

Commission of Human Rights and Administrative Justice (CHRAJ), Head Office  
Old Parliament House, High Street, Accra  
Post Box AC 489, Accra

**Petitioner(s):** The underlisted residents of Nwoase (Salamkrom electoral area at Donkro Nkwanta, in Nkoranza South Municipality, Brong Ahafo Region of the Republic of Ghana), acting through the Centre for Public Interest Law, House No. 28, Naa Shika Lane, Haatso, Accra +233-(0)30-2543580 ('CEPIL')

**Respondent(s):** Nana Adu Kofi III Atekoanohene of Nkoranza Traditional Area, Brong Ahafo Region and four unidentified Soldiers (as defined below)

Presented to CHRAJ on 28 November 2017

**RE: FORCED EVICTION AND VIOLATION OF SOCIAL AND ECONOMIC RIGHTS IN NWOASE VILLAGE, NKORANZA SOUTH MUNICIPALITY, BRONG AHAFO REGION**

We act as lawyers for the underlisted residents of Nwoase (hereinafter referred to as 'Petitioners' or 'our clients') and have their authority to write this petition.

**Request for Confidentiality**

We request that CHRAJ limit disclosure of the names of the Petitioners within its own organization to its directors, officers and/or employees having a need to know and shall not disclose said names to any third party (whether an individual, corporation, or other entity) without the prior written consent of the Petitioners or their representative, CEPIL. CHRAJ shall take affirmative measures to ensure compliance with these confidentiality obligations by its employees, agents, consultants and others who are permitted access to the names of the Petitioners. Petitioners will not pursue this complaint with CHRAJ in the absence of assurances that adequate measures will be taken to keep their identities confidential.

In particular, we insist that CHRAJ should not share with Respondents the names of any of the Petitioners. As will be apparent from the facts presented in this complaint, the Petitioners have a reasonable fear that Respondents will take steps to retaliate against them once they have knowledge of the complaint against them. In the case of Respondent Nana Adu Kofi III Atekoanohene, this fear is based on personal experience; he has used his position to intimidate the residents of Nwoase for years. In the case of the Respondent Soldiers, this fear is based on their position as members of the Ghana Armed Forces and the fact that they used their position as a pretext to gain access to the land in question.

**I. Factual Background**

Our clients are subsistence farmers growing yam, cassava, melons and maize - the crops on which the community traditionally relies. Some of our clients also grow cashew trees as a long-term investment for themselves and to support their children in the future. Most are descended from people who came to this area from other parts of Ghana generations ago, and they have worked as tenant farmers on land over which Nana Adu Kofi III Atekoanohene (hereinafter 'the

Atekoanohene<sup>1</sup>) has traditional authority ever since.<sup>1</sup> Even for those residents of Nwoase whose families originally came from elsewhere, Nwoase is the only home they have ever known.

In the last several years, the Atekoanohene has repeatedly destabilized our clients' lives, terrorizing them with the possibility of eviction and using this threat as a lever to extort ever-increasing, arbitrary payments and contributions from them. At least twice in the past five years, most recently in 2016, the Atekoanohene announced that he had sold some or all of the farmland at issue in this petition and informed our clients and their families that they would be required to leave. On both occasions he then reversed course but demanded higher land rent in return for allowing our clients to remain. After the most recent incident, he informed our clients that the gods did not approve of their practice of rearing goats, dogs and pigs in the village; when they protested that they had always reared these animals without falling afoul of any spiritual obligation, he changed course but decreed that they would henceforth be required to contribute sheep to him to appease the gods.

Additionally, during the most recent incident, all the crops of our clients farming the Additional Land (defined below) were destroyed. The Atekoanohene had warned our clients not to grow crops that would last for more than one planting season such as yams and cassava. However, at the same time the Atekoanohene expected our clients to also continue giving him food crops such as yams, cassava and other crops in offering to support his annual festival. The Atekoanohene has further destabilized the lives of our clients in ways unrelated to the farmland. He has forbidden any of the residents of Nwoase to die in their homes, amongst their families in the village. Instead he demands that, if someone in the Nwoase community is dying, they be carried out into the bush to die. And if their families want to bury them in the village, the Atekoanohene demands one sheep in return for his permission for a burial in Nwoase.

On or around 30 September 2017 it came to light that the Atekoanohene had purportedly sold 145 acres of farmland (the 'Disputed Land') to four soldiers (hereinafter 'Soldiers'). This land is occupied by tenant farmers who have farmed that land for at least 70 years, as well as some indigenous landowners who have held their land for generations. Moreover, the Atekoanohene has attempted to sell an additional 240 acres of land (the 'Additional Land') that the villagers - and, in particular, women in the village - rely on for their food crops. While the community is unaware of whether this second parcel of land has been sold yet, they reason to believe that they will be expelled imminently from the Additional Land as well. The community members have also farmed the Additional Land for over 70 years.

To date, the Soldiers have planted cashew seedlings on 30 acres of the 145 acres of the Disputed Land, all of which are currently cultivated by members of the Nwoase community. When our clients first saw representatives of the Soldiers - who had presumably arrived to survey the land - and asked why they were on the Disputed Land, the representatives used their military credentials as a pretext and claimed that they were there to identify suitable land to build a military camp. Our clients were intimidated by the mention of a military incursion on their land and asked no further questions. But in fact, the representatives of the Soldiers were there to scout the land for cashews. Furthermore

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<sup>1</sup> Although the Atekoanohene has acted as traditional leader and custodian of the land in question in this complaint, he is not its owner and does not actually have the authority to enter into the transactions described herein. It is the Atekoanohemaa, the Queen Mother, and her family that are the traditional owners with allodial title to the land.

our clients understand that the Atekoanohene has encouraged the Soldiers destroy to any cashew tree they find on the Disputed Land.

The Atekoanohene has told our clients that after the harvest of their current crops on the Disputed Land – which is already underway – they will not be allowed to return to their farmland. As for the Additional Land, they were told in June 2017 that they may not cultivate any crop there that would take more than one planting season to mature and, consequently, cannot even grow yams and cassava – crops that are central to their diet and their culture. Moreover, as noted above, the Atekoanohene has attempted previously to sell the Additional Land, most recently in December 2016. In light of the Atekoanohene’s actions on the Disputed Land and his previous attempts to sell the Additional Land, they reasonably fear that they will be expelled imminently from this land as well.

This expulsion will, in effect, leave our clients without any means of support and render them unable to live and work on the land that they have occupied for generations. It also constitutes the illegal expropriation of land and conversion of all trees and other immovable property and improvements that any of the farmers of have made to their lands over the years.

Moreover, this expulsion would amount to forced displacement due to, *inter alia*, the loss of housing, land and property, jobs and physical assets. Taken together, the Disputed Land and the Additional Land amount to all the farmland that our clients have at their disposal, and the only source of their incomes and livelihood. The village of Nwoase, where our clients have their homes, which have electricity, school, boreholes, and places of worship, was built on land adjacent to these two parcels of land, precisely due to its proximity to the farmland. Our clients’ families purchased this land from the Atekoanohene generations ago. While the current threats to their access to the Disputed Land and the Additional Land do not directly affect the land on which the village is built, our clients will not be able to remain in their homes if their farmland is taken from them, nor will they have the resources to reestablish themselves elsewhere.

## **II. Urgency**

Because our clients have been told that they may not return to their fields after the current harvest, their eviction is now imminent. They will begin to move away from their homes in order to find a new place where they can support themselves, although most lack the economic wherewithal to secure access to new land. We therefore request the CHRAJ’s intervention on an urgent basis; beginning with immediate outreach to the Atekoanohene to gauge the possibility for a negotiated resolution of this crisis.

## **III. Jurisdiction and Sources of Law**

The Commission has jurisdiction over this complaint because it involves injustice, abuse of power, unfair treatment, and violations of fundamental rights and freedoms by public officers – the Atekoanohene and the soldiers – in the exercise of their official duties.<sup>2</sup> As a traditional leader, the Atekoanohene is a state actor vested by the Constitution with power and the obligation to manage stool lands in trust for his subjects. The Soldiers are members of the Ghana Armed Forces, and although they are presumably acting in their personal capacity, they have used their position as

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<sup>2</sup> Constitution of the Republic of Ghana, art. 218(a) (1992) (hereinafter “Const.”).

soldiers as a pretext to gain access to the land, and continue to abuse that status to intimidate our clients and prevent them from exercising and defending their fundamental human rights.

The Commission also has jurisdiction over this complaint because it alleges conduct by individuals that constitute violations of fundamental rights and freedoms.<sup>3</sup>

In addition to provisions of the Ghanaian Constitution of 1992, this complaint makes reference to a number of international conventions, including the International Covenant on Civil and Political Rights (ICCPR), which Ghana ratified in 2000,<sup>4</sup> the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which Ghana also ratified 2000,<sup>5</sup> and the African Charter of People's and Human Rights, which Ghana ratified in 1989.<sup>6</sup> Moreover, like all nations, Ghana is bound by human rights protections under customary international law.

#### **IV. Rights and Responsibilities**

The actions of the Atekoanohene and the New Landowners violate the human rights of our clients in a number of ways:

##### *1. Right to Property.*

The Atekoanahene and the Soldiers have committed an injustice against our clients by violating their right to property.

The Ghanaian Constitution vests stool lands with traditional leaders “on behalf of and in trust for the subjects of the stool in accordance with customary law and usage.”<sup>7</sup> Moreover, no stool land can be disposed of unless the Regional Lands Commission has determined that the disposition or development is consistent with an approved regional development plan.<sup>8</sup>

The Atekoanohene was not free to dispose of stool land - such as the parcels that he has sold and is in the process of selling in this case - for pure and personal economic gain, thereby dispossessing their people and leaving them without a livelihood. All the people of Nwoase – indigenous families and descendants of migrants alike – fall within the definition of “subjects” whose fundamental rights and interests are protected by this provision of the Constitution. They lived on the land for generations, treated the current Atekoanohene and his predecessors as their chief, contributed money for the construction of his palace and the funerals of his family members, and (in the case of the tenant farmers) shared the profits from the land according to traditional arrangements for many years. Thus they are among the people in trust for whom the Atekoanohene is required to manage the land.

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<sup>3</sup> *Id.* art. 218(c).

<sup>4</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 176 [“ICCPR”].

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [“ICESCR”].

<sup>6</sup> African Charter of People's and Human Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 U.N.T.S. 217; 21 I.L.M. 58 (1982) [“African Charter”].

<sup>7</sup> Const., *supra* note 1, art. 267(1).

<sup>8</sup> *Id.*

Likewise, the Soldiers (and, in turn, the eventual purchasers of the Additional Land) are not free to dispossess the current inhabitants of the land they purport to have purchased. The protection of people living on stool lands is consistent with Article 14 of the African Charter for People's and Human Rights, which insists that the right to property - a right that is much broader than mere ownership<sup>9</sup> - may be infringed only "in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." In *Sudan Human Rights Organisation and Centre of Housing Evictions and Human Rights (COHRE) v. Sudan*, the African Commission determined that it although the complainants were not demonstrably the owners of their land, they had recognizable property rights by virtue of the fact that they had occupied and derived their livelihoods from the land for generations.<sup>10</sup> Likewise, the provisions of the Ghanaian Constitution cited above protect such people who live and depend on stool lands and ensure that they are not merely at the mercy of their traditional leaders. As in *COHRE v. Sudan*, in Nwoase, the sudden deprivation of their enjoyment of the land that is the only home and source of livelihood that our clients have known for generations violates their right to property.

By virtue of these protections, the people of Nwoase should not be evicted from the farmlands that support them and allow them to maintain their homes and families. If, however, the land sale must go forward and they must be displaced, they are entitled to significant assistance in re-establishing their lives elsewhere. When persons with no legal ownership right to the lands they use or occupy are forcibly displaced, international best practice as embodied in the International Finance Corporation Performance Standards insists that the person responsible for displacing them should provide them adequate housing with security of tenure elsewhere, and relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.<sup>11</sup> If squatters and others with no legal right to land at all are entitled to these forms of assistance, the people of Nwoase, who have rented the land for generations, built homes, schools, and places of worship based on their access to this land, and become the traditional subjects of the Atekoanohene, who manages the land in trust for them, are certainly entitled to at least as much.

2. *Right to be free from dehumanizing and injurious customary practices.*

The unilateral disposition of stool land and terrorizing of stool land occupants by a traditional leader to the detriment of his customary subjects are *not* consistent with custom or usage, but even if they were, these practices would be prohibited because the Constitution outlaws practices that "dehumanise or are injurious to the physical and mental well-being of a person . . ." (art. 26(2)).

The authorities of Ghana have always been careful to maintain and respect the integrity of traditional systems, but they have also been quite clear that customs which are "repugnant to

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<sup>9</sup> See, e.g., Decision Regarding Application 006/2012, *African Commission on Human and People's Rights v. Kenya* (Afr. Ct. Hum. & People's Rts. 26 May 2017), para. 124 ["*Ogiek Case*"].

<sup>10</sup> No. 279/03-296/05, para. 205, (2009) AHRLR 154 (African Comm. Hum. & People's Rts. 27 May 2009) ["*COHRE v. Sudan*"].

<sup>11</sup> International Finance Corporation Performance Standard 5 (Land Acquisition and Involuntary Resettlement), para. 18.

natural justice, equity and good conscience.”<sup>12</sup> The Atekoanohene’s actions are unjust and inequitable, and they are injurious to the physical and mental well-being of the people of Nwoase.

- The practices of the Atekoanohene are unjust because he has repeatedly changed the terms by which the people of Nwoase are permitted to live on the land and make their livelihoods, extorting them for more money and contributions. For example, he has unilaterally raised their rents, demanded additional contributions of animals as a condition of allowing them to rear sheep, and arbitrarily forbidden them from planting crops that are central to their diet and culture, such as yam and cassava. His sale of the land is unjust in that it neglects the obligation of chiefs to administer stool lands in trust for their subjects.
- The practice of unilaterally selling stool land is inequitable in that it threatens the livelihoods of poor rural farmers in favor of influential and wealthy members of the military.
- The practice of unilaterally selling stool land is injurious to the physical and mental well-being of the people of Nwoase because the loss of their lands and livelihoods will leave them without economic support, threatening their basic access to livelihood and adequate levels of food, housing, and health. In fact, the right to life encompasses the State’s obligation of “generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it.”<sup>13</sup> This includes the right to food<sup>14</sup> and right to housing.<sup>15</sup> Specifically, by losing the productive land that has supported them and their families for generations, the people of Nwoase will lose the capacity to provide adequate for themselves, and they will not be able to stay in their homes due to lack of livelihood options in a village surrounded by land farmed by soldiers and other investors.

### 3. *Right to food*

Because “[r]ural landlessness is often the best predictor of poverty and hunger,”<sup>16</sup> the dispossession of the people of Nwoase by the Atekoanohene and the Soldiers – which will render them landless - likely constitutes a violation of the right to food.

The right to food is recognized in Article 25 of the Universal Declaration of Human Rights as part of the right to an adequate standard of living and is enshrined in Article 11(2) of the ICESCR, which requires States to recognize the right to food and freedom from hunger. It

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<sup>12</sup> See, e.g., *Abevi v Akoto IV & Another* [1993-94] 1 GLR 512; *Abangana v Akologo* [1976] GLR 382.

<sup>13</sup> See *See Yakeye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 146, paras. 161 – 162 (June 17, 2005).

<sup>14</sup> See *The Social and Economic Action Rights Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria*, No. 155/96, paras. 61 – 62 (2001) AHRLR 60 [“Ogoni Case”]. See also Report of the Special Rapporteur on the right to food, Olivier De Schutter, *Addendum: Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge*, 28 Dec 2009, U.N. Doc. A/HRC/13/33/Add.2, para. 4 (“The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives . . .”).

<sup>15</sup> CESCR, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, U.N. Doc. E/1998/22, para. 4.

<sup>16</sup> See Food and Agriculture Organisation et al., *Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles’*, 4 (2007), available at [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf).

has long been recognized that forced eviction and compulsory acquisition of land are inextricably linked with the right to food. For example, the Food and Agriculture Organization (FAO) - the primary United Nations body concerned with the right to food - has noted:

[G]uaranteeing access to natural resources for the most vulnerable populations is the first essential step for realizing [the right to food] . . . Since forced eviction strongly affects peoples' access to food, it should be considered only in exceptional cases and should be strictly compliant with the conditions established by law."<sup>17</sup>

UN Habitat, the United Nations agency concerned with the right to adequate housing, has written:

Forced evictions can undermine the enjoyment of the right to food by depriving people of their access to the means to procure food. For example, forced evictions can lead to hunger and malnutrition when such evictions deprive people and communities of their land, water and other resources on which they depend to produce food that they eat or sell.<sup>18</sup>

UN treaty bodies have expressed particular concern about the loss of traditional lands as a threat to vulnerable populations' access to adequate food. For example, the CESCR has noted that compulsory acquisition of land for investment projects can undermine the food security of minority communities,<sup>19</sup> and that in the context of widespread malnutrition, agricultural policies and practices favoring export of food crops can violate the right to food.<sup>20</sup> Consequently, CESCR recommends that "priority for land use and agricultural projects should be accorded to ensure domestic food and nutrition security."<sup>21</sup>

States' obligations as to the right to food include the obligation to *respect* people's access to food, which means refraining from taking actions that would undermine food security. As the FAO has concluded, States may fail to respect the right to food when they sell large tracts of land previously cultivated by farmers for food crops to investors, who convert that land to cultivation of export crops.<sup>22</sup> States are also required to *protect* their people from the actions of individuals or enterprises that deprive people of their access to adequate food.<sup>23</sup>

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<sup>17</sup> Food and Agriculture Organisation, Right to Food Issues Brief 2: Land Tenure, Investments and the Right to Food (2011), *available at* [http://www.fao.org/fileadmin/templates/righttofood/documents/RTF\\_publications/EN/issuesbrief\\_LANDtenure\\_EN.pdf](http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/issuesbrief_LANDtenure_EN.pdf).

<sup>18</sup> UN Habitat & Office of the High Commissioner for Human Rights, Fact Sheet No. 25/Rev. 1: Forced Evictions, at 11 (2014), *available at* <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

<sup>19</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights: Cameroon, 8 Dec. 1999, U.N. Doc. E/C.12/1/Add.40, paras. 23 & 39.

<sup>20</sup> CESCR, Concluding observations on the second periodic report of the Sudan, 27 Oct. 2015, U.N. Doc. E/C.12/SDN/CO/2, para. 49.

<sup>21</sup> *Id.* para. 50.

<sup>22</sup> FAO Right to Food Issues Brief 2, *supra* note 16.

<sup>23</sup> CESCR, General Comment No. 12, Article 11, The Right to Adequate Food, 12 May 1999, U.N. Doc. E/C.12/1999/5, para. 15.

Finally, States have an obligation to *fulfill* the right to food, which requires proactive actions to strengthen access to adequate food. In this respect, “socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.”<sup>24</sup>

In this case, the State, in the person of the Atekoanohene and the Soldiers, has put the residents of Nwoase - poor farmers with nowhere else to go and little capital to access new farmland - in imminent danger of losing their access to adequate food. The State’s actions and omissions in this case violate all three aspects of the State’s obligations as described above. State actors are failing to *respect* the Nwoase residents’ right to food, as they are taking active steps to undermine the villagers’ food security. By neglecting to block the land sale or broker an arrangement whereby the villagers’ access to food would be preserved, State authorities - such as the Regional House of Chiefs, the police, and the Stool Lands Commission - are failing to *protect* the villagers from the actions of the Atekoanohene and the Soldiers. And since the Nwoase villagers will not be compensated for their losses and do not have access to public services, programs, or benefits that would enable them to find new productive land, they are victims of a failure to *fulfill* the right to food.

#### 4. *Right to housing*

By continually disrupting their occupancy and tenure on the Disputed and Additional Land, and threatening them with forced eviction, the Atekoanohene and the Soldiers have violated our clients’ right to housing.

##### **Adequacy of housing**

The right to be free of arbitrary interference in in the home and the right to adequate housing are protected in numerous human rights instruments to which Ghana is a party.<sup>25</sup>

While adequacy of housing is determined in part by social, economic, cultural, climatic, ecological and other factors, the following considerations should be taken into account for this purpose in any particular context:

- Security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy<sup>26</sup>

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<sup>24</sup> *Id.*, para. 13.

<sup>25</sup> See ICCPR, *supra* note 3, art. 17; ICESCR, *supra* note 4, art. 11. Although the right to housing is not explicitly protected in the African Charter, the African Commission on Human and People’s Rights has determined that protections for adequate housing are “implicit” in other guarantees that are stated expressly in the Charter. See *Ogoni Case*, *supra* note 13, para. 59.

<sup>26</sup> CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), 13 Dec. 1991, U.N. Doc. E/1992/23, para. 8.



Of the standards listed above, the one that is most at issue for our clients in Nwoase, both in terms of the Disputed Land and the Additional Land, is the security of tenure. Housing is not adequate if occupants do not have a degree of tenure security – stability in the terms of their occupancy and guarantees of legal protection against forced evictions, amongst other things. And the Atekoanohene’s actions have continually destabilized their tenure security.

### **Forced eviction**

Forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>27</sup> Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.<sup>28</sup> Forced evictions are a gross violation of human rights, in particular the right to adequate housing.

The African Commission on Human and Peoples’ Rights has recently urged all States Parties to the African Charter to take appropriate steps to ensure respect, protection and realisation of the right to adequate housing. In particular, States should put an end to all forms of forced evictions, in particular evictions carried out for development purposes, and ensure that evictions are only carried out as a last resort after all alternatives to eviction have been provided and that all evictions comply with international and regional standards.<sup>29</sup>

In general, international human rights law requires that all feasible alternatives be explored before carrying out any eviction, so as to avoid, or at least minimize, the need to use force. When evictions are carried out as a last resort, those affected must be afforded effective procedural guarantees, which may have a deterrent effect on planned evictions. These include:

- An opportunity for genuine consultation;
- Adequate and reasonable notice;
- Availability of information on the proposed eviction in reasonable time;
- Presence of Government officials or their representatives during an eviction;
- Proper identification of persons carrying out the eviction;
- Prohibition on carrying out evictions in bad weather or at night;
- Availability of legal remedies;
- Availability of legal aid to those in need to be able to seek judicial redress.<sup>30</sup>

These protections apply to our clients because the Atekoanohene – a State actor – is carrying out these evictions on land that he manages in trust for his subjects by virtue of a grant of

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<sup>27</sup> CESCR General Comment No. 7, *supra* note 14, para. 3.

<sup>28</sup> CESCR General Comment No. 4, *supra* note 25, para. 8(a).

<sup>29</sup> African Comm. Human & People’s Rts., 52nd Ordinary Sess., Res. 231: Resolution on the right to adequate housing and protection from forced evictions, 22 Oct. 2012.

<sup>30</sup> CESCR General Comment No. 7, *supra* note 14, para. 15.

power by the Republic of Ghana, and because the beneficiaries are soldiers who have used their position as a pretext to gain access to the land.

### **Forced eviction from our clients' farms**

The Atekoanohene has purported to dispose of the Disputed Land to the Soldiers, who have begun planting cashew seedlings before the expiry of any reasonable notice period. A number of the procedural guarantees listed above have been violated. In particular:

- *An opportunity for genuine consultation.* At no point have our clients been given an opportunity for genuine consultation in connection with the termination of their occupancy agreement or their forced eviction from the land they have farmed for generations; instead our clients were simply told that they would have to leave their lands by the end of the season.
- *Adequate and reasonable notice.* While the Soldiers may believe they have rightfully purchased the Disputed Land, they still have to comply with any applicable notice obligations. Instead, they have begun planting cashew trees on the Disputed Land, in amongst the crops of our clients, prior to the expiry of any notice period.
- *Availability of information on the proposed eviction in reasonable time.* Neither the Atekoanohene nor the Soldiers have made available information on the proposed eviction in reasonable time; instead it has simply begun, by way of the appearance of the Soldiers' agents on the land and the planting of cashew on the Disputed Land.
- *Proper identification of persons carrying out the eviction.* The persons carrying out the eviction have never been properly identified. In fact, at the time of the filing of this petition, our clients have been unable to discover the identities of the Soldiers and/or their agents who are planting cashew.

In respect of the Additional Land, the Atekoanohene has already warned our clients that he will be transferring that land to a new owner as soon as he can. The same analysis applies to this land: there has been no consultation, and past experience indicates that transfer will occur – when it does – without proper notice, information, or identification.

### **Forced eviction from our clients' homes**

As noted above, protection against forced eviction applies equally to farmland as it does to land on which homes are built. But in reality, our clients are being evicted from their homes just as surely as they are being evicted from their farmlands. If they cannot work on the fields that they have been farming for generations on the Disputed Land, they will not have any income to support their lives in their current homes – the only homes most of them have ever known – in Nwoase.

In respect of the Additional Land, the Atekoanohene has already warned our clients that he will be taking the lands back imminently. This is a clear indication that he intends to evict them and is making an attempt to do so. Those of our clients who have farms on the Additional Land therefore stand to suffer the same forced eviction from their homes as those on the Disputed Land. Therefore, the Atekoanohene's actions on the Additional Land amount to attempted forced eviction from our clients' homes.

## 5. *Right to human dignity*

The Ghanaian Constitution of 1992 provides that “The dignity of all persons shall be inviolable.”<sup>31</sup> The provisions on socio-economic rights in human rights texts have also been interpreted as strongly engaging with dignity. All of the rights described above – rights to property, of children, food, work and the right to be free from dehumanizing and injurious customary practices are necessary for the realisation of human dignity.

## 6. *Rights of children*

The Atekoanohene and the Soldiers have violated numerous aspects of the rights of children by depriving our clients of their lands, thereby undermining parents’ ability to provide for the basic economic and social rights of their children.

When it comes to children, it has been emphatically stated in the Convention on the Rights of the Child (CRC),<sup>32</sup> which Ghana ratified in 1990, that all human rights, including economic, social, and cultural rights, must be protected, respected, and fulfilled for all children within the jurisdiction of states party to the CRC, such as Ghana. These rights include the right to an education,<sup>33</sup> affordable food,<sup>34</sup> and adequate health care.<sup>35</sup> Multiple treaty body authorities of the United Nations have asserted that the enjoyment of rights stipulated in the CRC is not limited to children who are nationals of a state; these rights must be available to all children, including asylum seeker, refugees, and migrant children, irrespective of their nationality, immigration status, or statelessness.<sup>36</sup>

Many of the people of Nwoase and by extension their children are considered settlers and are not indigenous to the community. However, regardless of the children’s nationality or migrant status, all rights that children are entitled to cannot be denied or refuted for that reason. Moreover, our clients’ children fall precisely within the area of concern of the African Charter, which requires States and State actors to make special provision for vulnerable and disadvantaged groups are people who have faced and/or continue to face significant impediments to their enjoyment of economic, social and cultural rights.<sup>37</sup> Vulnerable and disadvantaged children include young girls, children of low-income groups, children in rural areas, and children of immigrants and of migrant workers.<sup>38</sup>

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<sup>31</sup> Const., *supra* note 1 art. 15(1).

<sup>32</sup> Convention on the Rights of the Child art. 27, Nov. 20, 1989, 1577 U.N.T.S. 3 [“CRC”]

<sup>33</sup> *Id.* art. 28. *See also* ICESCR, *supra* note 4, art. 13; African Charter, *supra* note 5, art. 17.1.

<sup>34</sup> CRC, *supra* note 31, art. 24.

<sup>35</sup> *Id.*

<sup>36</sup> Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6, para. 12, 1 Sept. 2005; CESCR, General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20, para. 30, 2 July 2009.

<sup>37</sup> *See* Afr. Comm. Hum. & Peoples’ Rts., *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in The African Charter on Human and Peoples’ Rights*, para. 3(c) [“Principles and Guidelines”].

<sup>38</sup> *Id.* para. 1(e).

Our clients are particularly concerned about their ability to continue providing an adequate education to their children, given the economic and physical dislocation that they will experience if they are expelled from their village. A Minimum Core Obligation under the African Charter is to ensure that all children enjoy their right to free and compulsory primary education.<sup>39</sup> By disposing of his lands in Nwoase, the Atekoanohene has dispossessed the people and their children, leaving them without a livelihood. If the families of Nwoase no longer have access to their land for farming, they will have no income and will likely need to move, and more fundamentally, would be unable to support their children's schooling. This would disrupt the education of the children.

Moreover, the Atekoanohene and the Soldiers' actions are threatening children's rights to be protected from forced eviction. In addition to the protections against forced eviction noted in the previous section, the African Charter requires States to take steps to "ensure that no one is subject to violence, especially women and children, or arbitrarily deprived of property or possessions as a result of forced evictions"<sup>40</sup> – a protection that applies equally to the destruction of agricultural lands as to the demolition of houses.<sup>41</sup> The Soldiers are planting cashew seedlings on the land of our clients, effecting a complete removal of our clients from the Disputed Land against their will, without any legal protections, thus subjecting them to a forced eviction.

### **Relief sought**

Our clients are urgently invoking your assistance and good offices to protect their human rights and stop the unjust and abusive behavior of the Atekoanohene and the Soldiers. In particular, they seek to stop the Soldiers from unjustly occupying their land and interfering with their harvest, and to challenge the legitimacy of the Atekoanohene's sale of the land. We understand that the Commission is charged with resolving human rights complaints through negotiation and compromise and hope for an amicable solution that accommodates the interests of all parties and ensures that our clients' fundamental rights are respected. In particular, we seek immediate outreach to the Atekoanohene to reach a negotiated outcome that recognizes and guarantees our clients' rights to remain on the lands they have traditionally farmed in the long- to medium term.

If, however, it is impossible to resolve this issue through negotiation, we call on the Commission to exercise its other remedial powers, such as the power to report the abusive acts of the Atekoanohene and the Soldiers to their superiors – higher-level chiefs and superior military officers, respectively – and to institute legal proceedings to secure an end to the illegal destruction of property and expulsion of rightful owners and occupants. Specifically, we ask that the Commission:

1. Use its investigative powers to identify the Soldiers, including by requiring any relevant institution(s) or person(s) to make available information, documents, records or other materials that will assist in the Commission's investigations to identify the Soldiers;

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<sup>39</sup> *Id.* para. 71(a).

<sup>40</sup> *Id.* para. 79(z).

<sup>41</sup> See *COHRE v. Sudan*, *supra* note 9, para. 203 (citing the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons).

2. Employ its power to seek remedies on behalf of affected citizens by going to court to obtain an injunction against the Soldiers, stopping them from planting on the land and to stop or cancel the purported land sale;
3. Use its investigative powers to identify whether the Atekoanohene has other, unoccupied lands that the Soldiers could purchase instead of the Disputed Land and Additional Land, thereby allowing our clients to remain on the land that they have occupied, lived on and farmed for generations.

Yours sincerely,

LAWYERS FOR PETITIONERS