

TEAM: IL-20

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

06TH – 08TH OCTOBER 2023

IN THE

INTERNATIONAL CRIMINAL COURT

AT THE HAGUE

CASE BEFORE THE APPEALS CHAMBER

PROSECUTOR V. POLICE CHIEF OF BANGTANGNAGAR

THE OFFICE OF THE PROSECUTOR'S SUBMISSION IN THE APPEAL FROM THE TRIAL

CHAMBER'S DECISION AGAINST THE POLICE CHIEF OF BANGTANGNAGAR

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LIST OF ABBREVIATIONS

S.NO.	ROOT WORD	ABBREVIATION
1.	International Criminal Court	ICC
2.	<i>Ibidem</i>	<i>Ibid</i>
3.	Moot proposition	Moot prop.
4.	Oxford University press	OUP
5.	Universal Declaration of Human Rights	UDHR
6.	International Covenant on Civil and Political Rights	ICCPR
7.	paragraph	¶
8.	Article	Art.
9.	Customary International Law	CIL
10.	International Court of Justice	ICJ
11.	International Criminal Tribunal of Rwanda	ICTR
12.	International Criminal Tribunal for the former Yugoslavia	ICTY
13.	Pre-Trial Chamber	PTC
14.	United Nations	UN

15.	United Nations Human Right Commission	UNHRC
16.	United Nations Security Council	UNSC
17.	Universal Declaration on Human Rights	UDHR
18.	Versus	v.
19.	Volume	Vol
20.	Vienna Convention on the Law of Treaties	VCLT
21.	International covenant for civil and political rights	ICCPR
22.	Document	Doc.

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- A. William A. Schabas, *International Criminal Court: A Commentary on the Rome Statute* (OUP, 1st Edn 2010).
- B. Otto Triffterer, *The Rome Statute of the International Criminal Court: A Commentary* (2016).
- C. Holmes, in: Cassese et al. (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (OUP 2002).
- D. Margaret M. deGuzman, 'Gravity and the Legitimacy of the International Criminal Court' *Fordham International Law Journal* (Issue 5 2008) vol 32

STATEMENT OF JURISDICTION

The present appeal has been preferred by the appellant under **Art. 81(1)** of the Rome Statute as he has been convicted of the Crimes against humanity which have been perpetrated pursuant to **Art. 5** of the Rome Statute as the crimes concerned fall within the domain of Art. 7 of the Rome Statute.

Article 81: Appeal against decision of acquittal or conviction or against sentence

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 5: Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a. The crime of genocide;
- b. Crimes against humanity;**
- c. War crimes;
- d. The crime of aggression.

STATEMENT OF FACTS

BACKGROUND	The matter arose from the country of Burmanyar where the Sholingilar community lived over the north-west border. After a military coup, their territory would be deemed as part of the restricted border security area. They were persecuted and terrorized there. Their human rights and citizenship have been violated. By crossing land border, barricades, etc they fled into a new county which is Bangtangnagar.
ALLEGED INCIDENT	Similar conditions were faced by them in Bangtangnagar, which is a theocratic state and followed the policy of <i>jus soli</i> for citizenship. Over half million were resided in Bangtangnagar. They faced slavery, discrimination, persecution, etc. On the orders of the police chief, the youths were arrested, women were subjected to slave labour on state-owned plantations, and the people in prison were mocked by them.
AFTERMATH	Once again the people of Sholingilar moved to a new country, Finlandia and were luckier this time as the civil society activists of that country helped them to fight against the injustice. They mobilized lawyers and raised the issue of victimization of Sholingilar people at the ICC.
INVESTIGATION AND TRIAL	The matter passed from pre-trial stage where the allegations of crime against humanity as well as genocide were levied against the police chief. In the trial chamber, the court accepted jurisdiction, found the matter admissible and upheld the charge of “ <i>slavery as a crime against humanity.</i> ” The charges of genocide and deportation were struck off in the trial chamber. With reference to this, two appeals have been filed from both the ends regarding the jurisdiction, admissibility and the decision to dismiss the charge of deportation.

STATEMENT OF ISSUES

I.

**WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT APPEAL, AS
BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE.**

II.

**WHETHER THE MATTER IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME
STATUTE?**

III.

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

SUMMARY OF ARGUMENTS

1. WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE.

The central issue in this case is whether the ICC can exercise jurisdiction over the appeal, despite Bangtangnagar not being a Rome Statute state party. Arguments suggest that the ICC can assert jurisdiction due to the crimes clearly falling within the Statute, specifically as crimes against humanity. These crimes involve actions such as forced labor, arrests, torture, and discrimination against the Sholingilar population, constituting a widespread and systematic attack on civilians. Additionally, Article 12(2)(a) of the Rome Statute allows ICC jurisdiction when crimes partially occur within a state party's territory, with the term 'conduct' encompassing a broad range of behaviors. This interpretation aligns with customary international law principles.

2. WHETHER THE MATTER IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

It is humbly submitted before the hon'ble court that the case would be admissible in ICC as it fulfils all the requisites for admissibility. The state of Bangtangnagar was unwilling to carry out the genuine investigation. It turned a blind eye to the actions of police chief which shows its intentions clearly. Moreover, the matter holds sufficient gravity threshold as well. The scale of the persecution, human rights violation, impact on the victims and their families, all these factors constitutes that the crime is grave. Also, the victim has not been tried previously before any court of Bangtangnagar. Thus, the matter is admissible in ICC.

3. WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

It is humbly submitted before the Honorable Court that the court erred in deciding that the police chief should be acquitted from the charges of deportation because there is enough evidence to show that the police chief committed the crime of deportation under Article 7(1)(d) of the Rome statute. The actus reus and mens rea requirements for deportation are satisfied pursuant to Article 7(1)(d) of the statute. Furthermore, the general intent requirement under article 30 of the statute is satisfied. The defendant ordered the systematic attack directed against the Sholingilar community and created a coercive environment against the Sholingilar community which led to the their deportation.

WRITTEN PLEADINGS

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

¶ 1. The counsels for the Prosecution submit that ICC has the jurisdiction over the matter at appeal, without prejudice to Bangtangnagar not being a state party to the Rome Statute (hereinafter, 'statute') *inter alia* [A.] The impugned conduct is a crime pursuant to Art. 5 thereby conferring *ratione materiae* and [B.] Suffices the requirements contained in article 12(2) of the Statute, thereby conferring *jurisdiction ratione loci or ratione personae*.¹

a. The impugned conduct is a crime pursuant to Art. 5 thereby conferring ratione materiae

¶ 2. Crimes against humanity, includes widespread or systematic attack against any civilian population pursuant to Art. 7 of the Statute. An "attack against any civilian population," as described in Article 7(1), involves a series of actions that are repeatedly carried out against a civilian population. This attack is driven by a state or organizational policy to execute such actions.² The chamber interprets the terms "attack," "civilian population," "policy," and "widespread or systematic" based on the court's established case law.³ Lastly, one of the underlying crimes must be committed as part of this attack.

¶ 3. *In casu*, the locals in Bangtangnagar employed Sholingilar individuals as forced labour in their fields, without registering their workers or paying them. They used Sholingilar people for labour in both fields and homes but denied them access to better jobs and education alongside their own children. This affected a refugee community of nearly half a million

¹ The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammad Hussien Ali [2011] ICC-01/09-02/11 O A; Situation in the Republic of Burundi [2017] ICC-01/17-X.

² Elements of Crimes, article 7, para 2 and 3

³ Prosecutor v Jean-Pierre Bemba Gombo [2016] ICC-01/05-01/08.

people. The police chief forced young women into labour on state-owned plantations. Under his command, the police arrested young people on drug-related charges and tortured both male and female youth in prison, mocking them and questioning their humanity.⁴ Hence, the conduct was committed as part of a widespread or systematic attack directed against a civilian population.

b. Suffices the requirements contained in article 12(2) of the Statute, thereby conferring jurisdiction razione loci or razione personae

¶ 4. As enshrined under Art. 12(2)(a) of the Statute, the Court may use its jurisdiction in the event of a State Party referral (article 13(a) of the Statute) or as a result of the Prosecutor starting an investigation on their own (article 13(c) of the Statute). Article 12(2)(a) of the statute has commonly been understood as a manifestation of the territoriality principle. In the cases and situations brought before the court so far, the application of this principle has usually not raised significant issues.

¶ 5. However, *In Casu*, the question arises regarding whether the court can effectuate its jurisdiction over crimes that took place partly within the territory of a state party and partly within the territory of a non-state party. To answer this question, two key issues need to be addressed, *inter alia* [1] Definition of the term ‘Conduct’ under Art. 12(2)(a) and, [2.] conduct in question occurred within the territory of the State party.

⁴ Moot Prop, para 11.

c. Article 12(2)(a) of the Statute defines the term ‘conduct,’ that needs to be proven.

¶ 6. A bare perusal of the word ‘conduct’ indicates that it is most accurately defined as a type of behaviour,⁵ encompassing a broader concept than just an individual action.⁶ However, it’s important to note that while this interpretation suggest that ‘conduct’ should go beyond a mere isolated act, it doesn’t specify what exactly needs to occur within the territory of one or more state parties.

¶ 7. ‘Conduct’ under Art.12(2)(a) of the Statute refers to the state territory and ‘Crime’ refers to vessels and aircrafts registered in a State. Initially, it might seem like ‘conduct’ and ‘crime’ are separate concepts. However, the simultaneous use of both ‘conduct’ and ‘crime’ in article 12(2)(a) suggests that ‘conduct,’ while falling short of being labelled as a ‘crime,’ refers to actions of a criminal nature without specific legal characterization.

¶ 8. The records of the drafting process (*travaux préparatoires*) do not provide any rationale for the use of different terminology concerning vessels/aircraft. Given the absence of any explanation from the drafters regarding the choice of these distinct terms for determining territorial jurisdiction, an interpretation based on context suggests that ‘conduct in question’ on state territory just before ‘crime’ committed on a vessel or aircraft implies that the terms ‘conduct’ and ‘crime’ in article 12(2)(a) of the statute essentially convey the same functional meaning.

¶ 9. Analysing the term in context by comparing it to other sections of the statute where the same term is employed leads to a consistent interpretation. For instance, when the term

⁵ ‘OED’, s.v. ‘conduct’ as a ‘manner of conducting oneself or one's life; behaviour.

⁶ Behaviour itself has been defined by the OED as both the ‘manner of conducting oneself in the external relations of life’ and ‘the manner in which a thing acts under specified conditions or circumstances, or in relation to other things’.

‘conduct’ is used in article 20, it is generally understood to pertain to actions that have not yet been legally characterized.⁷ Consequently, the term is utilized in a factual sense, encompassing the essential physical elements (actus reus) of a crime that falls within the court’s jurisdiction concerning the subject matter of the offence.

¶ 10. Further, the actus reus component of ‘conduct’ may, depending on the type of crime being accused, includes the resulting consequence of that conduct.⁸ For example, in the case of an act of killing, the consequence is the death of the victim. To establish the full picture, both the details of the action (the killing) and its consequence (the death) need to be confirmed.

¶ 11. The legal components of the crime of deportation necessitate, that the ‘perpetrator forcibly removes individuals through expulsion or other coercive means.’ This can be achieved by physical relocating the individuals or compelling them to depart from the place where they were legally present using coercive tactics.⁹

¶ 12. *In casu*, the police chief’s oppressive actions, including forcing young women to work as slaves on state-owned plantations and subjecting both male and female members of the Sholingilar community to torture, occurred in Bangtangnagar.¹⁰ These actions have compelled the Sholingilar people to cross the border into Finlandia.¹¹ It is humbly submitted that the act of deporting these individuals was completed when they left the area where they were lawfully present and fled to Finlandia due to the coercive acts and environment. Consequently, it can be inferred that a portion of the criminal act of deportation took place within the territory of Finlandia.

⁷ The Rome Statute, Articles 17(1) (c), 22(1), 24, 30(2), 91 90(1), 101(1), and 108.

⁸ Prosecutor v. Akayesu [2001] ICTR-96-4-A.

⁹ Elements of Crimes, article 7(1)(d), para 1.

¹⁰ Moot Prop, para 11.

¹¹ Moot Prop, para 13.

d. Whether the Impugned ‘Conduct in question’ occurred within the territory of the state party.

¶ 13. Another question that needs to be examined is whether article 12(2)(a) of the statute necessitates that the entirety of the behaviour occurs within the borders of one or multiple state parties. As already stated above, it is widely acknowledged that the language used in article 12(2)(a) is generally understood to be a reference to the principle of territoriality. To better understand the intended meaning of the phrase “on the territory of which the conduct occurred.”

¶ 14. It is important to examine the concept of territorial jurisdiction as defined by customary international law. This is important because it is the legal framework that the drafters of the relevant provisions likely had in mind during their negotiations.¹² It is especially significant to assess the status of customary international law regarding territorial jurisdiction since this represents the maximum authority that the states parties could have delegated to the court.

¶ 15. A brief survey of State practice reveals that States have developed different concepts for a variety of situations that enables domestic prosecuting authorities to assert territorial jurisdiction in transboundary criminal matters, such as:

- (i) the objective territoriality principle according to which the State may assert territorial jurisdiction if the crime is initiated abroad but completed in the State’s territory.¹³

¹² VCLT, article 31(3)(c), ‘any relevant rules of international law applicable in the relations between the parties’.

¹³ Australia: criminal code Act, s14.1, para 2(b) [1995]; Argentina: Código penal de la Nación Argentina, art 1(1) [1921]; China: criminal law of the people’s republic of China, art 6(3) [1979]; Colombia: Código Penal, art 14 [2000]; Czech Republic: Criminal code of Czech Republic, s 4(2) (b) [2009].

- (ii) the subjective territoriality principle, according to which the State may assert territorial jurisdiction if the crime has been initiated in the State's territory but completed abroad.¹⁴
- (iii) the principle of ubiquity, according to which the State may assert territorial jurisdiction if the crime took place in whole or in part on.

¶ 16. It can be reasonably assumed that all the states under examination believe that their domestic laws governing territorial jurisdiction concerning cross-border actions align with international law, reflecting a legal consensus (*opinion juris*).

¶ 17. The only clear limitation that follows from the wording of article 12(2)(a) of the Statute is that a portion of the conduct, especially the *actus reus* of the crime, must occur within the territory of a state party. Therefore, if part of the *actus reus* occurs within the territory of a State Party, the court has the authority to exercise territorial jurisdiction as defined by customary international law.

¶ 18. *In casu*, the forced deportation of the Sholingilar people across the border between Bangtangnagar and Finlandia, which included the Sholingilar people crossing that border, unequivocally establishes a territorial connection based on the *actus reus* of the crime, specially, the Sholingilar people crossing into Finlandia. this holds true when considering the objective territoriality principle,¹⁵ the ubiquity principle, and the constructive elements approach. Therefore, in accordance with the customary international law, the current case falls within the jurisdiction of the honourable court.

¹⁴ Armenia: Criminal Code of the Republic of Armenia, art 14(2) [2003]; Azerbaijan: Criminal Code of the Republic of Azerbaijan, art 11.1 [2000]; Georgia: Criminal Code, art 4(2); Kazakhstan: Criminal Code of the Republic of Kazakhstan, art 7(2) [2014]

¹⁵ Rules of Procedure and Evidence, Observations pursuant to Rule 103(1).

2. WHETHER THE MATTER IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

¶ 19. The counsel for prosecution submits that the case is admissible in ICC in pursuant to Art. 17 of the Statute. The pr-requisites to be fulfilled for admissibility are [2.1] the state is unwilling or unable genuinely to carry out the investigation, [2.2] the elements under the provision of Article 17(1)(b) have not been met, [2.3] the police chief has not been tried for his conduct previously, [2.4] the matter holds the sufficient gravity threshold.

a. The state is unwilling or unable genuinely to carry out the investigation

¶ 20. In order to prove that the state was unwilling or unable to carry out the investigation, required contextual elements should be satisfied, i.e, [2.1.1] the State has tried to shield the perpetrator¹⁶, [2.1.2] there has been an unjustified delay in the proceedings.¹⁷

i. The State has tried to shield the perpetrator

¶ 21. The counsel for prosecutor submits that, while assessing the willingness of the state, the intention of the state to impart justice to the person concerned, must be taken into consideration.¹⁸ At the time when the Sholingilar community was persecuted and tortured by the police chief, the government of Bangtangnagar turned a blind eye to this drastic exercise of power.¹⁹ Moreover, despite being the signatory of *1951 Refugee convention*, they didn't provide any protection and treatment to the Sholingilar persons²⁰ which is the clear violation of *Article 15 of 1951 Refugee Convention*. Apart from that they didn't let their children to attend

¹⁶ Rome Statute, Article 17(2)(a).

¹⁷ Rome Statute, Article 17(2)(b).

¹⁸ PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI [2009] Appeals Chamber ICC 01/04-01/07-1497 [60].

¹⁹ Moot Prop, Para 12.

²⁰ Moot Prop, Para 8.

the schools with their wards to get the elementary education.²¹ All these activities were on-going in the state but the government had not initiated any investigations to this matter. It was a clear and explicit expression and intention of unwillingness of the state to prosecute the police chief.

¶ 22. Furthermore, the appellant had not challenged the admissibility factor during the pre-trial stage. However, as the charges were confirmed during the trial, the State scheduled the trial in their own country to demonstrate their fraudulent willingness to shield the perpetrator. Mere scheduling of the trial doesn't necessarily indicate that the state was unwilling. Hence, all these circumstances provide sufficient evidence that national proceedings were undertaken to shield the person.

ii. There has been an unjustified delay in the proceedings.

¶ 23. The state of Bangtangnagar has delayed the proceedings against the police chief, which can be seen as a way to shield the perpetrator. *Firstly*, the government neglected all the traumatic events involving the police chief and took no investigative or punitive actions against him. Due to this unjustified delay, the Sholingilar community were forced to leave the state in order to protect themselves. *Secondly*, the government deliberately avoided initiating proceedings against the perpetrator. Even their decision to conduct the trial in their own state came after the police chief had already been charged in the ICC. Their reluctant behaviour towards the police chief's action is inconsistent with their intent to bring the person concerned to justice.

²¹ Refugee Convention 1951, Article 22.

b. The elements under the provision of Article 17(1) (b) have not been met

¶ 24. This provision contains two cumulative elements: *the case must have been investigated* and the *relevant State must have made a decision not to prosecute*.²² In casu, the state does not take any investigative steps and mere scheduling of the trial doesn't indicate that the genuine investigation was conducted in the state. However, neither the Statute nor the Rules or the Regulations of the Court define the term 'genuine', the concept carrying the most 'resemblance to genuineness is perhaps the concept of good faith'.²³ This interpretation finds support in two decisions of the European Court of Justice where it used the terms 'good faith' and 'genuine' interchangeably.²⁴ Using this interpretation in the present case, the state of Bangtangnagar was not at all in a good faith while deciding to take action against the perpetrator. Its main purpose was to shield the perpetrator as mentioned above.

¶ 25. Moving to the second element of the provision, the state of Bangtangnagar does not decide to prosecute the person concerned,²⁵ rather they scheduled the trial in their country in order to prosecute the perpetrator. Since, both these elements for inadmissibility are not fulfilled. Hence, the case would be admissible in ICC.

²² PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI [2009] Appeals Chamber ICC 01/04-01/07-1497 [82].

²³ Holmes, in: Cassese et al (eds), 'The Rome Statute of the International Criminal Court: A Commentary' (OUP 2002) 674.

²⁴ Commission v. Kingdom of Spain [2002] ECR I-6031 [24]; Commission v. Federal Republic of Germany [2006] ECR [93–94]; Commission v. Kingdom of Belgium [2006] ECR [82–83].

²⁵ PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO [2010] Appeals Chamber ICC-01/05-01/08-742-Corr, [60 – 66].

¶ 26. The ruling of Article 17(1) (c) states that the case won't be admissible in ICC if the perpetrator has already been tried, unless any condition of article 20(3) arises. There is no such situation in our case. The perpetrator has not yet tried in Bangtangnagar for his conduct. Even the trial that was scheduled in Bangtangnagar will happen after the ICC appeal is heard.²⁶It shows the inactive behaviour of the state. The case is not inadmissible pursuant to Article 17(1)(c) of the Statute, as this would require a prior conviction or acquittal, and the accused was never tried before the court in Bangtangnagar. This ground of article 17 clearly indicates that the case should be admissible in ICC as the state which carried jurisdiction over the matter has not done the prosecution yet.

c. The matter holds the sufficient gravity threshold

¶ 27. The Defense submits that Article 17(1) (d) of the Rome Statute requires that the gravity threshold be determined in reference to cases.²⁷In order to establish the gravity threshold in any matter, [2.4.1] the circumstances must present particular factors which render it especially grave²⁸.

i. The factors which render it especially grave

¶ 28. To determine the gravity of any matter, there are certain factors which need to be examined. These include [2.4.1.1] the scale of the alleged crimes [2.4.1.2] the nature of the unlawful behaviour or of the crimes allegedly committed [2.4.1.3] the manner of the commission of the alleged crimes and [2.4.1.4] the impact of the crimes and the harm caused to victims and their families.²⁹

1. The scale of the alleged crimes make the crime grave.

²⁶ Moot Prop, para 20

²⁷ M M. deGuzman, 'Gravity and the Legitimacy of the International Criminal Court'(2008) 32 Fordham International Law Journal Issue 5, Article 2.

²⁸ Situation in the Republic of Kenya [2010] PTC II ICC-01/09-19 [62].

²⁹ *Ibid*,29.

¶ 29. The scale of the alleged crimes includes the number of victims.³⁰ With reference to our case, over *half a million* Sholingilar people were residing in Bangtangnagar which is a huge number in itself. The persecution of such a huge population comprises large scale crime. The number of participating victims provides an indication of the scope of victimhood and the number of victims is one of the relevant considerations in the assessment of the gravity requirement for the purposes of article 17(1) (d) of the Statute.³¹ Thus, the number of victims affected in Bangtangnagar sufficiently establishing that the crime is grave.

2. *The nature of the unlawful behaviour or the alleged crime clearly indicates the intensity of crime.*

¶ 30. The nature of the unlawful behaviour includes legal characterisation of the alleged conduct³², human rights violation including the physical and mental integrity of the victims and their human dignity as a result of the alleged crime.³³ According to the ruling of *Article 4 of UDHR*³⁴, no one shall be held in slavery or servitude, and this law applies to every human including refugees. In our case, the people of Bangtangnagar employed Sholingilar persons as a slave-like labour in their field, they subjected young women to slave labour on their state-owned plantations. Even the police tortured male and female youth in prison and mocked them that they were not *fully-human*³⁵, which is a question on their dignity. All these actions

³⁰ Situation on the registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia [2019] PTC 1 ICC 01/13-T-002-FRA [20].

³¹ Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud [2020] AC ICC ICC-01/12-01/18 [127].

³²

Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia [2015] AC ICC-01/13-34 [28].

³³ ICCPR, Article 7.

³⁴ UDHR, Article 4.

³⁵ Moot prop, para 11

comprise unlawful behaviour and violation of human rights which clearly indicates the intensity of the crime.

3. The manner of the commission of the alleged crime was unlawful.

¶ 31. The manner of the commission of the alleged crime determines whether the alleged crimes were committed with particular cruelty,³⁶ whether they were committed on the basis of discriminatory motives³⁷ against a victim who is particularly defenceless or vulnerable³⁸, etc. With reference to our case, the police tortures male and female youth in prison, they compelled young women for slavery which shows cruel behaviour on their end. They didn't want that Sholingilar people could take better jobs, and their children could attend same school with their children. This shows the discriminatory motives of them. The Sholingilar people, in our case, were completely defenceless. They have no weapon on their own to fight against this unjustified behaviour. These entire factors show the manner of the commission of the alleged crime was unlawful.

4. The impact of the crimes and the harm caused to victims and their families is grave in nature.

¶ 32. *In casu*, the impact of the crimes caused to victims and their families was that grave that they were forced to leave the country. The traumatic events didn't let them to raise their children at the same place. It was the matter of their safety and security. Their children were

³⁶The Prosecutor v. Charles Blé Goudé [2014] PTC ICC-02/11-02/11-185 [12].

³⁷ THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD [2022] AC ICC 01/12-01/18 OA, Derived from rule 145(2)(b)(v) of the Rules [92].

³⁸ THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD [2022] AC ICC 01/12-01/18 OA, Derived from rule 145(2)(b)(iii) of the Rules [48] [57].

not able to get proper education there. They, themselves, didn't get the better jobs. They were tortured and mocked. All these events sufficiently establishing that the crime is grave.

All these requisites including the unwillingness of the state, gravity threshold, etc has been met successfully in this case which makes it admissible before ICC.

PRAYER

Wherefore in light of issues raised, arguments advanced, and authorities cited, the Prosecution respectfully requests this chamber to uphold the decision of the Trial Chamber and declare that:

A: The court has jurisdiction over the matter at the Appeal, despite the fact that Bangtangnagar is not a State Party to the Rome Statute, and other grounds.

B: The matter is admissible in the court as defined in the Articles of the Rome Statute.

On behalf of the office of the prosecutor.

3. WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

¶ 33. The counsel for the prosecution humbly submits that, the police chief is guilty of Crime against Humanity of deportation or forcible transfer of population under Article 7(1)(d) of the Rome Statute. Five elements are required to be fulfilled in order to meet the threshold of the crime against humanity of deportation or forcible transfer of population. The elements which need to be satisfied are

a. Police chief deported or forcibly transferred Sholingilar people, without ground permitted under international law.

¶ 34. In order to establish that the crime of deportation or forcible transfer of population is consummated, the Prosecutor would go on to prove that one or more acts that the perpetrator resulted in the deportation of the Sholingilar people.

i. Police chief abused his power to forcibly displace the Sholingilar.

¶ 35. “The term ‘forcibly’ is not restricted to physical force, but may include the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or by taking advantage of a coercive environment.”³⁹

¶ 36. Similarly in the present case the police not only abuse his powers by giving orders to arrest the Sholingilar people on the false charges drug related crimes. He also subjected young women to slave labour on state owned plantations. Under his order the police torture the male

³⁹ The Prosecutor v. Vlastimir Dordevic [2014] ICTY IT-05-87/1 [727]; The Prosecutor v. Milomir Stakic [2006] ICTY IT-97-24 [281].

and female youth in prison and mocked them that they are not fully human.⁴⁰ These acts of police chief created a sense of fear in the minds of Sholingilar people who were already been persecuted in Burmanyar.

ii. Police chief's conduct led to the forcible displacement of Sholingilar people.

¶ 37. In the case of Natganda it was stated that, “There should be a link between the act of the persecutor and the displacing of the victims.”⁴¹ Similarly, Police chief not only forced the young woman to slave labour on state-owned plantations but also arrested the youth on false charges of drug dealing and related crimes. Furthermore, under his order, the police tortured male and female youth in prison.⁴² This act of the police chief created a sense of fear and violence in the minds of the Sholingilar people. They increasingly felt no longer safe in Bangtangnagar⁴³. This new round of police persecution directly caused the effect of *Sholingilar* population to hate their existing conditions of livelihood and want to flee to another country. As a result of it, Sholingilar did not feel safe anymore in Bangtangnagar and decided to leave.⁴⁴

b. Such person or persons were lawfully present in the area from which they were deported or transferred.

¶ 38. In order to establish that the crime of deportation or forcible transfer of population is consummated, the prosecutor would go on to to prove that the people who were deported were present there lawfully.

⁴⁰ Moot proposition, para 11.

⁴¹ THE PROSECUTOR v. BOSCO NTAGANDA [2017] ICC-01/04-02/06 OA5.

⁴² Moot proposition, para 11.

⁴³ Moot proposition, para 12.

⁴⁴ Moot proposition, para 12.

i. Sholingilar people were lawfully present in Bangtangnagar.

¶ 39. “In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for “residency” to be demonstrated as a legal standard.”⁴⁵ From the above judgement it can be inferred that the Legal presence excludes only unlawful occupation, not a strict residency proof.

¶ 40. Similarly in the present case Bangtangnagar was signatory of the 1951 Refugee Convention and according to the core of the 1951 Convention is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. Therefore, the Sholingilar people who were living there as refugees were lawfully present in the country of Bangtangnagar.

ii. Many Sholingilar people were lawful citizens of Bangtangnagar.

¶ 41. In the present case, many Sholingilar families had borne children in Bangtangnagar.⁴⁶ Bangtangnagar followed the jus soli policy of citizenship which is “The principle that a person's citizenship is determined by place of birth rather than by the citizenship of one's parents”.⁴⁷ Therefore, they also became lawful citizens of Bangtangnagar.⁴⁸ Hence, the Sholingilar people were lawfully present in Bangtangnagar, and they were unlawfully were deported from Bangtangnagar.

⁴⁵ THE PROSECUTOR v. VUJADIN POPOVIĆ LJUBIŠA BEARA DRAGO NIKOLIĆ LJUBOMIR BOROVČANIN RADIVOJE MILETIĆ MILAN GVERO VINKO PANDUREVIĆ [2010] ICC IT-05-88-T.

⁴⁶ Moot Proposition, para 12

⁴⁷ Black's law dictionary (HENRY CAMPBELL BLACK, M.A. 1990).

⁴⁸ Moot Proposition, para 9

c. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

¶ 42. In order to establish that the crime of deportation or forcible transfer of population is consummated, the prosecutor would go on to prove that the conduct of the police chief was committed as part of a widespread or systematic attack directed against a civilian population.

i. There must be an attack on civilian population.

¶ 43. Firstly, an 'attack' may be defined as a course of conduct involving the commission of acts of violence.⁴⁹ Civilians” can be defined as anybody who does not belong to an armed force and who does not take part in a “levee en masse.⁵⁰ ‘A population may be considered as 'civilian' even if certain non-civilians are present, it must simply be 'predominantly civilian in nature’.⁵¹ Similarly in the present case the police chief directed an attack against the Sholingilar people by arresting them in the false charge of drug dealing and related crimes. He even subjected young women to slave labor on state owned plantations. Under his order the police tortured the Sholingilar youth in prison.⁵²It is already been established in the above arguments that the Sholingilar people were living there lawfully and some of them were the citizens of Bangtangnagar. This gives them the status of civilians and thus the attack of the police chief was directed against the civilian population.

ii. The attack was widespread and systematic.

¶ 44. Secondly, “widespread” refers to the large-scale nature of attack and the number of victims, whereas the term “systematic” refers to “the organized nature of the acts of violence

⁴⁹ Prosecutor v. Perišić [2011] ICTY IT-04-81-T [82]. See also Prosecutor v. Ante Gotovina Mladen Markac [2001] ICTY IT-06-90-T [1702].

⁵⁰ Geneva Convention IV, Article 50 [1977] Additional Protocol I and Article 4 [1949]

⁵¹ Prosecutor v. Kordić and Cerkez [2001] ICTY IT-95-14/2-T.

⁵² Moot proposition, para 11.

and improbability of their random occurrence.⁵³ Similarly *in Casu*, the locals of the Bangtangnagar employed the Sholingilar persons as slave-like labor in their fields. They did not register their worker's names and they did not pay them a salary.⁵⁴ They used Sholingilar people as labors in their fields and in their homes but they did not want them to take any of the better jobs, or for their children to attend schools with their children. This was happening to a refugee community of nearly half a million people.⁵⁵

iii. Acts of police chief was part of the widespread and systematic attack against Sholingilar people.

¶ 45. The acts of the police chief were part of the attack on Sholingilar people. The police chief not only subjected the young women to slave labor on state owned plantations, but under his orders, the police began to arrest the youth on charges of drug dealings and related crimes. He ordered the police to tortured the male and female youth in prison and mocked them, suggesting they were not fully human.⁵⁶ Hence, the conduct was committed as part of a widespread or systematic attack directed against a Sholingilar population.

d. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

¶ 46. In order to establish the crime of deportation or forcible transfer of population is consummated the prosecutor would go on to prove that the police chief was aware of the lawful presence of Sholingilar people.

i. Police chief knew about the lawful presence of Sholingilar people.

⁵³ Prosecutor V. Augustin Ndindiliyimana [2014] ICTR-00-56-T [260].

⁵⁴ Moot Proposition, para 9.

⁵⁵ Moot proposition, para 10.

⁵⁶ Moot proposition, para 11.

¶ 47. According to article 30(2)(b) of the Rome statute “in relation to consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Similarly *In Casu*, the police chief already knew that the Sholingilar people were refugees and some of the children who were born there were the legal citizens of Bangtangnagar because the country followed the “*jus soli*” policy of citizenship.⁵⁷ So, the Sholingilar people were living there legally and the police chief being a government official already knew about the factual circumstances that established the lawful presence of the Sholingilar people in Bangtangnagar which was, the Sholingilar community was a persecuted community and Bangtangnagar was the signatory of 1951 refugee convention.⁵⁸

¶ 48. The police chief of Bangtangnagar targeted the Sholingilar people knowing all the facts and circumstances, he subjected young women to slave labour on state-owned plantations, and under his order the police arrested the youth on charges of drug dealing and related crimes.⁵⁹ He also ordered the police to torture the male and female youth in prison and mocked them, suggesting they were not fully human.⁶⁰ Therefore, the conduct of the police chief also satisfies this element of deportation in which the perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

ii. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¶ 49. In order to establish the crime of deportation is consummated the prosecutor would go on to prove that the police chief knew that the conduct was part of or intended the conduct to

⁵⁷ Moot proposition, para 9.

⁵⁸ Moot proposition, para 9.

⁵⁹ Moot Proposition, para 11.

⁶⁰ Moot proposition, p 11.

be part of a widespread or systematic attack directed against a civilian population. The prosecution hereby humbly submits that the abovementioned constituent element has adumbrated.

iii. Perpetrator had the Knowledge of the conduct being part of systematic attack.

¶ 50. Article 30(3) of the Rome statute deals “knowledge” which means awareness that a circumstance exists or consequence will occur in the ordinary course of events.⁶¹

Similarly in the present case, the Police chief knew about the conditions of the Sholingilar people, the torture, and other mistreatments to which they were being subjected while detained in prison unlawfully by the police forces under his orders in Bangtangnagar.⁶² As police forces are under the government and part of the system it shows that the attack on Sholingilar people was systematic in nature. Thus, it proves that he had knowledge of the atrocities occurring in Bangtangnagar on the Sholingilar people event then he targeted the community.

iv. Police chief’s leadership role in the attack underscores its gravity.

¶ 51. “Position within the military and participation in attacks around the time demonstrated that he knew that the attack was part of a widespread and systematic attack on political and ethnic grounds.”⁶³

¶ 52. In the present case, the police chief was a powerful government official and under his order the police began to arrest youth on false charges of drug dealings and related crimes. He subjected the young women to slave labor on state-owned plantations. Under his order the police tortured the male and female youth in prison and mocked them, suggesting they were

⁶¹ EOC article 30 (3).

⁶² Moot proposition, para 11.

⁶³ Prosecutor v. Ildephonse Nizeyimana [2012] ICTR-2000-55C [1558].

not fully human.⁶⁴ The government of Bangtangnagar turned a blind eye to his drastic exercise of power.⁶⁵ This proves the leadership role of the police chief in carrying out the attack directed against the Sholingilar people.

The above argument satisfies the fifth element of Article 7(1)(d) that the police chief knew that his conduct was part of a systematic or widespread attack directed against the Sholingilar people.

⁶⁴ Moot proposition, para 11.

⁶⁵ Moot proposition, para 12.

PRAYER

Wherefore in light of issues raised, arguments advanced, and authorities cited, the Prosecution respectfully requests this chamber to reverse the decision of the Trial Chamber and to adjudge and declare that:

A: The dismissal of the charge of 'deportation as crime against humanity' is not valid.

On behalf of the office of the Prosecutor.