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COURT COMPETITION, 2023**

**INTERNATIONAL CRIMINAL
COURT
THE HAGUE, NETHERLANDS**



**THE CASE CONCERNING THE SHOLINGILAR
COMMUNITY OF BURMANYAR**

**THE PROSECUTOR
(PROSECUTION)**

v.

**THE POLICE CHIEF OF BANGTANGNAGAR
(DEFENDANT)**

As submitted under article 81 & 82 of the Rome Statute of the ICC, 2002

WRITTEN SUBMISSION ON BEHALF OF THE PROSECUTOR



Original: **English**

THE APPEALS CHAMBER

**Case before the International Criminal Court (ICC):
Prosecutor v. The Police Chief of Bangtangnagar**

**The Prosecutor's Submission in the Appeal from the Pre-Trial
Chamber's Decision on Confirmation of Charges against
The Police Chief of Bangtangnagar**

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TABLE OF ABBREVIATIONS

1. Art: Article
2. RS: Rome Statute
3. BTN: Bangtangnagar
4. ICC: International Criminal Court
5. Hon'ble: Honourable
6. RC: Refugee convention
7. PTC: Pre-trial chamber
8. Hon'ble: Honourable
9. CSA: Civil Society Activists
10. Govt: Government
11. OTP: Officer of The Prosecutor
12. UNHCR: United Nations High Commissioner for Refugees
13. PT: Point
14. Prop: Proposition

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6.	‘Roy S. Lee (ed.): The International Criminal Court - The Making of the Rome Statute: Issues, Negotiations and Results’ (2000) 4(1) Max Planck Yearbook of United Nations Law Online 588, XXXX < http://dx.doi.org/10.1163/187574100x00197 > accessed 22 September 2023.
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9.	‘Convention and Protocol Relating to the Status of Refugees UNHCR’ (UNHCR) < www.unhcr.org/media/convention-and-protocol-relating-status-refugees > accessed 24 September 2023

STATEMENT OF JURISDICTION

The Prosecutor has endorsed their pleadings before this Hon'ble International Criminal Court to try the instant matter under **Article 1, paragraph 10 of the preamble, Art. 5, 13(a), 14, 15(1), (3) & (4), 17(2)(b), 53, 81 & 82** of the Rome Statute of the International Criminal Court, 2002 while also considering the relevance of **Art. 16(1) and Art. 35(1)** of the Refugee Convention.

The present petition sets forth the facts, contentions, and arguments.

STATEMENT OF FACTS

1. In the nation of Burmanyar, the Sholingilar community, a diverse minority blending indigenous, Muslim, Hindu, and Buddhist beliefs, lived in isolation, engaging in small-scale agriculture, fishing, and craftsmanship. However, after a 2013 military coup, the regime clamped down on dissent, imposed a single state religion, arrested thousands without due process, and conducted extensive deforestation in Sholingilar regions.
2. Fearing persecution, the Sholingilar refrained from protests and faced harassment due to their syncretic religious practices. In 2015, their territory was declared a restricted border-security area under military law, subjecting them to daily checks and harassment.
3. Desperate to escape, many sought refuge in Bangtangnagar, but they encountered exploitation and discrimination. By 2020, over half a million Sholingilar were in Bangtangnagar, rendered stateless and facing discrimination. Their plight gained attention when they moved to Finlandia, where activists and lawyers provided support, shedding light on the crimes in Burmanyar and Bangtangnagar.
4. Victims' submissions to the International Criminal Court (ICC) led to an investigation, resulting in charges against the Bangtangnagar Police Chief for crimes against humanity. Victims' submissions to the International Criminal Court (ICC) resulted in an investigation, leading to charges of crimes against humanity against the Bangtangnagar Police Chief. Despite the government's non-cooperation, the ICC proceeded with the case, ultimately sentencing the Police Chief to 15 years in prison. Concerns persist that justice may not be served if the case returns to Bangtangnagar's jurisdiction, given the powerful position of the accused.

STATEMENT OF ISSUES

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.*

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

**Issue 1: 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**

The Prosecution asserts that ICC possesses jurisdiction to consider the present appeal, as stipulated in Articles 5, 13(a), 14, and 15(1), (3), and (4) of the RS.

Additionally, it is important to note that the Prosecutor received the referral from the victim, leading to a thorough examination by the Pre-Trial Chamber (PTC). The PTC, after assessing the request and accompanying evidence, found a reasonable basis to initiate an investigation. Subsequently, the PTC affirmed the court's jurisdiction and authorized the commencement of the investigation. Furthermore, the trial court, after considering the jurisdiction issue, accepted its jurisdiction over the present case.

**Issue 2: Whether the matter is admissible, as defined in the Articles of the Rome
Statute?**

In this submission to the honourable court, we argue for the admissibility of our case, citing Art. 1, paragraph 10 of the Rome Statute (RS) preamble, Art. 53, and Art. 17(2)(b), in conjunction with Art. 16(1) and Art. 35(1) of the Refugee Convention. We contend that this court should exercise full jurisdiction in this matter.

The RS preamble emphasizes states' duty to prosecute international crimes. Article 17(1) reinforces ICC's complementarity to national jurisdictions, highlighting the admissibility of our case concerning the Sholingilar community in Burmanyar, where systemic oppression has rendered the state unable and unwilling to address their plight.

Issue 3: Whether the dismissal of the charge of “deportation as a crime against humanity” is valid?

The council argues that the dismissal of the charge of deportation as a crime against humanity is invalid. The State of BTN, by failing to protect the Sholingilar refugees and subjecting them to exploitation and discrimination, holds accountability for the atrocities they faced. BTN breached its obligations under the Refugee Convention of 1951 by not offering refuge or questioning the abusive Burmanyar regime. BTN employed Sholingilar individuals as slave-like laborers, denied them registration and wages, violating principles of justice and equity. Furthermore, the Sholingilar community was denied legal representation and fair hearings, breaching the Principles of Natural Justice. These injustices ultimately forced the Sholingilar people to displace from BTN, fulfilling the elements of the crime of "Deportation" as a crime against humanity under Article 7(1)(d) of the Rome Statute.

ARGUMENTS ADVANCED

Issue 1: 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. The Prosecution most humbly submits that the Hon'ble ICC, Hague, Netherlands has the jurisdiction to hear the present matter at appeal in accordance with Art.5, Art.13 (a), Art.14 & Art. 15(1),(3) & (4).
2. The Prosecutor would also like to notify the court about the fact that through the submissions made by the victim, the PTC upon the examination of the request and the supporting material, had found a reasonable basis to proceed with an investigation¹. In furtherance to this, it had also affirmed the jurisdiction of the court and had authorized the commencement of the Investigation.²
3. In addition to the aforementioned information, along with the confirmation of crimes falling within the jurisdiction of the ICC by the PTC, the Trial had also accepted the jurisdiction of the court in the present case.

¹ Rome Statute of the International Criminal Court, Art. 15(1), (3)

² Ibid, Art. 15(4)

1.1 CRIMES COMMITTED WITHIN THE JURISDICTION OF THE COURT

4. According to the Preamble of the Statute, one of the core goals of the Statute is to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, which “must not go unpunished.”³
5. In order to achieve this goal, article 27(1) and (2) of the Statute provide for the following core principles:
 - (i) *"This Statute shall apply equally to all persons without any distinction based on official capacity;"*
 - (ii) *Official capacity as a Head of State or Government, a member of Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence;" and*
 - (iii) *"Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."⁴*
6. It is to contend on behalf of the victims of the Sholingilar Community that the crimes inflicted upon the people of the Sholingilar community, being the most serious crimes of

³ Ibid, the Preamble, para 4 & 5

⁴ Ibid, Art. 27 (1) & (2)

concern to the International community as a whole, are thereby crimes of International Character. These crimes, often referred to as "core crimes," are considered to be of grave concern to the international community as a whole. The gravity of crimes under the ICC's jurisdiction is a crucial concept in the Rome Statute, which is the treaty that established the ICC.⁵

7. Art 5 of the Statute reads out as- “ 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.”
8. The allegations of crimes against humanity as well as genocide levied against the Police Chief were confirmed by the PTC. In addition to this, the court upheld the charge of “ slavery as a crime against humanity” against the Police Chief. However charges of deportation and genocide were struck off.
9. The BTN villages near the border had employed Sholingilar persons as slave-like labour in their fields. The owners did not even register the workers' names and also refused to pay them a salary. Whereas BTN was a signatory to the 1951 Refugee Convention, there was no UNHCR mission in the country, and no lawyers who took up the cases of the Sholingilar people. The ordinary people also did not have much understanding or sympathy with the Sholingilar people.

⁵ Ibid, the Preamble

10. Displaced from home, the Sholingilar persons were denied passports and without being given status in their new country of residence, the community in BTN was for all purposes, like stateless people. The people of the Sholingilar community were being used in their fields and homes, but were denied better jobs. In furtherance to this, the children belonging to the community were also denied the access and opportunity to attend schools. The accused Police Chief had subjected young women to slave labour on state-owned plantations. Under his orders, the police of BTN tortured the young male and female youth in prison and mocked them, suggesting that they were not fully human.
11. As was held in the Bangladesh/ Myanmar case, for conduct to fall within the jurisdiction of the Court, it must:
- (i) Fall within the category of crimes set out in article 5 and defined in articles 6 to 8 bis of the Statute (jurisdiction *ratione materiae*);
 - (ii) Fulfil the temporal conditions specified in article 11 of the Statute (jurisdiction *ratione temporis*); and
 - (iii) Meet one of the two requirements contained in article 12(2) of the Statute (jurisdiction *ratione loci* or *ratione personae*)⁶.

1.2 ELEMENTS OF CRIME HAVE BEEN FULFILLED

12. GENOCIDE, Art. 6 of the RS reads out as :

“ For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

⁶ People’s Republic of Bangladesh V. Republic of the Union of Myanmar, ICC 2019

Article 6 (b) “Genocide by causing serious bodily or mental harm to members of the group”⁷ further giving out the *Elements*:

- a) *The perpetrator caused serious bodily or mental harm to one or more persons.*
- b) *Such a person or persons belonged to a particular national, ethnical, racial or religious group.*
- c) *The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.*
- d) *The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁸*

13. In the present situation, the perpetrator, that is the Police Chief, caused serious bodily or mental harm to the persons of the Sholingilar community. Under the orders of the accused Police Chief, the police of BTN had arrested the youth on charges of drug dealing and related crimes. The police tortured the male and female youth in prison and mocked them, suggesting that they were not human.⁹ This clearly indicates the discriminatory and racist attitude of the police of BTN towards the Sholingilar persons. The govt. of BTN turned a blind eye to his drastic exercise of power, which in turn created a traumatic repetition of events which had earlier happened in the State of Burmanyar, for the Sholingilar persons.¹⁰ While many Sholingilar families had now borne children in BTN, and had cut

⁷ Ibid, Art. 6

⁸ Ibid, Art. 6(b)

⁹ Moot Prop, Pt. 11

¹⁰ Ibid, Pt. 12

off ties fully from Burmanyar. This new round of police persecution and racism had raised for them the memories of their first displacement .

14. The people of the State of BTN used the Sholingilar persons as labour in their fields and in their homes but never encouraged or gave them better decent jobs or opportunities. The children of the Sholingilar persons were also not permitted to attend the local schools.¹¹ All of these points add up to the conclusion that the State of BTN brutally violated the basic fundamental rights that the Sholingilar persons deserved, further causing them serious bodily and mental harm. Therefore, the State of BTN is liable for the crime of Genocide by causing serious bodily and mental harm.¹²

15. CRIMES AGAINST HUMANITY, In the present case, there were clear instances of the below mentioned crimes which come under the ambit of Crimes Against Humanity of the RS. Art. 7 of the RS reads out as, “ *For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:*

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

¹¹ Ibid, Pt. 10

¹² RS of the ICC, Art. 6(b)

*(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.*¹³

16. The villages in close proximity to the border in BTN, started employing individuals from the Sholingilar community in a manner resembling forced labour on their farms. These employers neglected to officially document the names of their workers, and they did not provide any wages to them. Despite the fact that Bangtangnagar was a signatory to the 1951 Refugee Convention, there was no presence of a UNHCR mission within the country, and there were no legal professionals willing to take on the cases of the Sholingilar people. The people of the Sholingilar community tolerated this for two years, without being given a status in the State of BTN, similar to the situation of stateless people.

1.3 REFERRAL OF THE SITUATION TO THE PROSECUTOR BY CSA OF FINLANDIA

17. The situation of the Sholingilar persons at hand was referred to the Prosecutor of ICC by the State of Finlandia through its Civil Society Activists to raise the issues of the victimization of the Sholingilar persons, which is a state party to the RS.¹⁴

¹³ Ibid, Art. 7

¹⁴ Moot Prop, Pt. 13

18. *“The preliminary examination of a situation by the Office may be initiated on the basis of:*

- a) *Information sent by individuals or groups, States, intergovernmental or non-governmental organisations;*
- b) *A referral from a State Party or the United Nations Security Council; or*
- c) *A declaration lodged by a State accepting the exercise of jurisdiction by the Court pursuant to article 12(3) of the Statute.”¹⁵*

19. In Nigeria, On 11 December 2020, the Prosecutor announced the completion of her preliminary examination of the situation in Nigeria, having concluded that there was a reasonable basis to believe that war crimes and crimes against humanity were committed. The next step in the judicial process is to request authorisation from the Pre-Trial Chamber to open an investigation into the situation in Nigeria. In the interim, the Office continues to take measures to preserve the integrity of any future investigation into the situation in Nigeria.¹⁶

20. Art. 53 of the RS- *“ The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:*

¹⁵ ‘Preliminary examinations’ (International Criminal Court) <www.icc-cpi.int/situations-preliminary-examinations> accessed 21 September 2023.

¹⁶ ‘Nigeria’ (International Criminal Court) <www.icc-cpi.int/nigeria> accessed 21 September 2023.

- a) *The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;*
- b) *The case is or would be admissible under article 17; and*
- c) *Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”¹⁷*

21. The procedure for initiating an investigation upon the Prosecutor’s own initiative is regulated by article 15 of the Statute. This provision subjects the Prosecutor’s power to open an investigation proprio motu to the judicial scrutiny of the Pre-Trial Chamber¹⁸. Article 15(3) provides that, ‘if the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected.’¹⁹

22. The Prosecutor received information regarding the ongoing situation from the State of Finlandia which is a party to the RS, pursuant to articles 13(a) and 14(1) of the Statute.

23. *“Art.13 : The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:*

- a) *A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14.”*

¹⁷ RS of the ICC, Art. 53

¹⁸ Pre-Trial Chamber II, Situation in the Republic of Kenya, Kenya Article 15 Decision, 31 March 2010, ICC-01/09-19-Corr

¹⁹ RS of the ICC, Art. 15 (3)

24. It is contended before the hon'ble court that the following crimes, which are also crimes of International character as recognised by Art. 5 of the RS were committed against the people of the Sholingilar community : The referral by the State of Finlandia specifies that the participating State decided to refer the Situation in BTN to the Prosecutor of the ICC for the purpose of requesting the Prosecutor to investigate any acts of crimes against humanity and genocide alleged to have occurred on the territory of BTN, including any allegations of current and ongoing crimes occurring throughout the territory of BTN, thereby requesting the Court to exercise its jurisdiction with respect to the jurisdictional scope accepted by the State of Finlandia as was held in the case of Ukraine
25. The referral by the State of Finlandia specifies that the participating State decided to refer the Situation in BTN to the Prosecutor of the ICC for the purpose of requesting the Prosecutor to investigate any acts of crimes against humanity and genocide alleged to have occurred on the territory of BTN, including any allegations of current and ongoing crimes occurring throughout the territory of BTN, thereby requesting the Court to exercise its jurisdiction with respect to the jurisdictional scope accepted by the State of Finlandia as was held in the case of Ukraine.²⁰
26. The prosecutor can launch an investigation on his or her own initiative (*proprio motu*), on the basis of information received from diverse sources, concerning crimes within the jurisdiction of the Court. He or she may “seek additional information from states, organs of the UN, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony.”²¹

²⁰ ‘Ukraine’ (International Criminal Court) <www.icc-cpi.int/situations/ukraine> accessed 24 September 2023.

²¹ RS of the ICC, Art.15 (2)

Issue 2: Whether the matter is admissible, as defined in the Articles of the Rome Statute?

27. Before this honourable court, we respectfully submit our case, drawing attention to the provisions of Art. 1, paragraph 10 of the preamble, Art. 53, and Art. 17(2)(b) of the Rome Statute²² (RS), while also considering the relevance of Art. 16(1) and Art. 35(1) of the Refugee Convention²³. Our argument asserts the admissibility of this case as per the criteria outlined in the Refugee Convention and RS. We contend that the Court should fully exercise its jurisdiction over this matter.

28. The preamble²⁴ of the Rome Statute reminds us that every state has the obligation to exercise its criminal jurisdiction over individuals responsible for international crimes. Article 17(1) expressly references paragraph 10 of the Preamble and Article 1 of the RS, emphasizing that the ICC shall be complementary to national criminal jurisdictions. This underscores the admissibility of the matter at hand and its inherent complementarity to national criminal jurisdictions.²⁵

29. Article 17 of the Rome Statute establishes that a case is considered inadmissible if it is genuinely being investigated or prosecuted by a state with jurisdiction over it. In this case, the Sholingilar community resided in Burmanyar²⁶, a state where they endured systemic oppression and persecution. However, the actions of the state, including arbitrary arrests,

²² (International Criminal Court) <www.icc-cpi.int/sites/default/files/RS-Eng.pdf> accessed 24 September 2023.

²³ 'Convention and Protocol Relating to the Status of Refugees | UNHCR' (UNHCR) <www.unhcr.org/media/convention-and-protocol-relating-status-refugees> accessed 24 September 2023.

²⁴ RS of the ICC, the preamble

²⁵ Ibid, Art. 17(1)

²⁶ Moot Prop, Pt. 1

enforced disappearances, and persecution, have rendered it both unwilling and unable to genuinely address the crimes committed against the Sholingilar community.

2.1 STATE WITH LEGAL AUTHORITY

30. Pursuant to Article 17(1) of the Rome Statute, the ICC's interference can only be pre-empted by a "State which has jurisdiction over it." It is crucial to interpret "jurisdiction" in the context of international law, distinct from national law, although national law typically aligns with this concept. States, under international law, possess the authority to institute prosecutions for international crimes based directly on international legal principles.²⁷

31. The Sholingilar community, historically marginalized and persecuted, seeks justice for the atrocities they have suffered. Furthermore, we assert that the case against the Bangtangnagar Police Chief not only falls within the ICC's jurisdiction but is also admissible under Article 17 of the Rome Statute.

32. Notably, there is no overarching treaty governing states' criminal jurisdiction, and the Rome Statute does not aim to validate or rank jurisdictional bases. Additionally, the precise parameters of international customary law on this matter remain unsettled. Nevertheless, some guiding principles have emerged over time. The 1935 Harvard Research Draft Convention²⁸ identifies five foundational jurisdictional bases: territoriality (pertaining to the state where the crime occurred), nationality (pertaining to the

²⁷ 'Roy S. Lee (ed.): The International Criminal Court - The Making of the Rome Statute: Issues, Negotiations and Results' (2000) 4(1) Max Planck Yearbook of United Nations Law Online 588, XXXX <<http://dx.doi.org/10.1163/187574100x00197>> accessed 22 September 2023.

²⁸ 'Draft Convention on Jurisdiction with Respect to Crime' (1935) 29(S1) American Journal of International Law 439, <<http://dx.doi.org/10.2307/2213634>> accessed 24 September 2023.

perpetrator's home state), passive nationality (pertaining to the victim's home state), protection (pertaining to states facing the threat of the crime), and universality (pertaining to any state).

2.2 THE PRINCIPLE OF COMPLEMENTARITY

33. The principle of complementarity is implemented by the ICC through Articles 17 and 53 of the Rome Statute, it provides that a case is inadmissible before the ICC if it is currently under investigation by a state with jurisdiction over it. The concept of complementarity, however, allows for ICC jurisdiction in situations when the state is unable or unwilling to proceed with an investigation or where the state investigation is conducted in bad faith such as when it is used to shield the person from criminal responsibility.²⁹
34. This principle means that the Court will complement, but not supersede, national jurisdiction. National courts will continue to have priority in investigating and prosecuting crimes committed within their jurisdictions, but the International Criminal Court will act when national courts are 'unable or unwilling' to perform their tasks.³⁰
35. Under the complementarity principle, States have the primary responsibility to investigate and prosecute crimes falling within the jurisdiction of the Court, and the Court shall

²⁹ 'complementarity' (LII / Legal Information Institute)
<www.law.cornell.edu/wex/complementarity#:~:text=The%20principle%20of%20complementarity%20is%20implemented%20by%20the%20ICC%20through,state%20with%20jurisdiction%20over%20it.> accessed 24 September 2023.

³⁰ 'Roy S. Lee (ed.): The International Criminal Court - The Making of the Rome Statute: Issues, Negotiations and Results' (2000) 4(1) Max Planck Yearbook of United Nations Law Online 588, XXXX
<<http://dx.doi.org/10.1163/187574100x00197>> accessed 24 September 2023.

exercise its jurisdiction where the relevant national jurisdiction is either not doing so or is unwilling or unable to do so genuinely.³¹

36. Moreover, Article 17(2)(b) holds significance. It mandates that the Court, when assessing unwillingness in a specific case, must consider the principles of due process recognized by international law.³² Subclause (b) of the same article specifically stipulates that "There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice." This provision is pertinent given the ongoing proceedings within the national jurisdiction of Bangtangnagar, scheduled for trial after the aforementioned trial and post the pre-trial decision. This timeline clearly highlights the presence of an "unjustified delay in the proceedings" and, consequently, demonstrates an "unwillingness to bring the concerned to justice."

37. Article 20 of the Statute concerns the principle of '*ne bis in idem*'³³ and provides,

*(3) "No person who has been tried by another court for conduct also prescribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court: (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court."*³⁴

38. Therefore, the circumstantial evidence clearly indicates that a trial was initiated only after the decision of the trial³⁵ regarding the sentence of the Police Chief of BTN was

³¹ Prosecutor vs Saif Al Islam Gaddafi, ICC 2011.

³² RS of the ICC, Art.17(2)(b)

³³ Ibid, Art.20

³⁴ Ibid, Art. 20(3)(a)

³⁵ Moot Prop, Pt. 20

delivered, which also satisfies the aforementioned Art. which proves that the criminal charges against the Police Chief of BTN were merely laid down for the purpose of shielding him from criminal responsibility for crimes within the jurisdiction of the court.

39. In addition to this, in the case of *The Prosecutor v. Saif Al-Islam Gaddafi* the Appeals Chamber considered that article 17(1)(c) of the Statute, read together with article 20(3) of the Statute, means that the decision issued by a national jurisdiction must be final before a case can be declared inadmissible on the basis of these provisions.³⁶ Whereas in the present situation, criminal charges of slavery and police torture were merely laid in BTN against the Police Chief, and the matter at the moment is scheduled for trial which will take place after the hearing of ICC Appeal.³⁷ With respect to the first element, the Pre-Trial Chamber in the case of *The Prosecutor v. Saif Al-Islam Gaddafi* referred to article 20(3) of the Statute, stated that its wording ‘suggests that the person has been the subject of a completed trial with a final conviction or acquittal and not merely a trial “with a verdict on the merits” or a mere “decision on conviction or acquittal by a trial court”’, as counsel for Mr Gaddafi suggested. 54 The Pre-Trial Chamber stated that, ‘in other words, what is required, is a judgment which acquired *res judicata* effect’.³⁸

2.2 NATIONAL INACTION: AUTOMATIC ADMISSIBILITY

40. A straightforward scenario is when no state has initiated an investigation into a given case, making it automatically admissible provided it meets the gravity threshold. In a

³⁶ Prosecutor vs Saif Al Islam Gaddafi, ICC 2011

³⁷ Moot Prop, Pt. 20

³⁸ Prosecutor vs Saif Al Islam Gaddafi, ICC 2011

report to the Security Council regarding the Darfur situation, the ICC prosecutor concluded that "there are cases that would be admissible [for the purpose of article 53(1) (b)] in relation to the Darfur situation."³⁹ This decision was based on the absence of criminal proceedings related to the cases the OTP is likely to focus on.

41. National inaction leading to admissibility is evident because if the ICC prosecutor suspects that a crime within the ICC's jurisdiction has been committed and there is no investigation, there is a risk of impunity. Inaction may result from unwillingness or inability to genuinely proceed. In the case of the Police Chief, no investigation has been initiated, placing it within the realm of automatic admissibility due to national inaction.

2.3 FLIGHT TO BANGTANGNAGAR AND LACK OF REMEDIES

42. The Sholingilar community fled persecution in Burmanyar and sought refuge in Bangtangnagar, where they encountered exploitation and discrimination. Despite being a signatory to the 1951 Refugee Convention, Bangtangnagar offered no protection to the Sholingilar community, effectively rendering them refugees. Their lack of passports, coupled with their employment as slave-like laborers, left them effectively stateless and marginalized. Bangtangnagar's policies, including severe mistreatment by the Police Chief, exacerbated their plight. With no UNHCR mission, legal representation, or recourse available, they had no access to justice or protection of their rights within Bangtangnagar.

2.4 STATUTORY FOUNDATION FOR ADMISSIBILITY

³⁹ Prosecutor of the ICC, Darfur Situation (UNSCR 1593, UN Security Council 2005).

43. To establish the admissibility of a case under Article 17 of the Rome Statute, the ICC must determine that national authorities are not actively pursuing the case. Even when a state is prosecuting the case, it may still be considered unwilling if the proceedings are conducted primarily to shield the accused from criminal liability.⁴⁰ Cases may also be deemed inadmissible if there is an unjustified delay in the ongoing proceedings or if these proceedings lack independence and impartiality inconsistent with the objective of bringing the accused to justice.⁴¹
44. In light of the aforementioned circumstances, it is abundantly clear that the case against the Bangtangnagar Police Chief falls squarely within the jurisdiction of the ICC. This assertion is rooted in the fact that the Sholingilar community faced persecution and crimes against humanity in both Burmanyar and BTN. Furthermore, considering the inability of both states to conduct genuine investigations and prosecutions regarding these crimes, it is beyond dispute that the case is eminently admissible before this esteemed Court.

2.5 NON-COOPERATION BY THE GOVT. OF BTN

45. BTN's non-compliance with international legal norms, its neglect of refugee protection, discriminatory policies, and its outright refusal to cooperate with the ICC collectively underscore grave breaches of international law. These actions, in addition, cast doubt upon the government's commitment to fulfil its international responsibilities and

⁴⁰ RS of the ICC, Art.17(2)(a)

⁴¹ Ibid, Art. 17(2)(b) & (c)

safeguard the fundamental rights of vulnerable populations, exemplified here by the Sholingilar refugees.

46. Furthermore, BTN's lack of cooperation in relation to the Sholingilar refugees can be scrutinized within the framework of the Rome Statute, with specific regard to crimes against humanity and the obligations imposed upon state parties. This examination is prompted by the government's dereliction in providing protection to dissidents. Subsequent to the Sholingilar community's flight from persecution in Burmanyar and their subsequent appeal for refuge within BTN, the BTN government conspicuously failed to extend any form of protection to these refugees⁴², notwithstanding its status as a signatory to the 1951 Refugee Convention. This failure starkly contravenes its legal duties under international law, which mandate the provision of asylum and protection to individuals fleeing persecution.
47. Moreover, BTN's utilization of Sholingilar individuals as laborers in conditions akin to slavery within villages near the border flagrantly infringes upon established international labour and human rights standards. These individuals were neither formally registered nor remunerated for their labour.⁴³ This unambiguous violation of fundamental human rights principles was met with indifference by the government of BTN, which refrained from undertaking any corrective measures to rectify these blatant violations.
48. Despite hosting a large number of Sholingilar refugees, BTN did not have a UNHCR mission in the country⁴⁴, and there were no lawyers available to assist the Sholingilar

⁴² Moot Prop, Pt. 9

⁴³ Ibid, Pt. 10

⁴⁴ Ibid, Pt. 9

people with their cases. This lack of support further exposed the vulnerability of the refugees and their inability to access legal remedies.

49. To add on to the grievances of the Sholingilar persons, the BTN Police Chief exercised significant power and subjected Sholingilar youth and women to forced labour, torture, and dehumanizing treatment.⁴⁵ The government turned a blind eye to his actions, indicating complicity in human rights abuses. When the case of the Police Chief was brought before the ICC, the government of Bangtangnagar declined to cooperate and sent no submissions⁴⁶. It publicly stated that its functionaries could not be a party to the trial as it was not a signatory to the Rome Statute. This refusal to cooperate with an international tribunal demonstrates a lack of commitment to accountability for crimes against humanity.

Issue 3: Whether the dismissal of the charge of “deportation as a crime against humanity” is valid?

50. The council humbly submits before the court that the dismissal of the charge of deportation as a crime against humanity is not valid because the fact that the BTN Government avoided their responsibility and are accountable for the atrocities faced by the Sholingilar people, when they sought to take refuge in their country with decades of persecution in their parent state of Burmanayar and that they finally will be able to look for a better life for themselves in the State of BTN.

⁴⁵ Ibid, Pt. 11

⁴⁶ Ibid, Pt. 18

51. The State of BTN failed to fulfil its duty which it undertook under the RC, 1951⁴⁷ to provide refuge to the incoming refugees from the State of Burmanyar. The State of BTN never questioned the new military regime of Burmanyar nor did it offer any protection to the dissidents of this abusive military regime in their neighbour⁴⁸. The State of BTN employed Sholingilar persons as slave-like labour in their fields. They were denied registration and were not paid any salary for their hard work which is against the principle of justice, equity and good conscience and a grave violation of the RC, 1951 which the State of Bangtangnagar is a signatory. There are no lawyers who took up the cases of the Sholingilar people and they were denied to be represented and heard which violated the Principles of Natural Justice.

***3.1 THAT THE DISMISSAL OF CHARGE OF DEPORTATION AS A CRIME
AGAINST HUMANITY IS NOT VALID.***

52. RS⁴⁹ states that, “Crime Against Humanity means any act when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”

53. According to the Appeals Chamber in Kunarac et al.,

⁴⁷ ‘Convention and Protocol Relating to the Status of Refugees | UNHCR’ (UNHCR)
<www.unhcr.org/media/convention-and-protocol-relating-status-refugees> accessed 24 September 2023

⁴⁸ Moot Prop, Pt. 8

⁴⁹ RS of the ICC, Art. 7(1)

"In order to amount to crime against humanity, the acts of an accused must be part of a widespread or systematic attack "directed against any civilian population"⁵⁰. This phrase has been interpreted [...] as encompassing five elements:

- a) There must be an attack
- b) The acts of the perpetrator must be part of the attack
- c) The attack must be directed against any civilian population
- d) The attack must be widespread or systematic
- e) The perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern."

54. The charge of Deportation is given under RS⁵¹ which states, "Deportation or forcible transfer of population." The element of crime of deportation as given in the draft of Elements of Crimes⁵² by the ICC clearly puts out the factors determining the crime of "Deportation", i.e.,

⁵⁰ Prosecutor v. Kunarac, Kovac and Vukovic, ICTY, 12 June 2002, IT-69-23/IT-96-23-1, para 85.

⁵¹ RS of the ICC, Art. 7(1)(d)

⁵² The Elements of Crimes are reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010 (International Criminal Court publication, RC/11).

- (a) The perpetrator deported or forcibly⁵³ transferred⁵⁴, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
- (b) Such person or persons were lawfully present in the area from which they were so deported or transferred.
- (c) The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
- (d) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- (e) 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.

55. According to the Trial Chamber in Krnojelac⁵⁵: "Deportation is illegal only where it is forced. 'Forced' is not to be interpreted in a restrictive manner, such as being limited to physical force. It 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 another person, or by taking advantage of a coercive environment'. The essential element is that the displacement be involuntary in nature, where the relevant persons had no real choice. "

3.2 ABUSE OF POWER BY THE AUTHORITIES

⁵³ The term "forcibly" is not restricted to physical force, but may include 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 another person, or by taking advantage of a coercive environment.

⁵⁴ "Deported or forcibly transferred" is interchangeable with "forcibly displaced"

⁵⁵ Prosecutor v. Krnojelac, ICTY, 15 March 2002, IT-97-25-T, para 475.

56. That the above stated factors have come out in the face of State backed police action by the arrests of number of youths on the charges of drug dealing and related crimes which were completely arbitrary and the misuse of police power in an abusive manner and was a clear violation of RC, 1951⁵⁶. The Sholingilar youth which had faced perpetual hardships in their life in the face of racial persecution from their parent state and had sought refuge in the country looking for better opportunities and a better life were betrayed by the State agencies when they were tortured and mocked upon their existence and were told that they were not fully human. Countless similar incidents occurred where the People of BTN and the State turned a blind eye to this drastic abuse of power by the Police.⁵⁷ The Sholingilar people were not provided with legal aid and didn't get the opportunity to be heard and to prove their innocence which is a violation of the RC,1951.⁵⁸

3.3 UNFAIR TREATMENT OF SHOLINGILAR PEOPLE WITH RESPECT TO PAYMENT AND LIVELIHOOD.

57. That when the Sholingilar people came to BTN, they were employed like slaves in the fields of BTN villages near the border without any official registration, without any payroll and most importantly without any rights. The Sholingilar People being denied official registration resulted in them not being able to avail the State sponsored welfare schemes. It is a violation of the RC,1951⁵⁹ which provides for Labour Legislation and Social Security.

⁵⁶ RC 1951, Art. 3

⁵⁷ Moot Prop, Pt. 6 & 7

⁵⁸ RS of the ICC, Art. 16

⁵⁹ Ibid, Art. 24

The Sholingilar People were also denied payment of their wages which is in contravention of the RC,1951.⁶⁰

3.4 DISCRIMINATION AND DENIAL OF BASIC RIGHTS TO SHOLINGILAR PEOPLE.

58. That many Sholingilar families had borne children in BTN. They completely cut off ties from the state of Burmanyar and they expected a future in their new home-BTN. The Sholingilar People were subjected to great amounts of discrimination and their children were denied to attend schools with other children⁶¹ which is against the RC,1951⁶². The new round of police persecution and racism and failure to being given status in their new country of residence, the community felt like they were ostracized from the general public and considered themselves as “stateless people” even after having borne children and spending a great amount of time in BTN which violated not only the country’s *Jus Soli* principle but also the RC,1951.⁶³

3.5 SHOLINGILAR PEOPLE FORCED TO DISPLACE FROM BTN.

59. That because of the acts stated above it proves that the Sholingilar People were put under duress and in a state of psychological oppression. The Sholingilar people didn’t feel safe in BTN about their future, because of which they were ultimately forced to move/displace from the state of BTN after countless rounds of State sponsored persecution and being denied the basic human rights which resulted in the grave act of crime against humanity on

⁶⁰ Ibid, Art. 17

⁶¹ Moot Prop, Pt. 10

⁶² Ibid, Art. 22

⁶³ Ibid, Art. 34

them and constituted the grounds and fulfilled the elements for the validation of the crime of "Deportation."

60. As noted by ICTY Trial Chamber in *The Prosecutor v. Radovan Karadžić*⁶⁴: "To establish deportation and forcible transfer, there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The term "forced" may include physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or the act of taking advantage of a coercive environment. The forced character of the displacement is determined by the absence of genuine choice by the victim in his or her displacement. As such, while persons may consent to, or even request, their removal, any consent or request to be displaced must be given voluntarily and as a result of the individual's free will, assessed in light of the surrounding circumstances of the particular case.

61. Furthermore, the involvement of a non-governmental organization in facilitating displacements does not in and of itself render lawful an otherwise unlawful transfer. An agreement among military commanders, political leaders, or other representatives of the parties in a conflict cannot make a displacement lawful either; it is the consent of the individual that determines whether a displacement is voluntary.

62. As stated above, an element of deportation and forcible transfer is that the victim must be "lawfully present" in the area from which the forced displacement takes place. In analysing this element of deportation and forcible transfer, the terms "lawfully present" should be

⁶⁴ The Prosecutor v. Radovan Karadžić, ICTY, 24 March 2016, para 489-491.

given their common meaning and should not be equated to the legal concept of lawful residence.

63. It is also noted in the case of *Prosecutor v. Jadranko Prlić*⁶⁵: "The Tribunal's case-law does not go so far as to require that forcible removal occur "by force" in the strict sense of the word. Indeed, the mere threat of resorting to force or physical or mental coercion may be enough, if the targeted population facing this coercive climate or these threats, has no other choice but to leave its territory. It is the absence of genuine choice that renders removal unlawful. To determine whether the victims of a forcible removal faced a genuine choice, the circumstances surrounding their removal must be assessed."

64. "Accordingly, consent by the victim does not necessarily render forcible removal lawful, inasmuch as the circumstances surrounding that consent may deprive it of any potential value. The consent of the victim must be assessed in context. Generally speaking, detaining a person in a climate of terror and violence obviates any and all value arising from the consent."

PRAYER

Wherefore, it is most humbly pleaded and implored before the Hon'ble International Criminal Court, in the light of facts and circumstances of the case, issues raised, arguments advanced and authorities cited, the Prosecutor prays that this Hon'ble Court may be pleased to adjudge, rule upon, and determine the following:

⁶⁵ *Prosecutor v. Jadranko Prlić*, ICTY, 29 May 2013, para 50-51.

1. The ICC has jurisdiction over the matter at the Appeal under Article 81 & 82 in accordance with Article 5, Art.13 (a), Art.14 & Art. 15(1),(3) & (4) of the Rome Statute.
2. The matter is admissible under Art. 17, Article 1, and Article 53 of the Rome Statute.
3. The dismissal of the charge of “deportation as a crime against humanity” is not valid. The defendant is to be charged with the crime of “deportation as a crime against humanity.”

AND/OR

Pass any other order it may deem fit in the interest of Justice, Equity & Good
Conscience.

All of which is most respectfully prayed & humbly submitted.

Prosecutor