the gold mine as complying with all national and international rules of labour law. On 4 March 2014, a mining accident occurred in an underground shaft of the SML

gold mine, resulting in the loss of the lives of over 200 miners, who all perished underground. The families of each deceased miner received an equivalent of six months' salary of that miner as compensation.

13. The miners' trade union, to which 50 per cent of the deceased miners belonged, approached the High Court, suing the SML gold mine for failing to secure safe working conditions for all the deceased miners, and for the failure to adequately compensate the families of deceased workers. The High Court held that the miners' trade union had no standing to take the matter to the court on behalf of the miners' families, as the trade union was not an 'aggrieved party'. On appeal, the Supreme Court confirmed this finding, relying in part on the academic article by Professor Fop.
14. The UNINOK is a public university in the Northwest Province, established under an Act of Parliament in 1969. In terms of this Act, the national Minister of Higher Education appoints the University's Principal. The Act also allows the University to adopt its own disciplinary code, which the first University Governing Council did in 1969. Before taking on an appointment as a staff of UNINOK, every prospective staff is required to sign a pledge to abide by the UNINOK Disciplinary Code of Conduct, 1969 (the UNINOK Disciplinary Code). The UNINOK Disciplinary Code provides for a number of disciplinary infractions. Paragraph 6(1) of the Code provides that no staff member or student may 'engage in conduct which is likely to bring the University into disrepute'. In terms of paragraph 6(2), any staff member or student that engages in conduct that brings the University into disrepute may be dismissed upon investigation and full consideration of the nature of the misconduct. This investigation and dismissal must be undertaken by the University's Disciplinary Panel, which is headed by the Principal of the University. By virtue of paragraph 6(5) of the Code, the Principal of the University has the discretion, in cases he or she considers to be of 'overriding public importance', to suspend a staff member or student with immediate effect pending the determination of the case by the University's Disciplinary Panel.
15. Mr Kozo is a lecturer of Business and Human Rights at the UNINOK. Having followed the two cases involving SML asbestos and gold mines, he conducted a study on the matters raised in the two cases, which was commissioned by the UNINOK. Mr Kozo's field findings revealed that the fibres released from the SML asbestos mine were directly responsible for the poor health of Kankoyi residents, and for 68% of their deaths from illness. His study also showed that SML gold mine had failed to provide the miners with protective clothing despite their many requests; and that had it done so, an estimated 50% of the miners who died would have survived the March 2014 accident. He also blamed the government for adopting a 'paper tiger', in that the Mining Safety Law does not prescribe what has to happen to the reports submitted by mining companies. In his study, he described the government's action 'as a shameless, genocidal action against its own citizens.' Mr Kozo shared his study in a public lecture, delivered on 19 January 2015 on the University campus, to 200 students from various faculties within UNINOK.
16. On the early evening of 21 January 2015, enraged by Mr Kozo's findings, 125 students marched to the national President's residence, with posters demanding that SML's operations in Central Province and Goldbelt Province cease with immediate effect. Around the same time, an official reception ceremony was being held at the national President's residence for 10 African Heads of States who had come to Mongu for a Pan-African Economic Development Forum to be held on 21 and 22 January.
17. Prior to the march, on the morning of 20 January, one of the organisers of the march, the President of the Students' Council, approached the District Prefect under the Peaceful Assemblies Act, requesting permission for the march. The Prefect's Secretary received the written request, but by the afternoon of 21 January, no response (not even an

acknowledgement) had been received. The protesting students kept chanting and singing loudly throughout the night of 21 January, despite repeated instructions (over loudhailers) to leave the premises and to disband the protest. Around midnight, when some of the protesting students started singing a war-song and hitting hard at the fenced premises of the national President's residence, members of the Presidential Guard stormed the group, hitting students with batons. As a result, the crowd dispersed. International and local independent TV channels covered these events. These TV channels also interviewed Mr Kozo about his findings. Twenty-three students were admitted to hospital with severe injuries. By 23 January, all of them had been discharged. All these events were covered extensively in the international and national press, and on social networks.

18. On 22 January, the Principal of UNINOK summoned Mr Kozo to her office, and gently suggested that he renounce his research findings with an explanation that he had noted some inaccuracies in his analysis, which cast doubts about the reliability of his research findings. When Mr Kozo indicated that this would not be acceptable to his integrity, she confronted him with a report by Professor Makihinihika (a research Professor at Goldbelt University) who published an article in January 2015 indicating that the fibres from SML's asbestos mine were responsible for about 40% of the death from illness in Kankoyi. The Principal said to him: 'Take the honourable route and resign as you have disgraced the University enough'. When Mr Kozo took none of her advice, the Principal informed him that the University's Governing Council has decided to refer his case to the Disciplinary Panel. However, pending the determination of his case, the Principal informed him that he (Mr Kozo) was suspended with immediate effect. Two days later, Mr Kozo held a press conference, which was widely covered in the media in which he spoke about his suspension as an 'unfortunate dictatorship strange to the world of intellectualism'. Two weeks later, the Disciplinary Panel dismissed him following the full determination of his case. On 23 February, Mr Kozo instituted a case at the Supreme Court alleging that his suspension and eventual dismissal was a violation of his right to freedom of expression and academic freedom. The Supreme Court dismissed his case on grounds that his suspension and dismissal was reasonably justified within the limits of UNINOK's Disciplinary Code.
19. Active Help International, a non-governmental organisation working with communities across Mongu in the area of human rights, approaches Likando's parents, some members of the trade union and Mr Kozo offering to partner with them all to challenge the government on the human rights violations relating to the activities of SML. With their approval, Active Help International submitted a complaint to the African Commission on Human and Peoples' Rights, arguing that the government of URM:
 - a. violated Likando's right to health under the African Charter and relevant international law;
 - b. is, under the African Charter and relevant international law, responsible for the violation of the rights of the miners who died in the SML gold mine;
 - c. violated the protesting student's rights under the African Charter and relevant international law instruments, and
 - d. violated Mr Kozo's right to freedom of expression and academic freedom, as guaranteed under the African Charter and relevant international law.
20. In March 2015, the African Commission, acting in terms of Rule 118(4) of its Rules of Procedure, referred the matter to the Court without considering it on either admissibility or merits. The case has been set for hearing in October 2015. Prepare heads of arguments on both admissibility and merits for each issue for consideration by the African Court, on behalf of the African Commission and the Government of URM.