



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

**IN THE
INTERNATIONAL CRIMINAL COURT
(THE APPEALS CHAMBER)
--IN THE MATTERS OF--**

PROSECUTOR

V.

THE POLICE CHIEF OF BANGTANGNAGAR

&

THE POLICE CHIEF OF BANGTANGNAGAR

V.

PROSECUTOR

- SUBMISSIONS ON BEHALF OF THE PROSECUTOR -

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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THE APPEALS CHAMBER

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

**The Office of 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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&	And
¶/¶¶	Paragraph(s)
AC	Appeals Chamber
app./apps.	Appendix/Appendices
art./arts.	Article(s)
CAH	Crimes against humanity
CIL	Customary international law
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ed.	Edition
EU	European Union
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICL	International Criminal Law
ICT	International Criminal Tribunal(s)
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
Id.	Ibidem
IHL	International humanitarian law
IL	International Law
OTP	Office of the Prosecutor
p./pp.	Page(s)
PIL	Public International Law

PTC	Pre-Trial Chamber
RPE	Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
TC	Trial Chamber
U.N.S.C.	United Nations Security Council
UDHR	Universal Declaration of Human Rights
v.	Versus
VCLT	Vienna Convention on the Law of Treaties

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STATEMENT OF JURISDICTION

THE COUNSEL FOR THE DEFENCE, HEREBY HUMBL Y SUBMITS TO THE JURISDICTION OF THE APPEALS CHAMBERS OF THE HON'BLE INTERNATIONAL CRIMINAL COURT UNDER ARTICLE 81(1)(A) OF THE ROME STATUTE AS REFERRED TO UNDER CHAPTER VII OF THE UN CHARTER, WHICH READS AS FOLLOWS-

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;

STATEMENT OF FACTS

1. The Sholingilars are a minority indigenous and religious community that have lived in Burmanyar for two centuries that survived by small-scale agriculture, fishing, hunting and handicrafts. In 2013, a military coup imposed its regime in Burmanyar and began persecuting and harassing the Sholingilars, which forced the Sholingilars to flee to Bangtangnagar
2. In Bangtangnagar, stateless Sholingilars faced police abuse, forced labor, and lack of legal representation. The government ignored these issues, triggering painful memories. Feeling unsafe, they eventually relocated to Finlandia.
3. In Finlandia, civil activists assisted Sholingilar refugees with refugee applications, while anonymous assassins targeted prominent Sholingilar activists. The Police Chief faced charges at the ICC, with the Bangtangnagar government refusing to cooperate due to its non-signatory status to the Rome Statute, providing no support or representatives. They also raised the issue of the alleged victimization of the Sholingilars at the ICC and attempted to initiate two simultaneous proceedings –
 - a) to prosecute the Police Chief of Bangtangnagar
 - b) to prosecute the Generals of Burmanyar
4. The TC upheld the charges of slavery and struck off the charges of genocide and deportation.
5. Charges of slavery and police torture have been laid in Bangtangnagar against the Police Chief.

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

I. THE ICC HAS JURISDICTION TO PROSECUTE THE POLICE CHIEF UNDER ARTICLE 12(2)(A) OF THE ROME STATUTE

1. Art. 12(2) of the Rome Statute allows the ICC to exercise territorial jurisdiction over crimes that occur within the territory of a State Party or when the accused is a national of a State Party. The Police Chief, a national of Bangtangnagar, ordered the police to torture the Sholingilars in prison and subjected them to slave labour on state-owned plantations. However, the consequences of his orders were experienced in Finlandia. For the purpose of the objective territoriality principle, it is sufficient if one element of the crime occurs in the territory of a State Party. Since the consequences of the deportation happened in Finlandia, the crime was, therefore, completed in Finlandia. Accordingly, the Court can exercise jurisdiction as per the principles of territoriality.
2. The effects doctrine can be read into Art. 12 of the Statute and the jurisdictional requirements are met. The ICC can exercise effects jurisdiction under Article 12(2)(a), as the crime produced has substantial, direct and foreseeable effects within the territory of Finlandia, a State Party. The effects doctrine can be subsumed within Art. 12 of the Statute.
3. The Police Chief is not entitled to immunity. The ICC's jurisdiction is not barred by any immunity enjoyed by high-ranking State officials since personal immunities are inapplicable for international crimes before international criminal tribunals

II. THE MATTER IS ADMISSIBLE AS DEFINED IN THE ARTICLES OF THE ROME STATUTE

According to article 17 of the icc statute, the prosecutor contends that the police chief's case is admissible. first off, the government's delay and lack of cooperation, along with the fact that there have been no past or continuing investigations in bangtangnagar, indicate a lack of interest in bringing charges. secondly, articles 17(1)(c) and 20 have not been violated because

there has not been a trial in bangtangnagar for the alleged crimes. finally, the prosecutor claims that the case fits the requirements of article 17(1)(d) because it meets the gravity threshold. The argument highlights the seriousness of the offences and the police chief's important involvement in committing them while emphasising a holistic evaluation that does not only rely on quantitative factors.

III. THE DISMISSAL OF THE CHARGE OF DEPORTATION AS A CRIME AGAINST HUMANITY IS VALID

The Police Chief's alleged conduct constitutes a Crime Against Humanity (CAH) under Art. 7(1)(d) of the Rome Statute, based on three key elements: firstly, the deportation of the Sholingilars without lawful grounds under international law through coercive means; secondly, the lawful presence of the Sholingilars in the area they were deported from; and thirdly, the Police Chief's awareness of the circumstances establishing the lawfulness of their presence. The act for deportation encompasses various actions leading to expulsion or other coercive acts, including fear, duress, psychological oppression, and abuse of power. No permissible grounds existed for the Sholingilar community's deportation, as there was no military necessity or humanitarian crisis in Bangtangnagar, and they were lawfully present as refugees. The Police Chief's awareness of these circumstances is emphasized. Furthermore, the prosecution contends that the present case fulfils the contextual elements required for a CAH, including a widespread and systematic attack against a civilian population, with a nexus between individual acts and the attack, and knowledge of the attack. They argue that the Police Chief's orders, such as torture, persecution, and arrests, directly contributed to the forced displacement of the Sholingilar community, satisfying the Mens rea requirement. Police Chief's actions meet the criteria for a CAH under Art. 7(1)(d) of the Rome Statute, and they argue that he should be held individually criminally responsible under Art. 25(3)(b) for ordering these actions that led to the crime.

ARGUMENTS ADVANCED

I. THE ICC HAS JURISDICTION UNDER ARTICLE 12(2)(A) OF THE ROME STATUTE

A. THE ICC CAN EXERCISE JURISDICTION AS PER THE PRINCIPLES OF TERRITORIALITY

1. The Statute makes repeated references to the words “crime in question” and “crime”.¹ However, Art. 12(2)(a) refers to ‘conduct’. The word ‘conduct’ replaced the words ‘act or omission’, indicating that the drafters intended for Art. 12(2)(a) to be restricted to actions alone.² However, the interpretation of ‘conduct’ as ‘act or omission’ would yield absurd results.³ Hence, the ‘conduct’ must be interpreted contextually to mean ‘crime’ [i]. The Police Chief’s conduct can be localised to Finlandia [ii]. Therefore, the ICC can exercise territorial jurisdiction as per the objective territoriality principle [iii].

(i) *‘Conduct’ must be interpreted contextually to mean ‘crime’*

2. The word ‘conduct’ has not been defined by the Rome Statute or any of its instruments.⁴ Therefore, the Prosecutor submits a two-fold approach, in accordance with the general principles of international law, to interpret the word ‘conduct’.⁵ ‘Conduct’ must be read contextually with other provisions of the Rome Statute. The Prosecutor initiated investigations

¹ VAGIAS.

² TRIFFTERER.

³ BROOMHALL.

⁴ VAGIAS.

⁵ *Lubanga Jurisdiction*, ¶ 34; STATUTE, art.21(1)(b).

proprio motu based on the information received from civil society activists of Finlandia under Art. 15 of the Statute.⁶

3. When a situation is referred to the OTP, the Prosecutor determines if a crime within the jurisdiction *ratione materiae* of the ICC has been committed.⁷ While making such a determination, the Prosecutor considers the situation in its entirety as opposed to restricting itself to the act or omission alone.⁸ If Art. 12(2)(a) is read with the provisions in Part 2 relating to jurisdiction and Part 5 relating to prosecution and investigation,⁹ it follows that decisions regarding admissibility, investigation and exercise of jurisdiction are made after due consideration of the case at hand.¹⁰ Since ICC recognised that contextual reading of ‘conduct’ can lead it to be construed as ‘crime’ in the *Myanmar case*,¹¹ ‘conduct’ in Art. 12(2)(a) must be read as ‘crime’.

(ii) *There is a ‘substantial link’ between the crime and the territory of Finlandia*

(a) Consequences form a constituent element of a crime

4. Although the Rome Statute demarcates between conduct and consequences,¹² its drafting history and international criminal jurisprudence indicate that conduct includes the

⁶ Moot Proposition, ¶17.

⁷ Rastan.

⁸ Vagias I.

⁹ STATUTE, art. 58.

¹⁰ *Kenya Authorisation*, ¶ 28; *Al-Bashir*, ¶ 36.

¹¹ *Myanmar Jurisdiction*, ¶ 49.

¹² STATUTE, art. 30.

consequences of the conduct.¹³ The offences listed under Art. 7(1) of the Statute require consequences as an objective element of the crimes.¹⁴ Therefore, the Prosecutor humbly submits that conduct can be read to include consequences.

B. THE POLICE CHIEF’S ORDERS HAD SUBSTANTIAL EFFECTS IN FINLANDIA AND COMPELS THE EXERCISE OF EFFECTS JURISDICTION BY THE ICC

5. Criminal conduct in foreign territories often causes direct effects in states.¹⁵ The effects doctrine allows states to exercise jurisdiction over conduct that has direct extraterritorial effects.¹⁶ State practice indicates that the effects doctrine forms a part of the principles of territoriality.¹⁷ The ICC can exercise effects jurisdiction under Article 12(2)(a), as the crime produced has substantial, direct and foreseeable effects within the territory of Finlandia, a State Party. The effects doctrine can be subsumed within Art. 12 of the Statute. The ICC can read the effects doctrine into Art.12 of the Statute
6. Since the PTC determined that the case fell within the jurisdiction of the Court despite Bangtangnagar not being a State Party, it can be construed that the PTC had exercised the “effects jurisdiction” under Article 12¹⁸ which is a variant of the territoriality principle allowing the exercise of jurisdiction when substantial, direct, and foreseeable effects occur within a State

¹³ *Lotus*; *Mbarushimana Jurisdiction*, ¶ 14; *Kunarac Trial*, ¶ 404.

¹⁴ *Vasiljević*, ¶ 32.

¹⁵ *Davis*.

¹⁶ Coppel.

¹⁷ VAGIAS; Wolswijk; *Lotus*.

¹⁸ STATUTE, art.12(2)(a).

Party territory, even though the criminal conduct occurred elsewhere.¹⁹ The ICC has a personality of its own and has the *kompetenz-kompetenz* to interpret the Rome Statute.²⁰ When determining whether it can exercise jurisdiction, the ICC must satisfy itself that it has jurisdiction over a situation²¹ and ensure that state sovereignty is not violated.²²

(a) The ICC can determine the extent of its jurisdiction

7. CIL recognises that international courts and tribunals have the power to determine the scope of their jurisdiction when there is no express agreement that establishes the jurisdiction of a forum.²³ The Rome Statute lays down the basis for ICC's jurisdiction; however, interpretation of the Statute and the extent of jurisdiction are determined by the Court itself.²⁴ This was confirmed by the ICC in the *Situation in Uganda*, where it stated that Chambers must assess the "relevance of the matter vis-à-vis its powers and functions."²⁵ ICC can determine the extent of its own jurisdiction, including the appropriate interpretation of the ambit of territorial jurisdiction under Article 12(2)(a)²⁶ and can exercise jurisdiction over the Police Chief under Article 12(2)(a).

¹⁹ Felix, at p.39.

²⁰ *Kony Admissibility*, ¶ 45.

²¹ STATUTE, art. 19.

²² *Tadić Jurisdiction*.

²³ *Fisheries Jurisdiction*.

²⁴ HALL ET. AL.

²⁵ *Situation in Uganda*, ¶ 24.

²⁶ *Bangladesh/Myanmar Pre-Trial Chamber I*, ¶ 30.

(1) The term “conduct” under Article 12(2)(a) is interpreted to include effects

8. In interpreting a treaty provision, account must be taken of its ordinary meaning in its context and with its object and purpose.²⁷ “Conduct” includes substantial, direct, and foreseeable effects through these three interpretative aspects. *Firstly*, the ordinary meaning of “conduct” in Article 12(2)(a) is consistent with the exercise of effects jurisdiction. ICC has held that the term “conduct” is defined as a form of “behaviour”, a concept encompassing more than the notion of an act to include its effects.²⁸ *Secondly*, a contextual interpretation of Article 12(2)(a) suggests that jurisdiction can be exercised where a crime’s effects occur on State Party territory as it involves considering the provision within the context of the rules of international law.²⁹ As per CIL, States are free to exercise jurisdiction provided there is minimally sufficient nexus within their territory.³⁰ Further, the exercise of effects jurisdiction is consistent with the *Lotus* principle, under which the exercise of jurisdiction is allowed in the absence of any prohibitive rule under CIL.³¹ *Thirdly*, the object and purpose of Article 12(2)(a) supports the interpretation of “conduct” to include effects. To achieve the purpose of ending impunity for crimes of international concern,³² State Parties delegate their sovereign ability to prosecute crimes to this

²⁷ *Id.*, at 91; VCLT.

²⁸ *Bangladesh/Myanmar Pre-Trial Chamber III*, ¶157.

²⁹ *Bangladesh/Myanmar Pre-Trial Chamber I*, ¶ 65.

³⁰ *Entscheidungen; Ze’ev; Libman*.

³¹ Scharf, at p.72.

³² RS, Preamble; *Situation in the State of Palestine*, ¶104.

Court.³³ Further, the Rome Statute must be interpreted in light of subsequent developments.³⁴ This Court should likewise³⁵ adopt an expansive approach in interpreting its jurisdictional limits to combat the rise of cross-border crimes.³⁶ It cannot be argued that effects jurisdiction is contrary to the principle that a treaty binds the State parties (*pacta tertiis nec nocent nec prosunt*),³⁷ since any exercise of effects jurisdiction applies vis-à-vis the nationals of non-State Parties; no obligation is imposed upon non-State Parties.³⁸ In *Situation in Afghanistan*, the ICC exercised jurisdiction over the nationals of the US, a non-State Party, where part of the conduct occurred in Afghanistan, a State Party.³⁹

(2) Substantial, direct and foreseeable effects occurred on the territory of Finlandia

9. As argued above,⁴⁰ the proper interpretation of “conduct” in Art 12(2)(a) includes effects, such that this Court is empowered to exercise effects jurisdiction. Under international law, effects jurisdiction requires the effects to have *substantial, direct, and foreseeable* effects within the

³³ *Bangladesh/Myanmar* Pre-Trial Chamber I, ¶ 60; Schabas & Pecorella, at pp.681– 683.

³⁴ VCLT, Articles 31(3)(a), 31(3)(b)..

³⁵ *Charles Taylor*.

³⁶ VAGIAS, pp.166–167.

³⁷ VCLT, Article 34.

³⁸ Cassese, at p.608.

³⁹ *Situation in Afghanistan*, ¶50.

⁴⁰ *Situation in Afghanistan*, ¶¶ 64-69.

State Party's territory.⁴¹ Such effects occurred on the territory of Finlandia, a State Party to the Rome Statute. *Firstly*, the effects on Finlandia were both substantial and direct. The act of arrest, torture and subject Sholingilars to slave labour resulted in the mass deportation.⁴² *Secondly*, the risks of the Police Chief's actions were foreseeable. The attacks directed against the Sholingilars upon the orders of the Police Chief were well-organised, coordinated and systematic, and intended to drive the Sholingilars out of Bangtangnagar as they were not stopped from leaving Bangtangnagar after being persecuted and harassed there. The "conduct" requirement for deportation contains distinct legal elements, extending beyond the perpetrator's acts *stricto sensu* to include their legally required consequences.⁴³ Therefore, stating that the ICC has territorial jurisdiction is consistent with the Statute's legal framework and principles of criminal jurisdiction, recognising the issues with enforced deportation, both for victims and the receiving State. Applying the principles laid down in *Bangladesh/Myanmar*, ICC can exercise effects jurisdiction because one legal element of the crime occurred in Finlandia. Under Article 7(1)(d), the relevant legal element requires that the perpetrator inflicted serious injury by means of an inhumane act.⁴⁴ As the persecution of the Sholingilars took place in Bangtangnagar, resulting in their mass deportation to Finlandia, jurisdiction can similarly be exercised by this Court.

⁴¹ *Tallinn Manual 2*.

⁴² Moot Proposition, ¶11.

⁴³ EOC, Art. 7(1)(d).

⁴⁴ *Ibid*.

(b) State sovereignty will not be violated by reading the effects doctrine into Art. 12

10. Teleologically reading Art. 12(2)(a) to include the effects doctrine will not impose any obligations on non-state parties.⁴⁵ Including the effects doctrine within the ICC's jurisdiction is an issue of interpretation and is restricted to effects on State Party territory. Therefore, a teleological reading of Art. 12(2)(a) will not violate the *pacta tertiis* principle.

(1) Reading the effects doctrine into Art. 12 will ensure
deterrence

11. The objective of criminal justice is to discourage commission of offences through punishments and sanctions,⁴⁶ ensuring that offences are discouraged, tried and punished.⁴⁷ ICC has similar objectives and seeks to prosecute specific offences of a certain gravity.⁴⁸ The exercise of the effects doctrine by the ICC will serve as a tool to deter offences. Perpetrators of offences against human dignity, irrespective of their nationality and the *locus delicti commisi*, will be equal before the law, thereby fulfilling the purpose of the Statute and the universality aspirations of the drafters without violating the territoriality principles.⁴⁹

⁴⁵ VAGIAS.

⁴⁶ *Lubanga Arrest Warrant Appeal*, ¶ 75.

⁴⁷ Akhavan.

⁴⁸ STATUTE, PREAMBLE; SCHABAS; AMBOS.

⁴⁹ VAGIAS, at p. 165.

C. THE POLICE CHIEF IS NOT ENTITLED TO IMMUNITY

12. The ICC's jurisdiction is not barred by any immunity enjoyed by high-ranking State officials.⁵⁰ As repeatedly affirmed by the ICJ,⁵¹ SCSL⁵² and the ICC, personal immunities are inapplicable for international crimes before international criminal tribunals.⁵³ In any event, any immunity of high-ranking State officials before the ICC is waived under international custom.⁵⁴
13. **In conclusion, for the aforementioned reasons**, the ICC can exercise jurisdiction over the Police Chief's conduct under Art. 12(2)(a) of the Rome Statute.

II. THE POLICE CHIEF'S PROSECUTION IS ADMISSIBLE

14. The OTP humbly submits that the Defence's prosecution is admissible under Article 17 of the Rome Statute.

A. POLICE CHIEF'S PROSECUTION IS ADMISSIBLE AS PER THE COMPLEMENTARITY CRITERIA

15. Articles 17 (1)(a) and (b) of the Statute state that a Court will determine whether a case is admissible based on the complementarity criteria which thereafter determines whether the case at hand has been or is being adequately investigated or prosecuted by a state's national judicial system.
16. In the instant case, there have not been any past or ongoing investigations or prosecutions in Bangtangnagar against the Police Chief. When the public came to know about the actions of

⁵⁰ *Al-Bashir*, ¶ 41.

⁵¹ *Arrest Warrant* (n 184), [61].

⁵² *Charles Taylor*, ¶ 52.

⁵³ *Al-Bashir*, ¶ 41.

⁵⁴ Antonio Cassese, p.325; RS, Article 27(2).

the police chief, the government did not take any steps to investigate, and failed to take any disciplinary actions, as he still continues in the same position.

17. As per Art. 17 (1) (a) and (b), the question of unwillingness or inability has to be considered only when “(i) *there are, at the time of the proceedings in respect of an admissibility challenge, domestic investigations or prosecutions that could render the case inadmissible before the Court, or (ii) there have been such investigations and the State having jurisdiction has decided not to prosecute the person concerned*”, as laid down by the Appeals Chamber in Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui.⁵⁵
18. In Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, the Court laid down that national investigations must cover the same individual and substantially the same conduct as alleged in the proceedings to be rendered inadmissible under Art. 17 (1) (a). The words 'is being investigated' signify the taking of steps directed at ascertaining whether the individual is responsible for that conduct.⁵⁶
19. The emphasis on investigative steps was also laid down in Prosecutor v. Jean Pierre Bemba Gombo, wherein it was observed that the mere preparedness to take such steps or the investigation of other suspects will not suffice as unless investigative steps are taken in relation to the suspects subject of the proceedings before the Court, it cannot be said that the same case is (currently) under investigation by the Court and by a national jurisdiction, and there is therefore no conflict of jurisdictions.⁵⁷
20. The actions of the Police Chief were ignored by the Government of Bangtangnagar which did nothing to initiate an investigation into the crimes committed by him. Moreover, the

⁵⁵ Katanga Trial.

⁵⁶ Kenyatta. Francis Kirimi.

⁵⁷ Bemba Trial.

Government declined to cooperate, sent in no submissions to the ICC⁵⁸ and did not provide any evidence with a sufficient degree of specificity and probative value that demonstrates that it was indeed investigating the case at the time of the proceedings.⁵⁹

21. It is emphasised that the trial which is scheduled to take place in Bangtangnagar will happen only after the hearing at the ICC Appeals Chamber. There has been an unjustified delay in starting the proceedings which shows the unwillingness on the part of the government of Bangtangnagar with respect to the circumstances it is inconsistent with an intent to bring the persons concerned to justice.
22. In addition to that, the act of “investigating” or anything equivalent has been carried out with the Police Chief still in his position of authority. Any procedure that has been carried out would have been through his subordinates upon whom he has superior power. The state did not bother to make the process impartial, rather seems to have done it for the sake of it.
23. Hence, the Prosecutor respectfully submits that the Police Chief’s appeal is admissible as per the complementarity criteria as laid down in Article 17 (1) (a) and (b).

B. THE POLICE CHIEF HAS NOT ALREADY BEEN TRIED FOR CONDUCT WHICH IS THE SUBJECT OF THE COMPLAINT

24. In the case at hand, the Police chief has not yet been tried before any Court in Bangtangnagar with respect to the crimes referred to in Article 5 of the Statute. It is humbly submitted that the trial which has been scheduled to take place in Bangtangnagar is only after the ICC Appeal is heard. There was no trial in Bangtangnagar during the proceedings of the Court which ruled for the imprisonment of the Police Chief. Hence, the Police Chief’s prosecution is not violative of articles 17(1)(c) and 20.

⁵⁸ Moot Proposition, ¶ 18.

⁵⁹ Kenyatta.

C. THE GRAVITY OF THE CASE IS SUFFICIENT TO MEET THE THRESHOLD UNDER ARTICLE 17(1)(D)

25. Article 17(1)(d) provides that a Court will determine whether a case is inadmissible where it is not considered sufficiently grave to justify ‘further action’ by the ICC. The OTP humbly submits that it was laid down in *Al-Hassan*, that *the gravity assessment under article 17(1)(d) of the Statute must be made on a case-by-case basis. It involves a holistic evaluation of all relevant quantitative and qualitative criteria, including some of the factors relevant to the determination of the sentence of a convicted person. Quantitative criteria alone, including the number of victims, are not determinative of the gravity of a given case.*⁶⁰

(i) *The number of victims is sufficient with regard to the quantitative criteria to meet the gravity threshold*

26. The OTP humbly submits that over a half a million Sholingilars resided in Bangtangnagar.⁶¹ The Police Chief subjected young women to slave labour on state-owned plantations.⁶² Under his orders, the police tortured the youth in prison and persecuted them. Due to this, an increasing number of Sholingilars displaced to Finlandia, highlighting that there was a substantial number of people in this community who were subject to police persecution, racism, slavery and torture, which led to the influx in Finlandia.

27. In *Prosecutor v. Bemba*, with regard to the element of ‘population’, the PTC implied on a low threshold by stating that the Prosecutor must demonstrate “*that the attack was such that it cannot be characterised as having been directed against only a limited and randomly selected*

⁶⁰ *Al-Hassan*.

⁶¹ Moot Proposition, ¶ 10.

⁶² Moot Proposition, ¶ 11.

group of individuals". It added that the entire population of the geographical area where the attack took place need not have been targeted.⁶³

28. Crimes against humanity are the gravest crimes of all, and for that the quantitative magnitude need not be high and depends upon the nature of crime and circumstances of each case. This demonstrates that the gravity of a crime does not depend upon the magnitude of people affected, rather the crime itself.

(ii) *The Police Chief's prosecution meets the holistic evaluation of all relevant qualitative criteria*

29. The OTP humbly submits that quantitative criteria alone are not determinative of the gravity of a given case. It involves a holistic evaluation of all relevant quantitative and qualitative criteria, including some of the factors relevant to the determination of the sentence of a convicted person and the gravity assessment under Article 17(1)(d) of the Statute is done on a case-by-case basis as laid down by the Appeals Chamber in Al-Hassan.⁶⁴

30. It is submitted that slavery is considered as a crime against humanity under Article 7 of the Statute. The Police Chief subjected all the young women of a particular community to slave labour on state-owned plantations. Article 7(1)(c) of the Elements of Crimes applies to the present case. It provides the elements of crime against humanity of enslavement. It states that *the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty*⁶⁵

⁶³ Bemba Trial, ¶ 77.

⁶⁴ Al-Hassan.

⁶⁵ EOC, art.7(1)(c).

31. The imposition of deprivation of liberty may refer to forced or compulsory labour. The young Sholingiliar women were deprived of their liberty by subjecting them to slave labour on state-owned plantations by the Police Chief. Slavery is prohibited under the ICCPR. Article 8(3)(a) applies to the instant case as it states that *no one shall be required to perform forced or compulsory labour*⁶⁶ Similarly, UDHR also prohibits slavery in all forms under Article 4⁶⁷.
32. The fact that the same underlying act of slavery violated several international provisions is itself the most important consideration in the assessment of the gravity threshold. Various International statutes have regarded the crime of slavery as a grave crime. The Police Chief's crime of slavery not only violated several international provisions and fundamental human rights but also deprived the victims of their dignity and liberty making it unsafe to stay anymore in Bangtangnagar. Thus, the nature of the crime is extremely serious.
33. The Police Chief played a central role in the commission of this crime. Hence, the Police Chief's prosecution meets the holistic evaluation of the gravity assessment and thereby his prosecution is admissible.
34. Thus, the prosecution submits that the matter is admissible before the International Criminal Court under Section 17 of the statute.

III. THE CONDUCT OF THE POLICE CHIEF CONSTITUTES A CAH UNDER ART. 7(1)(D) OF THE STATUTE

35. The action of the Police Chief of deporting the Sholingilars to Finlandia, constitutes a CAH under Art. 7(1)(d).⁶⁸ The Police Chief deported the Sholingilars, without the grounds permitted under IL, through coercive means [3.1]. The Sholingilars were lawfully present in the area from

⁶⁶ ICCPR article 8(3)(a).

⁶⁷ UDHR Art 4.

⁶⁸ EOC, art., 7(1)(d).

which they were deported [3.2]. The Police Chief was aware of the factual circumstances that established the lawfulness of such presence [3.3].

A. THE PERPETRATOR DEPORTED THE SHOLINGILARS WITHOUT THE GROUNDS PERMITTED UNDER INTERNATIONAL LAW, BY EXPULSION OR OTHER COERCIVE ACTS

36. The interpretation from the elements of crimes of the *actus reus* would be that the deportation or forcible transfer of population is an open-conduct crime. In other words, the perpetrator may commit several different conducts which can amount to "expulsion or other coercive acts", so as to force the victim to leave the area where he or she is lawfully present, as required by article 7(2)(d) of the Statute and the Elements of Crimes.⁶⁹
37. The Prosecutor humbly submits that the perpetrator, the Police Chief has deported or forcibly transferred, without grounds permitted under international law, the Sholingilar community to another State by coercive acts. The term 'forcibly' is to be interpreted broadly and 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."⁷⁰
38. The forced character of the displacement in this context is determined by the absence of genuine choice⁷¹ by the Sholingilars with respect to their displacement. To demonstrate that the persons had no genuine choice to remain, it is not necessary to establish an unlawful attack designed to coerce their departure; rather as laid down in *Ntaganda* and *Georgia* by PTC I,

⁶⁹ Ruto and Sang Confirmation, ¶¶ 22, 268, 299, 349, 350, 367.

⁷⁰ EOC article 7(2)(d); *Dorđević*, ¶ 727; *Stakić*, ¶ 281.

⁷¹ *Radovan Karadžić*, ¶¶ 488-490.

“the Chamber will take into account the prevailing situation and atmosphere, as well as all other relevant circumstances.”⁷²

39. The OTP submits that the abuse of power by the infliction of torture, subjection to slave labour and continuous persecution and racism through drastic use of power by the very powerful Police Chief amounts to coercive act. Fear of violence, duress, detention, psychological oppression, and other such circumstances has created an environment where there was no choice for the Sholingilars but to leave, thus amounting to their forcible displacement.

40. IHL permits displacement for specific reasons, such as for the security of the civilians involved or in case of imperative military reasons.⁷³ Although displacement for humanitarian reasons is allowed in certain situations, the ICTY Appeals Chamber has held that this does not apply “where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity.”⁷⁴

41. The prosecution finds that the established facts do not reveal any grounds permitting the displacement under international law. Not only was there no military necessity, there was no humanitarian crisis present in Bangtangnagar. The actions against the community, along with the lack of access to courts, left them with no other choice but to leave. Thus, the prosecution submits that there were no permissible grounds on which the Sholingilar community was deported.

⁷² Ntaganda, ¶ 1056; STATUTE Art. 8(2)(a)(vii); ICC, Situation in Georgia, ¶ 35.

⁷³ Geneva Convention, art. 49; Additional Protocol II, art. 17.

⁷⁴ *Prosecutor v. Stakić*, ICTY A. Ch., 22 March 2006, para. 287.

(i) ***The Sholingilar Community was Lawfully Present in Bangtangnagar***

42. Bangtangnagar is a signatory and has ratified the UN Convention on Refugees, 1951. A plain reading of the convention, along with Protocol Related to Status of Refugees, 1967 protocol, establishes the Sholingilar community as refugees.⁷⁵ The Sholingilar community is unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religious practices.

43. When refugees reside in the territory of a contracting state upon forcible displacement from the initial state, the period of such enforced sojourn shall be considered to have lawful residence within that territory.⁷⁶ TC II in *Popović et al.* opined that “lawfully present” should not be equated to the legal concept of lawful residence, but understood in its common meaning.⁷⁷ In analysing this element of deportation, the terms “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence.⁷⁸ ICC Trial Chamber VI in *Ntaganda* focused on the lawfulness under international law, not on domestic legal requirements. It pointed out that “‘lawful presence’ does not mean that the victim must have had legal residence in the area.” Rather, the “protection extends to individuals who, for whatever reason, have come to live in a community, including internally displaced persons who have established temporary homes after being uprooted from their original communities.”⁷⁹

⁷⁵ Refugee Convention, art. 1; Protocol Related to Status of Refugees, art.1.

⁷⁶ Refugee Convention, art. 10.

⁷⁷ *Popovic*, ¶ 900.

⁷⁸ *Radovan Karadžić*, ¶¶ 488-490.

⁷⁹ *Ntaganda*, ¶¶ 1069, 1071.

44. The prosecution submits that the criteria for lawful residence of the Sholingilar community within the territories of Bangtangnagar is satisfied since they are refugees protected under the convention. It is also to be noted that the state of Bangtangnagar follows a *jus soli* policy of citizenship.⁸⁰ There are several people of Sholingilar who bore children there and those children are automatically granted citizenship, making their residence lawful.

(ii) *The Police Chief was Aware of the Factual Circumstances that established the Lawfulness of such Presence*

45. The Defence is a high official holding a powerful position, upon whose orders a number of coercive acts resulted in the forced displacement of the Sholingilars, including deprivation of their human rights, slavery, enforced and imprisonment took place. As a high ranking official, the knowledge of Bangtangnagar being signatory and ratified the UN Convention of Refugee can be construed. Being protected under the UN Refugee Convention the Sholingilar community had lawful residence.

46. The persecution faced by the Sholingilar community in Burmanyar, although invisible to the outside world, was visible to the neighbouring Bangtangnagar. The community tried to find refuge in Bangtangnagar and the knowledge of why they came cannot be ignored. The states have a stable economic relation, and never questioned the legitimacy of the government established by the coup.

47. The Elements of Crimes clarifies that awareness of the factual circumstances establishing the lawfulness of the victims' presence is needed. It is not required that the perpetrator make any legal evaluation of the lawfulness of the victims' presence.⁸¹

⁸⁰ Moot proposition, ¶ 9.

⁸¹ Darryl, pp. 86–88.

48. The influx of the people of the Sholingilars after the new military regime, and the evident persecution they were faced as a community in Burmanyar was enough to ascertain the status of refugees to the community as a whole since the state of Bangtangnagar ratified the convention.
49. The police chief, being a high official in power, cannot be said to have no knowledge of the status of the community and thus had knowledge of the lawfulness of the residence.

B. THE FACTS OF THE PRESENT CASSE FULFIL THE CONTEXTUAL ELEMENTS OF A CAH

(i) There was a Widespread and Systematic Attack against a Civilian Population

50. As laid out in *Bambia*, the term ‘attack’ encompasses mistreatment of a civilian population.⁸² CAH are any of the enumerated acts in Article 7 “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.⁸³ Pursuant to Article 7(2)(a), the attacks shall be committed ‘pursuant to or in furtherance of... organisational policy.’ The term ‘widespread’ refers to the cumulative effect of numerous inhumane acts.⁸⁴ The PTC in *Bemba*, characterised attack as “widespread” on “the large-scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims”⁸⁵ Moreover, the jurisprudence of ICTs also defines ‘widespread’ based on the large-scale nature of the attack

⁸² *Bemba Trial*, ¶ 151.

⁸³ STATUTE, art. 7(1).

⁸⁴ Kordic ICTY T. Ch. 26.2.2001 ¶ 176; Blaskic ¶ 206; Draft Code, pp. 94-5.

⁸⁵ *Bemba Trial*, ¶ 83.

and the number of victims.⁸⁶ Systematic was stated to be the organised nature of the acts of violence and the improbability of their random occurrence”⁸⁷

51. The persecution, attacks and torture of the Sholingilars was not separately launched by isolated individuals, but instead was a result of a unified strategy deployed by the police upon the orders of the Police Chief, thereby displaying a command structure and a disciplinary within the group.⁸⁸ The conduct of the Police Chief is directly relevant to the widespread and systematic attacks against the Sholingilars and is sufficiently connected with the attacks in accordance with Art. 7(2)(a).⁸⁹ The OTP submits that the relentless persecution, racism and drastic use of power by the Police Chief against the entire Sholingilar community satisfies the requirements of an attack to be qualified widespread and there is a direct nexus between the attacks and the conduct of the Police Chief.

(ii) *The Widespread Attack was in Furtherance of a State Policy*

52. Art. 7(2)(a) defines an attack directed against any civilian population as conduct involving multiple commission of acts, in furtherance of a State or organisational policy to commit such an attack.⁹⁰ The “policy to commit such attack” requires that the State or organisation actively promote or encourage such an attack against a civilian population.⁹¹

⁸⁶ Blaškić, ¶ 101.

⁸⁷ Katanga Trial, ¶ 394.

⁸⁸ Moot Proposition, ¶ 11.

⁸⁹ Kunarac Trial, ¶ 100.

⁹⁰ STATUTE, art. 7(2)(a).

⁹¹ EOC, art. 7.

53. The policy did not have to be conceived “at the highest level of the State machinery”.⁹² The police chief is a very powerful authority and part of the state. The “attacks” that were inflicted on the Sholingilar people followed a pattern of arresting their youth and torturing them, inducing severe physical and psychological trauma in them.
54. Moreover, subjecting the women population of the Sholingilar community to slave-labour in state owned plantation reflects the classification of planned attack to weaken the people in all ways possible. The persecution, attacks and torture of the Sholingilars was not separately launched by isolated individuals, but instead was a result of a unified strategy deployed by the police upon the orders of the Police Chief, a powerful authority of the state.

(iii) *The Attack was Committed with the Requisite Knowledge of it being a Widespread and Systematic Attack*

55. In *Tadić*, the TC took the view that the existence of knowledge must be construed objectively and implied from the contextual circumstances of the case.⁹³ Actual or constructive knowledge about the broader context of the attack can satisfy the knowledge requirement under Art. 7.⁹⁴
56. Neither deportation nor forcible transfer requires that the perpetrator have the intent to remove the victim permanently. The *mens rea* for these two crimes is present when the perpetrator of the forcible removal intended to remove the victims by force. In the case of deportation, the perpetrator must, in addition, have had the intent to carry out the removal by crossing a de jure or de facto border.⁹⁵

⁹² Kenya Authorisation ¶ 89; Blaškić, ¶ 205.

⁹³ *Tadić Trial*, ¶ 657.

⁹⁴ *Kayishema*, ¶ 134.

⁹⁵ Prosecutor v. Jadranko Prlić, Case No. IT-04-74-T, Judgement (TC), 29 May 2013, ¶ 57-58.

57. The Police Chief was aware of the stateless condition of the Sholingilars and their persecution in Burmanyar. The perpetrator had sufficient knowledge that his actions would inadvertently result in the Sholingilars fleeing the country for their safety.
58. The perpetrator need not have entire knowledge of the details of the attack or the policy, instead, he must know that his acts comprise a part of the attack.⁹⁶ The motive of the accused while engaging in the conduct is irrelevant.⁹⁷
59. The fact that he had knowledge of how the youth population and the women population were targeted specifically despite knowing what the community had to endure not just in the state they are currently in, but also the previous one, shows his awareness on how his actions further the attacks made on the community. Moreover the entire attitude of the people in the state of Bangtangnagar that showed contempt and resentment led to the slave labour of the community⁹⁸ which was even furthered by the chief of police by furthering this practice even by abuse of his authority. he has control over the actions of the police force in Bangtangnagar.
60. Article 7(1) sets out the mental element as ‘knowledge of the attack’. It “should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organisation”.⁹⁹ The defence had the knowledge in having their actions as an attack on the community of Sholingilar. Hence, the contextual requirements of knowledge are satisfied.
61. **In conclusion, for the aforementioned reasons**, it is concluded that the Police Chief’s conduct constitutes a CAH under Art. 7(1)(d) of the Rome Statute.

⁹⁶ *Kunarac Trial*, ¶ 434.

⁹⁷ *Tadić Appeal*, ¶¶ 248, 252

⁹⁸ Moot Proposition, ¶10.

⁹⁹ EOC, art. 7(1).

C. THE DEFENCE SHOULD BE HELD INDIVIDUALLY CRIMINALLY RESPONSIBLE FOR ORDERING A CAH UNDER ART. 25(2)

62. To establish criminal responsibility under Art. 25(3)(b), four requirements must be fulfilled.¹⁰⁰

(i) *The Police Chief Holds a Position of Authority in Bangtangnagar*

63. The Police Chief holds a position of authority is undisputed. He made the police torture and mock the incarcerated of the community, subjected the women to slave labour in state owned plantation, and had targeted the community by arresting them on drug dealing and anything related to that. All these actions perpetuated the already lingering persecution the community faced and forced them to move to another place where they are not treated so harshly.

64. Moreover, it is clear from the facts that the Police Chief has ordered the police force to carry out the torture of the prisoners from the Sholingilar community, subjecting the women to slave-labour and making those arrests targeting the youth of Sholingilar for any crimes related to drugs.

(ii) *There Exists a Causal Link Between the Defence's Conduct and the Crime Committed*

65. For individual criminal responsibility to ensue, the jurisprudence of ICTs has laid down a causal link requirement that needs to be established between the conduct of the accused and the particular crime.¹⁰¹ It is an explicit requirement that the order must have a direct and

¹⁰⁰ HALL ET. AL.

¹⁰¹ *Tadić Trial*, ¶ 674.

substantial effect on the commission of the illegal act or crime.¹⁰² The persecution, attacks and torture of the Sholingilar launched by isolated individuals, as a strategy deployed by the police upon the orders of the Police Chief displaced the community.

66. The Police Chief had all the knowledge about the situation and conditions of the people of Sholingilar and their history of being treated and their forced movement to Bangtangnagar from Burmanyar. His actions were in line with the persecutions the community faced back in Burmanyar.

67. The actions of targeting the people and arresting them for crimes related to drugs, torturing them in prisons and subjecting them to slave labour were intentional and left the community with no other option but to move as the chief knew his actions would bring consequences of displacement of the community again.

68. The link establishes when the community could not take on the persecution and racism perpetually inflicted by the police by the orders of the chief of police. His orders made a impact on the community as it essentially triggered the experience in the past they were subjected to. If not for the police persecutions experienced in the state of Burmanyar, the community would not have moved to Finlandia. The community did not have the state or its authorities to support them, but were more than available to make their lives more difficult.

69. The OTP submits that there is a clear causal link between the conduct and crime committed.

(iii) *The Order of the Police Chief was Accompanied Mens Rea*

70. In order to satisfy the *mens rea* requirement under Art. 30, it must be shown that the act was committed with both intent and knowledge.¹⁰³ Intent in relation to conduct exists when a person

¹⁰² *Stanišić Trial*, ¶ 98; *Aleksovski Trial*, ¶ 61.

¹⁰³ Statute, art. 30(1)

*“means to engage in the conduct.”*¹⁰⁴ While for a consequence, it must be shown that the perpetrator meant to cause the consequence or was aware of the certainty of its occurrence in the ordinary course of events.¹⁰⁵ The knowledge requirement is satisfied when the perpetrator is *“aware that a circumstance exists or that the consequence will occur in the ordinary course of events”*¹⁰⁶

71. The Police Chief was aware of the stateless condition of the Sholingilars and their persecution in Burmanyar. The perpetrator had sufficient knowledge that his actions would inadvertently result in the Sholingilars fleeing the country for their safety. The fact that he had knowledge of how the youth population and the women population were targeted specifically despite knowing what the community had to endure not just in the state they are currently in, but also the previous one, shows his awareness on how his actions further the attacks made on the community. The orders made by the police chief with the awareness he had clearly shows the harm he intended to put the people of the community of Sholingilar through. His knowledge of their past experience and how they reacted to it made him privy to the knowledge that their option would only be to leave the country especially considering they had no means to access a court of law in the country, clearly shows his intention to deport or forcibly displace the community using coercive means. Thus, the series of events clearly establishes that the Defendant had both intent and knowledge to engage in conduct that caused the consequences.
72. **In conclusion, for the aforementioned reasons**, the Police Chief’s conduct constitutes the crime against humanity of deportation under Art. 7(1)(d) of the Rome Statute.

¹⁰⁴ Statute, art. 30(2)(a)

¹⁰⁵ Statute, art. 30(2)(b)

¹⁰⁶ Statute, art 30(2)(b)

PRAYER

Wherefore in light of the issues raised, arguments advanced and authorities cited, the Counsel for the Prosecution respectfully requests this Court to adjudge and declare that:

- 1) That the ICC can exercise jurisdiction over the Police Chief's conduct under Art. 12 of the Rome Statute.
- 2) The matter is admissible as defined in the Articles of the Rome Statute.
- 3) That the dismissal of the charge of "deportation as a crime against humanity" is invalid.

Sd/-

On behalf of the Office of the Prosecutor

OFFICE OF THE PROSECUTOR

