

Didi and others V The Republic of Hambaro

Prepared by Dr. Fikire Tinsae Birhane, Institute for International and Comparative Law in Africa, University of Pretoria and lecturer in Law and Human Rights, School of Law, Hawassa University.

1. Yayami is a district of the North-East Province of the resource-rich country of the Republic of Hambaro (Hambaro), bordering the Democratic Republic of Awaya (Awaya) to the north. Hambaro's population was estimated to be 5.5 million people. Yayami is fertile and rich in resources such as gold, diamonds, and oil, which many groups inside and outside Hambaro seek to exploit. Hambaro had many ethnic groups within its borders. In Yayami, most of the people belong to the Tembu and Kamba ethnic groups.
2. In October 2014, the President of Hambaro, who was the leader of the Unity and Prosperity Party (UPP), which had recently assumed national governmental power in Hambaro, appointed a UPP member who was ethnic Tembu as the provisional governor of the Yayami district. Members of the Kamba were not happy about this appointment, alleging that this move could result in Tembu domination in Yayami and the latter's gaining of governmental backing for looting Yayami resources to the exclusion of other ethnic groups.
3. In early 2015, several members of the UPP in administrative and military positions of Hambaro, who had a Kamba ethnic background, conspired to drop their positions and organize under a new movement that would ensure the interests of their group, particularly in Yayami, which they claimed as an indigenous settlement of the Kamba. These individuals alleged that the UPP and the President of Hambaro had taken measures that apparently favoured and empowered the Tembu, and discriminated against the Kamba.
4. As of April 2015, following a departure from the UPP, the group became active under the name Yayami for Yayamians (YFY). Michael Bushaga was one of its leaders. The organisation increased its political activity and started contact with the authorities of the neighbouring country of Awaya, who were mostly ethnic Kambas and were sympathetic to their cause. The leaders of the YFY became the political and military leaders of the Patriotic Forces for Liberation of Yayami (PFLY) upon its formal creation in May 2015.
5. Around May 2015, the military wing of the PFLY began training military recruits at Chararo, a training camp established in the dense forests of Yayami, and at the end of June 2015, it obtained weapons from Awaya, enough to arm all the 2000 recruits who were present at that time at Chararo.
6. In July 2015, the leaders of PFLY held a meeting in Awaya. In that meeting, the leaders of the PFLY gave a clear message that each person present at the meeting should mobilise the children in their

community to join the PFLY. Accordingly, the PFLY extensively recruited individuals of all ages in various locations throughout Yayami, including the rural areas, from at least August 2015. The PFLY mobilised primarily the Kamba, but also members of some other ethnic groups as well to use them as human shields if government forces tried to attack and as informants.

7. The PFLY used several forms of recruitment. It organised awareness-raising campaigns and rallies in villages and communities, except Tembu ones. Presentations at schools in Kamba communities enticed numerous children and young people to join the group and defend their families and community. Members of the PFLY also requested elders and community leaders in Yayami to mobilise children and young people for recruitment into the ranks of the PFLY, so that they could defend their villages. The PFLY then imposed an obligation on families to provide at least one child to the PFLY for military service, including by threatening them.
8. These activities raised concern among some elders of the Kamba and community leaders from Yayami about the growing threat to their children. They secretly met and assigned 2 individuals to travel to the capital of Hambaro, and request the authorities to save their children from the impending danger. Unfortunately, word got to the PFLY leadership, and the 2 individuals were intercepted before their departure. They were publicly executed. Media reports on the executions sent shockwaves throughout Yayami. Those who had assigned the individuals who were executed comforted each other, saying that their sacrifice would not be in vain because, at least, the authorities had become aware of the risks to children in their community, and they were hopeful the government would act to put a stop to child recruitment.
9. In response to the media reports, the government decided to send a contingent of the Hambaro Defence Forces (HDF) to Yayami in October 2015, to establish a base there and deal with the PFLY activities before the group posed a serious threat to security. Accordingly, a contingent of 50 soldiers was deployed to the task. Upon their arrival, PFLY leaders received information from their informants. Posing as civilians, 200 PFLY fighters infiltrated the area by day, and at night they successfully encircled the HDF soldiers' camp and launched a surprise attack. Eventually, 20 of the 50 HDF soldiers were killed within minutes. The commander requested support. The Hambaro air force came to their assistance and launched airstrikes with barrel bombs against the PFLY soldiers. This helped the surviving soldiers to get out of Yayami, but due to the bombing and crossfire, numerous civilians, including children, were incidentally killed and injured. Subsequently, almost all civilian authorities and members of the police force in Yayami left the district in fear of the emboldened PFLY. Within a few weeks, the PFLY was able to bring most parts of Yayami under its effective control.

10. Eventually, because of the different forms of recruitment by the PFLY, some children joined voluntarily, while many others were recruited forcibly. The motives of those who joined voluntarily included the fact that they had already been separated from their parents, or their parents had been killed, and involvement with the PFLY offered food and shelter, which was not offered to them through other means, as well as a desire to avenge family members' deaths.
11. It remained difficult to gain access to the training locations that PFLY had used over the years. International civil society organizations reported in May 2017 the following: Upon arrival at a PFLY training location, recruits were screened based on their physical ability, but age was not a barrier to receiving training. The recruits were given monthly schedules to visit their families and return with food items and other essentials they could gather. Due to these visits, the community began to learn about the way of life for PFLY recruits. The recruits described the living conditions in the PFLY training camps as very harsh. They typically had the opportunity to eat only once a day. The food was sometimes rotten or not edible. Additionally, recruits had to sleep outside.
12. Recruits were told that they would be killed if they tried to flee or failed to return after their visit to their families. Those who attempted to escape were brought back, severely beaten, detained in darkened rooms, or, in some instances, shot as a deterring lesson for the others.
13. The female recruits, including girls as young as 12 and 13 years of age, were regularly subjected to sexual violence, including rape, by male PFLY soldiers and commanders.
14. Didi, a 14-year-old girl, escaped from the training camp and went to stay with her relatives residing in the capital city of Hambaro. She later explained that she was 'raped by many soldiers'. Three months later she started bleeding, and it was discovered that she had been pregnant, and was having a miscarriage. While being cared for in the medical camp which only provided rudimentary care, she developed a fever. At that stage she was sent to her family for them to get her the treatment she required in the only hospital in Yayami. However, the hospital was treating only emergency cases as it was looted of medical supplies by the PFLY and also partially destroyed by bombardment of the HDF air force in an operation that targeted PFLY fighters, who were allegedly operating from the basement of the hospital. Didi was turned away, and had to recover at her relatives' home, without any treatment.
15. Upon completion of their training, child recruits were considered to be PFLY soldiers and were deployed in military operations. In an engagement with the HDF, which was positioned to reclaim control of the capital of Yayami, 27 of them were killed and several were wounded. Some had difficulties fleeing when they were defeated because of the oversized military uniforms they were wearing and the heavy weapons they were carrying. Accordingly, 12 child fighters of the PFLY

were captured and transferred to a prison in the capital of Hambaro. Rumors began to circulate that prison officials were questioning them to obtain information about the positions of PFLY training camps and weapons storage, often subjecting them to beatings and threats of being shot if they did not cooperate. In a press release, the HDF explained that they were being held awaiting trial for their involvement in the conflict and that they were being detained in conditions appropriate for children, in accordance with Hambaro's international obligations.

16. Overwhelmed by the stories they had heard from recruits and the injuries they had witnessed of those sent back to their families for medical treatment, elders and community leaders from different villages in Yayami secretly met and agreed to petition the government to take measures to end their children being used in armed conflict. They selected 5 parents of child recruits to represent all the children in the community and to present their demands to the Hambaro Ministry of Defence and the Presidency. These individuals managed to reach the capital and approached the minister, explaining what their children had been going through in PFLY camps, as well as the tasks they had been assigned to undertake and their participation in military operations. They suggested that if the HDF had had an effective presence in Yayami, their children could have avoided recruitment by the PFLY. Accordingly, the parents demanded that the minister mobilize enough HDF soldiers for such a purpose and requested appropriate measures, including negotiations with the PFLY, be taken to secure the release of their children who had already been recruited. The minister, however, responded as follows: 'There is no difference between the terrorists and the community; you share the same motive. You willingly support the PFLY and give your children to join them, who then attack and kill my soldiers.' He also noted that he suspected the representatives had a mission from the PFLY to deceive the government into sending HDF forces into terrorist-held territory, aiming to ambush them. The parents, hoping to be understood by the President of the country, requested an appointment, but the President never replied to their request.

17. The government of Hambaro continued mobilizing the HDF and mounted successive military operations to disarm the PFLY and reclaim control of Yayami. Their main effect, however, was to antagonize and alienate the local population because the operations resulted in the death of thousands of civilians and the destruction of civilian property, including virtually all schools that had existed in Yayami, which the HDF targeted during campaigning and recruiting events of the PFLY. Moreover, crop fields that had been the primary source of food for the Yayami population were also mostly destroyed because of a battle fought by the HDF and the PFLY in the former's attempt to chase out the PFLY and assume control of the area. The United Nations Relief and Works Agency (UNRWA) estimated that out of 10,000 deaths, at least 6,000 children had been killed, and

hundreds were probably buried under the rubble of collapsed buildings. Doctors working in the hospital and medical service camp set up after the bombardment that had damaged the hospital noted that the majority of those seriously injured were children. There were some reports of children with gunshot wounds to the head. In addition, schools were targeted since there were allegations of PFLY leaders using schools for shelter.

- 18.** International media reporting on the conflict in Hambaro reported that the long-term strategy adopted by the Hambaro government was to remove the population from Yayami. This initially resulted in a concentration of the population near towns and trading centers, but from July 2018, a more systematic policy was adopted of moving people into internally displaced person (IDP) camps in a nearby district. According to media citing local civil society organizations, the camps were regularly patrolled by groups of HDF soldiers. Cultivation was very difficult, and movement outside the camps was strictly limited. Food and other commodities for the IDPs were provided by UNRWA. By November 2018, about half a million people were living in the camps. At the peak, around March 2020, there were dozens of IDP camps, and while some people still remained around the towns, almost the entire population of Yayami was in IDP camps. Those who did not go into the IDP camps, particularly in the main city and the northern parts of Yayami, suffered from acute food shortages and malnutrition. The government of Hambaro, however, denied access to UNRWA, claiming that the food could be intercepted by the PFLY along the way.
- 19.** The government called for support from non-governmental organizations that could provide psychological and social support to those who had been traumatized by the armed conflict, to be based in the IDP camps and treat them. Consequently, an international child rights organization, called PeaceChild, established centers in most of the IDP camps and began providing services, including educational services. It was, however, unable to assist all children due to the overwhelming number requiring assistance. The government also established sheltered areas as temporary schools to accommodate children who had been displaced from their villages so that they would not miss schooling, but not all children could be reached. There was a shortage of educational materials and teachers willing to work in the camps. Some teachers complained that they were required to encourage older children to join the HDF, as a result of which numerous children aged 16 and 17 were voluntarily recruited into the HDF with a view to being deployed once they reached 18 years of age.
- 20.** In October 2020, the government of Hambaro announced that it had established, within the Ministry of Children and Youth, a Unit for Coordination for the Rights of Children and Youth Affected by Armed Conflict and had appointed an acclaimed child rights expert as its director. The Director

declared that the government hoped to crush the insurgency soon and that, when control over the district of Yayami had been achieved, it would investigate, prosecute, and punish members of the PFLY who had been involved in the unlawful recruitment of children, as well as those who had committed acts of rape and sexual violence against them. She also noted that the Unit was drafting a national workplan to prevent and respond to child recruitment and a national strategy for the rehabilitation and reintegration of children associated with PFLY.

- 21.** On 11 August 2021, Michael Bushaga issued a declaration proclaiming that PFLY had taken full control of Yayami. He also declared the end of power of the UPP in Yayami, announced the political, economic, and military governance of Yayami by the PFLY, and demanded the support of the governments of neighbouring countries and the international community at large. In response to questions from international media, he explained that the PFLY would uphold its military positions to protect the citizens of Yayami against the HDF and that a military government under his leadership would run the North-East province.
- 22.** On several occasions in 2022, international organisations invited the PFLY to engage in peace efforts and to demobilise any children from their ranks. The PFLY published a press release stating that it accepted the invitation and that it had issued an instruction to commanders in its ranks to halt the recruitment of individuals under the age of 18 and to demobilize those already existing within the group. However, the use of young people who were below the age of 18 years at the time of recruitment continued, with PFLY claiming that the instruction to demobilize these individuals had not been included in the instructions.
- 23.** The elders and community leaders that remained in Yayami consulted with Ms. Qotara, a Kamba and lawyer based in the capital of Hambaro, to seek legal advice. Ms. Qotara lodged a public interest application with the Supreme Court of Hambaro on behalf of Yayami children affected by the armed conflict, a collective action which was permissible in terms of the court rules of Hambaro. To the disappointment of all, the Court clerks informed Ms. Qotara that the court would reject the application, asserting that the Court should not be an alternative forum to address issues previously rejected by the Ministry of Defence and the President's Office. Further, Ms. Qotara heard from her acquaintances working for the Court that the real reason for the rejection of the application was an order that had come from the top echelons of Hambaro's government. Accordingly, Ms. Qotara advised that it would be futile to pursue the case before the Supreme Court as there was no possibility of success.
- 24.** Assuming that there will not be any hope to obtain access to justice and remedies nationally, Ms Qotara suggested to her clients to bring a communication to the UN Committee on the Rights of the

Child. She then set up an opportunity to consult with 30 child clients from the community who had been directly affected by the armed conflict.

25. Hambaro became a State Party to the UN Convention on the Rights of the Child on 11 January 1991, with reservations to Articles 38 (1) and (4) stating these provisions were applicable only to international armed conflicts. Hambaro ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on 15 March 2005 and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure on 28 December 2018.

26. Ms Qotara's law firm is bringing the case before the UN Committee on the Rights of the Child for:

(a) A group of 30 children who had been recruited and used in the armed conflict and had later been demobilized, with Didi as the first applicant,

(b) A group of parents acting on behalf of their children who had been killed in attacks on hospitals and schools,

(c) An UNRWA medical officer who had autopsy reports and photographic evidence showing that he had treated 10 children ranging in age from 7 to 12 who ultimately died as a result of gunshots to the head,

(d) The international child rights organization, PeaceChild, which was assisting with the demobilization process, which claims to act 'on behalf of Yayamian children.'

The firm lodged an individual communication with the UN Committee on the Rights of the Child on 10 September 2023, in terms of Part II of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure for violations of several specified rights of the children named in the complaint, and on behalf of all Yayamian children against the Republic of Hambaro.

The government of Hambaro defends the communication, raising several points on admissibility (articles 5 and 7 of the Optional Protocol on a Communications Procedure), and on the merits.

(f) The UN Committee on the Rights of the Child will convene in April 2025 for a hearing of the case of *Didi and others v The Republic of Hambaro*, where arguments of both sides will be heard relating to admissibility and merits.



For the purposes of this Children's Rights Moot Court Competition, in assessing individual petitions under the UN Convention on the Rights of the Child, the procedural and substantive considerations pertaining to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (see in particular Article 7) will be followed. It will also follow the guidelines drawn up by the Committee on the Rights of the Child (see www.ohchr.org)