

Team Number 6
Memorial for the Prosecutor
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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 alleged attacks, quantitatively and qualitatively.³ There were 170 civilians and five United Nations [“UN”] personnel killed. Additionally, the contamination of the Nadawada River [“River”] damaged people and the world’s endangered white rhinoceros severely and also destroyed the UNESCO World Heritage. The 25,000 destroyed baobab trees were Momaayan’s cultural heritage and bred many rare species.⁴ These crimes are 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.⁵ 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.⁶ All of the charged behaviors happened within the geographical and temporal scope of the present IAC.
4. The crimes require a sufficient nexus with the IAC.⁷ All the charged crimes were conducted as duties of Diallo or the troops and militarily aimed to weaken Momaayo.
5. Diallo and the troops were aware that the gunfire took place on 18 April 2021, and that the crimes were all in the context of and associated with the IAC.

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

⁶ Problem, ¶¶18, 40.

⁷ *Dragoljub Kunarac and others*, IT-96-23/1-A(2002), ¶58.

II. FIRST CHARGE

A. The crime under article 8(2)(b)(iv) is sufficiently established.

a. Kissaka acquiesces in customary international humanitarian law [“CIHL”].

6. The legal basis of article 8(2)(b)(iv) of the Rome Statute is Additional Protocol I [“API”] which is CIHL.⁸ Although Kissaka was not a contracting party of API, it was still mandated to comply with the rules.

b. Kissakan troops launched an attack, causing widespread, long-term, and severe damage [“such damage”].

7. Article 35(3) of API protects the environment.⁹ The environment is civilian in character unless it becomes a military objective.¹⁰ Such damage includes direct and indirect effects and should be reasonably foreseeable when using forces, and is prohibited regardless of proportionality.¹¹

8. Kissakan troops attacked the environment in civilian character by destroying 25000 baobab trees and burying three improvised explosive devices [“IEDs”] close to two 100-year-old baobab trees. The baobab trees were Momaayo’s cultural heritage, and the Sanctuary preserved over 2000 rare species of insects.¹² The extinction of insects is catastrophic to the global ecosystem.¹³ It was reasonably foreseeable that the attack would cause such damage.

c. Such damage was clearly excessive to the military advantage anticipated.

⁸ API art.35(3), 55(1), 85(3)(b); ICRC, GUIDELINES ON THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (2020), ¶42 [“Guidelines”].

⁹ API art.35(3); ICRC, Commentary on API(1987), ¶1441[“API Commentary”].

¹⁰ Guidelines, ¶¶18, 101-103.

¹¹ Guidelines, ¶¶49, 57, 66, 70.

¹² Problem, ¶¶2, 3, 21, 22.

¹³ Problem, ¶3; Damian Carrington, *Plummeting insect numbers 'threaten collapse of nature'*, THE GUARDIAN(Feb.10, 2019),

<https://www.theguardian.com/environment/2019/feb/10/plummeting-insect-numbers-threaten-collapse-of-nature>.

9. Even if the damage did not reach such damage, the attack violated the proportionality.¹⁴ The perpetrator requires to make a value judgment between damage and military advantage.¹⁵

10. Kissakan troops could have taken another path where fewer baobab trees lay and could fulfill the military purpose of reaching the oil access point without conflicts.¹⁶ The advantage was small, while the damage was large.

d. Diallo and his troops were aware of such damage.

11. As public awareness about environmental protection grows,¹⁷ Diallo and his troops knew the importance of the Sanctuary. They were aware that the attack would cause such damage.

B. Garba is responsible under article 25(3)(b).

12. “Ordering” refers to using authority to instruct another to commit crimes, causing direct effects. The perpetrator should be aware that the crime will be committed when ordering.¹⁸

13. Garba was in a position of authority.¹⁹ Since the oil access point was within the Sanctuary, the implementation of Garba’s order to drill oil would inevitably destroy the trees. Garba was aware that the troops would commit the crime when implementing his order.

III. SECOND CHARGE

A. The crime under article 8(2)(b)(iv) is sufficiently established.

a. Kissakan troops’ attack would cause such damage excessive to the military advantage anticipated.

¹⁴ API art.57; Guidelines, ¶116.

¹⁵ Elements of Crimes, footnote 36 [“EoC”]; API Commentary, ¶2209.

¹⁶ Problem, ¶¶ 21, 22; Annex, II.

¹⁷ Problem, ¶¶ 3, 13, 35.

¹⁸ *Ntaganda*, ICC-01/04-02/06-PT(2014), ¶145[“*Ntaganda*”].

¹⁹ Problem, ¶¶6, 9, 16, 20, 29, 36.

14. Besides the elements above, Article 55(1) covers such damage prejudicing the health or survival of the population.²⁰ State parties to the 1972 World Heritage Convention have the responsibility to protect UNESCO World Heritage.²¹ If a party breaches an obligation of a treaty resulting in the impossibility of performing a treaty, it cannot invoke impossibility of performance.²²
15. The River was a UNESCO World Heritage site and also provided drinking water for Momaayans, species and the world's endangered rhinoceros. Introducing oil was reasonably foreseeable to poison or even kill them, and these effects would last several years. Kissaka also violated the obligation to protect the UNESCO World Heritage.²³ It was reasonably foreseeable that the attack would cause such damage.
16. The attack violated the proportionality. An imperative military necessity is required when the target is indispensable to the civilians survival or cultural property.²⁴ Introducing oil could only make the Momaayan troops relocate but could not weaken the Momaayo military.²⁵ The military advantage was little while the damage was grave.
- b. The Kissakan troops were aware of such damage.**
17. Kissakan troops knew oil spills always eventuate in major damage to the ecosystem.²⁶
- B. President Garba is responsible under article 25(3)(b).**
18. As established in paragraph 12, despite knowing the importance of the River, Garba still ordered the troops to introduce oil.²⁷ He was aware of the troops compliance and the charged crime.

IV. THIRD CHARGE

²⁰ API, art.55(1).

²¹ The World Heritage Convention, art.6, Nov.16, 1972.

²² Vienna Convention on the Law of Treaties, art.61, May.23, 1969.

²³ Problem, ¶¶1,3,29,30.

²⁴ API, art. 54; Guidelines, ¶¶156,169,180.

²⁵ Problem, ¶29.

²⁶ *Oil Spills: A Major Marine Ecosystem Threat*, U.S. NAT'L OCEANIC & ATMOSPHERIC ADMIN.(July 25, 2016),

<https://www.noaa.gov/explainers/oil-spills-major-marine-ecosystem-threat>.

²⁷ Problem, ¶¶13,29; EoC, footnote 37.

A. The crime under Article 8(2)(b)(iii) is sufficiently established.

a. The object of the attack was personnel involved in a humanitarian assistance and peacekeeping mission in accordance with the UN Charter.

19. The UN Charter does not define "peacekeeping" while describing it as a dynamic instrument as a way to help countries torn by conflict create the conditions for lasting peace.²⁸

20. The UN police and four UNEP workers were involved in a peacekeeping mission since the United Nations Mission in Momaayo ["UNMM"] was mandated by the Security Council, aiming to help the civilians under conflict and bring lasting peace to Momaayo.²⁹ Both Momaayo and Kissaka were members of the UN and were bound by UN Security Councils resolutions.³⁰

21. Humanitarian assistance personnel are those relieving the suffering of armed conflict victims and provide survival necessities.³¹ The five UN personnel were humanitarian assistance personnel mandated to investigate water contamination, providing drinking water for Momaayans.³²

b. The UN personnel did not lose civilian protection.

22. To constitute direct participation in hostilities, three requirements must be met: (i) threshold of harm; (ii) direct causation between the act and the expected harm; (iii) belligerent nexus, the act must be specifically designed to cause harm in support of a party against another.³³ The causation of harm in self-defense lacks belligerent nexus.³⁴

23. The act lacked belligerent nexus since it was not specifically designed to support Momaayo.³⁵ The police reached for her weapon to protect herself and defend the

²⁸ *Garda*, ¶169.

²⁹ Problem, Annex III.

³⁰ UN Charter V, art.25.

³¹ GCIV, art.10.

³² Problem, Annex III.

³³ ICRC, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES, 1028 (2008) ["DPH"].

³⁴ *Ibid.*

³⁵ Problem, Annex III.

UNEP workers since Diallo and his armed troops carrying AK-47 assault rifles jeopardized their lives.³⁶

24. Individuals in a civilian population who do not meet civilian definition do not deprive the population of its civilian character.³⁷ Even if the UN police lost civilian protection, the other UNEP workers did not.

c. The perpetrator intended such personnel to be the object of the attack and was aware of the factual circumstances that established that protection.

25. When Diallo intended to shoot the UN personnel, he was aware of their identity given their blue berets clearly denoted the UN emblem.³⁸ Diallo did not distinguish between the armed UN police and the UNEP workers proved his intention of killing civilians.

B. Garba is criminally responsible under Article 28(a).

a. Garba had effective control over Diallo and his troops as a military commander but failed to control.

26. Garba could command and control Kissakan troops and Diallo.³⁹ A commander's failure to punish past crimes will likely increase the risk of future crimes committed. Despite Diallo massacred 170 villagers in April 2021,⁴⁰ Garba did not reprimand or bring prosecutions against him, and still sent him to operate in October 2021 without legal training or precautions. Garba's omission increased the risk of the commission of the crimes charged.

b. Garba should have known Diallo was committing the crime and he failed to prevent it.

27. The commander must know or should have known such crime is committed.⁴¹ Garba should have known Diallo would commit the crime when sending Diallo out after his bloody misconducts without precautions.⁴²

³⁶ Problem, ¶37.

³⁷ API, art.50(3).

³⁸ *Ibid.*

³⁹ *Bemba*, ICC-01/05-01/08-424-PT (2009), ¶42 [“*Bemba*”]; Problem, ¶¶6,9,16,20,29.

⁴⁰ Problem, ¶26.

⁴¹ *Bemba*, ¶428.

⁴² Problem, ¶26.

V. FOURTH CHARGE

A. The crime under Article 8(2)(b)(i) is sufficiently established.

a. Diallo directed the attack against civilian population not taking direct part in hostilities.

28. Civilians shall not be the object of attack during armed conflicts under IHL.⁴³ These killed 170 villagers were not combatants but unarmed civilians.⁴⁴

29. These villagers did not lose their protection as civilians since they did not directly participate in hostilities.⁴⁵ They had neither the intention nor the act of attack in support of the armed villagers. Civilians only lose protection when they actually use force.⁴⁶ Diallo's assumption of their future hostile act did not deprive them of the protection.

30. Even if these villagers were considered taking direct part in hostilities, the proportionality test must be taken into consideration.⁴⁷ No more death should be incurred than what is necessary to accomplish a legitimate military purpose.⁴⁸ Kissakan armed forces could have restrained these villagers in handcuffs without killing them all. The means of killing was not proportionate to the military necessity.

b. Diallo intended the civilian population to be the object of the attack and was aware of the factual circumstances that established that protection.

31. Diallo knew the civilian status of their inability to resist since he could execute them by firing squad.⁴⁹

32. Even if Diallo considered those armed villagers combatants,⁵⁰ not making distinction between the 170 civilians and other combatants showed that he had the intention of attacking civilians and wiping out the village.

⁴³ GCIV, art.4.

⁴⁴ Clarification, ¶4.

⁴⁵ DPH, 1028.

⁴⁶ API, art.51(3).

⁴⁷ Hague Convention(IV), art.23(e).

⁴⁸ DPH, 1042.

⁴⁹ Problem, ¶26.

⁵⁰ Problem, ¶25.

B. Garba is criminally responsible under Article 28(a).

a. Garba's failure to control resulted in the commission of crimes.

33. Garba had effective control over Diallo and his troops but failed to reprimand Diallo's serious crimes.⁵¹ With Diallo's history of misconducts, giving him full authority to operate without restraint or legal training elevated the risk of commission of the crime.

b. Garba knew and should have known Diallo was committing the crime and he failed to prevent it.

34. As established in paragraph 27, even though Garba was not informed of Diallo's killing in time, he indulged in Diallo's conduct.

35. Besides, merely telling Diallo to peacefully operate without potential punishment is not sufficient to prevent the crimes.⁵²

⁵¹ Problem, ¶17.

⁵² Problem, ¶20.

PRAYER

The PROSECUTOR respectfully requests this Honorable Court to decide 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 Prosecutor**