

**INTERNATIONAL MOOT COURT
FOR HIGH SCHOOL STUDENTS
GDYNIA, POLAND
2020**

The Prosecutor

v

Xiang 'Tony' Qiao

Written by

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Introduction

This Moot Court exercise will introduce you to the work of the International Criminal Court (ICC).

It concerns an entirely fictional country called **Tabanath**. It also concerns people and places which have been invented for the purpose of this exercise. In the fictional facts that you are given, Tabanath has been the scene of conflict over the past decade.

The law that is being applied to these fictional facts is real. It comes from the Statute of the ICC (“the Statute”), and extracts from this law are included in the Appendix, at the back of the exercise.

As you will read in the facts given to you, the conflict in Tabanath included serious acts of violence committed by all sides. The Prosecutor of the ICC initiated a preliminary investigation, on the basis that there is an internal armed conflict which has led to serious violations of humanitarian law.

As a result of the investigation a summons for the arrest of a man named **Xiang ‘Tony’ Qiao** has been issued. It is alleged that he committed crimes against humanity in the form of deportation or forced transfer of population.

Lawyers on behalf of Tony Qiao have brought a case to the ICC challenging the basis for the Prosecutor’s investigation and the evidence that is claimed to support a case against their client.

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The Moot Court

The Teams

There will be **two teams**, each with 3 people. One team will be the lawyers for the Prosecutor, the other team will be the defence lawyers for Tony Qiao.

The challenge is being made to the Pre-Trial Chamber of the ICC under Article 19 of the Statute.

Each team member will present a part of the oral argument at the hearing. Each team must prepare the arguments for the hearing based upon the facts and the law included within these papers. The teams must develop their strategy for the hearing, prepare the arguments to be made and decide which team member will present each argument.

The judges will ask questions of the lawyers during their arguments. This will challenge the arguments being made and test the strength of those arguments.

Defence Team

Will go first as it is your burden to challenge the admissibility of the case and/or The Court's jurisdiction.

You will argue that there is **no probable cause** that the case will be admissible under Article 17 of the Statute.

Your arguments to the Court will be based upon **either or both** of the following:

- **insufficient evidence**, within the evidence presented by the Prosecution or taking account of your counter evidence; or
- **no jurisdiction**, given reasons you found in the case materials.

You will try to convince the judges there is no probable cause and that they should rule that the case is inadmissible and/or that there is a lack of jurisdiction.

Prosecution Team

The Prosecution Team will go second, as you are replying to the Defence Team's challenge to admissibility/jurisdiction of the Court.

Your argument on admissibility will be that the given facts establish that a crime against humanity, in the form of deportation, has been committed and that all the legal elements of that offence can be proved. In this part of your argument it is not necessary for you to link the crime to Tony Qiao, as that will be in your second argument.

Your second argument is that there is sufficient evidence to establish reasonable grounds to believe that Qiao has committed the crime of deportation or forced transfer of population within the jurisdiction of the Court.

You do not have to prove that Qiao is guilty of the alleged crime of deportation or forced transfer of population, as that is the purpose of the trial (if there is one), but you do have to show that there are **reasonable grounds** to believe that Qiao has committed the crime, so that the case has enough merits to maintain the summons for arrest.

Procedure

The moot hearing is before the Pre-Trial Chamber of the ICC. The judges will sit at the front of the courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left.

The hearing will take place as follows:

The Presiding Judge will declare the proceedings open and will introduce him/herself and his/her fellow judges. The Presiding Judge will then ask the first lawyer on each party to introduce their teammates; first the Prosecutor and then the Defence. This introduction will include advising the judges of each attorney's role, e.g. opening and closing, first argument, second argument.

The Presiding Judge will explain the time limits to be placed upon the lawyers of each team and that these time limits will be enforced strictly by the judges.

The Presiding Judge then calls upon the Defence team to make the application they have asked the Pre-Trial Chamber to consider.

The first **defence** lawyer will present the opening of their argument, outlining the facts they feel are relevant and the arguments their colleagues will be making on the two main issues – admissibility and jurisdiction. The opening lawyer will have 3 minutes to make this presentation.

Next, the first **prosecution** lawyer will present the opening of their argument, outlining the facts they feel are relevant and the arguments their colleagues will be making. Again, the opening lawyer will have 3 minutes to make this presentation.

The other two Defence lawyers will then take their turn to argue the two main issues for the hearing: (1) whether the conduct described supports whether or not, and on what legal grounds, charges may be brought against Tony Qiao for crimes within the jurisdiction of the Court and (2) any procedural issues which would allow or prevent this court from bringing these charges against Tony Qiao, including issues of admissibility and jurisdiction. Each lawyer will have 10 minutes to present their argument.

After the two Defence lawyers have completed their arguments, the other two Prosecution lawyers will then take their turns to argue the two main issues.

Once both sides have presented their arguments, the first Prosecution lawyer (who presented their opening) will be invited to make arguments rebutting the Defence's case and reinforcing their own arguments. The first Prosecution lawyer has 7 minutes for this rebuttal.

And finally, the first Defence lawyer (who presented their opening) will be invited to make arguments in conclusion in support of their application. The first Defence lawyer has 7 minutes for these concluding arguments.

General observations

The defence and prosecution teams should:

- speak slowly and clearly
- concentrate on their best points
- stick to the facts and the law
- give their speeches a structure (while understanding that questions from the judges may cause them to argue their points in a different order than they had originally planned)
- must be mindful of the time limits
- maintain professional demeanor throughout the proceeding which includes, not insulting or attacking the opposing counsel.

The lawyers will address the judges as "Your Honour(s)" at all times.

Lawyers must remember that all comments must be addressed to the judges, and not to each other or to the opposing lawyers on the other side.

The judges of the competition will have to decide which team wins. The decision is not simply based upon who wins the argument. The judges will also be looking for structured presentations that illustrate the following:

- debating skills and power of persuasion
- an ability to respond effectively to questions
- clarity in argument
- style of presentation
- clear and confident speech
- professionalism

At the end, the judges will summarize what they liked and didn't like about each team's performance and announce a winner.

Supportive information

Included in this packet are affidavits from witnesses and the suspect, as well as factual evidence gathered by the Prosecutors that both sides agree are relevant to the case.

There is a factual outline, which sets out the context in which the particular offences are alleged to have taken place. You may assume that all the facts set out in this outline are based upon witness evidence and could be the basis for challenge in the hearing.

This exercise is a "Closed Universe" Outside sources may not be used. Materials in this packet will enable students to formulate excellent arguments.

There are three annexes which contained extracts from the relevant provisions of the ICC:

- Annex 1: Relevant extracts from the Rome Statute
- Annex 2: Relevant extracts from the Rules of Procedure and Evidence
- Annex 3: Crimes within the jurisdiction of the ICC
- Annex 4: Extracts from the Elements of Crime, published by the ICC

All lawyers are encouraged to use the supportive information provided when presenting their arguments. This will allow judges as well as the opposing lawyers to generally understand the source and underlying claims of the arguments.

Any questions regarding the case or procedures should be in writing to Debra Lesser dlesser@schools.nyc.gov

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Factual Outline

The country of Tabanath was created in 1954 when a peace process established it as an independent state, following a long period of fighting amongst its neighbours.

Tabanath is made up of two distinct regions which have a strong cultural and religious heritage. The regions also differ markedly in their geography and economies. Tabanath has large reserves of oil, as well as sites which are important to the followers of three major religious groups.

One region, **Menai**, is a mountainous area, with no coastline, which is relatively poor compared to the rest of the country. The people of Menai mostly live in communities where farming is difficult due to unproductive land. The Menai region contains some very important religious sites, which are revered not just by the Menai, but also by the **Taba** people, from southern Tabanath, and the **Resu** people, who live in neighbouring countries.

The other region of Tabanath is Taba, which sits to the south of Menai and forms the coastline of the country. There is some agriculture on the fertile land in the foothills adjoining Menai and well developed industry in the coastal towns. Most important for the economy, is the fact that the coastline and inland waters contain significant quantities of oil. Some oil has already been extracted by agreements with large western multinational companies, but the potential oil reserves are believed to be very significant.

For many years, there have been rumors of gold deposits in the mountains of Menai. In recent years there have been some discoveries of what could be large and valuable quantities of gold.

The Taba people mostly live in the Taba region, but the Menai are spread more widely throughout the country and into the neighbouring countries of **Nami** and **Bilto**; which surround Tabanath. There has been limited inter-marriage between the Taba and Menai. For over a century there has been a single, common language; which was adopted as the national language at the creation of the country in 1954. However; there remains some local dialects which have become increasingly popular with the younger generations of both Taba and Menai.

Following independence, there were successive democratic elections which the international community regarded as free and fair. Due to the concentration of the population, the Tabanath government has always been dominated by Taba politicians. Some Menai people believe this has led to the prioritization of Taba interests and an unfair allocation of resources to the Taba region.

The existence of a democratic government has meant that the Tabanath army and police forces have traditionally been regarded as well organized and disciplined, with a respect for the rule of law.

During this period of settled government, Tabanath was a respected participant in international affairs. It played an active role in the United Nations and in June 2004 became a State Party of the ICC.

Following independence there were some occasional outbreaks of isolated violence, but these were contained through regular law and order mechanisms. The cause of the violence was never very clear and probably came out of many different sources, but two explanations regularly appeared in the media: first, a desire on the part of the Menai people to create an independent country or at least an autonomous, devolved state; second, an allegation that corruption drove the Taba-led governments and that the resources which Tabanath enjoyed were not shared equally.

In 2006 a new populist president was elected called **Said Khan**. He was strongly identified with the Taba communities and his election campaign included repeated references to the need to control the Menai people and to give priority to the strong economic opportunities that were available in the more developed and prosperous Taba region. This rhetoric quickly led to a disintegration in the social and political climate, with increasing violence between pro-Menai groups and the government forces, which began to follow a harder line and a Taba agenda.

By 2010 the situation had deteriorated badly, causing Khan to declare a state of emergency in accordance with the Tabanath constitution. This allowed him to postpone the presidential elections planned for that year. In 2012, under international pressure, a presidential election was held and Khan won. In 2016 he did not run again, as he was barred by the constitution, but his son **Dophi Khan** did and he won. Dophi is widely believed by the international community to be a puppet of his father.

The violence between the government forces and the pro-Menai groups escalated after Dophi Khan became president. The large international geo-political players have stayed out of the dispute and there is no clear mandate on the United Nations Security Council either for or against one side in the conflict.

Border security has always been an important issue in the region as the borders between Tabanath, Nami and Bilto were the subject of intense debate at the time that the three countries were created. Different governments have approached this issue in different ways. For the four decades following 1954, there was very easy movement between the three countries, with few checks on people or goods. Under the Khan regimes, the border has been a more controversial issue again, with increased restrictions on movement, tariffs imposed on goods and some disagreements on where the national boundaries lie.

The ministry of the Tabanath government which is responsible for border issues is the **Office of National Security (ONS)**. Security on the border is maintained by the **Tabanath Border Force (TBF)**. The TBF is a civilian body, which is not part of the military or the police, and it reports to the ONS. The Tabanath military and police report to the Ministry of Defence and the Ministry of Home Security, respectively.

Tony Qiao has been **Minister for National Security**, head of the ONS, since 2011. His early career included a time in both the Tabanath Army and the TBF. He is seen by many as being one of Said Khan's strongest allies and the political agenda concerning the border, immigration and trade has got tougher under his leadership.

Soon after Qiao took office as minister, a substantial programme to enhance the physical border was commenced. This included increased numbers of TBF officers at significant border points, the fortifying of existing border fencing and a large programme to fence new stretches of the border.

From the time of the increase in violence after 2006, significant numbers of people were forced out of towns and villages, particularly in the Menai region. Some moved down onto the lowlands in Taba, others were pushed towards the borders with Nami and Bilito. Tension was created with these neighbouring countries as Tabanath nationals started to move in increasing numbers across the borders. This created violence of its own, with the native communities in Nami and Bilito resisting what they saw as an unmanageable and illegal flow of people into their country.

Soon after he took over as Minister for National Security, Tony Qiao introduced a number of programmes which he said were intended to address this situation. Many observers believed that the programmes did nothing to relieve the situation and were in many ways making border pressure worse. Some people claimed that Qiao's real intention was to use the increasing violence as a way to move large numbers of the Menai people into neighbouring countries, for them to settle there and remove the 'problem' from Tabanath.

Camps were established near the Tabanath borders where large numbers of mostly Menai people were forced to live, driven out by ongoing violence in their home towns. These camps were originally guarded by the TBF, but as the government claimed they became the home to insurgent groups, the army started to take a greater role. International observers have been prevented from entering the camps, but accounts of wide spread disease and disorder have been spread through various social media channels.

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The Prosecution Case

The Prosecutor commenced a preliminary investigation by its own motion (*'proprio motu'*) on 21 November 2017.

The findings of the preliminary investigation led to a request on 29 March 2018 for authorization from the Pre-Trial Chamber for further investigations focused on the border programme run by the TBF, the ONS and the leadership of Tony Qiao.

The authorization under Article 15 of the Statute was granted on 21 May 2018 and is currently limited to events taking place between March 2015 and September 2016.

On 18 July 2018, an arrest warrant was issued for Xiang 'Tony' Qiao. This arrest warrant was answered by Tabanath who handed over Tony Qiao to the jurisdiction of the ICC on 22 October 2018.

Qiao was transferred to the ICC in The Hague and placed in custody in the ICC detention unit.

The Prosecution alleges that Tony Qiao bears responsibility as a commander or superior for one count of **crimes against humanity: deportation or forcible transfer of population**.

The Prosecution says it has enough evidence to bring Tony Qiao to trial and requests the Pre-Trial Chamber to hold a confirmation hearing. Tony Qiao challenges that request.

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Evidence 1

Affidavit of Ms. Anglea Sanchez

- 1.__My full name is Angela Dominica Sanchez, I swear this affidavit to contain the truth and the whole truth.
- 2.__I am 36 years old and was born in Tabanath on the 23 August 1981. My family were all born in the country which is now Tabanath, but my parents and grandparents were alive when Tabanath was made an independent country in 1954.
- 3.__My family are all from the Menai region. I am married to a man called Jose Marques. He was from the same town as me and we grew up in the same neighbourhood and attended the same school as each other.
- 4.__My family is not very religious, but we all follow the religion in our town. We live in an area with many religious places and we celebrate the festivals with the other people.
- 5.__My family were shop-keepers. My father and mother worked every day in the shop and as I grew up, I also worked there. Our shop sold household things, like small furniture, kitchen items, cooking utensils and hardware to make furniture and household repairs. Our shop didn't sell any food. My uncles and aunts lived nearby in the town. One of them had a shop also, but it sold carpets and curtain fabrics; the rest of my uncles worked in local factories.
- 6.__I went to school from the age of six to sixteen. I can read and write the Tabanath language, Taban. I can also speak and write the dialect of the Menai people, Fernu.
- 7.__My family was not involved in politics. We voted, but we were not members of any political party, nor did we attend political rallies.
- 8.__I got married when I was 19 years old. I had my first child five years later, when I was twenty-four. I have three children in total. The youngest is five years old.
- 9.__I worked in my family's shop when I wasn't looking after the children. My husband also worked in the shop, but he also worked doing electrical work in people's houses.
- 10.__The town where we lived is about three hundred miles from Dokar, the capital of Tabanath. Where we live is in the start of the mountains, in the Menai region. It is a town called Ranali and has about forty thousand people. Ranali is about eighty miles from the border with Nami to the west of the country. There is a police station in Ranali, but there has never been a permanent army base.

11.___When I was growing up, Ranali was a really peaceful place and I never remember there being any trouble. Some Taba people lived in the town, but they tended to keep to themselves. I had Taba friends and we all grew up together and had lessons at school together. I don't remember any of my Menai friends marrying a Taba friend, but I'm sure it did happen.

12.___ After I was married and working, I remember things started to get more difficult and tense. There were lots more political rallies going on in the country and the television was always full of news about protests and marches. I didn't pay much attention to them, because at that stage they mostly took place down in Dokar or the other bigger cities on the coast. We did start to hear about fighting in the Menai region and sometimes along the border with Nami and Bilto, but it never really affected us at that time.

13.___In about 2005 there was a big bombing in Dokar. It was at a sports stadium where one of the big Tabanath football teams was playing. It was a team which a lot of the Taba people supported and there were quite a lot of people killed I think; maybe fifty or eighty. This started a really bad time, with lots of other violent things happening. The Tabanath government blamed a Menai independence group, Menai Freedom Alliance (MFA) for the bomb and it started really cracking down on security.

14.___ We didn't see any members of MFA in our town at that time; but sometimes we would see them come through in cars and jeeps. They didn't have a uniform, but they did have banners which had slogans saying that Menai should be free and that we should have our own government.

15.___ I remember Said Khan being elected. My father told me this was a very bad thing, as it would mean that the country would lose the 'unity' that it had before. I remember my father saying that word, 'unity'. My father was a very wise and peaceful man and I always respected what he said.

16.___ After Said Khan became president, I do remember that we saw many more police and army in our town. We were stopped much more often and asked to show our identity papers. Our papers didn't identify on them what our ethnic background, but usually it was quite easy to tell from a person's name and from the way they dressed and talked. When I was stopped by the police or the army, I would always be asked if I was Menai. I always told the truth about that.

17.___I remember hearing stories about men who refused to state their ethnic background or said they were Taba, when they weren't. In those cases the men always ended up being beaten or punished and sometimes they seemed to disappear completely. It made everyone in my town really afraid and we always were really careful when the police and army were around.

18. ___ It must have been around the summer of 2013 that the army set up a base in Ranali. It started quite small on the outskirts of the town, but it grew during that year and the next. During 2014, the army took over the buildings that our town mayor and council used to have.

19. ___ Once the army was in the town, the situation got more and more tense. There started to be searches of our houses and the shop. The army and police would carry out the searches. Then we also started to have groups of the border force, TBF, in the town. They had never been there before. They wear a different uniform from the army and police, so it was really easy to tell them apart. The border is such a long way from us, that it didn't make sense to see them there. They started to take over the house searches from the army. They would say they were looking for immigrants and people from the neighbouring countries. The TBF could be quite rough when they conducted those searches, although I never saw them actually attack anyone. They also came to the shop asking for all our papers and business records. Again they said it was because they were checking for illegal immigrant workers.

20. ___ By the middle of 2015 the situation had gotten really bad. Then one day an officer from TBF came to our shop and said we were going to have to close the store and move out of the town. He said they had strong intelligence that the town was being used as a stronghold for the MFA and was strategically important in the fight between the government and what he called 'the rebels'. We said that this didn't make any sense and that we had never seen the MFA in the town in that way.

21. ___ Over the next few weeks we refused to shut the shop or to move. But as we did so we got more and more visits from the TBF and from the army. Eventually my father said we had to go and that it was for the best. It seemed this was a decision that had been made by the senior people in our community.

22. ___ I remember we left Ranali on the 3rd December 2015, because it was two days before my youngest son's birthday.

23. ___ We packed as much as we could into our car and my husband took his motorcycle too. We travelled as a family towards the border on the west side of the country, near Nami. As we left town we could see many other families doing the same. As we got closer to the border there were more and more people travelling on the roads with their cars full of belongings.

24. ___ After travelling for most of a day, we started to see more and more TBF men and also army vehicles. The TBF were directing people on the road towards Nami. I said to my husband that I thought we should turn back, but he said he had seen people who had tried to do that and they had their vehicles and possessions seized and the men were being arrested and taken away. So we kept going along the road.

25. __ Before we got to the border there was a checkpoint at which all the people and vehicles were being stopped. The checkpoint was manned by TBF men, with some army also standing around. The TBF were making lists of everyone who was going through the checkpoint and lists of what possessions they had with them. The TBF men at this checkpoint had big guns; this was the first time I had seen them with rifles. Usually TBF had either long sticks or some had pistols on their belt. We waited at the checkpoint for hours; maybe six or eight.

26. __ The next day we continued along the road and after about four miles there was a camp, where all the people were stopping. It was maybe a mile from the Nami border, or even less. I could see Nami easily.

27. __ The camp had gates and a fence, although not a very big one. We were directed inside by the TBF. There were already many thousands of people there; it could be as many as eight thousand. I recognized some people from our town, but there were also many others who I did not recognize. I could tell that everyone there was Menai. The camp seemed set up to take many more people and over the next few weeks or months it got more and more full. The camp was called Bentuta.

28. __ The camp was not really organized, but it was clear we could not leave. There were quite a lot of TBF around and sometimes army as well. I never heard of anyone trying to get away and back to their town, but I know that if they did try they would get in a lot of trouble and might even get killed.

29. __ Some people decided that rather than trying to go back to their towns, they would try to get over the border into Nami. Really they would do anything to get away from the camp. Getting over the border wasn't too difficult. The TBF didn't make it difficult and they certainly didn't seem to stop people. Sometimes people would come back after trying to get into Nami and being caught and turned back by the Nami Border Force.

30. __ As the months went by, the camp became more and more crowded. There were outbreaks of disease and food was really difficult to get hold of. We had to sell most of our possession to get by and things became very difficult for us. My children were always hungry and there were fights which broke out in the camp which made me scared.

31. __ I talked to my husband about what we could do. He had some family in Nami and we made a plan to get across the border to see if we could get help from them.

32. __ In around August 2016 we decided we had to leave. We got some few possessions together and made a plan to cross the border. There was often talk about people paying to get out, but we decided we couldn't do that, so we went on our own.

33. ___It took four days to go north along the border, before crossing over into Nami. We found a place where there seemed to be no Nami Border Force and we hid out for two nights to make sure we didn't get caught.

34. ___We walked for another day into Nami and were hoping to find our way to the town where my husband's cousins lived. Before we got there, we saw a United Nations jeep on the road and realized we must be near some organized camp. We waited until we saw another jeep and then flagged it down. The women inside told us where to go and we arrived at the UNHCR camp that day. We stayed at that camp for about two months before being flown to Sweden with other people from the camp.

Dated: January 25, 2018

Stockholm, Sweden

sworn and signed

Angela Sanchez

Evidence 2

Statement of Xiang 'Tony' Qiao

1.__My name is Xiang Qiao, but since I was a young boy I have been known by my family and everyone I meet as 'Tony'.

2.__I am currently being held at the ICC Detention Unit in The Hague. This is a complete outrage. I was arrested while I was still Minister of National Security in Tabanath. This whole situation is politically motivated and is being done to appease the western oil interests which are taking over our beloved country.

3.__I completely deny the ridiculous charges that have been brought against me by the ICC Prosecutor. It is absurd to suggest that I ran some kind of scheme or campaign to moved people out of their homes and villages. Everything I did was to protect the people of Tabanath and the independent country we have built.

4.__I was born on 16 April 1961, in what is now Tabanath. My family are part of the Taba people and I grew up with my parents and three siblings on the coast near to Dokar. My father was in the army when I was born, but by the time I went to school he had left the army and was working as part of the security office of an oil installation plant up the coast from our house. My mother did not work and she looked after me and my siblings at home.

5.__I left school at 15 and did a mixture of manual jobs for a few years. When I was 18 I joined the Tabanath army at a junior rank. I enjoyed the army and gradually got promoted until I left after about 7 years. After that I joined the Tabanath Border Force as an officer, but had started to have some outside interests in a few businesses. Those businesses started to become quite successful and so I left the TBF after four years and concentrated on my business interests.

6.__I was living in Dokar at this time and had gotten married. Over the next five years or so I became more interested in politics, as it was an exciting time for our country. I got voted onto the local city council first, and then into the national parliament. When Said Khan started his political party, Forca Tabanath, I switched parties and joined him. He and I shared many of the same views about what our country needed and I believed he was the right person to give our country the strong position it needed in the region.

7.__Said Khan and I were particularly concerned about the violence that had started in the Menai region. We thought this created a threat to our economy and our national interests. Tabanath has the potential to be a great country in our region, but it will only do that if the people are united. We believed that the calls for greater independence by the Menai people was a terrible idea for our country and it risked destabilising all that we had achieved.

8.__One of the greatest concerns we had was that the influx of illegal immigrants from our neighbouring countries was supporting the independence movement and helping the Menai Freedom Alliance. The MFA was doing terrible things all over our country and it needed to be stopped.

9.__Said Khan believed that a strong border was essential and he made me Minister of National Security on 14 March 2011. My mandate was to strengthen our borders with Nami and Bilto and to build a Border Force which could keep us secure. I was given an increased budget to achieve my objectives and this was seen as one of the most important parts of our government's plans.

10.__During the following seven years, I made the Tabanath Border Force much stronger by recruiting more men and providing better training. The TBF became the first line of defence for our country against the dangers that are created by weak borders.

11.__As the violence in the Menai region spread, it was essential for the TBF to play a bigger part in the security of the country. We helped people who were in threatened areas move to safer places. We set up camps for people who had found the situation in their towns too difficult to cope with. The camps were places of safety and the people who stayed there were kept safe by the TBF.

12.__No one was forced to go to a camp and no one was forced to stay in a camp once they got there. The idea that these were places to keep the Menai people away from their homes and workplaces is crazy. It is true that most of the people in the camps were Menai, but that is only because it was their towns where the insurgent groups like the MFA were taking over. If we had not provided these safe places for them, they would have been caught up in the terrible fighting between the Tabanath army and the MFA.

13.__In October I was arrested by the Tabanath police and taken to a prison in Dokar. I had no warning that this was going to happen. I never got along with Dophi Khan in the same way that I got on with his father. I believe that he is a playboy, who doesn't have the vision and the integrity which his father has. I believe Dophi thought I was a threat to him and that our party might get rid of him and make me president. I am sure it was Dophi who gave the order to have me arrested and he did so for entirely political reasons.

Dated: December 20, 2018

The Hague

signed

Tony Qiao

Evidence 3

The following exhibits have been extracted by Prosecution digital analysts from the official Tabanath Government Facebook site. The analysts have verified the metadata on these extracted screenshots and confirmed that the date stamps are consistent with what is recorded in the postings.

Exhibit 1:

4 February 2012

Office of National Security announces Project Secure and multi-million dollar investment in additional border infrastructure. Minister, Tony Qiao, hails this as: “a major commitment to our countries security and prosperity, ensuring we can maintain the integrity of our borders for future generations of Tabanath people”.

Exhibit 2:

19 September 2013

ONS News Briefing:

TBF to build stronger ties with the Tabanath army. Joint training programmes and mutual secondments to begin in new year.

Exhibit 3:

17 June 2015

President Said Khan has today condemned the recent violence in Menai towns. He called on “all patriotic Tabanath people to help rid the country of the dangerous menace that risks the destruction our great nation.”

Exhibit 4:

21 October 2016

TBF News:

To mark the occasion of the TBF Day of Celebration, Minister of National Security, Tony Qiao, has awarded medals of honour to the commanders of four border camps: Zepu, Bentuta, Liso and Waranka. Qiao praised the commanders for the exceptional work they had done to securely house so many Tabanath people in such difficult circumstances.

Evidence 4

Material uploaded to the site of the Justice Across Borders

Justice Across Borders (JAB) is a non-governmental organization funded by multi-lateral donors.

JAB has developed an app, available on mobile phones, onto which individuals can upload images and text concerning violations of international humanitarian law.

The following are downloads from the JAB servers. The location stamp is obtained via GPS capabilities in the mobile device recording the image and text. The date and time markings are also taken from the mobile device and have been verified to be Tabanath standard time.

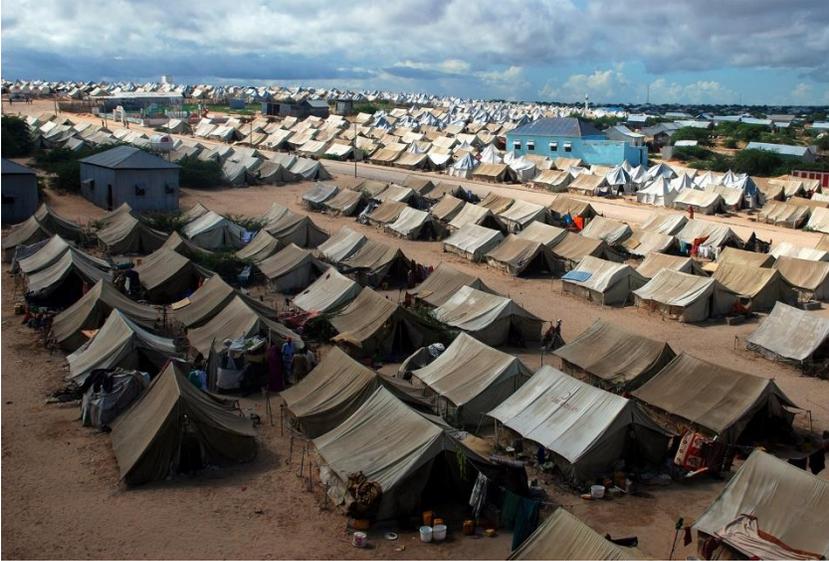
The identity of the persons uploading the material is known to JAB, but it's confidentiality has been maintained when it was passed to the Prosecutor.

A short statement producing the following four exhibits has been provided to the Prosecutor by an official at JAB. It confirms that the date, time and location markings are as recorded within their software. It confirms that the image was associated with those date, time and location markings and was uploaded along with the text that is reproduced here (which has been translated by JAB to English).

Exhibit 1:

Uploaded: 16.08: 17 April 2015: Menai Province, Tabanath

Image:



Text: *This is a camp being set up near the border with Nami. It is half empty at the moment but there are lots of tents which are empty and look ready to take people.*

Exhibit 2:

Uploaded: 08.23: 7 February 2016: Menai Province, Tabanath

Image:



Text: *Bentuta camp*

Exhibit 3:

Uploaded: 15.09: 24 June 2016: Menai Province, Tabanath

Image:



Text: *I took this photo near the camp at Bentuta. The men with guns are from TBF. The other men and boys are from the camp.*

Exhibit 4:

Uploaded: 11.46: 09 December 2018: Menai Province, Tabanath

Image:



Text: *This is the road near the Nami border.*

ANNEX 1

Relevant Extracts from the Rome Statute

Article 15 Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyze the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. 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. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation; he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

...

Article 17 Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) 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;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.
5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.
6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
 - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
 - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
 - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.
4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).
5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.
6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

...

Article 53

Initiation of an investigation

1. 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:

(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. If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(b) The case is inadmissible under article 17; or

(c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime; the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.

(b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54

Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this

Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(a) In accordance with the provisions of Part 9; or

(b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).

3. The Prosecutor may:

(a) Collect and examine evidence;

(b) Request the presence of and question persons being investigated, victims and witnesses;

(c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

...

Article 57

Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2,

61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9;

(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

...

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

(a) Waived his or her right to be present; or

(b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held. In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

(a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing. The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:

(a) Object to the charges;

(b) Challenge the evidence presented by the Prosecutor; and

(c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

(a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;

(b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;

(c) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conducting further investigation with respect to a particular charge; or

(ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

ANNEX 2

Relevant Extracts from the Rules of Procedure and Evidence with regard to the confirmation of charges.

Rule 121

Proceedings before the confirmation hearing

1. A person subject to a warrant of arrest or a summons to appear under article 58 shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67. At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under sub-rule 7, are made public.

2. In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure:

(a) The person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her;

(b) The Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a judge of the Pre-Trial Chamber shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person;

(c) All evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

3. The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

4. Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing.

5. Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.

6. If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

7. The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.

8. The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

9. The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

10. The Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

□ □

ANNEX 3

Relevant Extracts from the Rome Statute with regard to the crimes within the jurisdiction of the ICC

Article 5 Crimes within the jurisdiction of the Court

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

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

Article 6 Genocide

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:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7 Crimes against humanity

1. 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:

- (a) Murder;
- (b) Extermination;
- (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;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(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;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give

information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual Civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance

with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 8 bis

Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to

direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

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ANNEX 4

Selected Portions of Elements of Crimes, Published by the International Criminal Court

Elements of Crimes* **

* Explanatory note: The structure of the elements of the crimes of genocide, crimes against humanity and war crimes follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

** 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).

General introduction

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21 and the general principles set out in Part 3, are applicable to the Elements of Crimes.
2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.
3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.
4. With respect to mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated.
5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.¹
6. The requirement of “unlawfulness” found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.

7. The elements of crimes are generally structured in accordance with the following principles:

(a) As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;

(b) When required, a particular mental element is listed after the affected conduct, consequence or circumstance;

(c) Contextual circumstances are listed last.

8. As used in the Elements of Crimes, the term “perpetrator” is neutral as to guilt or innocence. The elements, including the appropriate mental elements, apply, *mutatis mutandis*, to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute.

9. A particular conduct may constitute one or more crimes.

10. The use of short titles for the crimes has no legal effect.

Footnote 1: This paragraph is without prejudice to the obligation of the Prosecutor under article 54, paragraph 1, of the Statute.

Article 7

Crimes against humanity

Introduction

1. Since article 7 pertains to international criminal law, its provisions, consistent with article 22, must be strictly construed, taking into account that crimes against humanity as defined in article 7 are among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.

2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element 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 organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.

3. “Attack directed against a civilian population” in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population. 6

Footnote 6: A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.

Article 7 (1) (d)

Crime against humanity of deportation or forcible transfer of population

Elements

1. The perpetrator deported or forcibly (12) transferred (13) without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. 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.

Footnote 12 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.

Footnote 13 “Deported or forcibly transferred” is interchangeable with “forcibly displaced”.

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ANNEX 5

A link to the Decision of ICC Pre-Trial Chamber: 6 September 2018

This is a decision from the ICC Pre-Trial Chambers concerning jurisdiction of the Court in an allegation of deportation of the Rohingya people from Myanmar to Bangladesh.

In section VI of the Decision, the Chamber considers the ‘crime against humanity: deportation’, at paragraphs 50 to 73.

There may be arguments in the Decision that are relevant to arguments you might want to make. In addition, there are many references to other cases which are cited in the Decision, which may be supportive of your arguments.

Link: https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF

□ □

ANNEX 6

Frequently Asked Questions about the International Criminal Court

There is a very good guide to the International Criminal Court on the link below. It is 49 pages long, so we haven't copied it for you here. But you can read it on the link below.

Link: <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>

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