AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

THE SITUATION IN UZURI (*PROSECUTOR V MS LUSHOMO NGALA*)

(CONFIRMATION ON CHARGES HEARING)

PRE TRIAL-CHAMBER I

<u>STATEMENT OF AGREED FACTS</u>

1. The Republic of Salima and the State of Kedibonye are neighboring countries and former Kingdom of Bukada colonies. Historically, the people of Kedibonye were farmers and nomadic livestock herders who lived in the Kedibonye plains. Salima is a mountainous country whose inhabitants work in coal and mineral mining. Uzuri is a Kedibonye enclave characterized by mountain ranges and surrounded by plains. The Uzur people have always been isolated from the rest of Kedibonye and have fiercely defended their autonomy. Uzuri was discovered to have rich silver and gold deposits during the colonial rule of Bukada in the nineteenth century. As a result, the Kingdom of Bukada encouraged salima residents to relocate to Uzuri and work as miners in the newly opened mines. Salima immigrants eventually mixed with the Uzuri people to form a mixed Salima-Uzuri ethnic group.

2. During the decolonization process, the Kingdom of Bukada held a plebiscite on the independence of Kedibonye and Salima in 1965. Due to mass protests in Uzuri, whose residents did not want to join Kedibonye, the Kingdom of Bukada held a separate plebiscite in Uzuri, giving its residents the option of independence, unification with Kedibonye, or unification with Salima. Uzuri's population voted overwhelmingly in favor of unification with Salima (71%). The Kingdom of Bukada relinquished its colonial rule in May 1966, and Kedibonye and Salima gained independence, with the enclave of Uzuri falling under Salima sovereignty. Kedibonye, on the other hand, has consistently rejected Salima's sovereignty over Uzuri and claimed the region as its own.

3. In February 1969, Kedibonye's armed forces surrounded the region and closed all major roads into Uzuri in order to force Salima to the negotiating table to discuss the handover of Uzuri. Salima, on the other hand, launched an all-out assault on Kedibonye in April 1969. Salima was able to occupy the territory between the Kedibonye-Salima border and Uzuri in four months. Salima refused to return the occupied Kedibonye territory at the end of the conflict, citing the need for a security corridor between its territory and Uzuri.

4. During a political crisis in Salima in 1974, Kedibonye took advantage of the opportunity to retake the occupied territory and the Uzuri region. The Uzuri region was under military

occupation from 1975 to 2000. Members of the Uzuri Liberation Front (ULF), whose distinctive symbol is two red swords on a black background, the reverse of the Salima flag, regularly attacked Kedibonye armed forces. The ULF also launched missile attacks on villages near the region's border. The ULF has widespread support in Uzuri and is classified as a terrorist organization under Kedibonye law. Nonetheless, a sizable minority despises the ULF's methods and desires a peaceful reunification with Salima as well as regional autonomy in the interim. The Uzuri Reunification and Autonomy Party (URAP) was founded in 1999 to advocate for the rights of the minority.

5. The URAP and the Kedibonye government reached an agreement on January 1, 2001. Uzuri was given significant legislative and administrative autonomy, and the URAP would govern it. The Kedibonye armed forces withdrew from Uzuri, where a local police force provided security. Nonetheless, the Kedibonye armed forces erected security fences around the region and established checkpoints at all major entry points. The ULF rejected the agreement and vowed to fight on. From 2001 to 2021, the ULF launched sporadic attacks on the local government in Uzuri and surrounding villages. In response, the Kedibonye armed forces would close the region off, sometimes for weeks, and send in troops to search for and round up suspected ULF members with the help of the local police force.

Asayoroma and Lushomo Ngala

6. Ms. Lushomo Ngala is the founder and CEO of Asayoroma, a global multinational specializing in ICT, AI, and social media. Despite being incorporated in the Kingdom of Bukada, its headquarters are in Bathsheba, the capital Salima. Ms. Lushomo Ngala is a citizen of the Kingdom of Bukada, but she also has a permanent address in Salima. She has been dubbed an IT genius and an AI visionary. She believes that artificial intelligence will significantly improve people's lives and make the world a better place. Ms. Lushomo Ngala is actively involved in the various projects currently being developed at Asayoroma. Staff must send her detailed reports on a regular basis. She also frequently contributes ideas and suggestions for improvements to ongoing projects.

7. Asayoroma has a significant business interest in the governments of Kedibonye and Salima, both of which want to implement e-governance and smart cities. In particular, in Kedibonye, Asayoroma runs a project in which real-time data is collected via public CCTV cameras, numerous apps, and social media on smartphones and used for transit, traffic, health services, security, and community news. The data is collected with the users'

permission and stored on servers in Ife, Kedibonye's capital. Jabulani, the capital of Uzuri, is one of the first cities in Kedibonye where the smart city project is being tested.

AfrOpt deployment in Uzuri.

8. Local police officers in Uzuri chased 18-year-old Madi Saikou through the streets of Jabulani on November 18, 2021, at 12:45 p.m., after catching him graffitiing pro-ULF slogans on public property. Mr. Madi Saikou died after jumping from a bridge during the chase. Mr. Madi Saikou's unintentional death caused widespread upheaval. Uzuri residents have been protesting the authorities for several weeks. When the authorities attempted to quell the protest, it became more violent. Sit-ins were organized, roads were blocked, and stones and other projectiles were thrown at police officers. Riots and the occupation of local government buildings occurred on December 18, 2021, in response to a mass rally commemorating Madi Saikou's death. The local police requested assistance from the Kedibonye armed forces.

9. Messages of support for the ULF were trending on social media. Furthermore, Kedibonye intelligence discovered that encrypted social media messages were used to organize and coordinate protests and acts of resistance against Kedibonye armed forces in Jabulani. Asadat, a social media platform owned by Asayoroma, is a popular tool that is flooded with messages in support of the ULF. Many users defended the protesters' actions and the ULF's attacks and expressed support for reunification with Salima.

10. On January 9, 2022, the Kedibonye Herald published an article based on an anonymous government source outlining the government's plan to detain large swaths of Uzuri residents. A Kedibonye government spokesperson declined to comment on the newspaper article. One week later, the Kedibonye government held a video conference with Ms. Lushomo Ngala, during which the government requested access to the data of Asadat users. Furthermore, the government requested access to all data collected as part of the Jabulani smart city project in order to identify ULF protesters and sympathizers. Ms. Lushomo Ngala, with the assistance of her legal team, initially refused to hand over the data, citing privacy concerns. Nonetheless, Ms. Lushomo Ngala agreed to hand over the data after being warned that the government would seek a court order to release the data under existing national security legislation.

11. Using data provided by Asayoroma, Kedibonye armed forces and police arrested a large number of Uzurian residents who supported the ULF or were involved in the protests

throughout Uzuri in February 2022. The large number of arrests received extensive media coverage, as did Salima's diplomatic protest.

12. The Kedibonye government met on March 8, 2022, to discuss how to deal with the mass arrests. It quickly became clear that there were insufficient facilities to hold all arrestees for an extended period of time. While arrestees involved in riots could be held in pre-trial detention facilities, the government did not have the capacity to house all arrestees arrested for simply expressing support for the ULF, which made up the majority of those arrested.

13. During the meeting, the Kedibonye Minister of Justice mentioned that Asayoroma had created an artificial intelligence (AI) program called AfrOpt that would be used to monitor prisoners who were deemed fit to re-enter society. Such inmates would be assigned residences with special magnetic locks that could be unlocked using a smartphone app. Every time a prisoner wishes to leave the residence, information about the request must be entered into the smartphone app. If the software approves the request to leave, the door will be unlocked. During the period of leave, the prisoner's location would be broadcasted by the smartphone app, allowing public CCTV cameras to quickly locate the prisoner if he or she deviated from the purpose of the leave.

14. On March 11, 2022, the Kedibonye government contacted Asayoroma to inquire about the implementation of AfrOpt in Kedibonye. During a video conference with Ms. Lushomo Ngala, the Kedibonye government inquired extensively about the use of AfrOpt and whether it could also be used to monitor larger groups that could pose a security risk. The use of AfrOpt in Uzuri was not mentioned during the meeting. Ms. Lushomo Ngala confirmed that AfrOpt could be used in this manner with some modifications. Ms. Lushomo Ngala also stated that an updated version of AfrOpt, optimized for this purpose, would be available in April 2022.

15. During April and May 2022, the Kedibonye government implemented the AfrOpt program in Uzuri for residents involved in spreading messages of support for the ULF, justifying ULF actions, and campaigning for reunification with Salima. These residents were confined to their homes, which were outfitted with special magnetic locks that could only be opened with a smartphone app. They could leave their house at predetermined times for groceries, medical appointments, or recreational activities, with their location constantly tracked by the smartphone app and security cameras throughout Uzuri. The individuals who were confined may contact authorities via the software to request permission to leave the house. The software did not grant permission on its own. Residents who violated the restrictions faced imprisonment. Every three months, the government would consider whether the

restrictions imposed on a specific resident should be maintained. According to Uzuri laws, the Administrative District Court conducts the review. It is possible to appeal on issues of fact and law to the Administrative Court of Appeal, and on issues of law to the Supreme Administrative Court. All of these courts are impartial and independent, and their practices comply with applicable human rights law.

Application of Bird Target AI Targeting Software.

16. Salima bolstered its military forces along the border with Kedibonye in June 2022. Kedibonye retaliated by assembling forces on both sides of the border. At 12:55 p.m. on July 2, 2022, the President of Salima announced that the government had decided to go to war with Kedibonye in order to reunify Uzuri with Salima. Salima armed forces crossed the border and clashed with Kedibonye armed forces an hour later. The Salima airforce destroyed large portions of Kedibonye's helicopter fleet and dropped weapons, particularly Rocket Propelled Grenades (RPG), into Uzuri, which the ULF collected. The ULF launched nighttime attacks on Kedibonye armed forces stationed in Uzuri.

17. Intense fighting along the border forced Kedibonye to redeploy armed forces from Uzuri to the border region between July 3 and July 15, 2022. As a result, the ULF gained control of much of Uzuri, including its capital, Jabulani. Kedibonye stabilized the front near the border after 16 July 2022, and sent units from the 23rd armoured regiment and the 501st mechanized infantry regiment to retake control of Uzuri. The mountainous terrain enabled the ULF to lay ambushes and damage or destroy many Kedibonye armoured vehicles with RPGs and homemade bombs. Furthermore, before and after attacks, ULF fighters blended in with civilians in residential areas. As a result, Kedibonye armed forces reported numerous civilian casualties throughout Uzuri as a result of Kedibonye armed forces' return fire. To avoid additional civilian casualties, the Kedibonye armed forces halted all operations in Uzuri on July 31, 2022. The civilian casualties are widely reported in Salima's news media as yet another reason to support the war for reunification.

18. On 4 August 2022, the Kedibonye government secretly contacted Ms. Lushomo Ngala, asking if Asayoroma could develop an AI program to help distinguish civilians from ULF fighters. Ms. Lushomo Ngala responded the next day, saying that Asayoroma had an AI program called Bird Target that was normally used to secure airports and public transportation areas against terrorist attacks. Using cameras, the program can identify people in crowds whose behavior is suspicious. It can also determine whether such individuals are likely to carry weapons. Ms. Lushomo Ngala informed the Kedibonye

government that Asayoroma software engineers would be able to adapt the software and link it to the targeting systems on board the 23rd armoured regiment and 501 mechanized infantry regiment's armoured vehicles. The militarized version of Bird Target software is tested in computer simulations between August 26 and September 3rd, with generally positive results. According to internal Asayoroma memos, Bird Target has no trouble identifying individual threats or threats in small groups of individuals of up to 50 individuals. However, in larger groups, Bird Target takes longer to identify potential threats and may become overloaded. The simulation results were given to the Kedibonye armed forces.

19. The first units of the 23rd armoured regiment and the 501 mechanized infantry regiment will be equipped with the militarized version of the Bird Target program on September 6, 2022. The targeting system of the armoured personal carrier (APC) and tanks of the units would automatically identify potential threats, select targets, and open fire in 10 seconds, unless the gunner opened or aborted fire during that time span. The Bird Target software collects threat identification and target selection data and sends it to Asayoroma servers, which share it with the Kedibonye armed forces. During the first week of operation, units reported fewer civilian casualties and less damage and destruction of armored vehicles when operating in mountainous terrain outside Jabulani. Data also showed that the gunners opened fire 3.5 seconds after acquiring the target. The gunners rarely stopped firing.

20. Units of the 23rd armoured regiment and the 501 mechanized infantry regiment arrive on the outskirts of Jabulani on September 19, 2022. ULF pamphlets distributed to civilians urged them to block the streets in order to halt the advance of the Kedibonye armed forces. Throughout the city, civilians stood behind barricades holding banners with pro-ULF slogans and calls for reunification with Salima. Civilians were persuaded to leave the barricades peacefully by members of the Kedibonye armed forces.

21. When Lt. Kamau Zongo 's unit of ten armored vehicles arrived at Old Town Plaza, they were met by a large crowd of approximately 250 civilians who had blocked the plaza. Lieutenant Kamau Zongo abandoned his vehicles and attempted to negotiate a peaceful evacuation of the square. During the negotiation, one of the vehicles' optical sensors detected a potential threat, possibly a ULF soldier with an RPG, in a building behind the civilians. The vehicle's gunner immediately opened fire on the building. Some terrified civilians threw stones at the armored vehicles, believing they were the target of the attack. Lt. Kamau Zongo was hit on the head by one stone and required medical attention. The Bird Target software identified these civilians as potential threats, according to data. Data

also showed that 8 seconds after the threat was identified, the gunners opened fire, killing 37 civilians and injuring 42 others.

Adom, a self-learning AI software program, was created and used.

22. Because the Salima airforce destroyed large parts of its helicopter fleet in July 2022, the Kedibonye armed forces were looking for alternatives to support their ground forces operating in Uzuri. Ms. Lushomo Ngala informed Kedibonye during secret talks between Kedibonye and Asayoroma that Asayoroma had developed an experimental AI program, Adom. Adom is a self-learning AI program that collects data autonomously via drones, analyzes the data, and uses the results of the analysis to select targets and make decisions on its own to strike. During the meeting, Ms. Lushomo Ngala assured Kedibonye representatives that Adom, with some additional software changes, could be fully operational by September 2022.

23. During the month of August, Adom's software was programmed using known ULF operation methods. The software was designed to recognize the ULF's distinctive symbol, a white bear on a red background. Because the ULF fighters worked in small groups, the software was designed to target small groups of people. The last known locations of the ULF command centers in the mountains north of Jabulani were also provided to Adom.

24. Adom went operational on September 9, 2022, during the military operation to retake Uzuri. Adom spent several weeks gathering information on small groups of ULF fighters. According to the data, those groups frequently met near small, abandoned churches and chapels that dot the mountainous region north of Uzuri and were frequently the only geographical markers in the area. The churches and chapels are all built in the same style, which is a domed basilica. In abandoned and dilapidated sanitoria north of Jabulani, Adom discovered important ULF command centers and munition stockpiles. These sanitoria were built in the 1920s to help miners suffering from silicosis. They also have a distinct architectural style, with distinct art deco shaped windows and art deco ornaments.

25. Adom drones successfully carried out numerous strikes against ULF fighters beginning on October 5, 2022. Major Faustino Mbabazi was among those killed by an Adom drone strike on October 10, 2022. Major Faustino Mbabazi is buried three days later in Vimbo, a village in the mountains north of Jabulani. ULF flags were displayed in front of the St. Eligius church during the ceremony, and when the coffin entered the church, ULF fighters fired a military salute into the air. An Adom drone flying over the village launched a strike after identifying the church as a military target. The priest and his four acolytes were killed, as

were an unknown number of local civilians and family members of Major Faustino Mbabazi, as well as an unknown number of ULF fighters.

26. Many wounded ULF were transported to the Mountainview Sanitorium, the last operational sanatorium in Uzuri, north of Jabulani, in October 2022. Although the sanitorium cared for the few remaining miners with silicosis, it also provided medical services to the surrounding communities. Mountainview Sanitorium was one of the few options for medical care for ULF fighters because it was located in deep ULF controlled territory. Wounded ULF fighters were brought to the sanitorium in vehicles bearing the ULF's distinctive emblem, after which the wounded were handed over. Adom drones collected data on activities around the sanitorium for ten days. On October 18, 2022, the Adom drone struck the sanitorium's main building, killing an unknown number of patients and medical staff.

27. Internal Asayoroma documents obtained during the Salima criminal investigation of Lushomo Ngala revealed that Adom software engineers reported to Ms. Lushomo Ngala that the Adom AI struggled to make decisions in situations where the identified target was not clearly a military objective or a civilian object. Ms. Lushomo Ngala directed that the software engineers patch the software as much as possible in order to prevent Adom from accidentally targeting a civilian object. Nonetheless, in an internal memo to Ms. Lushomo Ngala, the software engineers expressed doubts that the patch would be sufficient to prevent Adom from making the correct decision in all circumstances. Ms. Lushomo Ngala asked the software engineers in her email response to keep a close eye on Adom's operation and to patch the targeting software as needed.

28. Salima, outraged by the Adom drone strikes in Uzuri, referred the situation to the African Court of Justice and Human Rights (AFCJHR) on November 13, 2022. Salima launched an investigation into whether Asayoroma was secretly providing weapons and technology to its adversary, Kedibonye. Salima issued an arrest warrant for Ms. Lushomo Ngala on December 10, 2022, for illegal weapons transfer to Kedibonye. Ms. Lushomo Ngala, on the other hand, had already fled to the Kingdom of Bukada. Salima requested that Ms. Lushomo Ngala be extradited to Salima on January 7, 2023. This request was turned down. Salima submitted evidence to the Prosecutor's Office two days later. Salima stated that in the absence of Ms. Lushomo Ngala, it could not initiate a criminal procedure against her. Ms. Lushomo Ngala was not subjected to any criminal investigation by the Kingdom of Bukada.

29. The AFCJHR issued an arrest warrant for Ms. Lushomo Ngala on April 18, 2023. The following day, Bukada police officers arrested her at her home in Bukada. On April 24, 2023, Ms. Lushomo Ngala was transferred to the AFCJHR detention facility. Ms. Lushomo Ngala has protested her arrest, maintained her innocence, and called the charges against her unjust because she was only involved in the development of cutting-edge technology.

30. The matter has been brought as a confirmation of charges hearing before the ACJHR. The Pretrial Chamber of the AFCJHR has scheduled the agenda of hearing as follows:

    1. Whether the case against Ms. Lushomo Ngala of war crimes is admissible before the AFCJHR.

    2. Whether there are substantial grounds to believe that the following war crimes pursuant to Article 28 D of the Malabo Protocol were committed in Uzuri:

        (a) unlawful confinement,

        (b) intentional attacks against planned protected persons and;

        (c) attacks on protected property

    3. Whether there are substantial grounds to believe that Ms Lushomo Ngala is Individually criminally responsible for war crimes pursuant to Article 46B of the Malabo Protocol.

31. All states are members of the African Union and United Nations, and they have all ratified the Vienna Conventions on Law of Treaties (VCLT), the four Geneva Conventions, and the International Covenant on Civil and Political Rights (ICCPR). The Republic of Salima and the State of Kedibonye have ratified the Malabo protocol and the two Additional Protocols to the Geneva Conventions (AP I & II) while the Kingdom of Bukada is yet to ratify both the Malabo and the Additional Protocols to the Geneva Conventions. The Malabo Protocol came into force in 2019 after depositing instruments of ratification by 46 member states.

32. You are required to submit written memorials for both the office of the prosecution and for the defense and submit it on or before Sunday, 30 April 2023, 23:59 East African Standard Time. The oral phase of the confirmation of charges hearing will begin on 22nd May 2023.