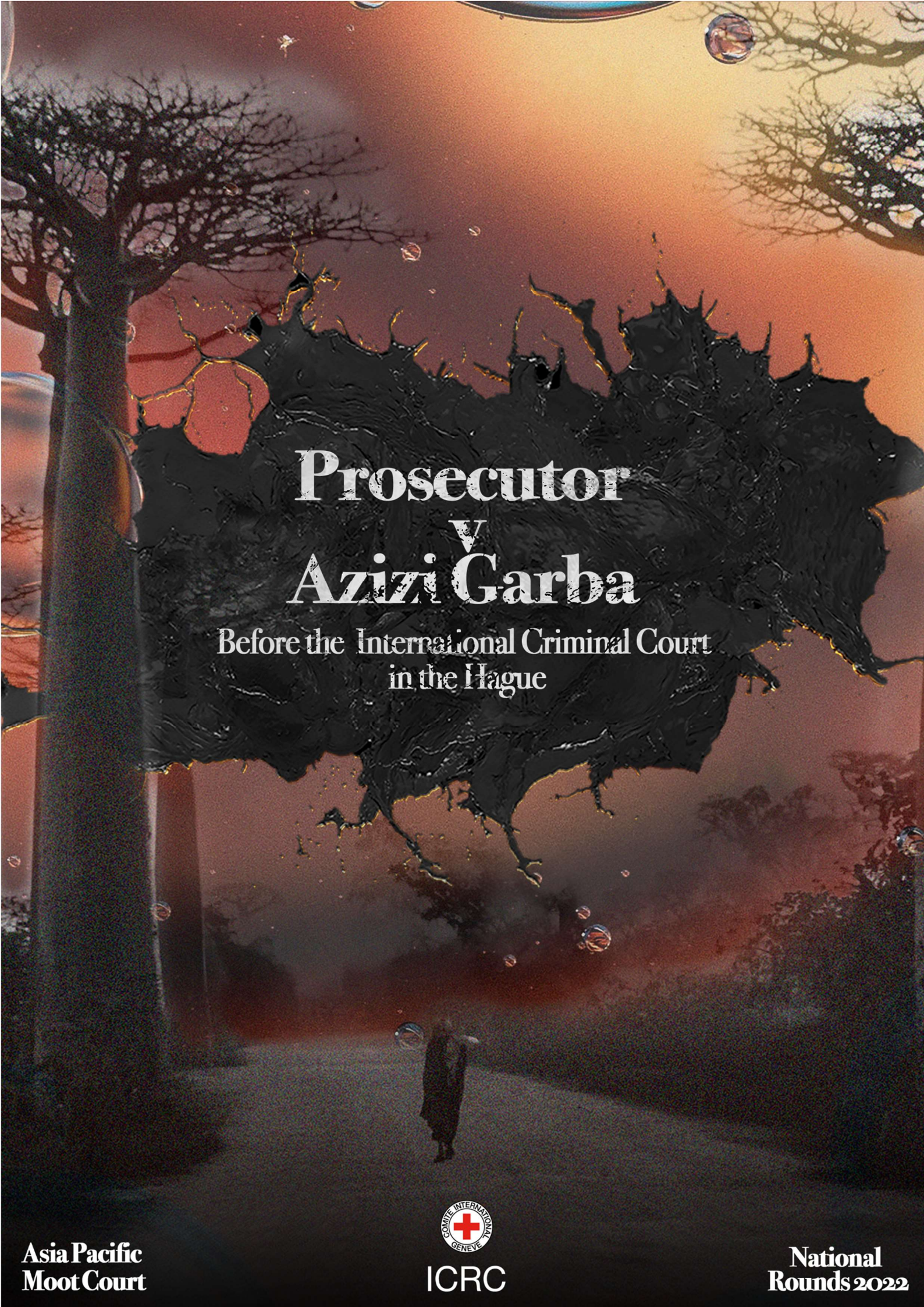




Prosecutor v Azizi Garba

Before the International Criminal Court
in the Hague

**ASIA-PACIFIC
MOOT COURT**



**NATIONAL
ROUNDS
2022**

ICRC

MOOT PROBLEM

SITUATION IN MOMAAYO

IN THE CASE OF

THE PROSECUTOR

V. AZIZI GARBA

BEFORE THE INTERNATIONAL CRIMINAL COURT IN THE HAGUE

Situation in Momaayo
Prosecutor v. Azizi Garba

Instructions

1. *Proceedings*: The hearing takes place in the jurisdiction of the International Criminal Court ('ICC') at the "confirmation of charges" stage pursuant to Article 61 of the 1998 Rome Statute of the ICC ('Rome Statute'). At this stage, the Prosecutor must "support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged." The Accused may "object to the charges" and "challenge the evidence presented by the Prosecutor".

2. *Facts and evidence*: The case is entirely fictional. The Statement of Agreed Facts includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence. Teams should confine themselves to the facts supplied. Neither the Prosecutor nor the Defence may introduce new evidence or facts at the hearing (Article 61(6)(c) of the Rome Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence.

3. *Procedure*: The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66 and 67 of the Rome Statute. Any other procedural questions should be ignored.

4. *Jurisdiction and admissibility*: Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.

5. *Applicable law*: In accordance with Article 21 of the Rome Statute:

1. *The Court shall apply:*

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. *The Court may apply principles and rules of law as interpreted in its previous decisions.*

6. Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and

teams should expect to be asked for copies of the headnote and the portion of the transcript or judgment referred to in their argument.

7. *Participation to treaties*: at all material times, the treaties listed in Annex I were in force for the States of Momaayo and Kissaka.

Indicative Authorities and Research Material

International Criminal Court

- a) Rome Statute of the International Criminal Court (1998): [http://legal.un.org/icc/statute/english/rome_statute\(e\).pdf](http://legal.un.org/icc/statute/english/rome_statute(e).pdf)
- b) Elements of Crimes under the Rome Statute: <https://www.icc-cpi.int/Publications/Elements-of-Crimes.pdf>

Basic IHL Documents

- a) IHL Treaties: <https://ihl-databases.icrc.org/ihl>
- b) Customary IHL: <https://ihl-databases.icrc.org/customary-ihl/>
- c) ICRC Commentaries to the Geneva Conventions and their Additional Protocols: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

Cases

- a) International Criminal Tribunal for the Former Yugoslavia: <http://www.icty.org/en/cases/judgement-list>
- b) International Criminal Tribunal for Rwanda: <http://unictr.unmict.org/en/cases>
- c) International Criminal Court: <https://www.icc-cpi.int/cases>
- d) International Court of Justice: <https://www.icj-cij.org/en/decisions>

Statement of Agreed Facts

1. The Kingdom of Momaayo is a constitutional monarchy situated on the eastern coast of Solfia (see regional map, Annex II). It sits on 24,760 m² of land and has a native population of 150,000 people. These people live primarily in the nation's capital city and several small villages. The villages of Dunanti and Appio are situated on the banks of the Nadawada River – a small river that runs the length of the country. The water in the Nadawada River begins in the Great Mountain Range in the neighbouring Republic of Kissaka and flows across the border into Momaayo, ultimately pooling in the Nadawada Lake. The water is considered some of the most pristine on Earth and is credited with the longevity and overall health of the Momaayan people.
2. Momaayo houses a vast baobab tree region and takes great pride in preserving the unique and beautiful trees as part of its cultural heritage. In 2008, King Arno Abdu of Momaayo established the Momaayo Cultural Heritage Foundation – a government-funded organisation with the sole purpose of maintaining the beautiful natural environment in the region and ensuring local wildlife enjoy the correct habitat to survive.
3. Momaayo is also considered a haven for many rare species of animals, including 3,890 rare species of insects which depend on the baobab tree and are found only in Momaayo. In response to international pressure to ensure the insects' survival, in 2010 the Momaayo Cultural Heritage Foundation created the Baobab Tree Sanctuary within the Momaayo National Park. If not for the Sanctuary, it is estimated that over 2,000 of those species would have died out. The country is also home to 10% of the world's white rhinoceros population and over 50% of the world's striped hyena population. In 2017, the Nadawada River was declared a UNESCO World Heritage site.
4. In 1998, the Kingdom of Momaayo signed the Rome Statute and has been an active supporter of the International Criminal Court (ICC) ever since. King Abdu personally deposited Momaayo's instrument of ratification at the United Nations Headquarters in 2002 following the adoption of the *International Criminal Court Act 2001* by the Parliament of Momaayo. Momaayo has adopted each of the subsequent amendments to the Rome Statute.
5. Momaayo has only a small military. Since 2018, it relies on both financial and military support from the wealthy State of Pictopia to run the peaceful country and protect its borders from aggressive neighbours. In exchange, King Abdu allows the Pictopian government to maintain an airbase in Momaayo's coastal waters.
6. To the south, Momaayo shares a border with the Republic of Kissaka. Kissaka is known to be one of the world's poorest and most turbulent countries. It has a population of around 17 million people. It has experienced a significant economic downturn since 2002, when its current government came to power at the end of a protracted insurgence. Its head of State, President Azizi Garba, was initially the leader

of the rebel faction that overthrew the sitting government in 2002. When the rebels seized power, Garba promised the people of Kissaka that their fortunes would change under his leadership. He has continued to rule the country through autocratic rule ever since.

7. The Kissakan government has mandatory conscription to its military for every person aged 16 – 20 years old. As a result, the Kissakan military is one of the largest in Solfia and, despite its lack of sophisticated weapons, is considered strong due to its number of soldiers.
8. Momaayo and Kissaka have a fraught history, with near-constant rumblings and small-scale fighting at the border regions over the past century.
9. In 2010, during a minor border clash between the two nations, President Garba sent a small platoon to the border. The platoon was headed by First Lieutenant Addo Diallo. Despite direct orders to maintain the peace and only fire if needed in retaliation, First Lieutenant Diallo ordered his troops to cross the border and attack the border village of Dunanti. He also ordered his troops to attack 7 Momaayo teen boys who were playing in the Nadawada River. During this attack, he and his troops killed all 7 boys. In his report of the operation, he justified his decision by saying that ‘all teen Momaayos grow into aggressive filth like their fathers’. This report was leaked to the leading global news service, *The Pictopian Times* and Lieutenant Diallo’s comments were published in 72 countries, including Momaayo. This attack and the subsequent comments led to the largest clash between the two nations in over a century. The 2017 fighting was bloody and protracted and was only quelled when the Pictopia and Momaayo Military Alliance (PMMA) Treaty was signed. The PMMA Treaty was novel at the time as Pictopia had never entered into a direct, two-party military alliance previously. The border region had been quiet since.
10. In February 2020, it was discovered that a large source of oil sits beneath the border of Momaayo and Kissaka. If it could be drilled and extracted, the oil held the benefit of providing significant financial benefit to the governments of Kissaka and Momaayo. It would also provide significant benefit to the Kissakan army who had been unable to afford sufficient oil in the past 10 years to fuel its tanks and military aircraft or to manufacture the bombs required to protect its vast borders.
11. President Garba began talks with King Abdu to discuss capitalising on the newfound oil reserve. The two countries collaborated to investigate where the best access point to the oil lay and what would be required to exploit it. This investigation lasted 8 months and cost both countries USD 550,000, which was a considerable expenditure for the government of Kissaka.
12. During the investigations, it was discovered that the access point for the oil was situated in Momaayo within the Baobab Tree Sanctuary. The access point for the oil was also very close to the Nadawada River and there was reported to be a 24% chance

that oil from the wells would contaminate the river during the normal course of drilling.

13. Upon being notified of these findings, UNESCO issued a statement reminding the governments of Momaayo and Kissaka of their responsibility to protect the pristine Nadawada River under the *Convention Concerning the Protection of the World Cultural and Natural Heritage*. The Pictopian government publicly supported this statement.
14. In response, King Abdu announced in a front-page article in *The Pictopian Times* that Momaayo would not proceed with drilling for oil. President Garba was furious at this announcement, having already invested a large amount of money into the project and being reliant on the oil to re-establish his military arsenal. He insisted that Momaayo should continue with the drilling as planned, without regard to diplomatic pressure from Pictopia. Despite this insistence, King Abdu stood firm on his decision to uphold Momaayo's UNESCO obligations to protect the Nadawada River and the surrounding natural environment.
15. The two leaders came to a stalemate and tensions began to rise. Poverty in Kissaka was intensifying drastically due to the COVID-19 pandemic. Yet, without the agreement of King Abdu, it would prove impossible to exploit the oil given the main access point to the oil sat on Momaayo's territory.
16. After a month of tense discussions and violent protests, on 18 April 2021, President Garba sent the 1st Commando Battalion comprising 800 troops including a tank platoon to the border between Kissaka and Momaayo.
17. The leader of the 1st Commando Battalion was Lieutenant Colonel Diallo. He had been promoted through the ranks since 2010 despite having a reputation as a violent and brutal man who often overstepped his orders. Furthermore, on five separate occasions since 2010, Lt. Col. Diallo had publicly criticised the Momaayan people, calling them 'lesser beings' and 'filthy animals' amongst other derogatory terms. These outbursts were well publicised in national media. As a result, sending Lt. Col. Diallo and his Battalion to the border was seen as a direct and violent threat to the Momaayo government.
18. In response, King Abdu mobilised the Royal Momaayo Army (RMA), sending the 1st Regiment to the only crossing point of the border. Unsurprisingly, there was immediate gunfire with both sides attempting to intimidate each other. While there were a small number of fatalities during the initial exchange of fire, the situation did not escalate and both armies stayed on their respective sides of the border.
19. On 20 April 2021, King Abdu made a public statement during a large press conference warning that if Kissakan troops were to cross the border, they would be met with the full strength of the RMA, stating that 'every Momaayo man and boy will defend their country, and the sanctity of the natural world, above all else.'

20. At 11:25 pm on 24 April 2021, President Garba gave Lt. Col. Diallo the order for troops from the 1st Commando Battalion to cross the border by stealth through the Momaayo National Park and infiltrate the quiet village of Dunanti near the border. There were two objectives:
- a. to secure the access point to the oil; and
 - b. to peacefully contain the villagers in their houses until the Kissakan oil miners were able to begin drilling for oil the next day.
21. Three Kissakan tanks were rolled slowly through the Momaayo National Park to create a direct path to the oil access point, and to evade Momaayan troops who were stationed along the existing roads. Doing so also allowed the Kissakan troops and miners direct on-foot access to the oil access point from the Kissakan border and allowed them to reach the access point in 1.3 km rather than the 3 km it would have otherwise taken using the existing roads. While creating a direct path to the oil access point, the Commando Battalion flattened and destroyed over 25,000 baobab tree saplings that had been planted 9 years earlier as part of the Baobab Tree Sanctuary.
22. Upon reaching the oil access point, half of the Battalion created a physical perimeter around the access point. They then buried 3 improvised explosive devices, made from ammonium nitrate fertiliser, at the entrance to the roads leading to the access point. The devices were placed within one metre of two of the five remaining 100-year-old baobab trees in the Momaayo National Park.
23. The other half of the Battalion entered Dunanti, setting up makeshift electric fences blocking the roads and pathways at the edges of the village to prevent villagers from disrupting their control of the oil access point.
24. Despite taking stealth measures, within a few hours, a few villagers had noticed the fences erected by the Kissakan armed forces and reported this to the Momaayo Police stationed in Appio. Being a small and peaceful country, Momaayan police do not carry firearms but instead carry tasers. Upon being advised of the Kissakan military operation, the two police officers on duty retreated north towards the capital, calling their regional command en route.
25. Hearing noises outside, some villagers living at the outskirts of Dunanti came out of their homes brandishing spears, machetes and rolling pins. A scuffle broke out between five soldiers and a dozen villagers. During the scuffle, three of the soldiers were injured and five of the villagers were killed. The remaining villagers were restrained with plastic flex cuffs and made to sit along the side of the road.
26. This altercation woke up the rest of the village. More villagers began exiting their homes to confront the Commando Battalion troops. Fearing his forces might become outnumbered, Lt. Col. Diallo yelled orders in local Kissakan dialect to his troops. The Kissakan forces began moving from house to house, entering homes and forcing all the men and boys into the street. They ordered all women and children to stay inside.

Once the men and boys were in the street, Lt. Col. Diallo shouted an order, after which the male villagers were lined up and shot in the back of their heads. From the reports of villagers, it was estimated that 170 Momaayan men and boys died.

27. Upon being alerted to the incursion, at dawn on 25 April the RMA sent a unit of heavily armed soldiers to Dunanti. Travelling in amphibious assault vehicles, the unit made it to the southern province by midday. Armed with high powered firearms, the RMA was able to force the enemy troops out of the village with minimal casualties to both armies.
28. The RMA remained in Dunanti and set up a base to ensure the ongoing safety of the village and to secure the access point. In accordance with the PMMA, the Pictopian military sent large supplies of Mk 17 Mod 0 battle rifles to arm the RMA. Two hundred and ten local police from the Northern and Eastern provinces of Momaayo were stationed in Dunanti and armed with Pictopian military-issue Berreta 92FS M9 pistols.
29. As public pressure on President Garba increased, on 10 July 2021 President Garba gave the order for Kissakan troops to weaken the Momaayo military by filtering existing stores of crude oil into the Nadawada River. This act meant that, although pristine drinking water remained available to the people of Kissaka, downstream the oil contaminated the water flowing into Momaayo and pooling at the Nadawada Lake, thus limiting the RMA's ability to remain in the border region and access clean water. The Government of Kissaka stated publicly, *'now there is nothing left to protect we can work as one to make our region great.'* Given the lack of oil available in Kissaka, this order was costly to the government and depleted their already dwindling oil supply for military use.
30. The effect of the contaminated water was such that the drinking water available to Momaayan residents dropped by 60%. Within days, water toxicity poisoning began to appear in both the human and animal populations. Over half of the RMA soldiers stationed at the border region had to relocate to access fresh water, leaving their military campaign weakened. Within a week, 2% of the world's endangered white rhinoceros population had died due to crude oil poisoning.
31. The effects of the violence and environmental damage in Momaayo were felt in the wider region. Faced with resource scarcity and the risk of further violence, civilians were fleeing to the neighbouring Federal Republic of Durham and to Pictopia. There was a concern that, with no measures being taken to mark or monitor the use of weapons being supplied to Momaayo, they might later be sold to fighters in the growing Durham resistance movement.
32. After considerable lobbying by the Council of Solfian States, Durham and the Momaayo Cultural Heritage Foundation, the United Nations Security Council considered the situation in Momaayo. Adopting Resolution 3827 on 28 August 2021, the Security Council authorised a UN peace operation in Momaayo (see Annex III).

33. Among those deployed to Dunanti, United Nations Police helped to take the testimonies of the villagers. UN Police patrols were conducted in the area to demonstrate their presence, assess the situation, and protect civilians. UN Police were also sent to Dunanti to ensure the introduction of crude oil into the Nadawada River ceased, while experts from the United Nations Environment Programme (UNEP) were sent to investigate the overall impact on the natural environment due to:
- a) the destruction of the baobab saplings,
 - b) the introduction of oil to the water, and
 - c) the sickness appearing in wildlife populations.
34. The UN environmental workers determined that, if left untouched, the oil introduced into the Nadawada ecosystem would take 12 years to fully dissipate. As a result, they requested further investigation into alternative cleaning options given the reliance on the water by the white rhinoceros population and the striped hyena population. However, the officers were not hopeful that any alternative cleaning options could be employed due to the delicate ecosystem in the region.
35. Several States adopted sanctions against Kissaka, including to restrict the supply of weapons, oil and fertiliser to the country. It became increasingly difficult to quell dissent in Kissaka as agricultural production slowed and the cost of living rose sharply.
36. At 8:30 am on 5 October 2022, President Garba gave Lt. Col. Diallo the order to return to Dunanti to secure the oil access point. They were to use any lawful means necessary to secure the access.
37. Upon arriving in Dunanti, Lt. Col. Diallo led one group of Kissakan soldiers down the direct path to the oil access point. On the way, they encountered four UNEP workers who were surveying the damage to the baobab saplings. Just beyond them was a UN Police officer, who had accompanied the environmental workers. All five UN personnel wore blue berets clearly denoting the UN emblem and the police officer had a standard issue SIG Sauer M18 semi-automatic pistol secured to her hip. Upon seeing Lt. Col. Diallo and his troops, the UN Police officer reached for her weapon. In her panic, she discharged a round. It ricocheted off the ground and hit one of the UNEP workers in the right arm, causing her to scream in pain. Upon hearing the gunshot and the screaming, Lt. Col. Diallo retrieved his AK-47 assault rifle and killed three of the UN environmental workers and the UN Police officer. The remaining UN environmental worker was badly injured at the scene and died 5 hours later at the Dunanti medical assistance centre.
38. King Abdu was outraged by the latest violence against UN personnel. On 7 October, he referred the situation in Momaayo to the ICC.

39. On 20 November 2021, the ICC Prosecutor informed both King Abdu and President Garba that they found there to be sufficient evidence to open an investigation. In response, President Garba ordered his troops to retreat to the border.
40. On 12 February 2022, the ICC issued an arrest warrant against President Garba. Later that day, President Garba was arrested at an airport in Durham while in transit to Pictopia where he was scheduled to speak at the United Nations General Assembly. He was transferred to the ICC detention facility in The Hague, the Netherlands.

Charges

The Office of the Prosecution presents the following charges against the defendant, President Azizi Garba:

Count 1

With respect to the destruction of the Baobab Tree Sanctuary in Momaayo:

On the basis of individual criminal responsibility, for ordering, soliciting or inducing the commission of such a crime which in fact occurs or is attempted as per Article 25 of the Rome Statute,

The war crime of intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or 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 in Article 8(2)(b)(iv) of the Rome Statute.

Count 2

With respect to the introduction of crude oil into the Nadawada River:

On the basis of individual criminal responsibility, for ordering, soliciting or inducing the commission of such a crime which in fact occurs or is attempted as per Article 25 of the Rome Statute,

The war crime of intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or 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 in Article 8(2)(b)(iv) of the Rome Statute.

Count 3

With respect to the killing of five UN Personnel:

On the basis of the responsibility of commanders and other superiors as per Article 28 of the Rome Statute,

The war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in 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 under Article 8(2)(b)(iii) of the Rome Statute.

Count 4

With respect to the killing of 170 men and boys in the town of Dunanti:

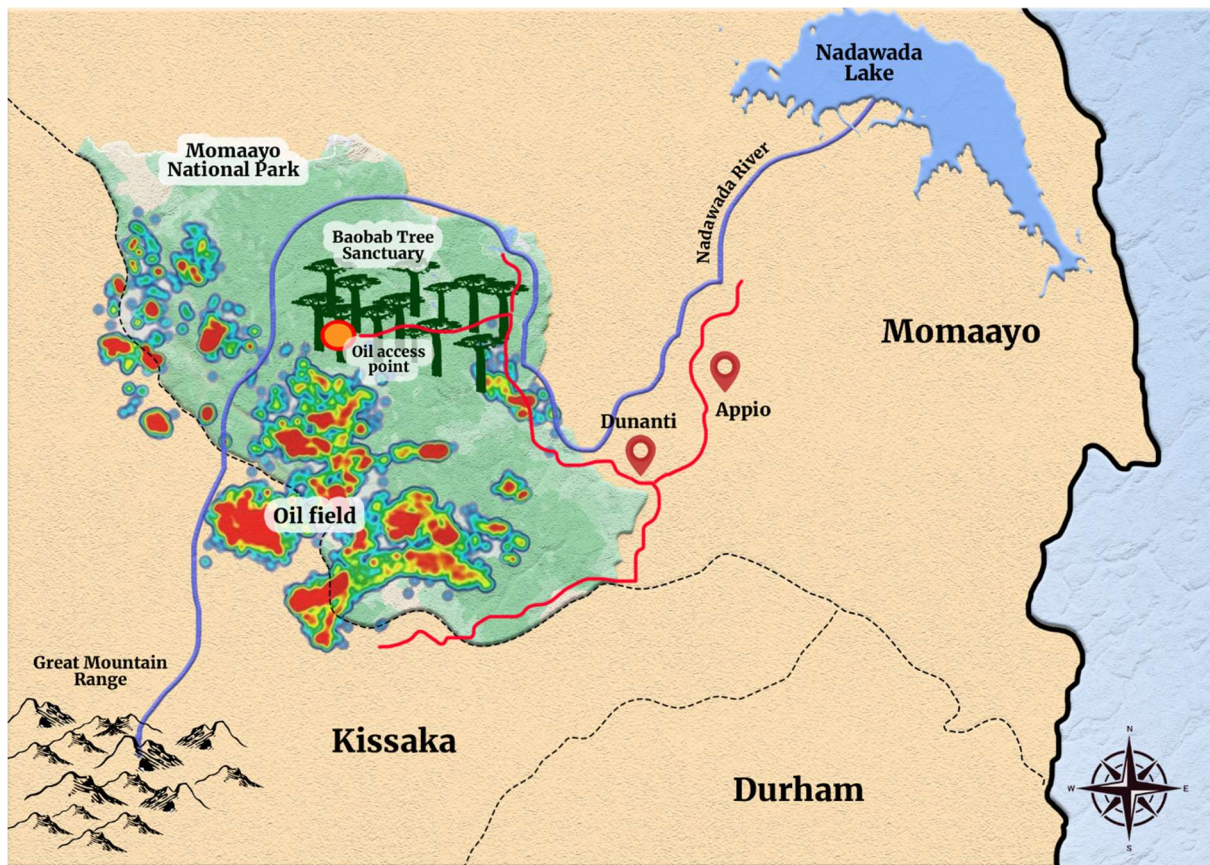
On the basis of the responsibility of commanders and other superiors as per Article 28 of the Rome Statute,

The war crime of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities under Article 8(2)(b)(i) of the Rome Statute.

Annex I: Applicable Agreements

Convention	Kingdom of Momaayo	Republic of Kissaka
Charter of the United Nations 1945	✓	✓
Geneva Convention I on Wounded and Sick in Armed Forces in the Field 1949	✓	✓
Geneva Convention II on Wounded, Sick and Shipwrecked of Armed Forces at Sea 1949	✓	✓
Geneva Convention III on Prisoners of War 1949	✓	✓
Geneva Convention IV on Civilians 1949	✓	✓
Additional Protocol I to the Geneva Conventions 1977	✓	
Additional Protocol II to the Geneva Conventions 1977	✓	
Vienna Convention on the Law of Treaties 1969	✓	✓
Rome Statute of the International Criminal Court 1998	✓	✓
Convention concerning the Protection of the World Cultural and Natural Heritage 1972	✓	✓

Annex II: Regional Map



United Nations

S/RES/3827 (2021)



Security Council

Distr.: General

28 August 2021

Resolution 3827 (2021)

**Adopted by the Security Council at its 9894th meeting,
on 28 August 2021,**

The Security Council,

Reaffirming its strong commitment to the sovereignty and territorial integrity of the Kingdom of Momaayo,

Deploing the persistence of conflict and violence and its effect on civilians and civilian objects, including the natural environment,

...

Determining that the situation faced by Momaayo constitutes a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to establish the United Nations Mission in Momaayo (UNMM) for an initial period of 12 months and *further decides* that UNMM will comprise up to 1,800 military personnel, including reserve battalions capable of deploying rapidly as and when required, 730 police personnel, and an appropriate civilian component, including technical environmental expertise;

...

4. *Decides* that the mandate of UNMM shall be the following:

...

(b) Protection of civilians and United Nations personnel

- (i) To protect, without prejudice to the responsibility of the authorities of Momaayo, civilians under imminent threat of physical violence, within its capacities and areas of deployment;
- (ii) To protect the United Nations personnel, installations and equipment and ensure the security and freedom of movement of United Nations and associated personnel;

(c) Promotion and protection of human rights

- (i) To monitor, help investigate and report to the Council on any abuses or violations of human rights or violations of international humanitarian law committed throughout Momaayo and to contribute to efforts to prevent such violations and abuses;
- (ii) To monitor, help investigate and report to the Council specifically on environmental damage;
- (iii) To assist the authorities of Momaayo, as necessary and feasible, in protecting from attack areas of particular environmental importance or fragility in Momaayo, in collaboration with UNEP;

...

(f) Support for national and international justice

- (i) To support, as feasible and appropriate, the efforts of the authorities of Momaayo, without prejudice to their responsibilities, to bring to justice those responsible for war crimes in Momaayo;

5. *Authorizes* UNMM to use all necessary means, within the limits of its capacities and areas of deployment, to carry out its mandate as set out in paragraphs 4 (a) (i) and (ii), 4 (b), 4 (c)(iii) and 4 (f) and requests UNMM's civilian and military components to coordinate their work with the aim of supporting the tasks outlined in paragraph 4 above;

...