

## **The case between Government of Gondi and the Public Interest Law Clinic**

1. The Republic of Gondi is a developing country in East Africa. It borders the Republic of Tongo on the West, the Republic of Kinieon the East, the Republic of South Rudanon the North and the Republic of Tangaon the South. According to a World Bank Development Report released in 2012, Gondi is ranked 145 out of 186 countries. According to this Report, Gondi has an under 5 mortality rate of 85 deaths per 1000 births, life expectancy of 57 years, an adult (over 15 years) literacy rate of 87% and a GNI per capita of 1,541 USD. Gondi has a population of about 40 million. Its economy has grown rapidly since it gained independence from the United Kingdom in 1962. Since then the Republic of Gondi has had a presidential form of government. Its law is based primarily on common law principles introduced during the colonial period. Its 1962 Constitution was replaced by the 1967 Constitution and later the 1995 Constitution.

2. The 1995 Constitution of the Republic of Gondi provides for two levels of government, the national government and the local governments, which are based on the districts and trickle down through the county, sub-county, parish to the village. In accordance with the Constitution, the Republic of Gondi is divided into 120 Districts. However, the districts are not fully autonomous and are heavily dependent on the national government. Each district has a Governor. National contributions to provinces are strictly proportionate to the population size of each province. The capital city of Gondi is Kalampa, located in the Central Province. The Central District has the largest population in Gondi, despite being the smallest district in terms of land mass. Chapter VIII of the Constitution provides for four levels of courts: Magistrates Courts, the High Court, the Court of Appeal/Constitutional Court and the Supreme Court. In this chapter of the Constitution, the Constitutional Court is recognised as the court with jurisdiction in respect of all matters relating to the interpretation of the Constitution. Appeals from the Constitutional Court lie to the Supreme Court. The 1995 Constitution provides for a justiciable Bill of Rights in Chapter IV. Any person who alleges a violation of his or her own rights under the Bill of Right may approach a High Court to adjudicate the matter. The Constitution also provides that where the matter requires interpretation of the Constitution, the same shall be referred to the Constitutional Court.

5. The country consists of 30 ethnic communities, of which the Makiliconstitute about 1% and the Pongo about 80%. Other ethnic communities constitute the remaining 19%. The members of the Pongo group hold most government and corporate positions. Gondi has had eight presidents since independence and all of them have been from the Pongo ethnic group, a factor that has created ethnic tension over the years. Members of the other ethnic communities have largely been marginalized from public life. Most of the Makililive in the Mudongo Forest, located in the Mudongo Province. According to 2012 national census figures, the total number of inhabitants of MudongoDistrictis 400 000, of which more than 80% live in the Mudongo Forest. Of those living in the Mudongo Forest, about 60% are younger than 18 years old. The Governor of MudongoDistrictand almost all officials in the MudongoDistrictgovernment are members of the Makiligroup.

6. The Republic of Gondi is a member of the United Nations (UN) and the African Union (AU). It is a party to the following UN human rights treaties: the International Covenant on

Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC). Gondi ratified the ICCPR and ICESCR in 1987, and the CRC in 1990. It has not accepted any of the individual complaints mechanisms allowed for under these treaties. At the regional level, it has become a party to the following: the OAU Refugee Convention (ratified on 1 June 1977); the African Charter on Human and Peoples' Rights (African Charter) (acceded to on 21 October 1987); the African Charter on the Rights and Welfare of the Child (African Children's Charter) (acceded to on 16 June 1991); the Protocol to the African Charter on the Rights of Women in Africa (ratified on 1 January 1991); the Protocol to the African Charter on the Establishment of African Court on Human and Peoples' Rights (African Court Protocol) (ratified on 1 January 2009); and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (IDP Convention) (signed on 1 January 2012, and ratified on 31 December 2013). On 1 March 2014, Gondi's Parliament adopted the Internal Displacement Act, which transformed all the relevant provisions of the IDP Convention into domestic law. It was the first time that the Gondi Parliament fully domesticated an international treaty. Gondi on 7 June 2014 made a declaration under article 34(6) of the African Court Protocol. At the time of acceding to the African Charter, Gondi entered a reservation to article 9 of the Charter. The reservation reads as follows: 'The right to access information shall only be exercised if specifically provided for under national legislation'. Section 35 of the 1990 Constitution of Gondi entrenches the right to access information for its citizens in the following terms:

Every citizen has the right of access to (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

8. The Mudongo Forest is a stretch of natural forest bordering the Tanga Republic. It makes up most of the land mass of the Mudongo Province. The Mudongo Forest extends from the Republic of Gondi into the Republic of Tongo. The Piwi has from time immemorial lived on the Tongo side of the Forest, and the Makilion the Gondi side. There is no clear borderline in the Forest, and the two communities never respected any rigid border lines. They used the Mudongo Forest for hunting and gathering for their essential livelihood. Their religious shrines are also located in various sites inside the Mudongo Forest.

9. During the period of colonialism, the traditional leadership of the Makilidid not fight against the colonialists. As a result, the colonialists allowed the Makilito continue living and using the Mudongo Forest. Unlike the Makili, the Piwi opposed the colonial rule of the Kingdom of Roblem, which in Tongo lasted from 1897 to 1965. Consequently, many Piwi were maimed and killed as the colonialists sought to suppress repeated uprisings. In the 1960s, about 10 000 of them moved to the Gondi part of the Forest, and were welcomed by the traditional leadership of the Makilion the understanding that they would submit to the leadership of the Makili. Upon the end of the colonial era over Tongo, in 1965, about half of this group of Piwi did not go back to their ancestral land in the Tongo part of the Mudongo Forest. On the basis of their historical roots, the Piwi in the Gondi part of the Forest still identify themselves as Tongo, and none of them at any stage acquired Gondi nationality. It is only the remnants of the Piwi who now live in Gondi who still maintain their cultural way of

life. Almost all of those in the Tongo part of the Forest have gradually since 1965 been integrated into the modernized economy of Tongo, and had abandoned the forest and their cultural way of life. The Tongo part of the Mudongo Forest has in 2001 been declared a natural conservation site, and has subsequently earned the country significant external revenue through tourism, mainly comprising visitors from Roblem.

10. Upon attaining independence, the new government of Gondi allowed the Makilito continue using the Mudongo Forest. It did not classify the land as customary land and no individual titles were registered over the land. All the four successive post-colonial governments allowed the Makilito use the land as they had done before. Given its relatively small population size, the Mudongo District receives very little support from the national government. In its contribution, the national government devoted only a small percentage of the expenditure on health and education. Communities in other parts of the country consider the Makilias a relic of the past. While there are only a few hospitals in Mudongo Province, they have all been established by private faith based organisations. However, because most inhabitants of the Mudongo Forest still prefer traditional medicine derived from the forest, these hospitals have been largely underutilized. The few primary and secondary schools in the Mudongo District are not attended well. The Makili have informal schools in the Forest, where their male children between 10 and 16, and girls between 8 and 12 are trained on their roles in society.

11. In 2009, Topu Energy Ltd (Topu), a foreign company registered in Maru Islands near China, was granted a prospecting license by the government of Gondi to prospect minerals in the Mudongo Forest. Earlier, in 2008, Topu discovered oil in commercially viable quantities in the Great Rayers Republic and Managa. However, due to several internal conflicts arising from the public knowledge of this discovery, several interested oil and energy companies turned away. In Managa, oil deposits were found in the Maro Lake but the government's ongoing negotiations with Topu have been seriously disturbed by conservationists concerned about the aquatic life in the Lake, which is unrivalled in the world. As a result of its prospecting activities in the Mudongo Forest, Topu in 2012 discovered considerable oil and coal deposits. According to an independent impact assessment report, commissioned by the Gondi government, in order to achieve the full benefit of the deposits, mining would require an excavation of almost three-quarters of the forest. The report also indicated that there were sufficient quantities to make oil drilling and mining economical. The assessment acknowledged the negative impact on local populations, and suggested that measures be taken to provide alternative accommodation to all affected Makili, and to provide them with reasonable compensation.

12. Three months after oil and coal had been discovered in the Mudongo Forest, on 31 March 2012, the Gondi government issued notice of its intention to resettle all the inhabitants of the Mudongo Forest in the small deforested part of the Mudongo Province, where some temporary shelters were erected. The government also unveiled a plan to build high rise apartments in Mudongo City, that would be able to accommodate all the inhabitants of the Mudongo Forest by June 2015. The government published a flyer, containing all relevant information, written in the local language, and distributed it widely in the community. In the flyer, inhabitants of the Forest were invited to register their concerns with

the relevant government office in Mudongo City. In July 2012, a notice was issued pursuant to section 2(3) of the Land Law Amendment Act, which was adopted earlier in 2012 by the two Houses of Parliament. Section 2(3) provides that only citizens with proof of ancestral roots in Gondi would be eligible for compensation due to resettlement. Jointly with Topu, the government called for a meeting with male elders of the Makilicommunity at the capital Kalampa and told them of the need to move to the temporary shelters, in order to pave way for the clearing of the Forest so that mining could start. While the Makiliwere promised a once-off monetary compensation of 1500 USD per person in addition to free accommodation in the to-be-constructed high rise apartments, they were also informed that should they refuse to move, the government would forcibly remove them, and they would forfeit all compensation.

14. At the meeting, representatives of government of Gondi and Topu spared no effort to convince the Makilito accept compensation and move to the temporary shelters. The Makilileadership refused. However, some of the Piwi speaking affiliates of the Makiliaccepted to move and were compensated with 1500 USD per person in addition to promises of accommodation in the high rise apartments. According to MrKadongo, the leader of a faith based organisation that worked closely with the communities, ‘the Piwi accepted to move out of fear that the government will make good on its promise to drive them away with nothing!’ Ultimately, on 31 January 2013, Topu began clearing the Forest with a view to commence mining, and its security agents started removing inhabitants and relocating them in the temporary shelter camps outside the Forest. At that stage, only about 10 000 persons were removed and relocated.

15. In the meantime, a small militant group called Movement for the Emancipation of Mudongo (MEE) was created by some members of the Makiliwith the stated goal of ‘stopping the exploitation and oppression of the inhabitants of Mudongo Forest and the devastation of the natural environment by public-private partnerships between the government of Gondi and corporations involved in the production of oil in the Mudongo Forest.’ Shortly after the clearing of the Forest and the relocation of inhabitants began, the leader of the MEE issued an ultimatum over a video released on the internet stating ‘Mudongo forest belongs to the Makilithat have lived in it for hundreds of years. The government and Topu should stop destroying the forest and oppressing our people. If not, they will pay the price.’ The parliament passed a decision to designate MEE as a terrorist organization under the section 3(2) of Gondi’s 2009 Prevention of Terrorism Act. At a glamorous ceremony, on 3 March 2013, the Minister of Mines signed the agreement between Topu and the government. When asked for a copy of the agreement, the Minister’s spokesperson said that the content could not be revealed, in the interest of state security. The matter did not end there. According to subsequent reports in Government owned Mission Newspaper, ‘insiders’ within government indicated that the agreement was very lucrative for Topu, and that the Minister was granted some ‘contingency fee’ under the agreement. *New Monitor* Newspaper, winner of the 2012 Openness Integrity Award for newspapers, equally confirmed this report. It also became clear from a report by Human Rights For All that Topu was relying solely on employees relocated from Meru Islands to Gondi to work on the mining and oil drilling project. When Members of the GondiParliament raised some concerns and posed questions during parliamentary question time, the Minister of Mines

refused to divulge any details of the agreement, claiming that the agreement had been approved by the cabinet, and that it is not in the national interest to reveal the details of the agreement, as that may, in addition to other reasons, have an impact on the state's regional economic advantage in the oil and coal extraction market.

17. Meanwhile, a university law clinic, the Public Interest Law Clinic (PILAC), approached the High Court seeking orders to restrain the government from evicting any other inhabitants of the Mudongo Forest. Most of the inhabitants were in fact unaware of PILAC's case with the High Court and had continued with their lives, particularly in areas where the clearing of the Forest was yet to commence. The High Court heard the matter on 16 May 2013, and found that PILAC did not have the requisite standing to bring the case. PILAC also approached the High Court on the basis of a violation of the Constitution, claiming that the right to freedom of information of the Makilicommunity had been violated by the government's refusal to make the agreement between itself and Topu public. The Court found that it lacked jurisdiction to deal with this issues, the same called for constitutional interpretation. PILAC lodged then petitioned the Constitutional Court on 27 September 2013. On 25 September 2013, the Registrar of the Constitutional Court announced that 'due to the backlog of petitions requiring urgent attention dating back to January 2012, petitions lodged after 31 July 2013 will be decided in due course, but at least within the next thirteen months from the date the appeal was lodged.' Some of the Petitions to be cleared have been lying in the Court since 2005.

18. Sometime after the decision of the High Court, in January 2014, Topu and its security agents started to clear substantial parts of the Forest, including through explosions that destroyed caves traditionally used by the Makilito live in. Topu supplied the affected Makiliwith some food relief and gave them clothing. The Makilileadership accepted the food and the clothing and at this stage about 100 000 Makiliaccepted to be moved to the temporary shelters built by the government. Following media reports covering these explosions, PILAC moved to the temporary shelter area and sought their consent to file a further suit on their behalf, in which the community would claim to entitled to at least 25% of all profits resulting from the oil drilling. The Makilileadership however declined to give the required consent in fear that the government would deny them food and shelter. At the time one of the most violent of these explosions took place, around 1 March 2014, a group of about two hundred persons with disabilities was undergoing traditional rehabilitation in a remote part of the Forest. Family members later found the PWDs who stayed behind, hidden in the Forest close to the site where the traditional rehabilitation was taking place. He told the people that the other persons fled out of the Forest when they heard the sounds of the explosion. He saw them moving along a footpath, leading to the district immediately to the north of Mudongo Province. He is sure that a sizeable number who could not move because of their disabilities remained behind and could not be traced "may be they were killed". He also thinks that a group of Makili people opposed to staying with PWDs could have taken advantage of the confusion to kill the PWDs.

21. After the announcement by the Court Registrar, PILAC painfully abandoned its Constitutional Court Petition and with the help of the African Commission on Human and Peoples Rights filed the case with the African Court in July 2014, arguing the following:

- a) It has the necessary standing to file the case before the African Court of Human and Peoples' Rights, and that the claim is admissible.
- b) The government of Gondi has violated the provisions of the African Charter and other relevant treaties through the process of resettlement of both the Makiliand Piwi.
- c) The government violated the African Charter and other relevant international law by depriving the Makili community of its right of freedom to information.
- d) The government should immediately take all necessary steps to ensure that the rights of the PWDs who cannot be traced are protected.

The case has been set for hearing in April 2015. Prepare heads of arguments on behalf of PILAC and the government of Gondi.