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VICTIMS' MEMORIAL



The Office of the Victim's Council

**UNIVERSIDADE FEDERAL DE MINAS GERAIS
BELO HORIZONTE – BRAZIL**

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I. APPLICATION FOR PARTICIPATION OF VICTIMS IN PROCEEDINGS

Pursuant to Rule 89 of the International Criminal Court's Rules of Procedures and Evidence, the victims of the crimes for which the Fatari Soldiers are being prosecuted respectfully request the opportunity to present their views and concerns to this Trial Chamber. ICC-ASP/1/3, Rule 89.

Victims applying to participate in this case are members of the Marijani Liberation Front and familiars of the victims that were affected by:

9 men willful killed;

sexual aggression (rape and mutilation) against 17 women;

the torture of several villagers;

the occupation of the village that lasted over a year.

The Memorial which supports this application is attached.

II. STATEMENT OF FACTS

Razachstan is a South East Asian country which, during the 90's, was engaged in a war against Qurac. After three years of war, Qurac occupied the Razachstani territory. During this occupation, several brutal acts were committed by the Quraci armed forces against the Razachstani people, especially against members of the Marijani caste (Problem, para.1).

Razachstan has a very complex social structure embedded in an oppressive caste system, in which the Marijanis are considered the "lowest of the low" (Problem, para. 1). The subjugation of the Marijanis may be demonstrated by the violence sum against them, which is prior even to the occupation by Qurac. Before the occupation over 500,000 violent crimes were committed annually (Problem, para. 1) against the Marijanis, but, during the occupation, this figure tripled. In nine years of occupation, at least 13,500,000 Marijanis were victims of violent crimes, an alarming number that reveals the extreme violence of this occupation, which was especially brutal against the Marijanis.

Despite the fact that the Quraci occupation was severely condemned by the international community, only in February 2002, when the oppression and brutality of the Quraci's acts became publicly known, the United Nations took measures against the occupation (Problem, para. 2). The UN, under a Security Council Chapter 7 Resolution, created an International Coalition of national troops (hereinafter referred to as "The Coalition") to keep the peace during the negotiations for the withdrawal of Quraci troops (Problem, para. 2).

On November 12, 2003, due to the dissatisfaction with the way the UN Peacekeepers had been conducting the missions, a Fatari regiment formed by twenty-seven soldiers broke away from the Coalition and marched into Buchari, province of Razachstan, an area almost exclusively inhabited by Marijanis (Problem, para. 3).

On December 5, 2004 the province of Nadir was released. It was the principal base of operations for Quraci forces in Razachstani territory. That forced the commander of the Quraci force, General Faraz Kushari, to order a cease fire and the surrender of all Quraci military forces, stopping the military operations but not putting an end to violence.

Under a United Nations negotiated agreement, Razachstan's provisional government was established on December 31, 2004 (Problem, para. 5), and governed until democratic elections were held.

In February 2005, during a survey mission in the Buchari province, the UN Coalition forces discovered twenty-seven Fatari soldiers occupying a Marijani village. The Fatari troops had been occupying this village for over a year. During that time, the invaders killed nine men, raped seventeen women and mutilated and tortured several villagers. The soldiers were immediately arrested by the UN Coalition (Problem, para. 7).

Once Fatar had no intention to exercise jurisdiction over those nationals (Problem, para. 8 and Clarifications), UN representatives suggested Razachstan to turn the soldiers over to the International Criminal Court (hereinafter “The ICC”), since this State would not have the ability to properly investigate and judge them.

After much discussion and debate within the provisional government, since part of the government thought that these crimes were not so heinous as to warrant execution, especially as the victims “had only been Marijanis”, (Problem, para. 8), the Fatari soldiers were turned over to the ICC in April 2005.

In May 2005, the ICC, based upon the jurisdiction of crimes on an international conflict in the territory of a signatory state, charged the Fatari soldiers with: crimes against humanity of murder (Article 7(1)(a)), war crimes of willful killing (Article 8(2)(a)(i)), war crimes of attacking civilians (Article 8(2)(b)(i)), war crimes of excessive incidental death, injury or damage (Article 8(2)(b)(iv)), war crimes of murder (Article 8(2)(c)(i)-1) (Problem, para. 9).

After that, the Razachstani government, in late May 2005, filed a petition with the ICC, challenging the Court’s jurisdiction based upon Article 19(3) and Rule 59(1)(a) of ICC’s Rules of Procedure (Problem, para. 10). Immediately, the victims appeared before the ICC challenging the government’s petition in accordance to Article 19(3) of the Statute and Rule 59(1)(b) of ICC’s Rules and Procedure.

The victims support that the Razachstani Municipal Courts have no real conditions to properly try the soldiers, once the country is reorganizing its legal system, after 9 years of Quraci’s occupation. Moreover, there is still a feeling that, once all the victims were Marijani, the trial would not consider the case as grave as it really is and no justice could be made (Problem, para. 11).

III. ARGUMENT

1. The ICC has jurisdiction to try the Fatari soldiers

A. The Court has jurisdiction over the case, once Fatar was a State Party by the time the crimes were committed.

The International Criminal Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute (Article 11(1)). The Rome Statute entered into force for Fatar in January 2004 (Clarifications, item 2, May 31), while the alleged crimes have been committed throughout the presence of the officers in the village (Clarifications, 10, May 31), which lasted until February 2005 (Problem, para. 3 and 7). Thus, at the time the alleged crimes are said to have been committed, the Rome Statute had already entered into force for the State of Fatar. This temporal element, therefore, empowers the Court to exercise its jurisdiction over the present case, in accordance with the principle of legality.

B. The Court has jurisdiction based on Article 12(2)(b)

The Rome Statute establishes two preconditions for the exercise of jurisdiction: the crimes occurred (1) on a territory of a State Party (Article 12(2)(a) - jurisdiction *ratione loci*) or (2) by nationals of a State Party (Article 12(2)(b) jurisdiction *ratione personae*). Both elements do not need to be, necessarily, present in the case, but one of them must occur.

Fatar was a State Party by the time the crimes were committed by those nationals at Razaschtan, which was not a State Party. Nevertheless, the existence of jurisdictional elements *ratione personae* and the fact that Fatar was party to the Statute, fulfill one of the preconditions for the exercise of jurisdiction. Therefore, all this alleged facts provide sufficient jurisdictional elements and preconditions that justify the ICC's jurisdiction.

C. The referral made by Provisional Government respected the legal requirements stated in Article 13(a) and 14(1).

After the arrestment of the perpetrators by the Coalition, Razachstan referred the case to the ICC, in April 2005, based on Articles 13 and 14 of the Statute.

According to the *supra* mentioned Article, State Parties can refer a case to the Prosecutor (Article 13(a)) of a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed (Article 14(1)).

No obstacle is opposed to the conduct of Razaschtan, once it was a State Party by the time of the referral: every State Party can refer cases to the ICC based on Article 13 and 14 (ILC, Draft Commentary, 1994). Nevertheless, one of the preconditions established in Article 12(2) has to be fulfilled. In this sense, nothing bars a State where the crimes were committed from triggering the ICC, considering that the jurisdictional precondition *ratione personae*, stated in the Article 12(2) (b), is present.

D. The referral made by the Provisional Government supplies the necessity for a formal declaration pursuant to Article 12.3.

The acceptance of the Court's jurisdiction by a State that was not a Party to the Statute at the time the crimes were committed is conditioned to a declaration lodged with the Registrar as stated in Article 12(3).

Once Razaschtan was a State Party since January 2005 and referred the case after this date, in April 2005, there is no need of this declaration accepting the ICC's jurisdiction.

Even if the Court understands that the declaration was necessary, once the Provisional Government referred a case that occurred at a time that the Statute was not in force for Razachstan, the affirmative should not prosper. All the Provisional Government's acts had shown the acceptance of the Court's jurisdiction. Moreover, as Razachstan had signed the Rome Statute prior to the commission of the crimes, it was at least bound to respect the purpose of the treaty which it has accepted (Vienna Convention on the Law of Treaties). According to the principle of good faith, it was not necessary for Razachstan to accept in other terms a special jurisdiction, for it had already demonstrated its intention to act in accordance with the preexistent international criminal system, which was confirmed by the referral of the situation to the Court.

E. Jurisdiction over the subject matter (ratione materiae)

The subject-matter jurisdiction pertains to the crimes which are within the scope of the International Criminal Court's jurisdiction. According to Article 5 of the Rome Statute,

the crimes within the competence of the ICC are the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Razachstan and Fatar are both Parties of the Rome Statute. Therefore, as stated in Article 12 of the same, they have accepted the ICC's jurisdiction to prosecute the crimes referred to in the Article 5.

1) The Fatari soldiers were responsible for crimes against humanity and war crimes

In accordance to the Article 12(1) of the Statute, a State Party accepts the ICC's jurisdiction *ratione materiae* to try, *in abstracto*, all crimes referred in Article 5 of the Rome Statute, such as crimes against humanity, genocide, war crimes and crimes of aggressions. After a preliminary investigation, the ICC charged the Fatari soldiers in the following crimes: crimes against humanity of murder (Article 7(1)(a)), war crimes of willful killing (Article 8(2)(a)(i)), war crimes of attacking civilians (Article 8(2)(e)(i)), war crimes of excessive incidental death, injury or damage (Article 8(2)(b)(iv)), war crimes of murder (Article 8(2)(c)(i)-1). By this legal support, the ICC has jurisdictional elements *ratione materiae* to try the perpetrators of the crimes in the present case.

a) The Fatari Soldiers were responsible for crimes against humanity of murder when attacked the Marijani village

The Statute defines, in Article 7(1)(a), crimes against humanity of murder as an act committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. For the purposes of the paragraph 1, an attack directed against any civilian population means "a course of conduct involving the multiple commissions 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." (Article 7(2)(a)). There is no need for the existence of an armed conflict to configure the crime against humanity. Even though, in the present case, those crimes occurred in an armed conflict.

In the particular case of crime against humanity of murder, the Assembly of State Parties to the Rome Statute of the International Criminal Court defines three basic elements: the perpetrator killed one or more persons, the conduct was committed as part of a

widespread or systematic attack directed against a civilian population, the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population (Article 7, Elements of Crimes, ICC-ASP/1/3).

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, that is engaged in a conduct or wanting to cause the consequence or is aware that it will occur in the ordinary course of events (Article 30(2)(a) and (b)).

b) The widespread and systematic attack and cause nexus between the crimes committed by the Fatari Soldiers

According to CASSESSE, the acts that configure the crime against humanity are not isolated or sporadic events, being a part either of a governmental policy or acts that are tolerated, condoned or acquiesced by a government or a *facto* authority (CASSESSE, 2001) . In this case, it is required that a single crime is committed in an instance of a repetition of similar crimes or is part of a string of such crimes (widespread practice), or that it represents a policy or a plan drawn up, or inspired by State authorities or by the leading officials of a *de facto* state-like organization, or of an organized political group. This political element is also stated by the ICTY: a governmental policy “need not be formalized and can be deduced from the way in which the acts occur” (ICTY, *Prosecutor V. Tadic*, para. 653).

The Marijanis have been, historically, victims of frequent violent crimes in Razaschtan. During the Quraci occupation, this caste was pursued, mainly, by the occupant’s forces, responsible for the grown of the violence against them (Problem, para. 1). As an occupying State, Qurac guaranteed a situation that unchained in a real Marijani’s slaughter.

In this context, twenty-seven Fatari Soldiers invaded a Marijani village and committed several crimes related to acts that took course during the Quraci occupation. According to the ICTY at “a single act [committed] by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable.” (ICTY, *Prosecutor V. Dusko Tadic*, para. 649)

For the purpose of the configuration of the crime against humanity, it is not necessary to prove 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 (Elements of Crimes, ICC/ASP/1/3), being necessary the realization of the act in accordance to the mental elements of Article 30. In this way, the attacks performed by the soldiers have the nexus to all aggressions committed against the Marijani by the occupation forces.

2) The War Crimes' Charges

The primarily investigation performed by the ICC resulted in several war crimes charges, related to armed conflict of different nature: the charges of Article 8(2)(a)(i), Article 8(2)(b)(i) and Article 8(2)(b)(iv) are related to an international conflict, while the charges of the Article 8(2) (c) (i)-1 is related to a non-international conflict.

In a first moment, these charges seem to violate the criminal principle of the *ne bis in idem* (Article 20), what is not true. In a manner to ensure the prosecution of the perpetrators, the ICC, based upon the jurisdiction to prosecute war crimes committed in an armed conflict, charges the soldiers on different crimes, related to different contexts.

Preliminarily, The Court understood that the crimes occurred in an international conflict (Problem, para. 9). However, the ICTY Appeal Chamber in *Prosecutor V. Tadic: Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction* has already decided that the nature of a conflict can also be object of merit, if there is a reasonable doubt about its characterization: “The Tadic Interlocutory Appeal Decision was an interlocutory appeal on Jurisdiction which did not resolve the issue about whether the events in the indictment occurred in an international or non international armed conflict, implicitly leaving this decision to the Trial Chamber.” (BYRON, 2001).

Furthermore, as a preliminary issue, the configuration of an armed conflict is *conditio sine qua non* to prosecute the soldiers in war crimes charges.

a) Preliminary Issue: the existence of an armed conflict

The Geneva Conventions Common Article 2(1) states that the International Humanitarian Law related to an international armed conflict would be applied “to all cases of declared war of any other armed conflict which may arise between two or more of the High Contracting Parties even if the State of war is not recognized by one of them.” These rules are

also applicable in cases of partial or total occupation of the territory of a High Contracting Party, even if this occupation has not met resistance (Geneva Conventions Common Article 2(2)). The Protocol I to the Geneva Conventions of 1949, Article 1(4), states that an armed conflict in which peoples are fighting against and alien occupation in exercise of their right of self-determination is one kind of international armed conflict.

During the 1990's, Razachstan and Qurac have been engaged in a war – an international armed conflict between two States as described in Article 2(1) of the Geneva Conventions. After three years of war, Qurac occupied Razachstan (Common Article 2(2)).

The occupation lasted nine years, until the intervention of the international community and the creation of the Coalition by the UN. This armed force, constituted by soldiers of many countries, contributed in the fight against the occupant's militia. This international armed conflict turned itself into an armed conflict as described in Article 1(4) of the Additional Protocol – a war against alien occupation in the exercise of the right of self-determination.

In December 2004, all Quraci military forces ceased fire and surrendered, putting an end to the occupation of the territory and reestablishing Razachstani sovereignty over the Nation.

These facts show elements that characterize the existence of an international armed conflict in Razachstan during 1992-2004 (three years of war and nine years of occupation). The crimes committed by the Fatari Soldiers, in accordance to the certification of the victims, had occurred between January 2004 and February 2005.

The end of the military operations did not mean the end of the protection provided by the Humanitarian Law. In accordance to the IV Geneva Convention Article 6(2), its application shall cease one year after the general close of military operations in occupied States, which means that the civilians would guarantee their status as protected people until December 2005. As stated further, the main elements that constitute the war crimes are: the existence of an armed conflict, an aggression against civilians, and the mental element which proves that the perpetrators realized such crime knowing that the victims were civilian/protected people.

b) The Fatari Soldiers committed war crimes of willful killing

The Rome Statute's Article 8(2)(a)(i) establishes the competence to ICC to prosecute the perpetrators of grave breaches of the Geneva Conventions of 12 August 1949.

As a grave breach, the willful killing is defined by PICTET, in "Commentary of the IV Geneva Convention", (expressed at art. 147 of the same Convention) as an act that "would appear to cover cases where death occurs through a fault of omission" (PICTET, 1958).

According to the ICC/ASP1/3, the elements of these crimes are: the perpetrator kills one or more persons that are protected under one or more of the Geneva Conventions of 1949 and is aware of the factual circumstance that established this protection. This awareness recognizes the interplay between Article 30 and 32 of the Statute and is related to factual circumstances that establish the status of persons or property protected under the relevant international law of armed conflict. Article 30 of the Statute is very precise when it says that the intention act is that action directed by a person with the intention to cause it - *doles in action*.

The Fatari soldiers, as military agents, were entirely conscious of their responsibility of respecting the Geneva Law, which, incidentally, has the status of customary humanitarian law, also described in Rule 142 (ICRC Report 1995 – Customary International Humanitarian Law). For sure, the perpetrators knew that civilians, who do not take part directly in conflicts, are protected persons under this breach of international law. After perpetrating the criminal acts, they continued controlling the village, causing terror among the villagers.

c) War crimes of attacking civilians (Article 8(2) (b) (i));

The war crime of attacking civilians is any intentional and directed attack against civilian population or individual that does not take direct part in hostilities perpetrated in a context of international armed conflict committed by individuals that know the existence of the conflict (Elements of crimes, ICC/ASP/1/3).

According to the IV Geneva Convention, civilians are protected people once, during an armed conflict, do not take direct part in hostilities: if the victims have once taken part in hostilities they are not protected people (ICTY at *Prosecutor v. Tadic* Appeal Chamber, Merits, para. 615).

The Marijanis never took place in the war between Razachstan and Qurac, suffering every kind of aggressions during this conflict. The attack directed by the Fatari soldiers

against the Marijani village at Buchari was a coward aggression committed against persons that, during these terrible times of war tried to live their lives.

d) War crimes of excessive incidental death, injury or damage (Article 8(2)(b)(IV));

The war crime of excessive incidental death, injury or damage is described in the Statute (Article 8(2)(b)(iv)) as an act that violates the law and custom applicable in international armed conflict. It configures an attack launched intentionally with the knowledge that it would cause incidental loss of life or injury to civilians which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

During the occupation of the village, the Fatari soldiers attacked civilians, violating the Rule 8 and several fundamental guarantees Customary International Humanitarian Law (ICRC Report 1995 – Customary International Humanitarian Law).

e) War crimes of murder (Article 8(2) (c) (i)-1).

In accordance to the Statute, the war crime of murder is a violation of Article 3 common to the Four Geneva Conventions of 1949. The acts need to be committed against persons taking no active part in the hostilities – as the civilians – and by individuals that were aware of the factual circumstances that established this status and the circumstances that established the existence of an armed conflict.

The International Criminal Court has jurisdiction over war crimes, no matter the nature of the conflict. The perpetrators were soldiers that, in an armed conflict, invaded a Marijani village and, knowing that the villagers were not taking part in the hostilities, killed several villagers.

2. Issues of Admissibility: the case is admissible before the International Criminal Court

A. Principle of Complementarity

The principle of complementarity, sketched in Paragraph 10 of the Statute's Preamble, establishes that the judgment of a case under the ICC should occur whenever States which would have primacy over it are not willing or find themselves unable to carry on fair investigative and criminal procedures. Nonetheless, the ICC is not and must not be considered merely as a court of last resort. One should be aware that the complementarity principle cannot in fact obscure the real purpose of the ICC, which is achieving justice when a State is not able to do so.

Accordingly, if a State Party, such as Razachstan, was found to be either **unable** or **unwilling**, and another State was not **willing** to assume jurisdiction, as Fatar in the current case, there is a duty on the ICC to prosecute if the alternative is impunity. After all, one of the reasons for the existence of the Court is 'to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes' (The Statute, Preamble, para. 5 / MCDONALD; HAVEMAN, 2003).

B. Fatar has demonstrated that it had no intent to investigate and prosecute the perpetrators

As discussed in previous arguments, the State of Fatar has jurisdiction over the crimes committed by the perpetrators pursuant to the principle of nationality. However, it is not permitted by the Rome Statute for this case to be turned over to Fatari national courts, for this country has explicitly affirmed that it had no intention to investigate and try the perpetrators (Prob. para. 8 / Clarifications, June 15, 2006). This is an element of unwillingness, according to the Rome Statute, Article 17(1)(a), reason why the case must remain under the ICC's competence.

C. Razachstan is both unwilling and unable to investigate and try the Fatari officers.

The Rome Statute specifies different situations in which the unwillingness of a State to investigate and try persons may be identified (Rome Statute, Article 17(2)). The criteria established by the Statute are: a) the conduct of the State is aimed at shielding criminals from juridical responsibility; b) there has been an unjustified delay in the proceedings; c) the investigation or trial is not being conducted impartially or independently. As stated below, all

of the criteria enumerated by the Statute are present in relation to Razachstan, which determines the need for this case to remain under the Court's authority.

1) Razachstan is shielding the Fatari soldiers from a fair trial.

There are no indications that a criminal investigation has already commenced in Razachstan, corroborating the thesis for the inadequate and negligent attitude of Razachstani government of not bringing the perpetrators into justice if the matter is turned back to its national courts.

In fact, the political purposes of a trial in Razachstani territory are evident, but it is also manifest that this conduct is not coherent with the main purposes of the Rome Statute, i.e., the punishment of those accountable for the worst violations to the International Law. If the Razachstani representatives truly hunted to see the perpetrators properly tried, they would not have challenged the jurisdiction or the admissibility of the case before the ICC, for Razachstan had and still has no material conditions to proceed with an accurate criminal action.

2) Razachstan is not considering the relevance of the crimes committed by the perpetrators

After the perpetrators were arrested in Razachstan, part of the provisional government was of the opinion that the crimes were not so heinous, once the victims had been only Marijani, which reveals the intensity of discrimination that takes place against the victims.

Once the Razachstani judicial system does not have specialized courts to try war crimes or crimes against humanity, if the case returns to the Razachstani judicial system, the soldiers would be certainly tried as perpetrators of common crimes, which is not true: as aforementioned, once the crimes were committed in a context of widespread and systematic attack during an international armed conflict, the authority of the Court to investigate and judge must prevail.

3) The unwillingness of Razachstan is represented by the delay in the criminal proceedings

The challenge of the jurisdiction of the Court by representatives of Razachstan is not legitimate, once it has not proved that an investigation has already begun in that country (Prob. para. 10). The absence of such requirement also reveals the delay in starting criminal proceedings, in a clear attempt not to bring the perpetrators into justice.

4) The proceedings, once started, will not last independently or impartially.

The Marijanis are a caste that has always been discriminated in the perspective of the Razachstani society, considered as the worst of the social groups in that country. Prior to the occupation by Quraci forces, there were at least 500,000 violent crimes committed against Marijanis annually (Problem, para. 1). This way, once the matter is turned back to Razachstani national courts, as all the victims in this case are Marijanis, there is no possibility for the proceedings to be impartial and precise. On the contrary, the most likely to happen is that the judgment will be absolutely simulated and not committed to bringing the Fatari offices into justice.

In this vein, it is also imperative to take into account the political structure of Razachstan as a factor of enough magnitude to determine the inadequacy of the judgment before Razachstani national courts. As a matter of fact, at the time of commission of the crimes, some members of the provisional government did not consider the soldiers' crimes so heinous as to warrant execution, especially as the victims had only been Marijanis (Prob. para. 8). If considered that the discrimination against members of this caste is endemic within the Razachstani civilization, as based on a cultural element, the most plausible consequence in this case will be the absolute denial of the rights of victims, despite of their juridical prerogatives of a fair and equitable treatment by the judiciary system.

Indeed, the dawn of democracy in Razachstan does not mean an achievement for this specific caste. On the contrary, the situation of minorities in democratic regimes is delicate, once it is entirely conceivable that, via democratic institutions, the political majorities will easily continue concerting and executing their plans of oppression (MADISON, 1788 (1961), p. 83). This way, the establishment of a new State structure is not a guarantee for the victims that justice will be made, as it has been found strong evidence that the majorities have indeed always used their direct legislative powers to deprive political minorities of their civil rights in democratic countries (DONOVAN; BOWLER, 1998).

5) Infrastructural lack at Razachstani national courts and inability to properly carry out the proceedings.

After twelve years of war and military occupation over its territory, the Razaschtani government alleges that it has a judicial institution capable to try the perpetrators. In similar cases, such as East Timor and Iraq, the reconstitution of judicial systems demanded years of international support so that there would be prepared personnel to work on the self-sustenance of a national juridical structure. East Timor, for instance, as a former Portuguese colony, was helped by Brazil and Portugal in many sectors for its rebuilding process, which included the advisory assistance in Justice System (CANÇADO TRINDADE, 2006, p. 237).

It is relevant to mention that the collapsed Razachstani judicial system has always been unjust to the Marijanis, yet when material conditions had existed. Additionally, after more than a decade of occupation, three years of war, the already deficient national infrastructure could not advance. Despite the objective inability criteria, the State of Razachstan has always been unable to examine matters involving the victims' pair. Members of the caste, surrounded by an institutional tolerance, a deliberated support towards the sensitive social discrimination, would never be properly heard at the national level. The testimony, as an indispensable proceeding to the achievement of justice, would be then denied as consistent with the principles of due legal process as well as a material condition proper to an investigative procedure.

D) The crimes committed in Razachstan are serious enough to justify the action by the Court.

Provided that the crimes have been perpetrated in the context of an international conflict and have been characterized by great violence against civilians, members of a widely discriminated social group, it must be acknowledged that this situation is of sufficient gravity to validate the exercise of jurisdiction by the Court (*see* UNSC Resolution 1265, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1265 (18 September 1999)).

E) The UN Security Council Resolutions 1422 and 1487 must not be applied in this case.

The United Nations Security Council Resolution n° 1422 combined with UNSCR n° 1487 shields UN peacekeepers from a contributing State not a Party to the Rome Statute from prosecution and judgment by the ICC for a 24-month period starting 1 July 2003 (UNSC Resolution 1422. U.N. SCOR, 4572nd meeting (12 July 2002) / UNSC Resolution 1487. U.N. SCOR, 4772nd meeting (12 June 2003)).

The aforesaid Resolutions do not apply to the present case for the reason that the perpetrators are nationals of a State Party to the Rome Statute, which entered into force for that State soon after the break of the officers from the peacekeeping coalition forces. In addition, as they had broken away from the coalition, their acts or omissions were not anymore related to the United Nations established operations, although their acts are associated with the international conflict that took place in Razachstan.

IV. PLEADING

For all the reasons stated above, according to the Rome Statute of the International Criminal Court and the general principles of International Law, this case must be declared admissible under this Court, and the defendants properly investigated and tried for the crimes against humanity and crimes of war perpetrated against members of the Marijiani population.

CERTIFICATION OF TEAM MEMBERS

We hereby certify that the memorial for Universidade Federal de Minas Gerais Law School (UFMG) is the product solely of the undersigned and that the undersigned have not received any faculty or other assistance, other than that allowed for in the Rules, in connection with the preparation of this memorial.

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