

Moot Number: P11

Memorial for the Prosecutor

Word Count:4000

## **I. THE CASE AGAINST PRIME MINISTER DON MIR IS ADMISSIBLE**

### **A. *Morok has failed to investigate Prime Minister Don Mir (“Mir”)***

1. A case is admissible if a State with jurisdiction over it has not investigated or prosecuted it.<sup>1</sup> Here, Morok has not even attempted to investigate the crimes committed by Mir even though these allegations first came to light more than 15 years ago. For example, the disappearance of public figures like journalist Mary Price was widely reported since 2003.<sup>2</sup> Between 2004 – 2018, the UN Human Rights Committee repeatedly publicised its concerns about enforced disappearances and torture occurring in Morok.<sup>3</sup> Yet after all these years, the Morok government has done nothing to inquire into Mir’s conduct.
2. Even if Mir was to be investigated, the Morok government would almost certainly be unwilling to genuinely prosecute any case against him. Mir’s administration has long been associated with civilian disappearances,<sup>4</sup> and has attracted widespread international critique regarding its human rights abuses.<sup>5</sup> However, the present Prime Minister’s first act in office was to thank Mir for his great work.<sup>6</sup> Even after Mir’s indictment by the ICC, the present Prime Minister issued press statements in support of Mir instead of launching an investigation.<sup>7</sup>

### **B. *The case against Mir is of sufficient gravity to justify action***

3. A case is admissible where it is sufficiently grave.<sup>8</sup> This assessment is based on the geographical and temporal scale, nature, employed means, and resulting harm of the alleged crimes.<sup>9</sup>
4. The geographical and temporal scale, and extent of harm of the alleged crimes constitute a sufficiently grave case against Mir. Mir is charged with: enforced

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<sup>1</sup> Article 17(1)(b) of the ICC Statute. Unless indicated otherwise, “Statute” and all subsequent articles refer to the ICC Statute.

<sup>2</sup> Facts, ¶10.

<sup>3</sup> Facts, ¶13.

<sup>4</sup> Facts, ¶10.

<sup>5</sup> Facts, ¶13.

<sup>6</sup> Facts, ¶38.

<sup>7</sup> Facts, ¶39.

<sup>8</sup> Article 17(1)(d) of the Statute.

<sup>9</sup> ICC, *Situation in the Republic of Kenya*, ICC-01/09-19, 31 March 2010, ¶62.

disappearances of 350 persons over the course of 15 years;<sup>10</sup> attacks that resulted in 70 civilian deaths;<sup>11</sup> and transfers of hundreds of Xeros persons to Morok and Willandra.<sup>12</sup>

5. As such, the case against Mir is admissible.

## **II. COUNT ONE: MIR IS LIABLE FOR THE ENFORCED DISAPPEARANCE OF PERSONS FROM MOROK AND XEROS**

### ***A. The State of Morok detained Morok and Xeros civilians***

#### *(1) The disappearances were committed with Morok's support*

6. The crime of enforced disappearance of persons is established on the detention of persons by or with the support of a State.<sup>13</sup> In Morok, over 340 Morok civilians (the “**Morok detainees**”) were detained by the Morok police,<sup>14</sup> a Morok state organ.

7. Also, there are substantial grounds to believe that Morok detained Susan Say, Marcus Roberts, and two vocal opponents of RP (the “**Xeros detainees**”). In September 2017, well-known NGO Journalists Without Borders reported that they were held in a Morok detention facility.<sup>15</sup> This was later corroborated in November 2017, when foreign independent journalist Marsha Pixel was able to observe the Morok prison camps first-hand and could confirm the presence of the Xeros detainees.<sup>16</sup>

#### *(2) Morok refused to give information on the fate of the detainees*

8. The perpetrator of the disappearances must have refused to give information on the fate or whereabouts of the detainees after their disappearances.<sup>17</sup> Following the detentions in Morok, the Morok police did not divulge any information on the detainees' whereabouts until they were released or put on trial.<sup>18</sup> The Morok detainees were detained without trial for three weeks up to more than a year.<sup>19</sup>

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<sup>10</sup> Facts, ¶10, ¶11, ¶17, ¶22 & ¶23.

<sup>11</sup> Facts, ¶21 & ¶30.

<sup>12</sup> Facts, ¶28, ¶33 & ¶34.

<sup>13</sup> Article 7(2)(i) of the Statute.

<sup>14</sup> Facts, ¶9–¶11.

<sup>15</sup> Facts, ¶24.

<sup>16</sup> Facts, ¶33.

<sup>17</sup> Article 7(2)(i) of the Statute.

<sup>18</sup> Facts, ¶9–¶11.

<sup>19</sup> Facts, ¶9–¶10.

9. As for the Xeros detainees, Morok authorities did not comment on the disappearance of Susan Say.<sup>20</sup> They also denied involvement in the disappearances of Marcus Roberts and the two vocal opponents of RP.<sup>21</sup> RP has also not divulged any information on the fates of the Xeros detainees.<sup>22</sup> It has been more than a year since the Xeros detainees have disappeared, and there has been no news of their release.<sup>23</sup>

(3) *Morok intended to remove the detainees from the protection of the law*

10. The perpetrator must have intended to remove the detainees from the protection of the law.<sup>24</sup> Morok has prevented the detainees' access to justice. Detainees were detained in unknown locations and were deprived of even family visitations.<sup>25</sup> There was no evidence that the detainees had any access to legal representation and advice throughout their detentions.

11. The detainees must have been deprived of protection of the law for a prolonged period of time.<sup>26</sup> The Morok detainees were held for three weeks to a year before they were released or put to trial.<sup>27</sup> As late as 15 November 2017, multiple sources corroborated that the Xeros detainees remained in Morok custody.<sup>28</sup>

***B. The detentions were committed as part of a widespread or systematic attack with knowledge of that attack***

12. The detentions must have been committed as part of a widespread or systematic attack directed against a civilian population.<sup>29</sup> An attack is widespread if it results in a large number of victims.<sup>30</sup> Here, around 350 Morok and Xeros civilians have been disappeared by Morok over the course of 15 years.<sup>31</sup>

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<sup>20</sup> Facts, ¶17.

<sup>21</sup> Facts, ¶23 & ¶24.

<sup>22</sup> Facts, ¶17 & ¶22–¶23.

<sup>23</sup> Facts, ¶17 & ¶22–¶23.

<sup>24</sup> Article 7(2)(i) of the Statute.

<sup>25</sup> Facts, ¶10, ¶11 & ¶24.

<sup>26</sup> Article 7(1)(i) of the Elements of Crime (“EOC”).

<sup>27</sup> Facts, ¶9–¶11.

<sup>28</sup> Facts, ¶33.

<sup>29</sup> Article 7(1) of the Statute.

<sup>30</sup> ICTR, *Prosecutor v Paul Bisengimana*, ICTR 00-60-T, 13 April 2006, ¶47.

<sup>31</sup> Facts, ¶9–¶11, ¶17, & ¶22–¶24.

13. An attack is systematic when there is a recurring perpetration of interlinked, non-random acts.<sup>32</sup> Here, a systematic recurring pattern of disappearances emerges. Every detainee was a vocal critic of Morok,<sup>33</sup> detained soon after voicing their criticism,<sup>34</sup> and was detained in Morok police facilities.<sup>35</sup>
14. The perpetrator must have knowledge of the attack and its nature.<sup>36</sup> Inference of such knowledge may be corroborated from a *modus operandi*.<sup>37</sup> The Morok government had knowledge of the attack and its widespread or systematic nature because it was in furtherance of a political objective. This political objective was that of clamping down on dissidents in the media, as set by Mir himself in Parliament.<sup>38</sup> Additionally, Morok has a proven *modus operandi* of detaining vocal journalists criticising its policies.<sup>39</sup>

**C. *Mir bears individual criminal responsibility for the enforced disappearances of persons***

15. Individual criminal responsibility arises when the accused solicits or induces the commission of the crime.<sup>40</sup> This is established where a person is instigated or influenced by another to commit a crime.<sup>41</sup>
16. There are substantial grounds to believe that Mir had exerted his great personal influence over the Morok government to instigate the commission of the enforced disappearances. Since 2000, Mir's political party has dominated the Morok Parliament with an 80% majority.<sup>42</sup> In Parliament, Mir himself called for repression of critical opinions against his government,<sup>43</sup> thereby setting out the political objective for the suppression of such opinions. It is likely that Mir instigated leaders in the Morok police to execute the enforced disappearances in accordance to said political objective. Having

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<sup>32</sup> ICC, *Prosecutor v Katanga*, ICC-01/04-01/07-3436, 7 March 2014, ¶1101.

<sup>33</sup> Facts, ¶11.

<sup>34</sup> Facts, ¶17.

<sup>35</sup> Facts, ¶24 & ¶33.

<sup>36</sup> Article 7(1) of the Statute.

<sup>37</sup> ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-269, 3 March 2014, ¶17–¶18.

<sup>38</sup> Facts, ¶9.

<sup>39</sup> Facts, ¶10 & ¶11.

<sup>40</sup> Article 25(3)(b) of the Statute.

<sup>41</sup> ICC, *Prosecutor v Ntaganda*, ICC-01/04-02/06-309, 9 June 2014, ¶153.

<sup>42</sup> Facts, ¶8.

<sup>43</sup> Facts, ¶9.

ensured the appointment of his supporters into leading positions in public service,<sup>44</sup> Mir wielded great influence over them, which he likely exercised toward the commission of the enforced disappearances.

***D. Alternatively, Mir bears common purpose liability for the enforced disappearances of persons***

17. Common purpose liability arises when the accused intentionally contributes significantly<sup>45</sup> to the commission of the crime.<sup>46</sup> The contribution must also be made in the knowledge of the intention of the group to commit the crime.<sup>47</sup>
18. Mir knowingly contributed significantly to the detention of the detainees. Presence of a respected figure during the crime represents approval of the perpetrators' conduct, a significant contribution.<sup>48</sup> As Prime Minister of Morok, Mir's regular meetings with Morok police at the detention facilities<sup>49</sup> constituted approval of the detentions. These appearances would have the effect of legitimising the criminal act, which constitutes a substantial contribution. Moreover, there is no evidence that Mir even attempted to stop the detentions even though he had the authority as Prime Minister.
19. Additionally, Mir's response when questioned shows that he knowingly contributed to the detentions. He gave dismissive answers instead of investigating the disappearances when they were raised by foreign media.<sup>50</sup> He also mischaracterised the enforced disappearances as necessary security measures.<sup>51</sup>

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<sup>44</sup> Facts, ¶8.

<sup>45</sup> ICC, *Prosecutor v Mbarushimana*, ICC-01/04-01/10-465-Red, 16 December 2011, ¶283.

<sup>46</sup> Article 25(3)(d) of the Statute.

<sup>47</sup> Article 25(3)(d)(ii) of the Statute.

<sup>48</sup> ICTR, *Prosecutor v Aloys Simba*, ICTR-2001-76-T, 13 December 2005, ¶403–¶404.

<sup>49</sup> Facts, ¶24.

<sup>50</sup> Facts, ¶11.

<sup>51</sup> Facts, ¶11.

### III. COUNT TWO: MIR IS LIABLE FOR CAUSING EXCESSIVE INCIDENTAL DEATH AND INJURY TO CIVILIANS AND CIVILIAN OBJECTS

#### A. *RP and Morok Armed Forces knowingly caused excessive incidental death or injury to civilians or damage to civilian objects*

(1) *Incidental harm was expected of RP and the Morok Armed Forces' attacks*

20. The perpetrators' attacks must have been ones that would cause incidental death or injury to civilians or damage to civilian objects.<sup>52</sup>

21. During the attack that occurred in the midday of the 6<sup>th</sup> of March 2017 (the "**6 March attack**"), RP targeted a civilian building.<sup>53</sup> This building was even located in the densely populated capital city of Xeros, Akantea.<sup>54</sup> Bombs, incapable of distinguishing military and civilian objects, were used.<sup>55</sup>

22. The use of explosive weapons in densely populated areas exposes civilians to extreme risks of incidental death and injury.<sup>56</sup> For the attack that occurred in the night of the 2<sup>nd</sup> November 2017 (the "**2 November attack**"), the Morok Armed Forces ("**MAF**") committed an airstrike targeted at Xeros troops fleeing across the border with high explosive rockets in addition to high-calibre cannon rounds.<sup>57</sup> Rockets are unguided munitions incapable of hitting specific targets.<sup>58</sup> Prior to the attack, the Morok government already knew that Xeros refugees were crossing the border to flee the violence in Xeros.<sup>59</sup>

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<sup>52</sup> Article 8(2)(b)(iv) of the EOC.

<sup>53</sup> Facts, ¶21.

<sup>54</sup> Clarifications, Question 37.

<sup>55</sup> Facts, ¶21.

<sup>56</sup> ICRC (2001), *International Humanitarian Law and the challenges of contemporary armed conflicts*, pg 41.

<sup>57</sup> Facts, ¶30.

<sup>58</sup> ICTY, *Prosecutor v Martić*, IT-95-11-T, 12 June 2007.

<sup>59</sup> Facts, ¶27; Clarifications, Question 57.

(2) *The expected incidental harm of the attacks was clearly excessive*

23. The incidental harm caused by the perpetrators' attacks must have been clearly excessive in relation to the concrete and direct overall military advantage anticipated by the perpetrators.<sup>60</sup>
24. For the 6 March attack, there could not have been any concrete and direct overall military advantage anticipated by RP. An object which is normally civilian in nature must be presumed to not be effectively contributing militarily.<sup>61</sup> The Times of Xeros building is a civilian building, with no military contribution on its part.<sup>62</sup> It is likely that most occupants of the building are civilians. The vast majority of deaths, 30 out of 38, were civilian, a foreseeable outcome given that the attack was targeted at a civilian building.<sup>63</sup> From a strategic standpoint, the attack on the Times of Xeros posed insignificant impact on Xeros' military strength and could only have encouraged the Xeros government to come down even harder on RP.
25. For the 2 November attack, there was little concrete and direct overall military advantage anticipated by MAF. The targeted Xeros forces were retreating into Xeros after they had carried out the attack against the industrial town in Morok.<sup>64</sup> Such retreating forces would pose no immediate threat towards Morok, nor was there a significant military advantage to be gained from the attack. At least 30% of the deaths were civilian.<sup>65</sup>

(3) *RP and MAF knew that the incidental harm would be excessive*

26. RP must have known that the incidental harm from the 6 March attack would be excessive. The bomb RP chose to use was powerful enough to partially destroy the targeted building.<sup>66</sup> RP, with strong support of Mir,<sup>67</sup> knowingly targeted the Times of Xeros office, a civilian target. The attack occurred two days after Times of Xeros

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<sup>60</sup> Article 8(2)(b)(iv) of the EOC.

<sup>61</sup> Article 52(3) of the GC Protocol I.

<sup>62</sup> Facts, ¶21.

<sup>63</sup> Facts, ¶21.

<sup>64</sup> Facts, ¶30.

<sup>65</sup> Facts, ¶30.

<sup>66</sup> Facts, ¶21.

<sup>67</sup> Facts, ¶18.

published articles critical of Mir and Mir retaliated by characterising them as a threat in the region.<sup>68</sup>

27. In the 2 November attack, Morok Commander David Azmir (“**Azmir**”) ordered the airstrike even though there was no significant military advantage expected from attacking retreating troops. Azmir should have known of the presence of civilians and the high likelihood of hurting them, as he had drone intelligence to provide information on the battlefield.<sup>69</sup>

**B. *RP and MAF committed the attacks with knowledge of the context of an IAC***

28. The attacks must have a nexus to an international armed conflict (“**IAC**”).<sup>70</sup> The perpetrators must also have been aware of the factual circumstances that established the existence of the IAC.<sup>71</sup>

*(1) The NIAC on 6 March was internationalised through Morok’s intervention*

29. A non-internationalised armed conflict (“**NIAC**”) becomes internationalised when some of the participants in an internal armed conflict act on behalf of another State.<sup>72</sup> Overall control by an intervening State over subordinate militia or paramilitary units internationalises the NIAC. Acts performed by such paramilitary units supported by a State may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts.<sup>73</sup> Here, there are substantial grounds to believe that Morok exercised overall control over RP.
30. First, Morok likely supported RP in their attacks. RP frequently used booby-traps produced in Morok.<sup>74</sup> They also secured arms for subsequent attacks from March to

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<sup>68</sup> Facts, ¶20.

<sup>69</sup> Facts, ¶30.

<sup>70</sup> Article 8(2)(b) of the Statute.

<sup>71</sup> Article 8(2)(b)(iv) of the EOC.

<sup>72</sup> ICTY, *Prosecutor v Dusko Tadić*, IT-94-1-A, 15 July 1999, ¶84.

<sup>73</sup> ICTY, *Prosecutor v Dusko Tadić*, IT-94-1-A, 15 July 1999, ¶137.

<sup>74</sup> Facts, ¶23.

October 2017.<sup>75</sup> OSCMP had also observed convoys of ammunition moving across the Morok border to Xeros under the guise of humanitarian convoys.<sup>76</sup>

31. Second, the participation of masked military personnel without insignia (“**Masked Militants**”) is indicative of substantial foreign State assistance amounting to overall control. During the 6 March attack, Amirah Wizzle, the right hand of RP’s leader, was accompanied by three Masked Militants,<sup>77</sup> demonstrating their centrality to the attack. Previously, RP, a political organisation led by a university professor, were only engaged in disorganised protests.<sup>78</sup> The high degree of organisation brought to RP by these Masked Militants suggests they have had military training. Since their appearance, RP managed to soundly defeat Xeros police and armed forces.<sup>79</sup>
32. Third, it was likely that the secrecy surrounding the Masked Militants was to hide their affiliation with a foreign State. RP members took pride in their affiliation with RP, committing aggression without hiding their identities,<sup>80</sup> and claimed responsibility for their attacks.<sup>81</sup> In contrast, the Masked Militants always concealed their identities.<sup>82</sup>
33. Finally, a foreign State's territorial ambition, as evinced by statements made by high-ranking politicians, can indicate its overall control over paramilitary units in an NIAC.<sup>83</sup> Mir has called the separation of Morok and Xeros a historical error, and vowed to correct it through reunification.<sup>84</sup> He also regarded the wealth of Xeros as Morok’s.<sup>85</sup>

(2) *The 2 November attack constituted an IAC*

34. An IAC exists whenever there is a hostile resort to armed force or means of warfare<sup>86</sup> between two or more States.<sup>87</sup> In the 2 November attack, the hostile resort to armed

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<sup>75</sup> Facts, ¶23.

<sup>76</sup> Facts, ¶28.

<sup>77</sup> Facts, ¶21.

<sup>78</sup> Facts, ¶14.

<sup>79</sup> Facts, ¶26.

<sup>80</sup> Facts, ¶16.

<sup>81</sup> Facts, ¶16 & ¶21.

<sup>82</sup> Facts, ¶21, ¶25, ¶26, ¶28, ¶29 & ¶33.

<sup>83</sup> ICTY, *Dario Kordić and Mario Čerkez*, IT-95-14/2-T, 26 February 2001, ¶134–¶135.

<sup>84</sup> Facts, ¶7, ¶18.

<sup>85</sup> Facts, ¶7.

<sup>86</sup> ICRC, *Commentary on the First Geneva Convention*, 2016, ¶228.

<sup>87</sup> ICRC, “How is the Term “Armed Conflict” Defined in International Humanitarian Law?”, *Opinion Paper* (March 2008); ICTY, *Prosecutor v Tadić*, IT-94-1-T, 2 October 1995, ¶70.

force by both Morok and Xeros militaries triggered an IAC. The Morok helicopter airstrike was targeted at Xeros forces.<sup>88</sup> Xeros forces also infiltrated and struck an industrial town in southern Morok.<sup>89</sup>

35. The MAF was also aware of the context of the IAC. Azmir authorised the airstrike knowing that the target of the attack was the retreating Xeros forces moving back across the border to Xeros.<sup>90</sup>

***C. Mir bears command responsibility for the attacks causing excessive incidental harm to civilians and civilian objects***

*(1) Mir had knowledge that RP and MAF were about to attack*

36. A superior must have had knowledge that the subordinates were committing or about to commit the crimes.<sup>91</sup> As argued above,<sup>92</sup> there are substantial grounds to believe that Morok exercised overall control over RP by providing substantial military support. RP would therefore be a subordinate group under Mir, the Prime Minister of Morok and head of the MAF.

37. Mir must have known that RP was about to commit the 6 March attack on the Times of Xeros building. Two days before the 6 March attack, Mir called upon Xeros to stop Times of Xeros journalists from calling for severe police action against RP and RP sympathisers.<sup>93</sup> He also labelled such publications as a threat to regional peace and stability, hinting at possible reprisal from RP.<sup>94</sup> In the same announcement, Mir had even urged Xeros citizens to rise up and defend what he deemed to be traditional principles.<sup>95</sup>

38. Mir knew that the MAF was committing the 2 November attack. Mir was the one who relayed intelligence on the retreating Xeros troops to Azmir immediately before the

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<sup>88</sup> Facts, ¶30.

<sup>89</sup> Facts, ¶30.

<sup>90</sup> Facts, ¶30.

<sup>91</sup> Article 28(b) of the Statute.

<sup>92</sup> See ¶29–¶33.

<sup>93</sup> Facts, ¶20.

<sup>94</sup> Facts, ¶20.

<sup>95</sup> Facts, ¶20.

2 November attack.<sup>96</sup> As an overt act of war, it is unlikely that Azmir would have ordered the attack without sanction from Mir as the head of MAF.<sup>97</sup>

(2) *Mir failed to prevent the attacks which were within his effective responsibility and control*

39. The superior must have failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes that were within his effective responsibility and control.<sup>98</sup> For the 6 March attack, Mir as Morok's Prime Minister could have exercised Morok's overall control over RP to prevent the bombing. As for the 2 November attack, Mir as head of MAF failed to exercise his powers to reduce the incidental damage of the attack. He could have instead ordered the use of small arms against the retreating Xeros troops.

#### **IV. COUNT THREE: MIR IS LIABLE FOR THE TRANSFER OF XEROS PERSONS**

##### **A. *Morok had transferred Xeros persons to Morok and Willandra***

40. The crime of transfer is established on the transfer of any part of the population of an occupied territory within or outside this territory.<sup>99</sup> The transfers must be forcible, which can include physical force or coercion caused by fear of violence, duress, detention, psychological oppression, or abuse of power.<sup>100</sup>

41. Through the MAF and RP, Morok had forcibly transferred Xeros persons to Morok and Willandra. As of early December 2017, 21 vehicles bearing Morok military code were used to directly transfer women and children from Xeros to Morok.<sup>101</sup> Marsha Pixel confirmed that more than 100 of such Xeros transferees were held in a Morok prison camp on the western outskirts of Lobos.<sup>102</sup>

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<sup>96</sup> Facts, ¶30.

<sup>97</sup> Facts, ¶30.

<sup>98</sup> Article 28(b) of the Statute.

<sup>99</sup> Article 8(2)(b)(viii) of the EOC.

<sup>100</sup> ICTY, *Prosecutor v Radislav Krstić*, IT-98-33-T, 2 August 2001, ¶519–¶532.

<sup>101</sup> Facts, ¶28.

<sup>102</sup> Facts, ¶33.

42. Morok would also have published the ICRC report on the prison camps if the report vindicated them of Marsha Pixel's allegations. There is no evidence that Morok has published the ICRC report on its prison camps.<sup>103</sup>
43. In any case, the confidentiality of the report was likely a condition negotiated by Morok. The ICRC was only granted access to the prison camps after lengthy negotiations.<sup>104</sup> The fact that the ICRC did not publicly condemn Morok is not indicative of their innocence.
44. By end November 2017, around 200 Xeros civilians, coerced by fear of such capture and detention by Morok, had fled to Willandra.<sup>105</sup> Even more Xeros persons were forced to leave as the fighting in Xeros intensified and RP's control over the north west of Xeros became known for widespread arbitrary detention, torture, and disappearances of civilians.<sup>106</sup>
45. These transfers would also not constitute a genuine evacuation. A genuine evacuation would involve an obligation to bring the population back when the hostilities have ended.<sup>107</sup> However, when Xeros called upon Morok to disclose the whereabouts of the transferred persons, Mir evaded the question and gave a dismissive response.<sup>108</sup> By February 2018, hostilities in Xeros had subsided since most of RP had been killed, captured, or had fled.<sup>109</sup> However, no evidence shows that the displaced persons were returned to Xeros, even one year after the end of hostilities.
46. An evacuation must not involve movement of persons outside the occupied territory, unless it is physically impossible to do otherwise.<sup>110</sup> The vehicles transferred the people across the border, even though Xeros maintained control of the south eastern part of the country.<sup>111</sup>

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<sup>103</sup> Facts, ¶33.

<sup>104</sup> Facts, ¶33.

<sup>105</sup> Facts, ¶28.

<sup>106</sup> Facts, ¶34.

<sup>107</sup> ICTY, *Prosecutor v Mladen Naletilić and Vinko Martinović*, IT-98-34-T, 31 March 2003, ¶526.

<sup>108</sup> Facts, ¶35.

<sup>109</sup> Facts, ¶36.

<sup>110</sup> ICTY, *Prosecutor v Mladen Naletilić and Vinko Martinović*, IT-98-34-T, 31 March 2003, ¶526.

<sup>111</sup> Facts, ¶34.

**B. *The transfer of persons from Xeros to Morok and Willandra were perpetrated in the context of an IAC***

47. The transfers must have a nexus to an international armed conflict (“IAC”).<sup>112</sup> The perpetrator must also have been aware of the factual circumstances that established the existence of the IAC.<sup>113</sup>
48. The transfers had a nexus to the ongoing IAC triggered by the 2 November attack, which, as argued above,<sup>114</sup> triggered an IAC.<sup>115</sup> MAF continued the IAC by supporting RP with troops, equipment, ammunition, transportation, heavy weapons, and even tanks.<sup>116</sup> As the MAF itself had conducted the 2 November attack and has been consistently supporting RP, it was aware of the context of the IAC against which the transfers were being conducted.

**C. *Mir bears common purpose liability for the transfer of Xeros persons***

49. Common purpose liability arises when the accused intentionally contributes significantly<sup>117</sup> to the commission of the crime.<sup>118</sup> The contribution must also be made in the knowledge of the intention of the group to commit the crime.<sup>119</sup>
50. The group, consisting of RP and Morok authorities, deported Xeros persons with the common purpose of achieving Morok’s reunification with Xeros. The deported persons were guarded by armed men wearing red scarves,<sup>120</sup> an identifying emblem worn by RP members when they stormed the Xeros government building.<sup>121</sup> A Morok prison camp was used to confine these Xeros transferees.<sup>122</sup>
51. Mir significantly contributed to the crime with the knowledge of the group’s criminal intention. MAF’s provision of military support to RP, a foreign non-State actor, to

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<sup>112</sup> Article 8(2)(b) of the Statute.

<sup>113</sup> Article 8(2)(b)(iv) of the EOC.

<sup>114</sup> See ¶34–¶35.

<sup>115</sup> Facts, ¶30.

<sup>116</sup> Facts, ¶28.

<sup>117</sup> ICC, *Prosecutor v Mbarushimana*, ICC-01/04-01/10-465-Red, 16 December 2011, ¶283.

<sup>118</sup> Article 25(3)(d) of the Statute.

<sup>119</sup> Article 25(3)(d)(ii) of the Statute.

<sup>120</sup> Facts, ¶28.

<sup>121</sup> Facts, ¶20.

<sup>122</sup> Facts, ¶33.

commit an insurgency within Xeros<sup>123</sup> could only have been performed with his sanction as head of the MAF. Morok's provision of the prison camp that detained the Xeros transferees<sup>124</sup> could only have been possible with his sanction as Prime Minister. He even covered up for the transfers by giving evasive and dismissive answers when Xeros authorities requested information on the transferees.<sup>125</sup>

## **V. PRAYER FOR RELIEF**

52. For these reasons, the Prosecution submits that there are substantial grounds to believe that Mir had committed the crime against humanity under Article 7(1)(i), and the war crimes under Articles 8(2)(b)(iv) and 8(2)(b)(viii) of the Statute.

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<sup>123</sup> Facts, ¶28.

<sup>124</sup> Facts, ¶33.

<sup>125</sup> Facts, ¶35.