

NELSON MANDELA WORLD HUMAN RIGHTS MOOT COURT COMPETITION

2023 HYPOTHETICAL CASE

IN THE MATTER BETWEEN

CABUDURA AND MR. LETTERS FOCUS

VERSUS

VARANUS ISLANDS



1. In this matter before the Komodoen Human Rights Court, the Applicant is Mr. Letters Focus, a citizen of Varanus Islands (VI), and the Coalition Against the Business of Death and Undermining of Refugee Affairs (CABUDURA), a human rights non-governmental organisation (NGO) registered in VI. The state of VI is the Respondent.
2. VI is a country on the east of Komodoen Continent (KC). KC is named after the Komodo dragons that inhabit the KC's tropical savanna forests, mountain ridge tops, beaches and rocky plateaus and burrows. People from VI are called Varanusians. VI consists of three islands, namely, Vara, Juqour and NeZuqour. Before 1846, the three islands existed as separate kingdoms – the Vara Kingdom, largely inhabited by the tribe of Vara; the Juqour Kingdom, largely inhabited by the tribe of Juqour; and the Kingdom of NeZuqour, largely inhabited by the tribe of NeZuqour. In 1839, Oga Gwevereshe (OG) became the King of the Vara Kingdom. On account of his military prowess and the successes of his armies, King Oga is popularly known as the OG Warrior. After his wars of expansion between 1842 and 1846, the OG Warrior managed to forcefully unite the three islands into one kingdom – later, in 1864, to be called VI.
3. VI shares a border with Varanidae Republic, a KC nation. Along this border, there is a disputed territory called the Drago-Zone. The Drago-Zone is largely a virgin forest of around 398 square miles. Since 1986, both VI and Varanidae have claimed ownership of Drago-Zone. In 2017, the two nations agreed to submit their dispute to the International Court of Justice (ICJ). The ICJ is yet to make a decision on the matter.
4. VI and Varanidae were once colonies of Squamata Kingdom (SK). SK is a developed and powerful nation in geopolitical terms. VI is categorised as a developing nation although many have argued that for all intents and purposes, it is a developed nation. All the three nations have ratified the United Nations (UN) Charter and are members of the UN.
5. VI's 1983 Constitution is the supreme law of the land and any law that is inconsistent with the provisions of the Constitution is of no force or effect. Save for the provision on the right to property, the civil-political rights and socio-economic and cultural rights in VI's Constitution are similar in substance to the rights provided for in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
6. VI has Magistrates' Courts, High Courts, a Supreme Court and a Constitutional Court. The Magistrates' Courts are the lowest courts, and the Supreme Court is the highest court of appeal on all issues other than constitutional matters. The VI Constitutional Court has exclusive jurisdiction over human rights matters. Any person within VI's jurisdiction can access the Constitutional Court with allegations of human rights violations.
7. KC's regional human rights system is centred on the Komodoen Union (KU), the Komodoen Charter on Human Rights (Komodoen Charter) and the Komodoen Human Rights Court (KHRC). The mandate and functions of the KU are similar to those of the Organisation of American States. The rights provided for in the Komodoen Charter are similar in substance to those provided for in the European Convention on Human Rights. In terms of Article 29 of the Komodoen Charter, KHRC has three main functions, namely: a) contentious jurisdiction b) the power to issue provisional measures and c) an advisory function. The jurisdiction of KHRC is subject to a Declaration of Acceptance by Member States. In terms of its contentious jurisdiction, KHRC has the competence to decide if a state has incurred international responsibility for 'violating the Komodoen Charter or any other relevant international human rights treaties ratified by the state concerned, or both'. KHRC has the power to hand down provisional measures in urgent and critical cases where it is necessary to avoid irreparable harm. In terms of its advisory function, KHRC responds to questions

that are presented by KU Member States regarding the compatibility of domestic law, measures, or norms with the Komodoen Charter. Its function is also to interpret the Komodoen Charter or any other relevant human rights treaties relating to the protection of human rights on KC. KHRC's rules on admissibility of claims are similar to those contained in the African Charter on Human and Peoples' Rights. Only 'victims of human rights violations' have legal standing before the KHRC.

8. VI ratified, without reservation, all international human rights treaties and their protocols. VI is also party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. VI has also signed all UN disarmament and arms control treaties, including the 2014 Arms Trade Treaty. VI is party to the World Trade Organisation (WTO). In 1994, VI signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and ratified it in 1995. In 1996, VI domesticated TRIPS by passing the TRIPS Act that mirrors the provisions of TRIPS. On ratifying the Komodoen Charter, VI also made a declaration accepting the jurisdiction of KHRC.
9. Those who tell the story of the colonisation of VI often start with a man called Mashayar Focus. Father Mashayar Focus was born in 1820 in SK. At the age of 26, he founded Letter Main Focus, a church following the Christian faith which is the dominant church in SK. In 1863, the Queen of SK sent Father Mashayar Focus to KC on a religious mission. In November 1863, Father Mashayar Focus arrived in VI. SK historians have credited Father Mashayar Focus as one of the leading figures in the "civilisation of KC".
10. On the other hand, VI historians have condemned Father Mashayar Focus as the precursor of KC colonisation. Following the defeat of OG Warrior by SK military, VI officially became a SK colony on 16 January 1864. The Queen of SK allocated Father Mashayar Focus vast lands in VI who in turn, forcefully converted many locals to Christianity while destroying local religions in the process. On page 42 of her 2022 book titled "*Varanusian land wars, conquest and dispossession*", Professor Tapiwar Mendor, a reknowned VI historian, states:

"Land dispossession in VI predates the arrival of Father Mashayar Focus. During colonial invasion, land dispossession was along racial lines while in the precolonial era, particularly, during the OG Warrior's wars of expansion, land dispossession occurred along tribal lines. When OG Warrior invaded Juqour and NeZuqour Kingdoms, he took most of the fertile agricultural lands and allocated it to his own people of the Vara tribe. Indigenous peoples of the Tribe of Juqour were strongly aggrieved when the OG Warrior dispossessed them of lands that host the Komodo Dragon Caves. The Komodo dragon caves are sacred shrines for those who believe in the Komodo dragon god. While many Varanusians believe in the Komodo dragon god, peoples of the Tribe of Juqour have always felt they are the chosen tribe and hence the closest to the Komodo dragon god."

11. In 1864, the lands with the Komodo Dragon caves were part of the lands that the Queen of SK allocated to Father Mashayar Focus. These lands are known in the present day as Focus Farm. Once in occupation, Father Mashayar Focus destroyed the local cemeteries and many of the Komodo Dragon Caves. In place of the Komodo Dragon Caves that he destroyed, he built the Letter Main Temple.
12. As soon the Varanusians were subjugated, hundreds of Squamatians – people from the SK – migrated to VI. During SK's colonial rule, VI's minerals and other natural resources were syphoned to SK. In 1899 and at the age of 79, Father Mashayar Focus founded a mining company called FocusExtractives. FocusExtractives was one of the mining companies that made huge profits in VI

as it mined valuable minerals such as uranium, titanium, beryllium, molybdenum, aluminium, nickel, silver, and copper.

- 13.** Father Mashayar Focus died in October 1913. In his Will, he left FocusExtractives to his three sons. However, he left Focus Farm to his last-born son, Lot Focus, as he considered him to be the most focussed among his sons. Father Mashayar Focus also left part of his estate to Squamata Kingdom University (SKU) Medical School to establish the Focus Scholarship which support exceptional students who are underprivileged. His relationship with SKU Medical School began earlier during the 1889-1893 A/H1N1 influenza outbreak when he donated huge sums of money to SKU for the establishment of a Virology Department. For several decades, the SKU Medical School has been ranked among the top four medical schools in the world.
- 14.** In November 1914, Father Mashayar Focus' three sons enlisted in SK's army and joined the fighting in the First World War, which had started four months earlier. In December 1914, the three sons changed their father's company name from FocusExtractives to FocusDefence LPC. FocusDefence LPC is registered in VI. In addition to mining the above-mentioned minerals, between 1914 and the present day, FocusDefence LPC has been researching, processing, and developing military vehicles, aircrafts, naval vessels, military gear and body armour, missiles, and other critical components of military technologies. Its profits particularly intensified during the Second World War.
- 15.** In 1949, Lot Focus was involved in a protracted legal battle with Ado Salt. The legal battle was only settled 6 years later in February 1955 and resulted in Lot losing to Salt. He was forced to give up the Focus Farm to Salt. Because Focus Farm was very dear to him, Lot's health deteriorated, and he died in May 1955 leaving behind his pregnant wife. In the winter of June 1955, Lot's widow gave birth to a baby boy and in accordance with Lot's dying wishes, she named him Letters Focus.
- 16.** Meanwhile, Varanusians, who were under the yoke of colonial rule since 1864, in 1956 began organising and protesting against colonial rule. Between 1956 and 1962 these protests were unsuccessful as they were met with brutal force by the colonial government, regardless of being peaceful. In 1962, protestors decided to start an armed struggle. VI's liberation struggle against colonial rule was led by Kenpō Druid (KD), a founding member of the VI Liberation Army (LIBA). Later, KD became the first president of independent VI. After several years of fighting between LIBA and the SK's colonial Government in VI – between 1962 and 1983 – the warring parties finally agreed to a ceasefire which was followed by the LIBA-SK Agreement of 1983. This Agreement led to the first democratic elections in VI in which KD was elected as president. VI became the second country to gain independence on KC after Varanidae, which gained its independence from SK in 1966.
- 17.** Despite being one of the first KC nations to gain independence, Varanidae has remained plugged in a deadly civil war as local armed groups fighting each other and the government. On several occasions, the Government of Varanidae has blamed VI's arms trade business – especially through FocusDefence PLC – for fuelling the armed conflict in Varanidae and for the resulting displacement of Varanidaens. On one occasion, the President of Varanidae appeared on national television and said: "My Government appreciates that VI has supported us in this war against terrorist groups in our territory by providing us with various kinds of weapons. However, we are also aware that VI has allowed FocusDefence LPC to sell arms to the Government of Mero who, for years, have been arming these terrorist groups. VI is aware of this illicit flow of arms and has done nothing about it. This senseless war has resulted in many people being displaced and the current refugee crisis in the Drago-Zone. What is more sad is that despite being the author of this refugee crisis, VI has, on several occasions, refused to support the refugees in Drago-Zone." Mero is a KC nation in the

north of VI. In response, the Government of VI argues that people in DragoZone are not refugees and even if they were, VI is not responsible for them.

18. By the age of 25, Letters Focus had risen in the ranks of FocusDefence PLC and was now part of the executives. Between 1979 and 1982, Mr. Letters Focus appeared on national television arguing that FocusDefence PLC was neither responsible for the conflict in Varanidae nor the refugee crisis in Drago-Zone. He particularly noted that FocusDefence PLC does not trade arms with anyone in Varanidae. He indicated that on KC, his company only sell arms to the governments of VI and Mero and cannot be responsible for where the weapons go afterwards.
19. In his father's memory, Letters Focus also managed to raise funds and buy back Focus Farm from the Salt family for which the VI Government issued him title deeds. As years passed by, Letters Focus also founded Focus Inc. and Focus Pharmaceuticals. Focus Inc. has since grown into a formidable global information tech company and is registered in SK. He has also managed to grow and expand Focus Pharmaceuticals which engages in various collaborative research projects with SKU Medical School.
20. In 1983, as part of its conditions in negotiating the LIBA-SK Agreement, SK insisted that the new leaders of independent VI should provide constitutional guarantees on property rights, particularly, land and mineral rights against compulsory acquisition by the new VI Government. In the event of a lawful compulsory acquisition, representatives of the SK Government insisted that there should be full and adequate compensation. LIBA representatives pushed back on mineral rights insisting that there should be equitable sharing of mineral proceeds.
21. Following the dictates of the LIBA-SK Agreement, the Constitution of VI that was adopted in December 1983 made the following guarantees on property rights:

Section 20

“Every person will be protected from having his property compulsorily acquired except when the acquisition is in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of that or other property in such a manner as to promote the public benefit or, in the case of under-utilised land, settlement of land for agricultural purposes. When property is wanted for one of these purposes, its acquisition will be lawful only on condition that the law provides for the prompt payment of adequate compensation and, where the acquisition is contested, that a court order is obtained. A person whose property is so acquired will be guaranteed the right of access to the courts of Varanus Islands to determine the amount of compensation.”

22. In 1984, the new VI Government passed the Indigenous and Economic Recovery Act, which in Section 2 provides that 70% shares of every company involved in mining Varanus' minerals shall be owned by native Varanusians. As a result of the application of this Act, Letters Focus and other SK citizens who constituted the majority shareholders of FocusDefence PLC lost their shares to top LIBA men and VI politicians. In 1985 at the FocusDefence Annual General Meeting, Mr Letters Focus was voted out of the company. While he was aggrieved by this loss, he was consoled that at least he was able to keep the Focus Farm.
23. In 1995, ten years after losing FocusDefence, Letters Focus funded the formation of an NGO CABUDURA. CABUDURA is registered in VI and campaigns for a ban on arms trade which it argues has been responsible for massive human rights violations. Between 1996 and 2016, CABUDURA lodged 119 legal challenges in the High Court of VI challenging various governmental policies on

arms trade and its treatment of Varanidaens who manage to reach VI. Of those 119 cases, CABUDURA won 13.

24. In March 2017, CABUDURA produced a 99-paged report titled *“Business of death: Arms trade and the refugee crisis in Varanidae”*. The overall argument in the report – premised on evidence and analysis in the report – is that VI’s arms trade – through companies like FocusDefence – have immensely contributed to the prolonged war in Varanidae and the resulting refugee crisis. The report states that bombs and chemical weapons from VI have immensely contributed to deforestation and climate change in Varanidae. The report states that both the Government of Varanidae and armed groups have used chemical weapons with a devastating impact on the natural environment. As a result, agricultural productivity has decreased by 37%. It has also led to contamination of water sources, leading to a devastating impact on fishing industry. Many Varanidae fishermen have been left without a source of income. The warring parties have also used explosives causing damage to crops, soil, livestock and wild animals. Many farmers have been displaced. This has led to severe famine causing many people to flee Varanidae not only because of war but also due to famine. Most of the displaced Varanidaens have migrated towards VI and are currently concentrated in Drago-Zone.
25. On page 85 of the Report, CABUDURA notes as follows: “The war in Varanidae continues because VI supplies arms to both sides of warring parties. The Government of VI continues to sell arms to Varanidae Government in full knowledge that the latter is not respecting international humanitarian law. VI Government has also allowed FocusDefence LPC to operate with impunity. FocusDefence LPC sells all kinds of weapons to the corrupt Government of Mero. Mero’s Minister of Defence is widely known on KC as ‘the Lord of War’. The Lord of War has been accused by various international organisations of supplying arms to rebel groups that are fighting the Government of Varanidae.” When VI’s Minister of Defence was interviewed about the CABUDURA Report, he insisted that when selling arms to Varanidae and to Mero, both the Government of Varanidae and FocusDefence LPC insist that there should be compliance with international humanitarian law. During the 2021 Conference of the Arms Trade Treaty (ATT) in Geneva, Switzerland, 16 states commended VI as one of the few nations across the globe that has the best ATT implementation practices. Similar commendations were given by the ATT’s Working Group on Effective Treaty Implementation (WGETI).
26. To protect its borders from Varanidae armed groups and those fleeing war and famine, VI has made its borders one of the most militarised in the world. The VI military regularly arrests and forcibly returns those crossing into its territory from Varanidae, arguing that they might be “terrorist members of armed groups”. The VI military has also fought away armed groups who try to enter VI through the Drago-Zone. Over the years, the Drago-Zone has *de facto* turned into a refugee camp as those who are fleeing the conflict, climate change and famine feel safer there than returning to innerland Varanidae. The VI military has allowed passage into the Drago-Zone for organisations such the International Committee of the Red Cross to cater for the basic needs of civilians who have set up tents in the Drago-Zone. VI has, however, refused to allow anyone entry into innerland VI or take full responsibility for anyone’s welfare in Drago-Zone. However, VI’s military continues to maintain law and order in Drago-Zone. In 2021, CABUDURA tweeted as follows:



CABUDURA
@CABUDURA



It's shocking that VI Government refuses that it has caused the refugee crisis, that people in the DragoZone are refugees and to take responsibility for their welfare. I invite the misguided Government legal advisors to read the following:

1) The UN High Commissioner for Refugees, Legal considerations on refugee protection for people fleeing conflict and famine affected countries, (2017)

<http://www.refworld.org/docid/5906e0824.html>

2) Sanjula Weerasinghe, "In Harm's Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change" (2018) <http://www.refworld.org/docid/5c2f54fe4.html>

and "Refugee Law in a Time of Climate Change, Disaster and Conflict (2020),

<https://www.refworld.org/docid/5ff43e894.html>.

12:00 PM · Jun 1, 2021

311 Retweets 137 Quote Tweets 6.5K Likes

27. As the war in Varanidae continues, the population in Drago-Zone continues to rise. In 2019, there were about 39,000 people in Drago-Zone, most of them, women and children. Around 70 % of those in the Drago-Zone are maintained in overcrowded, military-manned closed camps, with severe restrictions on their freedom of movement. The VI military justifies these restrictions on security grounds. Without vaccines, sufficient medical equipment and a serious shortage of masks, by December 2021, about 9,000 people died of COVID-19 in Drago-Zone. Between 2020 and 2022, there were outbreaks of cholera and dysentery in Drago-Zone which claimed over 1,000 lives. On a number of occasions, the VI military donated medical provisions to NGOs working in the Drago-Zone. Medical personnel from VI's military have also helped in taking care of the sick in Drago-Zone. CABUDURA and other human rights organisations continue to report that while the assistance from VI military is appreciated, many more lives could be saved if VI allowed people in Drago-Zone access to the hospitals and health facilities in VI. Further, human rights organisations have continuously pointed out the need for adequate provision of elementary education in Drago-Zone. Currently, about 4,500 children do not have access to education in Drago-Zone. In 2021, the VI military made a deal with private primary schools along the border to give access to about 1,500 children from Drago-Zone. Each school day, the VI military provides military trucks and personnel to transport children to and from school.

28. In 2022, to deal with what it termed the "Drago-Zone border menace", VI Government signed the VI-Mero Migration Partnership. In this partnership, VI agreed to give Mero 50 million Varanusian dollars (equivalent to 40 million United States dollars) to allow VI to send people in the Drago-Zone to Mero. VI also agreed to pay for the processing and integration costs for each relocated person. The VI Government has described this deal as a "humanitarian partnership that is meant to save lives". Between January and July 2022, a total of 940 persons were relocated from Drago-Zone to Mero. There has been protest in Drago-Zone, particularly from those who felt there was insufficient consultation before relocation. A poll taken by CABUDURA showed that of those relocated to Mero, 40% were in favour of relocation, 13% against and 47% refused to comment as they felt it may lead to their victimisation. Those who refused relocation are from a minority ethnic group in Varanidae who feared being sent back to their country of origin where they are likely to face persecution for perceived support to some of the armed groups. When asked

whether they would rather be in Mero or VI, 80% preferred VI. In September 2022, CABUDURA managed to get a court order from VI High Court interdicting the Government from carrying out further relocations until such time that the Court decides on the legality of such transfers. The High Court is yet to give a judgment on the merits of the case.

- 29.** CABUDURA has not been the only human rights NGO in VI to report on claims of human rights violations. International organisations and experts from the UN have also made claims in their reports about VI's failure to respect, protect and fulfil human rights. In July 2017, the UN Special Rapporteur on extreme poverty and human rights presented his report on VI to the UN Human Rights Council. Page 3 paragraph 7 of the report states as follows:

“Although it has been 34 years since VI gained its political independence from colonial rule, VI is yet to attain its economic independence. The extreme poverty of many Varanusians can be explained in terms of this continued land dispossession. VI has always been agrarian. In precolonial VI, agricultural land has always made a critical contribution to social and economic progress, equality, poverty reduction, peace, and security. Land is not only the source of economic opportunities and benefits for Varanusians, but it is an integral part of their dignity.”

- 30.** Experts from the UN Human Settlements Programme, UN Development Programme, Food and Agriculture Organization of the UN have made similar remarks regarding the importance of land to the local population. In its recommendations, the UN Special Rapporteur on extreme poverty also noted on page 24 paragraph 17 that “VI should look for opportunities to improve on internet penetration – especially in rural areas – and the Government should look at opportunities presented by emerging technologies including information technology in alleviating poverty.”

- 31.** In June 2018, there was a military coup that saw the removal of President KD and his replacement by Commander Kōzō. Commander Kōzō belongs to the Tribe of Vara. There have been reports and claims in the region that the coup was supported by the Varanidae Government who, for long, felt aggrieved by VI's alleged fuelling of the conflict in Varanidae. In December 2018, Commander Kōzō who had since assumed VI presidency announced an immediate stop of VI's sale of arms to any nations or groups involved in armed conflict. Citing the report of the UN Special Rapporteur on extreme poverty and human rights, Commander Kōzō argued that his Government is “not bound by colonial arrangements and agreements that sought to perpetuate colonialism.”

- 32.** Between 2019 and 2020, the new Government conducted wide consultations on the question of land reform. In January 2021, President Kōzō's Government tabled a Constitutional Amendment Bill that sought to provide for a framework on compulsory acquisition of land without compensation. On 16 June 2021, Constitutional Amendment Number 3 was passed. Constitutional Amendment Number 3 amends Section 20 of the Constitution of Varanus Islands, 1983, to include the following subsections:

a) Read together with provisions on property rights, the peoples of Varanus recognise that land is a common heritage of all citizens, and the state must safeguard for future generations. The peoples of Varanus Islands recognise the need for urgent and accelerated land reform to address the injustices of the past that were inflicted on the majority of Varanusians and recognise the hunger for land amongst the dispossessed.

b) Where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil. No compensation shall be payable for land that was stolen during colonialism except for any improvements effected on such land before it was acquired, however, any colonial temples built upon sacred shrines of the majority of Varanusians shall not be considered as “improvements” in this context.

c) A person having any right or interest in the land so acquired during colonialism in line with subsection (b) above shall not apply to a court to challenge the acquisition of the land by the State, and no court shall entertain any such challenge.”

33. In the morning of 17 June 2021, there was a trending video on Twitter which showed prominent politicians and several judges partying on the night of 16 June 2021 in celebration of the passing of Constitutional Amendment Number 3. In the video, some judges are seen in their traditional attire and faces smeared in white chalk and ashes dancing and thanking their ancestors and the Komodo Dragon god for bringing their land back. The video sparked a fierce debate with many constitutional lawyers who argued that such judges would be perceived to be compromised in the very likely future litigations on the land issue. One of the individuals who was outspoken on the matter was Mr. Letters Focus who tweeted as follows:



34. On 18 June, Mr. Letters Focus also published an op-ed titled “*Abacadabra: The Vodoo-Bench and the human rights crisis in Varanus Islands*”. In the article, he referenced a tweet which he claims was a threat issued against him by Justice Dare Guru. Justice Dare Guru is the Chief Justice of the Constitutional Court of VI. In the referenced tweet, the Chief Justice noted as follows:



When contacted for comment by local newspapers, the Chief Justice denied that his comments were directed at Mr. Letters Focus. He insisted as follows: “Like everyone else, I have freedom of expression which encompasses sharing information, even so, impacting what I believe to be wisdom. I was in no way targeting or referring to Mr. Focus. And let me be clear, we live in a secular country, where all religions and beliefs are equally protected.”

- 35.** On 19 June 2021, Letters Focus received a letter from the Government concerning the Focus Farm and Letter Main Temple. The letter notified him that both were to be compulsorily acquired without compensation in terms of Constitutional Amendment Number 3. The letter was dated 18 June 2021. By 30 June 2021, Letters Focus had been effectively removed from Focus Farm. Many local newspapers have reported that Focus Farm was given to a close relative of President Kōzō.
- 36.** Bá Juqour is a descendant of a royal family from the Tribe of Juqour. The VI Government recognises him as the ceremonial King of the peoples of Juqour. Bá Juqour is also known across the globe as a land rights activist for indigenous people. For several years, he has voiced the grievances of the indigenous peoples from Juqour from whom Focus Farm lands were taken. On 30 June 2021, he tweeted as follows:



- 37.** Following consultations with his legal advisers, Bá Juqour approached VI Constitutional Court challenging what he termed a “wrongful re-allocation of Focus Farm in violation of indigenous peoples’ rights.” The Constitutional Court found the matter was admissible and set to hear the case in November 2023.
- 38.** Immediately, the new owner of Focus Farm started dismantling Letter Main Temple. Letters Focus issued a tweet on 31 June 2021, stating: “Our Main Temple is being destroyed! VI discriminates against Christians! Not only is this is flagrant violation of our laws directly transposed from Article 18 of the ICCPR, but VI is a secular state, acting as a theocracy to defend its own beliefs! The 18 Commitments on Faith for Rights require equal treatment and denounce all forms of discriminatory practices! I see that several of the 18 Commitments on Faith for Rights are clearly not respected. #Faith4Rights #NoDoctrinalSecularism”.
- 39.** Meanwhile, in July 2021, Mdarah Pharma was the first pharmaceutical company on KC to produce a Covid-19 vaccine called MdarahVac. Mdarah Pharma was founded by Dr. Mdarah Madeker, a virologist by profession. Mdarah Pharma is registered in SK. Dr. Madeker got a Focus Scholarship to attend SKU Medical School where he excelled in the Virology Department. Hearing of the MdarahVac vaccine, Mr. Letters Focus, on behalf of Focus Pharmaceuticals – which is registered in VI – approached Dr. Madeker to ask for a waiver on his intellectual property rights so that Focus Pharmaceuticals could mass-produce the vaccine for humanitarian purposes. Disappointed by Dr. Madeker’s refusal, Mr. Letters Focus took his frustration to Twitter where a Twitter war of words ensued.



40. Focus Pharmaceuticals approached the VI High Court seeking an order to compel the VI Government to invoke Article 31 of TRIPS and the TRIPS Act (1996) allowing compulsory licensing of MdarahVac. In their application, Focus Pharmaceuticals provided detailed evidence of the public health crisis presented by Covid-19. They particularly noted that Focus Pharmaceuticals wanted to mass produce the vaccine to save lives of thousands of those stuck in the Drago-Zone. They presented NGO and UN reports of hundreds who died of Covid-19 in Drago-Zone. The case was cited as *Focus Pharmaceuticals v. Mdarah Pharma and the Government of VI*. Focus Pharmaceuticals lost the case. Earlier in 2020 and 2021, VI was party of the WTO members who voted against the [TRIPS communication IP/C/W/669](#) presented by South Africa and India.
41. A week later after the VI High Court Judgment in *Focus Pharmaceuticals v. Mdarah Pharma and the Government of VI*, the Judicial Service Commission of VI hosted a Judicial Symposium titled *Human Rights in VI: Challenges and Opportunities*. Justice Dare Guru was the keynote speaker. During the question-and-answer session, one of the participants in the symposium asked the Chief Justice if in recent years VI has stopped respecting property rights. Chief Justice Dare Guru replied as follows: “We respect human rights which include property rights. Citizens should not think that because the Government took stolen property away from certain people, the Government is going to take properties for which citizens rightfully own and have worked hard for.”
42. Meanwhile, reports from the UN Office of High Commissioner for Refugees have detailed appalling conditions for civilians in Drago-Zone. After his visit to VI in 2021, the UN Special Rapporteur on the human rights of migrants issued a report on VI within which he gives reference to the 2017 CABUDURA’s report titled “*Business of death: Arms trade and the refugee crisis in Varanidae*”. In June 2021, CABUDURA approached VI Constitutional Court arguing that VI Government’s arms trade policies between September 1967 and May 2018 were inconsistent with its international obligations. It argued that on account of its contributions through its arms trade, the VI Government should partly compensate a list of those who have been displaced and are human rights victims of Varanidae civil war between the afore-mentioned period. The VI Government argued that it cannot be held responsible for actions of previous colonial and neo-colonial governments. On 2 August 2021, the VI Constitutional Court dismissed the case on the basis that

CABUDURA had no legal standing to represent those in the Drago-Zone and that the VI Constitutional Court cannot exercise jurisdiction in the Drago-Zone.

43. Following some of the recommendations that were given by the UN Special Rapporteur on extreme poverty and human rights, VI's Minister of Information, Science and Technology published a VI Roadmap on Big Data, Artificial Intelligence and Emerging Technologies in September 2021. On 4 October 2021, the VI Government issued a call for tenders to provide IT infrastructure in terms of the framework provided for in the Roadmap. Focus Inc. and MdarahVision responded to the call for tenders and were shortlisted as finalists. While Focus Inc. is registered in VI, MdarahVision is an information technology company belonging to the business mogul, Dr. Mdarah Madeker and is registered in SK. MdarahVision won the tender. Between October 2021 and March 2022, MdarahVision made extensive and visible changes to VI's infrastructure which saw improvements in delivery of services such as health and education.
44. On 16 April 2022, Focus Inc. staged a successful hostile takeover of MdarahVision in SK. Once in control of MdarahVision, Mr. Letters Focus was alerted of massive data appropriation practices that were carried out by MdarahVision between January 2020 and March 2022. He discovered that in several agreements signed between VI Government and MdarahVision, the latter was granted wide powers especially in how they used personal data for health and education projects. Mr. Focus also discovered that there were contracts between VI Government and MdarahVision going back to the time before the tender advertisement. One of such contracts was a 2020 contract where MdarahVision was granted access to personal data of Varanusians for purposes of its research into Covid-19 vaccine.
45. Immediately, Mr. Letters Focus held a press conference within which he revealed what he categorised as "damning evidence of abuse of personal data by VI Government." The following month, Focus Inc. organised a Conference on Data Justice in VI. Many leading experts in data justice were invited. Part of the Conference material that was discussed included the [Data Justice Report](#) by the Alan Turing Institute and the book "[The costs of connection: How data is colonizing human life and appropriating it for capitalism](#)" by Nick Couldry and Ulises Mejias. Mr. Letters Focus was the keynote speaker at the Conference and in his opening remarks referred to pages 38 and 85 of the aforementioned book "The cost of connection":

"I am not here to tell you that internet connectivity, big data and emerging technologies cannot play a critical role in realisation of fundamental human rights. I am here, however, to tell you that we must be careful and worry about data colonialism. To quote from the Conference material, the book by Nick and Ulises: we are in the era of the Cloud Empire where "we are seeing a regression to blatant forms of appropriation that have a lot in common with the economic logic of historical colonialism ... Unlike the earlier forms of imperialism, the Cloud Empire is not founded on a particular state's overt military or political desire for control of territories. Instead, it operates more informally, seeking to make all of life available to capitalisation through data not by brute force but by sustaining the expansion of exploitable spaces ... If historical colonialism was an appropriation of land, bodies and natural resources, data colonialism can be understood as an appropriation of social resources, one that represents both a progression of capitalism and its return, potentially, to more brutal forms of exploitation. It is because the dispossession of social resources today operates in ways that replicate how the dispossession of natural resources once worked that we argue data relations re-create a colonizing form of power. In this colonial scheme, the colony is not a geographic location but an enhanced reality in which we conduct our social interactions under conditions of continuous data extraction. The resources that are being colonised are the associations, norms, codes, knowledge, and meanings that help us maintain social

connections, the human and material processes that constitute economic activity, and the space of the subject from which we face the social world.”

After hearing the extent of the VI scandal on data appropriation, several participants – some who identified as victims of the scandal – urged Focus Inc. to take legal proceedings against the VI Government.

- 46.** On 29 May 2022, Mr. Letters Focus and the authorised representatives of CABUDURA, Focus Pharmaceuticals, and Focus Inc. met to discuss what they considered a plethora of human rights violations by VI Government. It was agreed that CABUDURA and Mr. Letters Focus – on his own behalf and representing Focus Inc. and Focus Pharmaceuticals – should approach the KHRC asking the Court to adjudge and declare the following:
- a)** The compulsory acquisition of Focus Farm and Letter Main Temple without compensation and refusal to compulsorily licence MdarahVac are inconsistent with VI’s international human rights obligations.
 - b)** VI’s arms trade and its treatment of Varanidean refugees in Drago-Zone are inconsistent with its international human rights obligations.
 - c)** VI’s agreements with MdarahVision and the consequent data colonialism, expropriation and exploitation are inconsistent with VI’s international human rights obligations.

Instruction

Prepare memorials for the Applicants (CABUDURA and Mr. Letters Focus) and for Respondent (Varanus Islands) addressing issues on jurisdiction, standing, admissibility and merits of each of the claims.