

Team Number 6
Memorial for the Defendant
Word Count: 1960

I. PRELIMINARY MATTERS

A. Admissibility

a. Jurisdiction

1. The four crimes charged against President Azizi Garba [“Garba”] occurred in the Kingdom of Momaayo [“Momaayo”] and the Republic of Kissaka [“Kissaka”],¹ the Contracting Parties of the Rome Statute [“Statute”].²

b. Gravity

2. Gravity is assessed by the scale and impact of attacks, both quantitatively and qualitatively.³ The contamination of the Nadawada River [“River”] slightly affected people and animals. The 25,000 destroyed baobab trees could be replanted.⁴ The five UN personnel and the 170 killed villagers were lawful targets as they lost protection prior to Diallo’s attack.⁵ Therefore, these crimes are not grave enough to be admissible.

B. Contextual elements of the crimes

3. An international armed conflict exists whenever there is a resort to armed force between States.⁶ The gunfire between Momaayo and Kissaka occurred on 18 April 2021 established an international armed conflict [“IAC”]. IAC had not ceased when the Prosecutor issued a warrant against Garba.⁷ All of the charged behaviors happened within the geographical and temporal scope of the present IAC.

II. FIRST CHARGE

A. The crime under Article 8(2)(b)(iv) is not sufficiently established.

¹ Problem, ¶¶21, 22, 26, 29, 37; Clarification, ¶6.

² Statute, art. 12(2), 13, 14; Problem, ¶4.

³ Statute, art. 17(1)(d); *Abu Garda*, ICC-02/05-02/09-243-Red (2010), ¶31[“*Garda*”].

⁴ Problem, ¶¶2, 3, 20, 30.

⁵ Problem, ¶¶7, 19, 26, 37.

⁶ *Tadić*, IT-94-1(1995), ¶70 [“*Tadić*”]; ICRC, Commentary on Geneva Convention (I) (2016), ¶218.

⁷ Problem, ¶¶18, 40.

a. The attack would not cause widespread, long-term, and severe damage [“such damage”].

4. “Widespread, long-term, and severe” damage includes direct and indirect effects and should be reasonably foreseeable when using forces. Such damage is prohibited regardless of proportionality. This is extremely difficult to meet.⁸
5. The Kissakan troops only destroyed 25000 baobab tree “saplings”,⁹ of which were not so beneficial to the ecosystem. Besides, those trees were a mere “part” of the Baobab Tree Sanctuary [“Sanctuary”], which would not affect the ecosystem nor cause rare species extinction.
6. The attack also did not violate the proportionality given the massive military advantage and limited damage.¹⁰ The conduct in question allowed the Kissakan troops to access the oil access point directly without inflicting casualties. Besides, they only destroyed the trees on the direct and shorter path to the oil access point,¹¹ expressing their precautions on the potential damage.

b. Diallo and his troops were not aware of such damage.

7. Diallo and his troops had taken the natural environment into account and minimized the damage. Besides, Momaayo and the world only emphasized the importance of the River, excluding the Sanctuary.¹² Momaayo stationed the troops within the Sanctuary,¹³ misleading the Kissakan troops to underestimate the severity of potential damage.

B. Garba is not responsible under article 25(3)(b).

8. “Ordering” refers to the person instructing another to commit a crime, who is aware that the crime will be committed.¹⁴ “Inducing” refers to exerting influence on another

⁸ Rome Statute, Art. 8(2)(b)(iv); ICRC, GUIDELINES ON THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (2020), ¶¶49, 57, 66, 70 [“Guidelines”].

⁹ Problem, ¶21.

¹⁰ AP I art. 57; Commentary on API, ¶1418; Guidelines, ¶¶115, 116.

¹¹ Problem, ¶¶21, 22.

¹² Problem, ¶¶12, 13, 14.

¹³ Problem, ¶¶12, 14, 19, 21; Guidelines, ¶¶145, 146.

¹⁴ *Ntaganda*, No. ICC-01/04-02/06, ¶76.[“*Ntaganda*”]

to commit crimes. “Soliciting” refers to asking or urging another to commit crimes.¹⁵

9. Garba did not instruct the troops to destroy the Sanctuary.¹⁶ Not knowing the terrain and plant distribution in Momaayo National Park, he could not have ordered, induced or solicited the troops to bypass all baobab trees. Garba was not aware of the route nor the damage due to these facts.

III. SECOND CHARGE

A. The crime under Article 8(2)(b)(iv) is not sufficiently established.

a. The attack would not cause such damage that is clearly excessive.

10. “Widespread, long-term, and severe” are cumulative, and each element must be met.¹⁷ Only two percent of the world’s endangered white rhinoceros population had died and at most 10% would die. Although humans and animals were poisoned, no evidence showed the percentage of the population and the severity of effects. Due to Momaayo’s small population, they would still have adequate drinking water.¹⁸ The attack would not reach the “severe” threshold.
11. The attack also did not violate the proportionality given the massive military advantage and limited damage. An imperative military necessity is required when the target is indispensable to the survival of the civilians and cultural property.¹⁹ It was imperative for Kissaka to continue implementing the oil extraction to improve living standards.²⁰ That attack was the only effective way to weaken Momaayan troops because Momaayo would destroy them in direct confrontation owing to the disparate military strength.²¹ The place where the Mormayan troops were stationed was a necessary route to the oil access point, and Kissakan troops could access the oil point once the Momaayo’s troops relocated.²²

¹⁵ *Ntaganda*, ¶153; *Bemba et al.*, ICC-01/05-01/13(2016), ¶¶75, 76.

¹⁶ Problem, ¶20.

¹⁷ API art. 35; ICRC, Commentary on API(1987), ¶1457. [“API Commentary”]

¹⁸ Problem, ¶¶1, 3, 30, 34.

¹⁹ Guidelines, ¶¶156, 169, 180.

²⁰ Problem, ¶¶6, 10, 11, 15, 35, 36.

²¹ Problem, ¶¶7, 9, 28.

²² Problem, Annex II.

B. Garba is not responsible under article 25(3)(b).

12. As the elements established in paragraph seven, Garba was not aware that introducing oil would cause such damage. For Garba, the attack was the only effective way to weaken the Momaayo troops, and it did not affect the environment drastically.

IV. THIRD CHARGE

A. The crime under Article 8(2)(b)(iii) is not sufficiently established.

a. The conduct was not associated with IAC.

13. The existence of an armed conflict must play a substantial part in the perpetrator's decision.²³ Despite Diallo's knowledge of the IAC existence, it did not significantly affect Diallo's decision since he shot the UN personnel in self-defense.

b. The object of the attack was not personnel involved in a peacekeeping mission or humanitarian assistance.

14. Not all operations authorized by the UN are entitled to the protection of peacekeeping missions.²⁴ There are three principles of peacekeeping mission: (i) consent of the parties; (ii) impartiality; and (iii) the non-use of force except in self-defense.²⁵

15. The United Nations Mission in Momaayo ["UNMM"] did not obtain the consent of Kissaka. Besides, the UNMM aimed to "use all necessary means" to assist the authorities of Momaayo, implying that the mandate was partial and violated "non-use of force" principle.²⁶ The UN personnel could not be entitled to UN personnel protection.

16. Humanitarian assistance missions personnel are those relieving the suffering of victims of armed conflict and providing survival necessities.²⁷ The UN personnel were monitoring and investigating the River, instead of providing Momaayan drinking water to maintain their livelihoods.²⁸ They were not conducting humanitarian assistance.

c. UN personnel were not entitled to civilian protection.

²³ *Dragoljub Kunarac and others*, IT-96-23 (2001), IT-96-23/1-A(2002), ¶58 et seq.

²⁴ *Garda*, ¶74.

²⁵ *Ibid.*

²⁶ Problem, Annex III.

²⁷ GCIV, art.10.

²⁸ Problem, Annex III.

17. Direct participation in hostilities requires three elements: (i) threshold of harm; (ii) direct causation between the act and the expected harm; (iii) belligerent nexus.²⁹
18. The UN police was not entitled to the protection given to civilians. Although she charged a round in her panic, there was an objective likelihood of injury or death resulting from the act.³⁰ Besides, the UN police reached for her weapon since she tried to attack Diallo to support Momaayo authorities.³¹ The act met the belligerent nexus. The UN police was taking direct part in hostilities and therefore lost civilian protection.
- d. Diallo did not intend the UN personnel to be the object of the attack nor was he aware of the facts establishing the protection.**
19. Although Diallo might have seen the UN personnel wearing UN emblem, he was convinced that his troops were under their hostile attack given the gunshot and screaming. For fear of being injured, Diallo retrieved his weapon and shot them out of self-defense.³² Besides, Diallo had difficulty distinguishing combatants as their uniforms were identical in a short time.

B. Garba is not criminally responsible under Article 28(a).

a. Garba had no control over Diallo and his troops and no causal relationship between his failure to control and the committed crimes.

20. To determine whether the defendant has effective control, the capacity to ensure compliance with the orders issued is included.³³ Despite the hierarchical relationship, Garba cannot be held responsible for doing something he had no power to do.³⁴ As a remote commander sending troops to a foreign country, he could not have foreseen that Diallo would confront a UN police firing them first. Diallo's actions were not causally related to his failure to control, and the risk was not controllable beforehand.

²⁹ ICRC, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES, 1028 (2008) [“DPH”].

³⁰ DPH, 1017.

³¹ Problem, Annex III.

³² Problem, ¶37.

³³ *Bemba*, ICC-01/05-01/08-424-PT (2009), ¶415.

³⁴ *Bemba*, ICC-01/05-01/08A(2018), ¶167. [“*Bemba Appeal*”]

b. Garba did not know Diallo was committing the crime and he had fulfilled his obligation to prevent.

21. The commander must have failed to take all necessary to be liable.³⁵ Since Garba had ordered them to use lawful means,³⁶ and there were no other effective precautions, he had fulfilled his prevention obligation.

V. FOURTH CHARGE

A. The crime under Article 8(2)(b)(i) is not sufficiently established.

a. There was no attack against civilian population.

22. Those who do not belong to arm forces and not taking direct part in hostilities are entitled to civilian protection.³⁷ These 170 villagers were not civilians but combatants when killed. Momaayo and Kissaka have a fraught history,³⁸ and a fire occurred recently when King Abdu brought the entire nation to arms.³⁹ Besides, some armed villagers had injured the soldiers.⁴⁰ Therefore, all villagers were guerrilla combatants in purely civilian dress, who were mobilized at will to fight for their country at any time. They were combatants whether in action or not.⁴¹

23. Even if they were not guerrilla combatants, these villagers were inhabitants who would spontaneously take up arms to resist the invading forces because they would come out to defend their homeland like their fellows,⁴² and therefore were likely to cause harm and had the belligerent nexus, making them combatants.⁴³

b. Diallo did not intend the civilian population to be the object of the attack.

³⁵ *Bemba Appeal*, ¶186.

³⁶ *Ibid.*

³⁷ API art. 50, 51.

³⁸ Problem, ¶9.

³⁹ Problem, ¶19.

⁴⁰ Problem, ¶25.

⁴¹ API art. 43; API Commentary, ¶1678.

⁴² GCIII art. 4(A)(6).

⁴³ DPH, 1016.

24. The fact that Diallo only killed males proved that he considered all boys and men were combatants due to King Abdu's statement.⁴⁴ Besides, Diallo feared that his troops were probably destroyed by the large number of villagers since they were already under the villagers' attack and more were coming out.⁴⁵

B. Garba is not criminally responsible under Article 28(a).

a. Garba had no control over Diallo and his troops and no causal relationship between his failure to control and the committed crimes.

25. As established in paragraph 20, Garba had given a clear direction to peacefully contain the villagers.⁴⁶ However, in the process of implementation, Diallo had to assess the situation at hand. Garba's control impeded to a degree when Diallo overstepped his order. The outnumbered situation leading to Diallo's killing was not foreseeable to Garba, so it was impossible for him to control beforehand.

b. Garba did not know Diallo was committing the crime and he had fulfilled his obligation to prevent.

26. As established in paragraph 21, Garba had prevented the crime by his "peacefully" order; therefore, he was not criminally responsible.

27. Additionally, a superior cannot be responsible for failing his duty to obtain information of subordinates.⁴⁷ There exists no liability under the statute on failure of knowledge about the subordinates' crimes.⁴⁸ His lack of knowledge did not amount to failing the commander's obligations.

⁴⁴ Problem, ¶19.

⁴⁵ Problem, ¶¶25, 26.

⁴⁶ Problem, ¶20.

⁴⁷ *Moinina Fofana, Allieu Kondewa*, SCSL-04-14-T(2007), ¶245.

⁴⁸ *Delalić*, IT-96-21-A(2001), ¶226.

PRAYER

The DEFENDANT respectfully requests this Honorable Court to decide not to confirm the charges against Garba for:

War Crimes Under Article 8(2)(b)(iv), Article 8(2)(b)(iii), and Article 8(2)(b)(i) of Statute.

**Respectfully Submitted,
The Defendant**