

TEAM: IL-31

**6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT
COMPETITION, 2023**

BEFORE THE INTERNATIONAL CRIMINAL COURT

The Hague, Netherlands

IN THE MATTER OF

PROSECUTOR

V.

THE POLICE CHIEF

-WRITTEN SUBMISSION ON BEHALF OF THE PROSECUTION-

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

Date:

APPEALS CHAMBER

CASE BEFORE THE INTERNATIONAL CRIMINAL COURT:

PROSECUTOR V THE POLICE CHIEF

**The Office of the Prosecutor's Submission in the Appeal from the Trial
Chamber's Decision against defendant the Police Chief of
Bangtangnagar**

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ABBREVIATIONS	FULL FORM
¶	Paragraph
AC	Appeals Chamber
Art(s).	Article(s)
CAH	Crime against Humanity
CIL	Customary International Law
ECtHR	European Court of Human Rights
EOC	Elements of Crime
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC	International Law Commission
No.	Number
OTP	Office of Prosecutor
p.	Page
PTC	Pre-Trial Chamber
RS	Rome Statute
SCSL	Special Court for Sierra Leone
TC	Trial Chamber
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VCLT	Vienna Convention on Law of Treaties
Vol.	Volume

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STATEMENT OF JURISDICTION

The Prosecutor submits the case to the Appeals Chamber of the International Criminal Court under Article 81 of the Rome Statute.

“Article 81 of the Rome Statute of the International Criminal Court

1. A decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(a) The Prosecutor may make an appeal on any of the following grounds:

- (i) Procedural error;*
- (ii) Error of fact, or*
- (iii) Error of law;”*

Article 12 of the Rome Statute of the International Criminal Court

1. ..

2. In the case of Article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;”

All of which is most respectfully submitted.

STATEMENT OF FACTS

THE INCEPTION OF CHAOS

The Sholingilar, an indigenous and religious minority in the forests of Burmanyar, faced persecution after a 2013 military coup established a single official religion. Escaping oppression, the Sholingilars sought refuge in Bangtangnagar, a signatory to the 1951 Refugee Convention and the 1967 Protocol.

ATROCITIES IN BANGTANGNAGAR

The people of Bangtangnagar exploited them and used them as slave labour in local and state-owned plantations. By 2020, over half a million Sholingilars faced discrimination and maltreatment, particularly from the local police under the orders of their influential Police Chief. The youth suffered torture and dehumanization in prison while the government looked the other way.

RELIEF IN FINLANDIA

Compelled to flee, the Sholingilars arrived in Finlandia, wherein, with the aid of civil society activists, they approached the ICC, invoking Article 15 of the Rome Statute, although neither Burmanyar nor Bangtangnagar were signatories to the Rome Statute. The Finlandia Civil Society even mobilized lawyers who filed refugee applications of the Sholingilar people

ICC'S PROCEEDINGS

The Pre Trial Chamber and Trial Chamber observed their jurisdictions over the matter and found reasonable grounds for an investigation against the Police Chief for 'crimes against humanity and genocide'. Subsequently, the charges for slavery were upheld against the Police Chief, and those of deportation and genocide were dismissed. A domestic trial was also initiated in Bangtangnagar but was presumed biased, leading to the present appeal.

STATEMENT OF ISSUES

WHETHER OR NOT

ISSUE I

WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

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WHETHER THE POLICE CHIEF'S PROSECUTION IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

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WHETHER THE DISMISSAL OF THE CHARGE OF "DEPORTATION AS A CRIME AGAINST HUMANITY" IS VALID?

SUMMARY OF ARGUMENTS

ISSUE I: WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

It is humbly submitted by the Prosecution that, the ICC has jurisdiction over the matter at the appeal, as Bangtangnagar is not a State Party to the Rome Statute. The same would be substantiated in a three-fold manner. **Firstly**, ICC has jurisdiction over the Police Chief's conduct under Article 12(2)(a). As the 'Conduct in Question' establishes the objective territoriality. **Secondly**, ICC's jurisdiction is also warranted as per the 'Effects' doctrine. **Thirdly**, ICC has an *Obligatio Erga Omnes* to prosecute the police chief. As Slavery As Crimes Against Humanity Are *Jus Cogens* Crimes. Therefore, The ICC Has An *Obligatio Erga Omnes* to prosecute *Jus Cogens* Crimes.

ISSUE II: WHETHER THE POLICE CHIEF'S PROSECUTION IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

It is humbly submitted that, the Police Chief's prosecution is admissible, as defined in the Articles of the Rome Statute. The same would be substantiated in a two-fold argument. **Firstly**, the Principle of Complementarity should be followed. As the unwillingness of the state empowers the court to take cognizance. Therefore, the investigation by Bangtangnagar is not genuine in nature and suffered an unjustified delay. **Secondly**, the gravity of the case is sufficient to meet threshold under Article 17 (1) (d). As there are sufficient number of victims to satisfy the gravity of threshold. Therefore, nature, manner and impact of commission of the alleged crime on the victims indicate the gravity of the offence.

ISSUE III: WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

It is humbly submitted that, the dismissal of the charge of “Deportation as a Crime Against Humanity” is not valid. The same would be substantiated in a four-fold argument. *Firstly*, the perpetrator deported, without grounds permitted under International Law to another state by coercive acts. *Secondly*, Sholingilars were lawfully present in Bangtangnagar and the perpetrator was aware about the lawfulness of such presence. *Thirdly*, the crime was committed as a part of widespread and systematic attack against civilian population and the Police Chief had the requisite knowledge and intent. *Fourthly*, the Police Chief is individually criminally responsible under Article 25(3) (b) of the Rome Statute for ordering a Crime Against Humanity.

ARGUMENTS ADVANCED

[ISSUE I] WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

[¶1] It is humbly submitted that, the ICC has jurisdiction over the present matter at hand. This has been substantiated in a three-fold manner. ***Firstly***, the ICC has jurisdiction over the Police Chief's conduct under Article 12(2)(a).¹ ***Secondly***, jurisdiction of the ICC is warranted as per the *Effects* doctrine. ***Thirdly***, the ICC has an *Erga Omnes* obligation to prosecute the Police Chief. As Slavery as Crimes Against Humanity are *Jus Cogens* Crimes. Therefore, The ICC has an *Obligatio Erga Omnes* to prosecute *Jus Cogens* Crimes.

[A] ICC HAS JURISDICTION OVER THE POLICE CHIEF'S CONDUCT UNDER ARTICLE 12(2) (A)

[¶2] It is submitted that, ICC has jurisdiction over the Police Chief's conduct. The same has been substantiated through one-fold argument. ***Firstly***, that the 'conduct in question' establishes the objective territoriality [A.1].

[A.1] That The 'Conduct In Question' Establishes The Objective Territoriality

[¶3] It is submitted that, this Court can exercise jurisdiction under Article 12(2) (a) where at least part of the actus reus of a crime occurs on State Party territory.² Depending on the nature of the crime, its actus reus may encompass both the underlying act and its effects, such that this

¹ Rome Statute (1998) 2178 UNTS 9018, Article 12 (2) (a).

² *Myanmar* authorisation decision [61].

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Court can exercise jurisdiction upon the occurrence of effects on State Party territory.³ Such crimes include crimes where the underlying act is necessarily linked with its effect.⁴

[¶4] Pursuant to Article 31, the Statute must be interpreted in accordance with its objects and purposes and the main purpose of the ICC is to end impunity.⁵ The jurisdiction of this court covers crimes that are of concern to the international community such as Crimes Against Humanity which is Enslavement.⁶ Hence, the purpose of the Statute will be defeated if the jurisdiction of the Court requires all the elements of a crime to take place within the territory of State party.⁷

[¶5] In the context of an International Criminal Tribunal created by treaty, States delegate their jurisdiction on agreed grounds,⁸ delegated-jurisdiction theory supports ICC's jurisdiction over nationals of non-state party, which can occur in cases of Objective Territoriality.⁹ This is so because the drafters meant to allow the Court to exercise jurisdiction in the same circumstances in which Parties would do over such crimes under their legal systems.¹⁰ Therefore, denying the jurisdiction because a part of a crime within the Court's jurisdiction was committed on the territory of a non-state party would not be in line with the object and purpose of the Statute.¹¹

³ *Myanmar* authorisation decision (n 2) [50]-[61].

⁴ *ibid.*

⁵ Vienna Convention on Law of Treaties (1969) 1155 UNTS 331 Article 31(1).

⁶ Rome Statute (1998) 2178 UNTS 9018 Article 7 (2) (c).

⁷ *Myanmar* decision on jurisdiction [69] - [70].

⁸ Monique Cormier, *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties* (Cambridge University Press 2020).

⁹ Madeline Morris, 'The Jurisdiction of the International Criminal Court over Nationals of Non-Party States' [1999] 6 ILSA Journal of International & Comparative Law 365.

¹⁰ *Myanmar* decision on jurisdiction (n 7) [70].

¹¹ *ibid.*

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[¶6] It can be reasonably inferred that, the subjection of young women to slavery on state-owned plantations and the torture of detained Sholingilar in prisons¹² led to critical conditions in Bangtangnagar. Essentially, the insecure and perilous conditions created by the police under the orders of the Police Chief¹³ compelled the Sholingilar people to either suffer in Bangtangnagar under inhumane conditions or seek refuge elsewhere resulting in, them moving to Finlandia.

[B] ICC’S JURISDICTION IS ALSO WARRANTED AS PER THE ‘EFFECTS’ DOCTRINE

[¶7] It is submitted that, as per the ‘*Effects*’ doctrine a State may assert territorial jurisdiction if the crime, taking place outside the state territory, produces effects within the territory of the State.¹⁴ The Assembly of State Parties¹⁵ extensively endorsed the doctrine’s inclusion under Article 12(2) (a) by suggesting that ‘Conduct’ encompasses both conduct in question and its ‘Consequence’.¹⁶ This Court has accepted that States exercising effects jurisdiction possess the requisite *Opinio Juris* in conformity with International Law.¹⁷

[¶8] In Afghanistan, this Court affirmed that it could exercise jurisdiction over the nationals of the USA, a non-state Party, where part of the conduct occurred in Afghanistan, a State Party.¹⁸

¹² Moot Proposition ¶ 11.

¹³ *ibid.*

¹⁴ *Lubanga* AC [21].

¹⁵ Report of Special Working Group ¶38; *Myanmar* decision on jurisdiction [50].

¹⁶ Report of Special Working Group (n 15) ¶39.

¹⁷ *Myanmar* authorisation decision (n 2) [56]–[57].

¹⁸ *Afghanistan Decision* PTC [50].

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Furthermore, such jurisdiction is consistent with the *S.S. Lotus* principle, under which the exercise of jurisdiction is allowed without any prohibitive rule under International Law.¹⁹

[¶9] Further, the Rome Statute must be interpreted in light of subsequent developments.²⁰ In recent years, crimes increasingly span international borders, such as international terrorism,²¹ cybercrimes,²² anti-trust violations,²³ and deportation.²⁴ In response, States have assumed ‘Effects’ jurisdiction in human rights violations²⁵ and ordinary criminal law violations.

[¶10] ‘Effects’ jurisdiction is a variant of the territoriality principle allowing the exercise of jurisdiction when substantial, direct, and foreseeable effects occur within a State Party territory, even though the criminal conduct occurred in a Non-State Party.²⁶ Therefore, the atrocities committed on Sholingilars were widespread and intended.²⁷ There exists a sufficient link²⁸ between the underlying crimes and deportation. This was foreseeable as the circumstances created in Bangtangnagar forced Sholingilars to flee the country.

¹⁹ Michael P. Scharf, ‘The ICC’s Jurisdiction over the Nationals of Non-Party States: A Critique of the U.S. Position’ [2001] L & Contemp Probs 72.

²⁰ *Furundžija* TC [165].

²¹ Kolb, Robert, ‘The Exercise of Criminal Jurisdiction over International Terrorists’ in Andrea Bianchi (eds) *Enforcing International Law Norms Against Terrorism* (Oxford:Hart 2004).

²² Fyfe Shannon, ‘Tracking Hate Speech Acts as Incitement to Genocide in International Criminal Law’ [2017] *Leiden Journal of International Law* 523.

²³ *Nippon Paper* [1, 8].

²⁴ *Myanmar* decision on jurisdiction (n 7) [30].

²⁵ Yuval Shany, ‘The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v Prime Minister of Israel’ [2009] *Isr L Rev* 101.

²⁶ Felix Eboibi, ‘Jurisdiction of the International Criminal Court: Analysis, Loopholes and Challenges’ [2012] *NAUJILJ* 28.

²⁷ *United States v. Hsuan Bin Chen* CR-09-00110-SI (MJ) [3].

²⁸ *Callixte* PTC [16]-[17].

[C] ICC HAS AN OBLIGATIO ERGA OMNES TO PROSECUTE THE POLICE CHIEF

[¶11] It is submitted that the ICC has an *Obligatio Erga Omnes* to prosecute the Police Chief. The same has been substantiated by a two-fold argument. ***Firstly***, crimes against humanity are *Jus Cogens* crimes. ***Secondly***, the ICC has an *Obligatio Erga Omnes* to prosecute *Jus Cogens* crimes.

[C.1] Slavery As Crimes Against Humanity Are Jus Cogens Crimes

[¶12] Enslavement is recognized as a Crime Against Humanity²⁹ and its prohibition belongs to *Jus Cogens*.³⁰ The term "*Jus Cogens*" holds the highest hierarchical position among all other norms and principles.³¹ As a consequence of that standing, *Jus Cogens* norms are deemed to be peremptory and non-derogable.³² It is submitted that, ICC is under the *Erga Omnes* obligation to adjudicate cases involving serious crimes that concern the international community.³³ There is no derogation from such obligations even for a non-party to treaties exhibiting *erga omnes* character.³⁴

[¶13] It is submitted that, *Jus Cogens* enjoy a higher rank in the international hierarchy than treaty law and even "ordinary" customary rules.³⁵ In the present case, subjecting young woman

²⁹ Article (n6) 7 (2) (C).

³⁰ James Crawford, *Brownlie's Principles Of Public International Law* (9th edn, OUP 2019) 515; Lauri Hannikainen, *Peremptory Norms (Jus Cogens) In International Law* [1988] American Journal of International Law 796.

³¹ M. Cherif Bassiouni, 'A Functional Approach to "General Principles of International Law"' [1990] MICH. J. INT'L L. 768.

³² Lauri Hannikainen, *Peremptory Norms (Jus Cogens) In International Law* [1988] American Journal of International Law 796.

³³ Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn, C.H. Beck, Hart, Nomos 2008) 56.

³⁴ Antonio Cassese, Paola Gaeta and John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, vol. 1B (OUP, 2002) 609.

³⁵ *Furundžija* TC [165].

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to slave labour³⁶ by the Police Chief is a violation of the established *Jus Cogen* of slavery as a Crime Against Humanity. Furthermore, obligations arising from prohibition against slavery towards international community as a whole are a concern of all states.³⁷ Hence, the ICC must take cognizance of the matter and serve justice.

[C.2] **The ICC Has An Obligatio Erga Omnes To Prosecute Jus Cogens Crimes**

[¶14] It is submitted that, *Erga omnes*, is a consequence of a given international crime having risen to the level of *jus cogens*.³⁸ In the present case, the Police Chief subjected the young women to slave labour, thus committing *jus cogens* crime. Hence, the ICC has an *erga omnes* obligation to exercise its jurisdiction over the present matter. Furthermore, the charges of slavery that have been upheld by the TC³⁹ are valid as under *erga omnes* obligation the ICC has jurisdiction over the present issue.

ISSUE II: WHETHER THE MATTER IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

[¶15] It is submitted that, the present matter is admissible, as defined in the Articles of the Rome Statute. The same would be substantiated in a two-fold manner. ***Firstly***, the Principle of Complementarity should be followed. ***Secondly***, the gravity of the case is sufficient to meet threshold under Article 17(1)(d).⁴⁰

³⁶ Moot Proposition ¶ 11. (n 12)

³⁷ *Barcelona Decision* [33]

³⁸ Theodor Meron, 'Human Rights And Humanitarian Norms As Customary Law' [1989] *Leiden Journal of International Law* 275; Claudia Annacker, 'The Legal Regime of "Erga Omnes" Obligations and International Law' [1994] *AUSTRIAN J. PUB. INT'L L.* 131; Theodor Meron, 'On a Hierarchy of International Human Rights' [1986] *AM. J. INT'L L.* 1

³⁹ Moot Proposition ¶ 19

⁴⁰ Rome Statute (1998) 2178 UNTS 9018, Article 17 (1) (d).

[A] THE PRINCIPLE OF COMPLEMENTARITY SHOULD BE FOLLOWED

[¶16] It is submitted that, the Complementarity Principle has been said to be one of the cornerstones of the Rome Statute.⁴¹ It lays down that the courts and the state must work with the each other in order to end impunity and reach the ultimate goal of the statute.⁴²

[¶17] If a state with primary jurisdiction fails to prosecute crimes falling within the Court's jurisdiction then the ICC can intervene.⁴³ This is substantiated through a two-fold argument, ***Firstly***, that the unwillingness of the state empowers the court to take cognizance [A.1]. ***Secondly***, that the case is admissible as the investigation by Bangtangnagar is not genuine in nature and suffered an unjustified delay [A.2].

[A.1] The Unwillingness Of The State Empowers The Court To Take Cognizance

[¶18] Article 17⁴⁴ reflects to the balance and the complex relationship between national legal systems and the ICC.⁴⁵ It follows that while all inactions will not lead to proceedings before the ICC, however, a finding of inaction will not prevent the court from asserting its jurisdiction over the cases before it.⁴⁶ The AC stated that the term 'willingness' refers to a situation that only arises after the opening of a formal investigation by the respective state having jurisdiction over the matter.⁴⁷

⁴¹ *Lubanga* 2006 PTC [34].

⁴² *Gaddafi Admissibility Appeal* [19]; Rome Statute (1998) 2178 UNTS 9018, preamble; Markus Ben, 'The Complementarity Regime of the International Criminal Court: International Criminal Justice Between State Sovereignty and the Fight Against Impunity' [2003] MAX PLANCK Y.B. OF UNITED NATIONS L. 591.

⁴³ Jann K. Kleffner, 'The Impact of Complementarity on National Implementation of Substantive International Criminal Law' [2003] J. INT'L CRIM. J. 86.

⁴⁴ Rome Statute (1998) 2178 UNTS 9018, Article 17.

⁴⁵ William A. Schabas, *An Introduction to the International Criminal Court* (2nd ed, CUP 2004), p. 85.

⁴⁶ *Katanga* 2009 AC[2].

⁴⁷ *Katanga* 2009 AC[8].

[¶19] Rendering a case inadmissible only on the theoretical possibility that a national jurisdiction may eventually investigate and prosecute the crimes risks impunity, instead of combatting it.⁴⁸ The question of unwillingness arises when the existing courts are technically equipped to initiate a case but are politically unwilling to prosecute.⁴⁹ A domestic process experiencing an intentional delay showcases lack of will or intent to bring the person concerned to justice, such a scenario lays the basis of unwillingness.⁵⁰

[¶20] In the present case, no lawyer took heed of the sholingilar people⁵¹ to protect them from the atrocities they were facing. The government did not even intervene and turned a blind eye towards these people.⁵² Furthermore, the national courts can evaluate the conduct but they cannot evaluate the consequences which are occurring on Finlandia. No change in the state's policy has occurred in this entire time span which shows the unwillingness of the state, thus, the Courts must take cognizance of the matter and render the case admissible.

[A.2] *The Case is Admissible as the Investigation By Bangtangnagar is not Genuine in Nature And Suffered an Unjustified Delay*

[¶21] It is submitted that, State proceedings are granted primacy, but this primacy is contingent on the state 'genuinely' fulfilling its duty to prosecute.⁵³ Genuineness is an important dimension of the complementarity determination.⁵⁴ The term 'genuinely' creates a mandate upon the state

⁴⁸ *Yekatom Judgement* TC [11].

⁴⁹ Andrea Gioia, 'The Role of the European Court of Human Rights in Monitoring Compliance with Humanitarian Law in Armed Conflict' in O. Ben-Naftali (eds), *International Humanitarian Law and International Human Rights Law* (Oxford Academic 2011)

⁵⁰ *Gaddafi Admissibility Decision* PTC [235].

⁵¹ Moot Proposition ¶ 9.

⁵² Moot Proposition. ¶ 12.

⁵³ Rome Statute (1998) 2178 UNTS 9018, Article 20(1).Article 17(1).

⁵⁴ *Paniagua Morales et al.*, IACtHR (Ser. C) No. 37 (1998) 94; *Garrido and Baigorria v. Argentina*, IACtHR (Ser. C) No. 39 (1998) 73.

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that it isn't enough to merely carry out an investigation; rather it must be proved that there is an element of genuineness accompanying such investigation.⁵⁵

[¶22] Delays in conduct of national investigation are inconsistent with intent to bring the person concerned to justice. It is essential that a trial begins within a reasonable time⁵⁶ and without delay as it might jeopardise the effectiveness and credibility of the trial.⁵⁷ It is also to be noted that the state policy against Sholingliars which put them into plantations as forced labour did not change throughout the period even when the investigations were being conducted. The prosecution does not intend to challenge the capacity of the state to prosecute however, the credibility remains a question.

[¶23] The victims were worried that justice will not be served to them since the Police Chief is a powerful figure in the country.⁵⁸ Moreover, the matter will only be heard in the National Court once the ICC finish its hearing,⁵⁹ which also puts a question on the fairness of the trial as no action, was taken by the government while the atrocities were at its peak. Moreover, the state delayed the process of investigation by 3 years as to when half a million people entered Bangtangnagar by 2020⁶⁰ and only considered the matter important when Finlandia raised this issue in 2023.⁶¹ Thus, the case is admissible as the investigation by Bangtangnagar is not genuine in nature and suffered an unjustified delay.

⁵⁵ Leila Nadya Sadat and S. Richard Carden, 'The New International Criminal Court: An Uneasy Revolution'[2000] 88 Georgetown Law Journal 381.

⁵⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECtHR), signed 4 November 1950, entered into force 3 September 1953, 213 UNTS 221, ETS. 5, Articles 5(3) and 6(1).

⁵⁷ *H. v. France*, Application No. 10073/82, ECtHR, Judgment 24 October 1989, 58.

⁵⁸ Moot Proposition ¶ 20.

⁵⁹ Moot Proposition ¶ 20.

⁶⁰ Moot Proposition ¶ 10.

⁶¹ Moot Proposition ¶ 16.

[B] THE GRAVITY OF THE CASE IS SUFFICIENT TO MEET THRESHOLD UNDER ARTICLE 17 (1) (D)

[¶24] It is submitted that, Article 17 (1) (d)⁶² establishes a mandate which requires that a case must be of sufficient gravity for it to be admissible before the Court.⁶³ Quantitative factor along with Qualitative factors attached to a commission of crime sufficiently indicates the gravity of situation.⁶⁴ This is substantiated through a two-fold argument, ***Firstly***, that there is sufficient number of victims to satisfy the gravity threshold [B.1]. ***Secondly***, nature, manner and impact of commission of the alleged crime on the victims indicate the gravity of the offence [B.2].

[B.1] There is Sufficient Number of Victims to Satisfy The Gravity Threshold.

[¶25] Article 17(1) (d) provides that a Court will determine that a case is inadmissible where is not considered sufficiently grave to justify ‘further action’ by the Court.⁶⁵ ‘Scale’ herein means the number of victims, location and temporal extension of the act.⁶⁶ Instances of outrages upon personal dignity, or torture or inhumane treatment, are a compelling indicator of sufficient gravity.⁶⁷ The ‘physical, psychological or emotional harm suffered by the direct and indirect victims of the identified crimes must not be undervalued.’⁶⁸

[¶26] PTC I held that the gravity threshold had been sufficiently met, despite there being fewer than 1,000 victims.⁶⁹ It is to be noted that an attack does not need to be against an entire

⁶² Rome Statute (1998) 2178 UNTS 9018, Article 17 (1) (d).

⁶³ *Lubanga* 2006 PTC [43]-[62].

⁶⁴ *Bemba* TC [249]; *Abu Garda* PTC [31].

⁶⁵ *PTC I Al Mahdi* [43].

⁶⁶ *Situation in Congo* PTC [40].

⁶⁷ *Comoros* PTC [16]-[17].

⁶⁸ *Ibid.*

⁶⁹ *Goudé* [21]-[22].

“population” to be considered sufficient in number.⁷⁰ In the present case over half a million Sholingilar people⁷¹ were at a risk of facing atrocities while, a large amount of male and female youth are tortured and imprisoned while also made to work as slave labours.⁷² Therefore, looking at the possible number of victims and the ones suffering from the acts of the Police Chief there is sufficient number of victims to satisfy the gravity of threshold.

[B.2] Nature, Manner and Impact Of Commission Of The Alleged Crime On The Victims Indicate The Gravity Of The Offence.

[¶27] It is submitted that, to determine whether the gravity threshold is met, the assessment of Quantitative criterion alone is not determinative. In order to meet the set gravity as per Article 17 (1) (d)⁷³ the conduct of the accused must fulfil the qualitative threshold by nature and manner of commission of the alleged crimes, and their impact on victims and the existence of aggravating circumstances.⁷⁴

[¶28] Nature of the attack refers to the characteristics as well situation in which that attack was committed.⁷⁵ In the present case, the Police Chief’s nature of attack are torturous and atrocious wherein, he subjected young woman to slave labour⁷⁶ and it was under his direct orders that

⁷⁰ *Situation in Kenya* PTC [164].

⁷¹ Moot Proposition ¶ 10.

⁷² Moot Proposition ¶ 11.

⁷³ Rome Statute (1998) 2178 UNTS 9018, Article 17 (1) (d).

⁷⁴ *Muthaura, Kenyatta and Ali* PTC [50].

⁷⁵ *Comoros* PTC [41].

⁷⁶ Moot Proposition ¶ 11.

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both the female and male youth were tortured in prison.⁷⁷ The nature of the conduct and additional features render the acts of the Police Chief especially grave.⁷⁸

[¶29] Manner refers to the way that attack was committed.⁷⁹ Relevant factors include means the extent to which the crimes were systematic or large-scale.⁸⁰ While assessing the manner of the commission of crime the OTP refers to aspects of particular cruelty, crimes against particularly vulnerable victims and involving discrimination and abuse of de jure or de facto power.⁸¹

[¶30] A systematic attack requires the existence of a pattern or methodical plan.⁸² It is essential to note that the orders of the police chief coupled with the inaction of the Government all indicate to the common policy of the government towards sholingilar. Furthermore, by turning a blind eye⁸³ against them and not making any changes in the existing conditions reflect to a pattern established against them.

[¶31] Impact committed on victims refers to the aggravation of crimes.⁸⁴ The impact considers inter alia the sufferings endured by victims, the terror subsequently instilled, and the damage inflicted on affected communities.⁸⁵ As a result of which, the older Sholingilar people faced extremely traumatic repetition of events.⁸⁶ These people had been rendered vulnerable and

⁷⁷ *ibid.*

⁷⁸ *Kenya Authorisation* PTC [56] *Abu Garda PTC I* [30]; *Lubanga* 2006 PTC [41, 45].

⁷⁹ *Katanga* TC [380].

⁸⁰ *Afghanistan Decision* PTC [23] *Lubanga* 2006 PTC [46].

⁸¹ OTP, “Policy paper on Preliminary Examinations” [39].

⁸² *Simatović* TC [963].

⁸³ Moot Proposition ¶ 12.

⁸⁴ *Kenya Authorization* PTC [188].

⁸⁵ OTP, “Policy Paper on Preliminary Examination” [65].

⁸⁶ Moot Proposition ¶ 12.

persecuted twice due to which they had no other option left but to flee the country in order to remain safe from the atrocities being caused on them. Therefore, it is humbly submitted that impact of commission of the alleged crime on the victims indicate the gravity of the offence.

ISSUE III: WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

[¶32] It is submitted that the dismissal of the charge of Deportation as a Crime Against Humanity is invalid. This is substantiated through four-fold argument, ***Firstly***, the perpetrator deported, without grounds permitted under International Law to another State by coercive acts [A.1]. ***Secondly***, Sholingilars were lawfully present in Bangtangnagar and the perpetrator was aware about the lawfulness of such presence [A.2]. ***Thirdly***, the crime was committed as a part of widespread and systematic attack against civilian population [A.3]. ***Fourthly***, the Police Chief had the requisite knowledge and intent [A.4].

[A] THE PERPETRATOR DEPORTED, WITHOUT GROUNDS PERMITTED UNDER INTERNATIONAL LAW TO ANOTHER STATE BY COERCIVE ACTS

[¶33] It is submitted that, the Perpetrator deported, without grounds permitted under international law to another state by coercive acts.⁸⁷ This is substantiated through three-fold argument. ***Firstly***, there was occurrence of crime of Deportation owing to crossing of International Border [A.1]. ***Secondly***, Deportation was a result of force and coercion [A.2]. ***Thirdly***, the perpetrator deported victims without the grounds permitted under International Law [A.3].

⁸⁷ *Ruto* PTC [243]; *Krajišnik* TC [723]; *Gotovina Judgement* TC [1738]; *Simatović* TC [992].

[A.1] *There Was Occurrence Of The Crime Of Deportation Owing To Crossing Of International Border*

[¶34] It is submitted that, the crossing of a border as an element of deportation is rooted in Customary International Law.⁸⁸ Deportation requires the displacement of persons across a national border, to be distinguished from forcible transfer which may take place within national boundaries.⁸⁹ In the present case, Sholingilars began to move by land to the country of Finlandia beyond the border of Bangtangnagar which thereby, fulfils the essential of deportation.⁹⁰

[A.2] *Deportation Was A Result Of Forced And Coercion*

[¶35] It is submitted that, the term ‘forcibly’ is not restricted to physical force, but includes threat of force or coercion,⁹¹ such as that caused by, duress, psychological oppression, abuse of power against such person or persons⁹² or by taking advantage of a coercive environment.⁹³ The ICTY Chambers have consistently held that it is the absence of ‘genuine choice’ that makes a given act of displacement unlawful.⁹⁴

[¶36] The Brđanin Trial Chamber has inferred a lack of genuine choice from threatening and intimidating acts intended to deprive the civilian population of exercising its free will.⁹⁵ A trier

⁸⁸ Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn, C.H. Beck, Hart, Nomos 2008) 56.

⁸⁹ *Krnojelac TC II* [474], *Myanmar* decision on jurisdiction PTC [4].

⁹⁰ Moot Proposition ¶ 13.

⁹¹ *Stakić TC* [680].

⁹² *Decision on Karadzic AC* [489].

⁹³ *Dordevic AC* [727].

⁹⁴ *Blagojevic Judgement TC I* [596]; *Brđanin Judgement TC* [543].

⁹⁵ *Simic TC* [125]–[126].

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of fact must consider ‘all relevant circumstances, including the victims’ vulnerability, when assessing whether the displaced victims had a genuine choice to remain or leave.’⁹⁶

[¶37] According to the Chamber, the Prosecutor must prove, ‘that one or more acts that the perpetrator has performed produced the effect to deport or forcibly transfer the victim.’ They were employed as slave like labour in the fields. The owners did not register their workers’ name and they did not pay them a salary.⁹⁷ The new round of police persecution and racism raised for them the memories of their first displacement.⁹⁸ Sholingilars did not had a ‘genuine choice’ and therefore, deportation in the present case is the result of the force and coercion.

[A.3] *The Perpetrator Deported Victims Without the Grounds Permitted Under International Law*

[¶38] According to the jurisprudence of the ICTY, there are two grounds on which displacement of persons is legitimate under International Law, the security of a civilian population, or imperative military reasons.⁹⁹ Although displacement for humanitarian reasons is allowed in certain situations, the ICTY Appeals Chamber has held that this does not apply “where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity”¹⁰⁰

[¶39] In the present scenario, none of them stand satisfied. Security of Bangtangnagar was never hampered, on the contrary, Sholingilars were harassed and were made slaves. The attacks

⁹⁶ *Brđanin Judgement* TC [596]

⁹⁷ Moot Proposition ¶ 9.

⁹⁸ Moot Proposition ¶ 12.

⁹⁹ *Blagojevic Judgement TC I* [597]; *Brđanin Judgement* TC [556].

¹⁰⁰ *Stakić AC* [287].

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that caused the displacement is itself the result of Police Chief's own unlawful activity. Therefore, people were deported without the permitted grounds under International Law.

[B] THAT SHOLINGILARS WERE LAWFULLY PRESENT IN BANGTANGNAGAR AND THE PERPETRATOR WAS AWARE ABOUT THE LAWFULNESS OF SUCH PRESENCE

[¶40] It is submitted that, Bangtangnagar has ratified and acceded to the Refugee Convention of 1951 and 1967 Protocol to the Convention.¹⁰¹ In the present case, Sholingilars were persecuted on the grounds of religion¹⁰² in Burmanyar. Since, Bangtangnagar has ratified and acceded the Refugee Convention, it is bound to provide them with the status of refugees. It cannot deport Sholingilars on the grounds of their illegal entry as Article 31(1) of the Refugee Convention,¹⁰³ prohibits penalties on account of their illegal entry or stay. It accordingly presumes that asylum-seekers are lawfully present under International Law.¹⁰⁴

[¶41] The requirement of 'lawful presence' does not mean that the victim must have had legal residence in the area.¹⁰⁵ It is further contended that, awareness of the factual circumstances establishing the lawfulness of the victims' presence suffices. It is not required that the perpetrator make any legal evaluation of the lawfulness of the victims' presence.¹⁰⁶ Knowledge can be presumed either from the Police officer's official position in the state hierarchy or from

¹⁰¹ Clarification 21 to Moot Proposition.

¹⁰² Refugee Convention, 1951, Article 1(2)(a).

¹⁰³ Refugee Convention, 1951, Article 31(1).

¹⁰⁴ Chetail Vincent, 'Is There Blood on my hands? Deportation as a Crime of International Law' [2016] *Leiden Journal of International Law* 917.

¹⁰⁵ *Popović Judgement TC* [900].

¹⁰⁶ Darryl Robinson, 'Defining 'Crimes Against Humanity' at the Rome Conference' [1999] 93 *American Journal of International Law* 43.

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the notorious character of the crimes committed by police authorities under his orders.¹⁰⁷ He had general information which puts him on notice of possible unlawful acts, and is sufficient to prove that he had reason to know.¹⁰⁸

[C] THAT THE CRIME WAS COMMITTED AS A PART OF WIDESPREAD AND SYSTEMATIC ATTACK AGAINST CIVILIAN POPULATION

[¶42] It is submitted that, an “attack” though non-violent¹⁰⁹ in nature, amount to an attack if it causes any mistreatment to the civilian population. The commission of a single illegal act¹¹⁰ is an attack if it has sufficient nexus with the civilian population.¹¹¹ This is substantiated through a two-fold argument. *Firstly*, there was an attack [C.1]. *Secondly*, the attack was systematic [C.2]. *Thirdly*, the attack was widespread [C.3].

[C.1] The Attack Was Systematic

[¶43] It is submitted that, a systematic attack means an attack carried out pursuant to a preconceived policy¹¹² and there is an improbability of their random occurrence.¹¹³ There is no requirement that this policy must be adopted formally as the policy of a state,¹¹⁴ nor must the policy or plan ‘necessarily be declared expressly¹¹⁵ Thus, an implicit or de facto policy is

¹⁰⁷ B. I. Bonafé, Finding a Proper Role for Command Responsibility, Journal. of International. Criminal. Justice, vol. 5 (2007) p. 606.

¹⁰⁸ *Delalic TC* [238].

¹⁰⁹ *Akayesu TC* [581].

¹¹⁰ *Tadic Trial TC* [688].

¹¹¹ *Akayesu TC* [79]-[158]-[236].

¹¹² *Kayishema and Ruzindana TC* [123].

¹¹³ *Kenya Authorization PTC* [96].

¹¹⁴ *Akayesu TC* [580]; *Rutaganda TC* [69], *Musema TC* [204], *Kayishema and Ruzindana TC* [126].

¹¹⁵ *Katanga PTC* [396]; *Bemba TC I* [81].

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sufficient.¹¹⁶ In the present case, under the Police Chief's order the police tortured the male and female youth in prison and mocked them, suggesting they were not 'fully humans.'¹¹⁷ Therefore, "orders" can be classified as common policy.

[¶44] It is contended that, there could be a policy by omission.¹¹⁸ Such a policy may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.¹¹⁹ It explicitly included toleration, approval, endorsement etc. as possible methods for implementation of a policy.¹²⁰ Such a policy, however, presupposes that the state is legally obliged and able to intervene.¹²¹ In the present case, the Bangtangnagar Government's inaction will be termed as a common policy as it turned blind eye to police chief's drastic exercise of power.¹²² In conclusion, the state's inaction coupled with the police chief's order will be termed as systematic attack.

[C.2] The Attack Was Widespread

[¶45] It is submitted that, an attack is "widespread" if it is massive, frequent, carried out collectively with considerable seriousness and directed against civilian population.¹²³ 'Widespread' connotes the large-scale nature of the attack¹²⁴ including the result of the

¹¹⁶ *Kunarac TC* [98].

¹¹⁷ Moot Proposition ¶ 11.

¹¹⁸ M. Cherif Bassiouni, 'A Functional Approach to "General Principles of International Law"' [1990] MICH. J. INT'L L. 768.

¹¹⁹ Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn, C.H. Beck, Hart, Nomos 2008) 176.

¹²⁰ *Kupreškić TC* [552].

¹²¹ Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn, C.H. Beck, Hart, Nomos 2008) 197.

¹²² Moot Proposition ¶ 12.

¹²³ *Ruto PTC* [176].

¹²⁴ *Tadic Trial TC* [648]; *Akayesu TC* [580], *Kunarac AC* [428], *Bemba TC* [162].

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cumulative effect of the series of inhumane acts.¹²⁵ As the widespread nature of the attack is established by its scale¹²⁶, even a single victim is sufficient.¹²⁷

[¶46] The widespread element is neither to be assessed strictly quantitatively nor geographically but ‘on the basis of the individual facts.’¹²⁸ In the present case, over a half a million Sholingilar people resided in Bangtangnagar where they were ill-treated. Since, a large number of civilian populations suffered torture and enslavement, which resulted to an “increasing” number of Sholingilar people turning up in Finlandia.¹²⁹

[C.3] The Attack Was Directed Against Any Civilian Population

[¶47] It is submitted that, a civilian is anyone who is not a member of the armed forces or of an organized armed group.¹³⁰ The use of the word ‘any’ in article 7 indicates that the ‘civilian population’ includes persons of any nationality.¹³¹ Crimes against humanity can, thus, be committed against civilians of the same nationality as the perpetrator, and stateless persons.¹³² The expression ‘directed against’ underlines that the civilian population must be ‘the primary object of the attack’.

[¶48] It is sufficient to show that enough individuals were targeted during the attack, rather than against a limited and randomly selected number of individuals.’ In the present case the

¹²⁵ Report of the International Law Commission on the Work of its 48th session, 6 May – 26 July 1996, Official Records of the General Assembly, 51st session, Supp. No. 10, Yearbook of the International Law Commission, Vol. II, Part Two, A/51/10 Vol. II, Part Two (1996) [ILC Report (1996)]

¹²⁶ *Blaskic TC* [603].

¹²⁷ *Nahimana AC* [924].

¹²⁸ *Kenya Authorization PTC* [95].

¹²⁹ Moot Proposition ¶ 13.

¹³⁰ *Tolimir TC* [141]-[142].

¹³¹ *Tadić Trial* [635]; *Kunarac AC* [423].

¹³² *ibid*; *Kunarac TC* [423]; *Katanga TC* [1103].

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attack was directed against the civilian population as explained earlier, the attack was widespread and Sholingilars were not a member of armed forces. Moreover, it is an undisputed fact that, only Sholingilars were subjected to slavery and atrocious treatment, hence the primary target of the attack.

[C.4] The Police Chief Had The Requisite Knowledge And Intent

[¶49] Article 7(1) requires that the perpetrator have ‘knowledge of the attack.’¹³³ Knowledge means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.¹³⁴ While the perpetrators must be aware that their acts form part of the collective attack,¹³⁵ this does not mean that they must have knowledge of the entire attack in all of its details.

[¶50] In the present case, Sholingilars were never stopped from leaving.¹³⁶ They were not even given status in their new country of residence. The community in Bangtanganagar was for all purpose, like a stateless people.¹³⁷ They were subjected to slavery and inhumane treatment. Their presence was “resented.”¹³⁸ The undisputed fact that, Bangtangnagar has ratified and acceded to the Refugee Convention, which put a country into obligation to at least provide them with ‘basic facilities.’

[¶51] There are variety of factors from which intent may be inferred, including: a series of culpable acts “systematically directed against” the same group; “the scale of the atrocities” and

¹³³ Rome Statute (1998) 2178 UNTS 9018, Article 7 (1).

¹³⁴ Rome Statute (1998) 2178 UNTS 9018, Article 30(3), RS.

¹³⁵ *Delalic* TC [439]; *Kayishema and Ruzindana* TC [150]–[151]; *Rutaganda* TC [80]; *Musema* TC [215].

¹³⁶ Moot Proposition ¶ 13.

¹³⁷ Moot Propostion ¶ 10.

¹³⁸ *ibid.*

“deliberately targeting victims on account of their membership of a particular group, while excluding the members of other groups.”¹³⁹ Ordering with such awareness is accepting the commission of the crime.¹⁴⁰ These events had created fear and insecurity amongst Sholingilars which resulted into their deportation from Bangtangnagar where they were legally present leading to the conclusion that the actions were intentional. Thus, the mens rea¹⁴¹ of crime has been fulfilled.

[D] THAT THE POLICE CHIEF IS INDIVIDUALLY CRIMINALLY RESPONSIBLE UNDER ARTICLE 25(3)(B) OF THE ROME STATUTE FOR ORDERING A CRIME AGAINST HUMANITY

[¶52] It is submitted that the police chief as individually criminally responsible under Article 25(3)(b).¹⁴² This will be substantiated by a three-fold argument. ***Firstly***, the Police Chief was in a position of authority [D.1]. ***Secondly***, the Defendant instructed another person to commit a crime [D.2]. ***Thirdly***, the Defence’s conduct had direct and substantial effect on the crime committed [D.3].

[D.1] The Police Chief Was In The Position Of Authority

[¶53] It is submitted that ordering under Article 25(3)(b) of the Statute requires the offender to be in a position of authority.¹⁴³ It is not necessary to prove a formal superior-subordinate relationship to establish the existence of a position of authority.¹⁴⁴ It is enough that the

¹³⁹ *Akayesu* TC [523].

¹⁴⁰ *Ntaganda* TC [145].

¹⁴¹ Rome Statute (1998) 2178 UNTS 9018, Article 30.

¹⁴² *Karadžić* AC [573]; *Kordić* AC [28-30].

¹⁴³ *Semanza Appeal* AC [361].

¹⁴⁴ *Kordic* AC [28], *Strugar Trial* AC [331], *Limaj* TC [515].

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individual issuing the order exercises a significant influence over the perpetrator, pursuant to which the latter obeys the order of the former.¹⁴⁵

[¶54] The accused must be in some position of authority that would compel another to commit a crime by following his order.¹⁴⁶ In the present case, Police Chief assumed a position of authority. He wielded power over police authorities relating to Bangtangnagar and police.¹⁴⁷ Therefore, crime alleged under Art.7 (1)(d) is attributable to Police chief by way of ordering its commission¹⁴⁸ as he was in a position of authority.

[D.2] The Police Chief Instructed Another Person To Commit A Crime

[¶55] It is submitted that ordering requires an action of instruction.¹⁴⁹ The accused must use his position of authority to issue the order and, compel¹⁵⁰ or persuade¹⁵¹ another person to engage in criminal conduct. The order need not be in writing or take any particular form,¹⁵² it can be express or implied.¹⁵³ An individual behind a perpetrator may be individually criminally responsible, regardless of whether the direct perpetrator is also responsible.¹⁵⁴

¹⁴⁵ *Strugar Trial* AC [331]; *Semanza Appeal* AC [361].

¹⁴⁶ *Semanza Appeal* AC [361].

¹⁴⁷ Moot Proposition ¶ 11.

¹⁴⁸ Rome Statute (1998) 2178 UNTS 9018, Article 7 (1) (d).

¹⁴⁹ *Blaškić* TC [176].

¹⁵⁰ *Kamuhanda* AC [594].

¹⁵¹ *Bagilishema* TC [30].

¹⁵² *Strugar Trial* AC [331]; *Blaskic Trial* TC [281].

¹⁵³ *Blaskic* TC [282].

¹⁵⁴ *Ggagbo* TC [243].

[D.3] That The Police Chief's Conduct Had Direct And Substantial Effect On The Crime Committed

[¶56] It is humbly submitted that, 25(3)(b) of the Statute requires that the order has a direct and substantial effect on the commission of the crime.¹⁵⁵ Substantial contribution implies that the act had an effect or a causal relationship¹⁵⁶ with the result¹⁵⁷ and includes any assistance which furthers, advances, or facilitates the commission of the crime.¹⁵⁸ Such assistance can be by words or acts that encourage or support the commission of the crime.¹⁵⁹ When giving an order, the perpetrator must be aware of the “substantial likelihood” that a crime will be committed as a result.¹⁶⁰

[¶57] In the present case, the police chief was on a position where he could have stopped the atrocious crimes prevailing in the country rather, he contributed and ordered to aggravate the situation more. ICR recognises omissions wherein there is a failure to act in the existence of a duty on the authority.¹⁶¹ In the Bemba case, the Court established the test of ‘direct’ and ‘substantial’ link between the superior’s failure to act and the consequences of the crime.¹⁶² In the present matter, it can be inferred that the atrocities were committed due to the orders of Police Chief. Therefore, the substantial effects of police authorities can be directly traced back to the Police Chief’s conduct of ordering the atrocities of the individuals.

¹⁵⁵ *Mudacumura* PTC [63]; *Kamuhanda* AC [75]; *Nahimana* AC [481]; *Boskoski* AC[160].

¹⁵⁶ *Stakić* TC [445]; *Strugar Trial* TC [332]; *Semanza Appeal* AC[382] .

¹⁵⁷ *Tadic Trial* TC [688].

¹⁵⁸ *Bemba TC* [94].

¹⁵⁹ *Tadic Trial* TC [689]; *Delalić TC* [325]-[329].

¹⁶⁰ *Strugar Trial* TC [331]; *Blaskic Trial* TC [42] [345].

¹⁶¹ Antonio Cassese, Paola Gaeta and John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, vol. 1B (OUP, 2002) 200.

¹⁶² *Bemba TC I* [425].

PRAYER

Wherefore, in light of the facts stated, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully requesting this court to adjudge and declare;

- I. **DECLARE** that the International Criminal Court has jurisdiction to prosecute the Police Chief, although Bangtangnagar is not a State Party to the Rome Statute, and other grounds;
- II. **DECLARE** that the Police Chief's prosecution is admissible, as defined in the Articles of Rome Statute; and
- III. **DECLARE** that the dismissal of the charge of "Deportation as a Crime Against Humanity" is invalid.

All of which is respectfully submitted.

On the behalf of the Prosecution

COUNSEL FOR THE PROSECUTION