

**INTERNATIONAL COURT OF JUSTICE CONFERENCE DRAFT QUESTION**

**THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, IN NETHERLANDS**



**IN THE MATTER BETWEEN**

**THE UNITED REPUBLIC OF LIMPOPO**

**(APPLICANT)**

**V**

**THE REPUBLIC OF SAHARA**

**(RESPONDENT)**

1. The Federal Democratic Republic of Limpopo (Limpopo) is a landlocked country located in the North of the continent Kush. It shares borders with Murigu to the north, Owino and Purity to the northeast, Kulei to the east, Mboya to the south, Kiiru to the northwest and the Great Queendom of Sahara (Sahara) to the west. Limpopo is the 13th-most populous country in the world and the 2nd-most populous in Kush. Its capital and largest city is Kanairo.
2. Limpopo is a multilingual nation, with around 70 ethnolinguistic groups, the four largest of which are the Wakulima in the central region, Buteras in the south, Originals in the east and the Sulu in the west.
3. Sahara is a landlocked country in Northern Kush, neighbouring Limpopo to the west, with its capital city in K Squared. It is bordered by Salaton to its northeast, Wangui to its north, Quinter to its west, and Tarus to its south. Sahara is one of the smallest countries in Kush. The population is primarily composed of ethnic Saharans.
4. The prevalent language in the country is Kisahara. The Saharans established their kingdom in the mid-17th century under the leadership of Tachalla III. The country and the Saharans take their names from Mishera II, the 19th-century Queen under whose rule the Sahara territory was expanded and unified. The present boundaries were drawn up in 1883 in the midst of the Scramble for Kush. The Queendom's expansionist thirst and thrills have been curtailed by the utter observance of the doctrine of *uti possidetis juris* by the reigning Queen Jerotich.
5. Both Limpopo and Sahara are United Nations (UN) member states and are State Parties to the nine core human rights treaties in the UN framework and also the UN Charter; the ICJ Statute; the four Geneva Conventions and all the Protocols; the 1948

Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

6. Ever since the creation of the modern states of Kush at independence in the late 1950s and early 60s, which was preceded by the Scramble for Kush and its partitioning by Western imperialist states, the two states have enjoyed great collaboration in matters development and in efforts to guarantee civil political and socio-economic rights of their peoples. Additionally, there is an existing bilateral extradition treaty in force between the two states, ratified in 1976.
7. Between 1980 and 1991, Limpopo was immersed in a brutal Civil War over political differences between the rulers of Kanairo and those of Sulu. An attempt to end the war was made in 1990 through a series of intensive peace negotiations between the leader of the Kanairo region, General Ndonga and General Kiwi of Sulu. The talks culminated in the final round of talks set for 30 September 1990 in Kanairo, branded in the Great Roundtable of Kush. However, unbeknownst to General Kiwi, the Machiavellian General Ndonga had other plans. When the Sulu delegation arrived in Kanairo, the Limpopo People's Majestic Revolutionary Party (MRP), General Ndonga's army apprehended all of them and sent them to 're-education' camps. Ndonga then declared that Kiwi had agreed to an unconditional surrender driven by his unimpeachable desire to see peace in Limpopo.
8. Following the capture of Kiwi, Limpopo became a dominant-party state under the newly formed Limpopo People's Democratic Front (PDF), a coalition of ethnically-based parties, with MRP forming the national army. PDF voted to release Kiwi and his

delegation in 1995 on condition that he assists to integrate his former Sulu army (The SuluSulu Guerillas - TSG) into the national army. He agreed and this was done over a protracted period of 7 years before Kiwi died of pneumonia. PDF was under the chairmanship of General Ndonga who ruled as Prime Minister (PM) of Limpopo until his voluntary retirement from politics and governance in 2015.

9. In 2015, a new government was voted in with General Kerubo, a former member of the defunct TSG, winning the Prime Ministerial seat. The higher-ups in the PDF loyal to Ndonga agreed to be part of the governing coalition until 2019 when PM Kerubo decided to merge the PDF with the SuluSulu Democratic Party (SDP) into the Limpopo Party (LP). The PDF member tied with Ndonga broke off upon the formation of the LP, and retreated to an ancient fortified military base in the outskirts of Kanairo where they run their operations. They have since been referred to as The Renegades, in all official government documents and are under the command of The Most Esteemed General Makwata.
10. In the first quarter of 2020, tensions between the government (LP), and The Renegades escalated. PM Kerubo accused members of The Renegades of undermining her authority. In late July, the Limpopo Reconciliation Commission stated that it was trying to mediate between the LP and The Renegades, but that steep pre-conditions set by both sides were blocking progress.
11. PM Kerubo and her Cabinet reached the decision to smoke out The Renegades in order to have them tried for interference with the government's activities. They called this 'Operation Smokey.' In the Cabinet meeting where this decision was reached, it was also put to the PM's concern that The Renegades heavily rely on food supplies

from a village neighbouring their military base. According to government data, the village, with an estimate population of 650 people, was 98% composed of members of the Wakulima tribe. The PM decided that the first phase of the operation would be to resettle the village in a different part of Kanairo called Eldares, among the Originals.

12. When the government delegation was sent to negotiate the resettlement of the villagers, their elders were furiously opposed to the proposal. The head of the council of elders told the head of the government's delegation that, "*This village is ours by way of ancestral right and it is our life. We cannot be removed from these lands unless it is by the second coming of our God, Mulungu's son. Besides, it is laughable that you propose to settle us among the Originals scum. They are more fake than original.*" The government's delegation attempted to explain to them how The Renegades were a threat to the village's existence, and referred the villagers as 'the woman who hid the hyena from an angry mob.'

13. Following a week of hopeless negotiations, the government decided to use its long arms to get the villagers out in order to get to The Renegades. This was in heed to advice from high level security experts in government and from the private sector who had assessed and reported to the PM that it might be the best way to get to The Renegades. The PM had an elaborate plan for the eviction and resettlement of the villagers, despite the clear objection from its members. They were to start by transporting out all the children, 300 in total, followed by the elderly and then the middle aged. The children were to be transported in 5 separate school buses.

14. On the day the operation began, government officials enveloped the village and grabbed children from their crying mothers and fathers, pushing away any adult who

resisted. The day was characterised by rivers of tears and loud screams from the villagers. The operation took 3 hours and all the children were put in the buses. En route Eldares, the buses were ambushed by troops belonging to The Most Esteemed General Makwata. Makwata's troops captured two buses and redirected them to a location that is yet to be known. The children in the two buses were last heard cheering in joy as they drove away in the company of 'friendly' forces. It was an easy operation as the buses were unguarded. The other three buses arrived safely in Eldares.

15. The news made headlines in the country with many citizens faulting the government for being too cavalier in their approach. The notorious Limpopos on Twitter ran a hashtag **#EndtheGenocide**. The PM had to halt the operation for an unknown period of time as the backlash was too much from the public. PrimeTime News, the leading television station in the country, arranged for an interview between two world-renowned leading scholars of Public International Law, Doctor Kioko and Professor Tali. In a much-anticipated interview, Dr. Kioko argued that the government's actions amounted to genocide since there was clearly a lack of consent for the children to be removed from the village. Prof. Tali disputed this saying that if there was any genocide, it was conducted by the troops of The Most Esteemed General Makwata, since the government's intention was to progressively reunite the children with their families in Eldares.

16. The two scholars agreed to publish their arguments in an upcoming volume of the country's leading peer reviewed law journal, the National University of Limpopo Journal of International Law (NJIL) ran by the National University of Limpopo. Prof.

Kioko's article was titled "***The Plight of the Wakulima: Examining Operation Smokey in Light of the Crime of Genocide.***" In the same volume, Prof. Tali wrote his reply titled "***Please Pardon the Young Radical Scholar: Correcting a Misinterpretation of the Crime of Genocide – A Response to “The Plight of the Wakulima: Examining Operation Smokey in Light of the Crime of Genocide.”***" The two articles feature in Volume 15 Issue 1 of the NJIL.

17. Three days after the two buses disappeared, the two bus drivers were found in a forested area in Kanairo having suffered grievous physical harm. Upon interrogation by police officers, they revealed that The Esteemed General himself had tortured them in order to obtain any information they knew on the government's 'Operation Smokey.' The Directorate of Criminal Investigations took to their official Twitter handle saying, "*The hunt for The Most 'Unesteemed' General Makwata is on.*" Following this announcement, more troops were deployed to the area of Kanairo where The Renegades' fortified fortress was located, enveloping them in it.
18. Meanwhile, The Most Esteemed General had already fled the country to seek asylum in Sahara. He was granted audience with Queen Jerotich, to whom Makwata told that he had not commissioned the torture. Queen Jerotich agreed to grant him asylum but promised, through a *note verbale* to the government of PM Kerubo, that she would immediately make a preliminary inquiry into the facts of the torture accusation. Her government then set up The Makwata Commission of Inquiry mandated to conduct the preliminary inquiry. The Commission conducted an interview with Makwata who reiterated that he did not commission the torture. The Commission made public its schedule of inquiry which stretched over a period of one month. However, nothing on

the schedule was done on time, which the Chair of the Commission, when asked, said was due to underfunding. He also said that he is in consultation with the government to solve the financial quagmire.

19. However, PM Kerubo's government is furious and has accused Queen Jerotich's government of violating its UNCAT and customary international law obligations to prosecute or extradite The Most Esteemed General Makwata. In response to this claim, Queen Jerotich wrote on her Twitter account, "*The typical case of the pot calling the kettle black. Let them answer for genocide first.*"

20. After an exchange of several *note verbales* between Kanairo and K Squared, Limpopo unilaterally moved to the International Court of Justice (ICJ) to institute a case against Sahara for failure to prosecute or extradite The Most Esteemed General Makwata. At the time when the proceedings were instituted, Sahara had not recognized the jurisdiction of the ICJ, but agreed to subsequently accept such jurisdiction to enable the Court to entertain the case on condition that the question of genocide is also determined by the ICJ.

21. Both states agreed that for the purposes of the proceedings, the following issues must be dealt with.

- a. **Whether the ICJ has jurisdiction to determine the matter.**
- b. **Whether the issues are admissible and whether Sahara has the *locus standi* to appear before the Court.**
- c. **Whether Sahara has violated its obligations under UNCAT and customary international law to prosecute or extradite The Most Esteemed General Makwata.**

**d. Whether Limpopo is in violation of its obligations under the Genocide Convention.**