

**FIFTH EDITION OF THE SIR DAWDA KAIRABA JAWARA INTERNATIONAL HUMAN RIGHTS MOOT COURT COMPETITION 2024**

**HYPOTHETICAL CASE**

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

**BETWEEN**

**CENTER FOR MIGRATION STUDIES (CMS)**

**AND**

**THE REPUBLIC EQUITANIA**

1. The Republic of Equitania is located in West Africa and borders with the Republic of Soneya in the East and the Republic of Bajamaneh in the West. All the three countries share long history of economic cooperation, cultural exchange and ethnolinguistic similarities although with notable differences in dialects. On the South, Equitania shares a 150 kilometer border with Mbadia. The four countries were part of the same empire for centuries before its eventual fall to the British Empire in 1875 resulting to the partitioning of the empire into four different countries. Equitania is a resource-rich country with a population of over 20 million people. Due to economic disparities, low wages and limited job opportunities in Soneya, Bajamaneh and Mbadia, millions of migrants from these countries seek work in the more developed Equitania.
2. Equitania's economy has rapidly modernized since 2000, with a GDP of USD 70 billion, and a robust growth rate of 6.2% annually over the last decade. The country's economic success has been driven by strategic investments in technology, services, and infrastructure. Major cities like the capital, Bateli, and the bustling industrial center of Joka have become hubs of trade and commerce. Equitania's government, under President Manlafi Koyo, focused on creating an enabling environment for foreign investment. This prosperity has attracted migrants, primarily from neighboring Soneya, who see Equitania as a land of opportunity. In 2018, the number of migrants in the country was nearly 6 million people. Migrants have been a critical part of Equitania's economic growth as many migrants found jobs in sectors where Equitanians were less inclined to work, such as construction, agriculture, and domestic services.
3. Equitania has a presidential system of Government with legislative powers vested in the Legislature, judicial powers in the Courts, and executive powers in the President and Cabinet. Equitania also has a Constitutional Court that is empowered by its 1990 Constitution to interpret and enforce the Constitution. Section 35 of the Equitania 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, Equitania applies the common law system, the principles of equity in the administration of justice and is a dualist state in its application of international human rights instruments. The Bill of Rights Chapter of the 1990 Constitution reflects the provisions of the International Covenant on Civil and Political

Rights (ICCPR). The right to education, healthcare and social security are incorporated in the Constitution as Directive Principles of State Policy. Equitania also has one of the toughest citizenship laws in the region. Under Equitania law, a child born in the country to non-nationals does not automatically become a citizen of Equitania. The child takes the nationality of the parents and naturalization requires 15 years of residency in the country. Moreover, inefficiencies in the court system have been a long-standing problem in Equitania, with delays of up to 1 year in the scheduling of cases.

4. Equitania ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in June 2010; the Migration for Employment Convention in 1992; the Migrant Workers (Supplementary Provisions) Convention on 10 April 1985; the African Charter on Human and Peoples' Rights (African Charter) in June 1988; the ICCPR in January 1979; the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 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 in 1998; the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD) in 1980; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 7 June 1990; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on the 15 August 1990 and the UN Convention on the Rights of the Child (CRC) in 2002.
5. The country is also a party to the African Charter on the Rights and Welfare of the Child (ACRWC) since March 2000; Convention relating to the Status of Refugees (the 1951 Convention) in 1975; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2004; and Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime in 2006. In acceding to the ACRWC and the CRC, Equitania entered a reservation against Article 11 (3) of the Charter and article 28 (1) of the CRC to the extent that 'due to resource constraints Equitania is unable to guarantee the full realisation of the obligations to non-nationals.'
6. Equitania further 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. The country is also a State Party to the Protocol to the African Charter on Human and Peoples' Rights, establishing the African Court on Human and Peoples' Rights since 2012. On the 16 September 2019, the country made a declaration under Article 34(6). However, following an unprecedented rise of cases lodged against Equitania in the African Court, the Government has declared that it will henceforth prohibit individuals and Non-Governmental Organizations (NGOs) from directly filing complaints against it in this court. On 8 August 2024, the Government submitted its instrument of withdrawal. The Government claims that the withdrawal was a necessary step to prevent the potential exploitation of the individual complaint process by foreign nationals.

7. Since gaining independence in 1956, Equitania embraced a strong tradition of free and fair elections and peaceful transfers of power between governments. Its political system has long been a source of pride and an example for the neighboring countries. Over the past two decades, the country has been under the rule of Alliance for Democratic Governance (ADG) with a strong support for multiculturalism and democratic pluralism. However, in recent years, the political landscape has begun to shift dramatically. The global economic downturn in 2008, Covid-19 pandemic in 2019 and Equitania's domestic recession have given rise to far-right nationalist movements. These movements have gained traction among young people and the middle class as the country's economic problems have deepened, particularly unemployment, which rose to 35% between 2020 and 2022, and high cost of living.
8. The far-right factions blame foreigners, particularly those from Soneya, for taking jobs and straining public services like health care and education. They argue that deporting migrants is necessary to safeguard jobs and health care services for their citizens and protect national identity. It was estimated that by 2020 non-citizens living in Equitania consume about 35% of Equitania's annual health budget. In the 2019 elections, the Nationalist Unity Party (NUP), a far-right faction led by Emmanuel Roberts made significant electoral gains. While it did not win the majority of seats, their strong representation in parliament has forced the ruling party, ADG, to adopt tougher immigration measures to prevent further loss of political support base. New laws were passed in 2020 and they provide for mass deportations and increased detention of undocumented migrant workers and their families and unaccompanied children. This period coincided with economic hardship in Soneya following years of economic mismanagement, climate change and inflation. Since 2010 Soneya has experienced prolonged droughts that continue to create widespread crop failure across the country. These challenges crippled Soneya's agriculture sector that provided livelihood for a large segment of the population. By 2017, lot of people were forced to seek what they term as 'greener pastures' in the neighboring Equitania.
9. Many families fled Soneya in desperation, driven by worsening economic conditions. The journey to Bateli, the capital of Equitania, was fraught with danger. Smugglers, capitalizing on their desperation, offered illegal passage across borders, often under treacherous conditions. Entire families crammed into hidden compartments of trucks make the journey in the dark while others walk the distance for several days. Several women that passed through the border reported sexual exploitation by smugglers and along the way, chaos often separated children from their families. In some cases, parents were detained at checkpoints while their children slipped through, left alone with no documentation. As the numbers of unaccompanied children grew in Bateli, rumors began to spread all over the city that the children from Soneya were criminals and were causing insecurity in the city.
10. In light of the ongoing presence of unaccompanied children on the streets of Bateli, the city Mayor Mr. Taylor Janha announced that the Children's Act of 2010 allows local authorities to take any child without parental care into custody. Following this statement, the police and local authority agents rounded up all the children in the streets and placed them in police custody. They were subsequently placed at a temporary facility in the outskirts of the city where they are provided with

clothes, books and food. After several months at the facility, in 2018 some of the girls started complaining of sexual harassment by personnel at the facility. The complaints were investigated and six of the male staff found wanting were put on administrative leave but were not prosecuted because Equitania had no law against sexual harassment. As a result, in 2019 Equitania established a Committee of Experts to produce a draft law and policy against sexual harassment.

11. In early 2021 the Center for Migration Studies (CMS) petitioned the High Court of Equitania, accusing the State of severe human rights violations in its treatment of migrant children from Soneya. The complaint stems from the Center's visit at the temporary facility where the children have been kept. During their visit, the Center collected evidence of abuse, including reports of rape and sexual harassment from several girls at the facility. However, the Court declined jurisdiction on account that the petitioner does not have standing to bring claims on behalf of the children. The Court relied on section 40 of the Constitution which limits the standing for enforcement of rights to persons that are directly affected by alleged infringement. CMS appealed against the decision in the Court of Appeal but the Court dismissed the matter because it was filed out of time.
12. Having heard of the work of CMS, Elizabeth Jah, a migrant worker from Soneya approached the organization with her longstanding problem. She informed CMS that she arrived in Equitania, in 2014 and has been working as a domestic worker at a private home in Bateli. She added that she gave birth to a child in a hospital in Bateli in 2020 and due to the ongoing bureaucratic hurdles in Soneya, she has been unable to secure the necessary documents to register her newborn's nationality. Only the birth of the child is registered and no further actions were taken either by the hospital or the Ministry of Interior that is responsible for immigration matters. After consulting a lawyer, CMS informed Elizabeth that Equitania's laws do not grant citizenship by birth unless one of the parents is Equitanian national. Since Elizabeth is not a citizen of Equitania and the father of her child is from Mbadia, her child is ineligible for citizenship, despite being born in the country. CMS advised her that their options are very minimal as the law is very strict on matters of citizenship. However, regardless of a child's nationality, Equitania law guarantees the right to basic education, access to healthcare, and modest social assistance payments. Elizabeth Jah has been receiving these modest social income payments from the State.
13. In January 2022 while trying to test the courts on the case of Elizabeth, CMS came across the story of the Johnson family who first arrived in Equitania in 2016, fleeing economic hardship in their home country of Soneya. Mr. Johnson, desperate to provide a better future for his family, decided to migrate to Equitania, which was then experiencing a robust economic boom. He entered the country legally through the ECOWAS Protocol on Free Movement of Persons, initially finding work as a laborer in the construction sector. His wife, Amina, and their infant daughter and son joined him a few months later. The family quickly settled into life in Equitania, with their two children later enrolling in local schools, and Mr. Johnson securing consistent work on various construction sites around Bateli. For the Johnsons, Equitania had become home, where they had built a life and contributed to the economy for years before the sudden threat of deportation loomed over them.

14. The Johnson family was shocked when they received a notice in November 2021 from the Ministry of Interior of Equitania ordering them to leave the country. After living and working in Equitania for years, they were now facing deportation due to new, stricter work permit regulations introduced by the government. Mr. Johnson, who had been working in construction, was unable to meet the new requirement of a formal employment contract, despite his many years of service in the sector. His wife, Amina, worked as a cook for a wealthy family also found herself unable to comply with the higher income thresholds now required for migrants to renew their work permits. On 2 June 2022, CMS filed a case in the High Court against the Minister of Interior to halt the deportation of the Johnson family and to investigate and determine the case of Elizabeth Jah. As the cases developed, they gained national attention. The Court did not hear the cases until November 2022, at which point they were dismissed due to lack of ‘diligent prosecution’. CMS later appealed in the Court of Appeal where judgement was in their favor as the court determined that the failure of the state to serve the Appellants hearing notices is a ground for retrial. However, since the State appealed against the decision in the Supreme Court their cases have remained underdetermined.
15. Due to the surge of migrants in Equitania, in 2020 the Government created what it refers to as ‘Friendly Shelters’ that are designed to provide accommodation for migrants and their families. The unaccompanied children are integrated within small family units in the Shelter headed by a foster mother. The Government reported that the ‘friendly Shelters’ have rapidly expanded across the country, each housing a minimum of 225 families. According to the Government, these Shelters are designed not only to provide a safe place to stay but also offers a holistic support system to migrants. Within the Shelters, families have access to essential services such as healthcare, with fully equipped hospitals on site. For the children, playgrounds and recreational areas have been built to foster a sense of normalcy. In addition to Shelter, the State provides a monthly stipend to help families cover basic needs such as food and transportation. Places of worship have also been provided in the Shelters for its diverse residents. Most of the adults that live in the Shelters with their families would normally find work in Bateli in the construction industry and domestic work.
16. In January 2023, the residents of the ‘Friendly Shelters’ in Bateli, concerned about the education of their children, reached out to the city’s Mayor to address the lack of schools within the Shelters. In response to this issue, the Mayor took the initiative to consult the Ministry of Basic and Secondary Education, to explore the possibility of building schools within the Shelters to meet the educational needs of children. However, in a formal letter addressed to the residents of the Shelters, the Mayor shared the Ministry's response, which indicated that the Government was unable to build schools in the Shelters due to their temporary nature. Despite the increase in number of Shelters and the growing population of children in need of education, the Government's focus remained on providing temporary solutions, and as a result, no schools would be built within the Shelters. The Government insisted that at some point the migrants and the unaccompanied children will return to their home country.

17. Moreover, despite the pressing need for educational facilities in the ‘Friendly Shelters,’ the Government has prohibited several humanitarian organizations from building permanent schools at these locations, citing the temporary nature of the Shelters. In response, some NGOs have found a creative solution by establishing ‘training centers’ instead. These small, temporary structures are designed to accommodate about 50 children at a time, providing basic life skills and basic education. The training centers operate in two daily shifts from Monday to Friday, with each session lasting about an hour. By December 2023, fifty training centers had been built across various Shelters in the country, with most of the attending children being 12 years old or younger.
18. In January 2024, the residents sought assistance from the Ministry of Basic and Secondary Education of Equitania to support their ‘training centers’ with curriculums. The Ministry responded it could not extend official curriculums or educational resources to these centers because they were not recognized as approved schools under the national education system. However, in a bid to support the children, the Ministry proposed developing a separate curriculum tailored to the specific needs of the children. This specialized curriculum would take into account their place of origin, religious background, and unique circumstances, to provide relevant life skills and foundational education. The decision was welcomed by the residents, who saw it as a positive step toward addressing their children's educational needs in a meaningful and culturally sensitive way.
19. In June 2024, a prominent human rights advocate and lawyer, Mrs. Yerewu Falana, became aware of the situation faced by children living in the ‘Friendly Shelters.’ Concerned about the lack of formal education, she filed a case in the Constitutional Court, arguing that the government's failure to provide schools violated the Constitution and the children's right to education. Despite her strong and well-reasoned arguments, the Constitutional Court dismissed the case, ruling that the right to education is not justiciable in Equitania.
20. In October 2023, CMS was granted observer status by the AU Commission on Human and Peoples’ Rights. As an organization dedicated to the protection of human rights, CMS did many policy papers and documentaries on the human rights of migrants in Africa. On the 19 October 2024, CMS filed a case before the African Court on Human and Peoples’ Rights and the matter is set for hearing before the African Court in December 2024. The Court is set to hear and determine the following issues:
  1. Standing and the admissibility of the case before the African Court on Human and Peoples’ Rights;
  2. Equitania's handling of the children found on the streets contravened the African Charter and related international human rights laws.
  3. Equitania’s deportation of the Johnson Family violates the African Charter and related international human rights laws.
  4. Equitania’s handling of the education of the children in the ‘Friendly Shelters’ contravened the African Charter and related international human rights laws.

5. Equitania's handling of Elizabeth Jah's case violates the African Charter and related international human rights laws.

The hearing is scheduled for 10 December 2024.

Prepare separate written arguments on behalf of the applicant, Center for Migration Studies (CMS), and the State of Equitania, the respondent.

For each party, address the issue of jurisdiction, merits and remedies in relation to each issue for determination.