

**IN THE INTERNATIONAL CRIMINAL COURT**

**PRE-TRIAL CHAMBER I**

**March 2019**

***Prosecutor v. Prime Minister Don Mir***

**A. INSTRUCTIONS**

- 1 *Proceedings*: The hearing takes place pursuant to Article 61 of the ICC Statute (confirmation of charges). At this stage, the Prosecutor has to “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/or “challenge the evidence presented by the Prosecutor”.
- 2 *Oral Pleading*: For the purpose of the moot, the hearing comprises a main speech and a rebuttal for the Prosecution and a main speech and a sur-rebuttal for the Defence (see Rule 12 of the Rules for the competition).
- 3 *Facts and evidence*: The case is entirely fictional. The Moot problem includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence for the purpose of the hearing. 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 ICC Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence. Teams should not hand anything to judges unless specifically asked to by a judge.
- 4 *Procedure*: The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66-69 of the ICC Statute. Any other procedural questions should be ignored.
- 5 *Jurisdiction and admissibility*: Counsels may, if relevant, address any issue regarding the admissibility of the case.
- 6 *Applicable law*: In accordance with Article 21 of the ICC Statute:

*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.*

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

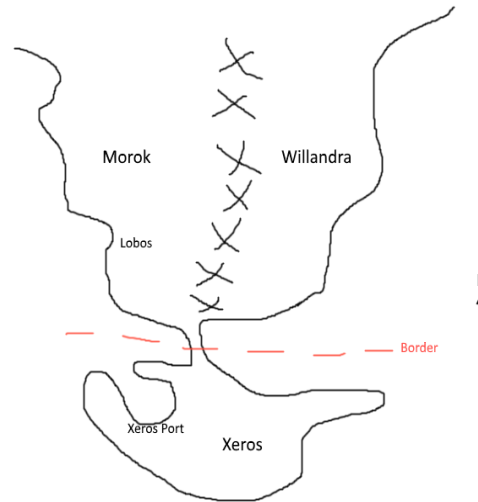
- 8 Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in their argument.
- 9 *Participation to treaties:* At all material times, the following treaties were in force (✓):

<b>Treaties</b>	<b>Morok</b>	<b>Xeros</b>	<b>Willandra</b>
<i>1949 Geneva Conventions I-IV</i>	✓	✓	✓
<i>1907 Hague Regulations</i>	✓	✓	✓
<i>1969 Vienna Convention on the Law of Treaties</i>	✓	✓	✓
<i>1977 Protocols I and II Additional to the 1949 Geneva I-IV</i>	✓	✓	✓
<i>1980/2001 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its Protocol I, II (amended), III, IV and V.</i>	✓	✓	✓
<i>1998 Statute of the International Criminal Court</i>	✓	✓	✓
<i>1966 International Covenant on Civil and Political Rights</i>	✓	✓	✓
<i>1985 Convention Against Torture</i>	✓	✓	✓
<i>2006 International Convention against Enforced Disappearance</i>			✓
<i>1966 International Covenant on Economic, Social and Cultural Rights Civil and Political Rights</i>	✓	✓	✓

## **B. FACTS**

1. The Republic of Morok occupies over half of the Morokian Peninsula. Morok has a population of some ninety (90) million inhabitants spread over an area of four hundred and fifty (450) thousand square kilometres. Its capital city is called Lobos, which lies, on the western coast some 50 kilometres north of the border with Xeros. While Morok has significant oil and gas reserves the majority of its population work in rural industries. A key market and export route for Morok is the adjoining state of Xeros. Morok seeks to be a democracy with elections being held every four (4) years for persons seeking to sit in the House of Representatives, the sole parliamentary institution. The party holding the majority of seats in the parliament governs the country. The national flag of Morok has stars and stripes and has a red and green background.
2. At the foot of the Morokian peninsula lays the tombolo called Xeros, a wealthy, small state, having as a capital city Akantea. While Xeros was part of what now constitutes the Republic of Morok in colonial times it is now a separate state with about seven million inhabitants. Xeros is famous for its port, which has successfully transitioned from a strategic naval base able to exert control over a large swath of the Main Ocean to one of the world's main duty-free shipping ports with an adjacent industrial zone famous for electronic and technical equipment. The national flag of Xeros is coloured black and yellow and has a lion in the middle.

3. The growing wealth of Xeros has made it the envy of many states in the region, especially Morok. The border between Morok and Xeros is about one kilometre wide and is located across the tombolo where it joins the Morokian peninsula. One side of the tombolo is swamp while the other is lightly wooded. While a two-metre high wire fence marks the border and the joint border post is located across the road and rail link movement across the border is a relaxed affair with border officials paying little attention to who crosses.
4. The strategic location and history of Xeros as a major trading port has resulted in a diverse multi-cultural population holding more liberal views on gender, religion, education and politics than the rest of the Morokian Peninsula. The colonial rulers had initially intended to grant independence to the whole of what now constitutes Morok and Xeros as the new state of Morok. However, the traders and business leaders of Xeros used their wealth and influence to successfully plead for an independent Xeros notwithstanding common religious, cultural and ethnic ties between the majority of people's living in Morok and Xeros. This period of negotiation became increasingly violent as politically opposed groups of demonstrators clashed over the future of what is now Morok and Xeros. What distinguished the traders and business leaders was ethnic diversity brought about by mixed marriages over some two hundred years with people's foreign to the peninsula. Today the descendants of those traders and business leaders make up about fifty (50) percent of Xeros population. Those same descendants of the traders also hold most of the wealth and leadership positions in business, politics, security, police and armed forces. That is not to say that the rest of Xeros population has not, to a certain extent, benefited from this growth and development. Nevertheless, the remaining 50% of the population is poorer and mainly live in the rural areas, in the eastern part of Xeros and is composed mainly of people's of Bazu ethnicity, the original dominant ethnicity of the region.
5. However, since independence, a vocal group within Xeros has consistently called for reunification with Morok on the basis of cultural, religious and ethnic considerations. The large majority of Morok is of Bazu ethnicity. These once, pre-colonial, common traits were diluted in Xeros as the Colonial rulers encouraged immigration to accelerate economic growth with the port in Xeros. These immigrants not only provided specialised labour, skills and business acumen but numerous soldiers and sailors also settled in Xeros at the conclusion of their military service. The former colonial masters also encouraged this immigration and settlement because the new arrivals had no interest in self-determination until the future self-government of what now comprises Morok and Xeros became a reality. Prime Minister Mir, whose family had opposed the separation of Xeros from Morok, supported the calls for reunification from within Xeros. When it became known that Xeros would become a separate state Prime Minister Mir's family moved from Xeros to Lobos to avoid the growing violence between opposing sides and to ensure that their children grew up in a pure ethnic, religious and linguistic environment, the one predominantly present in Morok which also shared more conservative values. Before entering politics Prime Minister Mir was trained as a medical practitioner at Lobos University and worked and advocated for improved health services for the rural poor of Morok.
6. The rest of the Morokian Peninsula is occupied by the State of Willandra. Willandra is a middle ranking power with a strong balanced economy and well-trained, modern military. The history of Willandra is largely influenced by the State of Miga, a state situated in the north east of the peninsula, with which it shares linguistic and cultural ties. It is separated from Morok by a mountain chain. The national flag of Willandra is coloured blue and gold and has a white anchor in the middle.



Map – Morokian Peninsula

7. In 2000 the political party led by Prime Minister Don Mir came to power and still governs Morok. Don Mir was known during his campaign to be a strong supporter of the reunification between Morok and Xeros. During his first election for prime minister, he was recorded as saying ‘the wealth of Xeros belongs to Morok’ and ‘we will correct the historical error, the separation of Xeros from Morok, the forced division of our peoples into two states’. Prime Minister Mir also came to power promising rural reforms. He also wanted Morok to adhere more strictly to its religious and traditional values. In order to do this, new legislations was enacted to reinforce the power and influence of male religious leaders. Criminal laws sanctioning what were considered immoral behaviours were also adopted. Don Mir is the head of the armed forces as established by article 87 of the Morok Constitution. To enhance the power of Morok in the region and ensure its development, Don Mir increased Morok’s expenditure on technological security surveillance capabilities along with enhanced electronic warfare capabilities. Morok used to develop for defensive purposes explosive rockets and other cheap weapons, such as landmines and booby-traps. He now wanted to improve and expand its small aerospace industry by producing, inter alia, top-end unmanned aerial vehicles (UAVs) and autonomous weapons systems (AWS). Since coming to power Prime Minister Mir had developed close personal and political ties with Agora, one of the major powers in the region and one of the five states that hold veto powers in the United Nations (UN) Security Council. Two outcomes of these ties were a new military airfield and enhanced port facilities with associated training facility leased to Agora. Agora is also enhancing Morok infrastructure in return for favorable trade deals. This new military expenditure was of course noticed outside Morok, including by the Times of Xeros, one of the oldest and leading newspaper in the region, which published a series of detailed articles on Morok’s military ambitions and political ties. Morok’s government news agency responded several times, calling upon the Xeros government to ‘control your media’ and ‘stop the publication of fake news’.
8. Prime Minister Mir was often heard to say that for Morok to become a successful and wealthy nation everybody needed to focus on what was important, that is, security, stronger cultural identity and development. To achieve the government objective of a safe and prosperous Morok, Prime Minister Mir prohibited the media from criticising government policies. The number of opposition politicians decreased from almost 50% in Parliament following the 2000 elections to some 20% following the elections. Since 2000 Prime Minister Mir has ensured his supporters are appointed to leading positions in

the military, judiciary and, more generally, the public service. During the same period, several media outlets and foreign media officers in Morok closed following continual pressure from Morok security agencies.

9. Between **November 2000 and November 2002** Mary Price, a well-known journalist from the Morokian Times published a series of opinion pieces critical of Prime Minister Mir's **2000** election win and subsequent exercise of prime ministerial powers in appointing friends and associates. Mary Price was a vocal advocate of human rights, which, in her opinion, were being slowly stifled by the government's legislative agenda. Following an oral attack on Mary Price by the Prime Minister in Parliament in which he said amongst other things, 'Price is not a real journalist, she is a liar, she seeks to undermine our society and for this, she will have to pay', Prime Minister Mir further added that 'all such cases should be repressed, in Morok and beyond'. In response Mary Price let it be known that in her mid-**December** article she would not only provide evidence to support her assertions but would 'name names' and 'produce documents'. In early January **2003**, two Morokian Times editors were detained by security personnel and after extensive questioning were released after three weeks. Nobody knew of their whereabouts until their release.
10. Mary Price was last seen leaving a New Year party at 2am on 1 January **2003**. Her office and apartment were destroyed by fire in the early hours of 1 January **2003**, but nobody was found. A subsequent investigation found that both fires were caused by electrical faults. Mary Price's mid-**December** article was never published as all of her papers, notes and electronic equipment could not be located and were thought to have been destroyed in the fires. When questioned by the media about her disappearance, the Prime Minister gave dismissive answers. On the **5<sup>th</sup> of February 2003**, she was seen by her sister who reported about the allegations of incommunicado detention of Ms Price since her disappearance as well as ill-treatment. Some have said to have seen her leaving the country on the 7<sup>th</sup> of February to Willandra. Ms Price's sister confirmed her earlier intention to leave Morok. The story was the object of a first-page news article in the Morok Times and other newspapers. Shortly after, 40 persons **including** journalists and editors disappeared **along with** Ms Price's sister. Their whereabouts **were revealed** approximately one year later, on the 15<sup>th</sup> of March **2004** when the police declared that they **had been** deprived of liberty for interrogation purposes and that for security reasons their contact with the outside could not be facilitated. Once released, these persons all started new jobs and generally **vanished from public life whilst** remaining in Morok. Five journalists were nevertheless **sentenced to** 10 years imprisonment for corruption and treason. They first appeared in front of the court to start the trial on the 25<sup>th</sup> of **October 2004**. While their location was disclosed to the family at that point, no visits were allowed.
11. Between **November 2004** and December 2016, around 300 journalists, students, academics and business people disappeared in Morok for approximately one month, sometimes three months or even more. A common feature was the fact that each of those who disappeared had been a critic of Prime Minister Mir and/or his government. The disappeared persons were held in undisclosed locations and most of them **had** vanished at night. The majority of the disappeared were subsequently released and **noticeably** changed previous habits, lives, including jobs. Around 50 persons, mainly journalists, were kept detained on **allegations** of treason and corruption. When questioned by foreign media about whether or not the Government was involved in the disappearance cases, Prime Minister Mir gave dismissive answers and stated that 'security measures have to be adopted to ensure public order'. In any case, Minister Mir reiterated several times that these are 'internal affairs' and has explained the need to respect "Morok's sovereignty". Anonymous bloggers tweeted and re-tweeted 'missing journalist/critic taken by black van'... 'Morokian secret service has black vans'. In January 2014, one key opposition

politician and two newspaper editors were convicted of a range of offences including treason and defamation and were imprisoned. The treason and defamation laws were old colonial laws that had been retained but later adapted by Morok following statehood. All three had either spoken or reported criticisms of Prime Minister Mir's actions. On April 2014, Morok News disclosed the location of the three persons, which was one of the detention centres west of Lobos. Again, family visits were not allowed after that. During the same time period, seven opposition politicians died in mysterious car accidents. In April 2014, another politician died when his vehicle crashed and exploded. Subsequent investigations by Morokian police reported poor servicing and excessive speed as the cause of the accidents.

12. As Prime Minister Mir's legislative agenda was rolled out there was a simultaneous strengthening of security across Morok alongside improvements in infrastructure and rural health. In parallel, there was a growing nationalism within Morok and many were calling for 'reunification with Xeros'. In early 2003 stronger security measures were introduced in Morok on the basis of existing legislation to ensure greater stability within Morok. These reforms and amendments to previous colonial laws provided for pre-charge detention for questioning for periods of up to 15 weeks for suspected acts of rebellion or treason as well as the use of special military courts for suspected persons, with highly confidential procedures. Authorities in Morok also started detaining people for questioning not only because of anti-social ideas but also on the basis of 'inappropriate dress'. Most community and religious leaders, mainly of Bazu origin, strongly supported the government agenda.
13. Between 2004 and 2018, NGO and several United Nations (UN) mechanisms, including Human Rights Committees, repeatedly shared allegations of human rights abuses in Morok. In particular, the reports, throughout the years, reiterated that Morok must, inter alia, ensure that all disappearances, allegations of torture and ill-treatment are promptly, impartially and effectively investigated by an independent mechanism. With regard to detention generally, the UN Committees expressed concerns about the use of prolonged pre-trial detention, lack of procedural guarantees for detainees and the detention and prosecution of people based on broadly defined offences. NGOs and UN mechanisms all expressed particular concern at the broadly defined crimes grouped under the categories of 'endangering national security' in the Criminal Law and in the 2003 Morok Security Law. These new laws updated older colonial laws by expanding their scope and reach in the definition provided in article 472 of the "Ministry of Security Measures concerning Criminal Procedures".
14. The frequency of demonstrations in Xeros calling for reunification with Morok grew from several a year to monthly and sometimes fortnightly in light of the growing increase of economic inequalities. What pushed things over the edge was an unpopular fuel tax increase adopted in February 2014 that brought exurban people in Xeros to feel excluded from public transportation and other government services they believe wealthy urbanites were enjoying on their dime. When Xeros increased the national gasoline tax, those living outside pricey urban areas, who often drive out of necessity rather than by choice, felt they had the most to lose. The growing economic inequality among Xeros citizens also revived old political resentments on reunification, particularly among the Bazu, the majority of which were leaving in rural areas. On 1 May 2014 a newly formed political group calling itself 'Reunification Patriots' (RP) started to distribute pamphlets and used social media outlets to organise demonstrations. The RP started wearing red scarves embossed with stars and stripes. Initially RP demonstrations were peaceful but as opposition to RP spread within Xeros, the demonstrations turned into violent clashes between the RP and opponents on the one hand and the police on the other. As a result of the incidents, 20 RP got injured as well as 12 members of the police together with 10 other opponents. Interviews conducted by Xeros media with members of RP revealed a



membership driven by the conservative values opposed to the liberal policies of many living in Xeros. The RP and their supporters also showed strong ties with Morok friendly policies towards rural areas. Aware of the increasing protests and violent clashes in Xeros, Prime Minister Mir took the opportunity to call for ‘adherence to Morokian social norms’ the more emboldened became the demonstrators. By late 2014 the authorities in Xeros started requiring anybody wishing to hold a demonstration to seek police permission. Throughout December 2014 and January 2015 several demonstrations were organised. On 15 December 2014 a protest which escalated into violent attacks against Xeros police started. Xeros armed police was deployed, and a few days later hundreds of RP clashed with both police and other opponents from the civil society. Xeros officials said that a total of 50 people died, among those killed most of them were civilians from Xeros, with 120 others injured and many vehicles and buildings destroyed. The police in Xeros arrested more than 100 RP members as well as two tourists of Morok nationality on misdemeanour charges of ‘disturbing the peace’ as the two tourists were seen to be involved in the protests organised by RP. Prime Minister Mir claimed diplomatic protection over the two nationals which Xeros refused.

15. As a result, violent riots over several days broke out on 2 January 2015 in the capital city of Xeros. Xeros increased the police and armed forces presence in the streets and the RP appointed Brian Frenzel, a Bazu Professor of International Humanitarian Law, as their leader. The first day's rioting, which involved at least 1,000 RP, escalated into violent attacks that mainly targeted the police and armed forces. A few days later hundreds of RP people clashed with both police and armed forces. Xeros officials said that a total of 150 people died, among those killed, most of them were RP members. Police and military forces of Xeros said to be hampered in identifying RP fighters because not all were keeping their scarves during fights, even if they were carrying arms openly before and during military engagements.
16. On 22 April 2015 a bomb-attack occurred on the outskirts of Akantea. According to witnesses, the assailants were a group of 18 young and red scarfed men, who arrived in a black van, and who opposed the local government, including its campaign against the burqa, which had grown popular among older Xeros women in 2009. The men occupied a police station nearby, killing two security guards with knives and bombs and taking five hostages. The attackers then yelled religious slogans. After a firefight with police, 14 of the attackers were killed, and four were captured. Three of the hostages were rescued alive, while two were killed in the attack. Local and national governments said the attack was organized terrorism motivated by religious extremism, and found that two of the attackers have links to the RP. A team from Xeros police was sent to investigate the attack. RP acknowledged responsibility for the attack on May 4. Six men were handed prison sentences for their involvement in several attacks since December 2014.
17. Between January 2015 and December 2016 there were allegations that RP was selectively targeting media on Xeros that criticised RP. For example, Xeros national television channel experienced a series of outages in May 2015 and January 2016 due to cyber attacks from unidentified sources, while the national radio broadcaster was forced to cease transmissions on several occasions due to cyber attacks that interrupted transmissions. By December 2016 Morok was also suffering cyber threats on government websites including the posting of commentary critical of Prime Minister Mir. On 1 December 2016 the vocal journalist of the well know TV news, Xeros Today, Susan Say, and a prominent academic specialised in political relations in the region, Anthony Claphand, were seen by their neighbours to have been badly beaten by an unidentified mob that invaded their homes. One month later, Susan Say, was not seen at the media centre. Her absence continued and despite widespread searches and questioning of possible suspects, including RP supporters, nobody knew of her whereabouts. Rumours suggested that she had been secretly taken across the border and

handed to Morok security. Analysis of border surveillance cameras identified two black vehicles owned by suspected RP members crossing into Morok but only one returned and no evidence was found linking that vehicle or the driver and passengers to the disappearance of Susan Say.

18. Authorities in Xeros became increasingly aggressive in stopping and breaking up demonstrations supporting the reunification with Morok. Between April 2015 and December 2016, more than 1500 people died in Xeros, including simple opponents and around 1200 persons were arrested. Many demonstrators ended up in hospital. Prime Minister Mir regularly accused Xeros authorities of ‘ignoring the will of the people’, ‘victimising citizens who seek to correct an historical wrong’. He went on to offer to meet with Xeros authorities to discuss reunification with Morok and to ensure that Xeros maintained its distinctive historical character. His offer was however ignored. In his annual ‘speech to the people’ on 3 March 2017 delivered in the Great Hall of the Morok Parliament in Lobos, Prime Minister Mir warned Xeros that they risked losing everything they had achieved if they did not accommodate the calls from within Xeros for self-determination and re-unification with Morok. Noticeably in the audience were members of RP who cheered loudly at every opportunity while waving their RP scarves. On one occasion Prime Minister Mir acknowledged their presence saying ‘we welcome our brothers and sisters from across the border’.
19. On 4 March 2017 the Times of Xeros published a series of articles critical of the Morok government. In particular, the newspaper editors identified a growing repression in Morok and warned about the growing influence of Morok nationalism within Xeros. In several articles journalists called for ‘severe police action against RP and RP sympathisers’ and ‘the need for the armed forces to consider a targeted military strike against any foreign state causing trouble in Xeros’. Some residents, particularly traders, of Xeros started boycotting rural products from Morok and refused to accept their rural product which were sent to Xeros ports for international markets.
20. Prime Minister Mir responded by calling upon Xeros to make the newspaper and its editors stop spreading fake-news as they constitute a threat to peace and stability in the region. He went on to warn Xeros that any military action against Morok would be met with ‘fire and fury’. He also urged the citizens of Xeros to continue to rise up and defend the traditional and valuable principles upon which the societies of Morok and Xeros are based and to dismantle inequalities. The morning of 6 March 2017 saw a crowd of about five hundred demonstrators led by the RP leader, Mr Brian Frenzel, march upon the capital central square, close to the main government building with their red scarves. When some of the demonstrators together with Brian Frenzel stormed the government’s building around 11 a.m., the police fired tear gas and turned water cannon on the demonstrators outside the building while those inside were driven out by baton wielding police in gas masks. 100 demonstrators were injured, 60 seriously and 40 others captured.
21. At midday of the 6<sup>th</sup> of March, a bomb destroyed parts of the building that housed the Times of Xeros killing 38 people and injuring 10 others. Among those killed were 3 members of Xeros armed forces and 5 members of the police. Several people in the building managed to escape. The RP claimed responsibility for the attack. Amirah Wizzle, Brian Frenzel’s right hand, was seen to be waiting in a black van close to the Times of Xeros building. She was also seen to be accompanied by three mysterious masked men in military uniforms without insignia using two-ways mobile radios. The car immediately disappeared after the attack. Subsequent police raids on suspects in Xeros led to five arrests of RP members.
22. Two days later, on 8 March 2017, Marcus Roberts, the senior editor of the Times of Xeros, was reported missing to police by his partner who reported that Marcus had not



returned from his evening run and nobody had seen or heard from him. Subsequent investigations found that Marcus, a marathon runner, wore an advanced fitness tracker that automatically uploaded his training to the iCloud. When this was accessed several weeks later it showed that on the night he vanished, the tracker indicated he had entered a vehicle as he left a park in Xeros and had stopped sending data shortly after the vehicle had crossed the border between Morok and Xeros near a Morok security building. When the family of Marcus Roberts sought a meeting with Morokian police about his disappearance a police spokesperson told the family a meeting was not needed because Roberts had disappeared in Xeros and that they should speak to Xeros police.

23. Between 17 March 2017 and 1 October 2017 there was an increasing number of armed attacks by small numbers of RP on police and military buildings and personnel. Police and military often located booby-traps when clearing buildings that had been occupied by RP militia. When Xeros authorities complained to the Morok government as booby-traps were found to be produced in Morok, the Morok Government replied saying their military equipment could be purchased from a number of armed dealers. During the same period of time two vocal opponents of RP disappeared whilst walking home. Witnesses reported seeing them enter vehicles that had pulled up beside them. The same type of vehicle was later recorded as driving across the border with Morok with only a driver in the passenger compartment. Subsequent investigations revealed many border personnel were sympathetic to RP with several taking part in demonstrations. When the families of those who had disappeared demanded Xeros politicians to seek answers from Morok they were told that the Morok Government denied any part in or knowledge of the disappearances.
24. On September 2017, a report from a well-known Xeros based NGO, called “Journalists without borders”, which receive part of its funding from liberal states, including Willandra, confirmed the disappearance of Susan Say which was found by the organisation to be detained close to an unknown village in the west of Morok, called Semi, close to Xeros’ border. The two vocal opponents were also claimed by the NGO to be detained in the same facility together with Marcus Roberts. Don Mir was also seen to regularly meet the police of the detention centre. The reports of the NGO were later on used, among other documents, by several UN Committees to make recommendations to Morok.
25. By 1 October 2017 the authorities in Xeros had significantly improved the security of public buildings and police infrastructure. Members of Xeros armed forces now patrolled Xeros in conjunction with the local police. Commentators on Xeros radio and television networks called for more decisive action such as arresting anybody found with a red scarf with stars and stripes, shooting RP demonstrators on sight and instituting economic sanctions against Morok. At least one radio presenter demanded Xeros to close its border with Morok, expel all Morokians from Xeros and shot on sight any Morokian attempting to enter Xeros. This implied to find out, according to the radio presenter, who were the men in military uniforms without insignia who were seen around the Times of Xeros building on the 6<sup>th</sup> of March.
26. Xeros awoke on the morning of Wednesday, 11 October 2017 to news that RP had seized the Xeros public broadcaster’s radio and television premises. A group of masked militants wearing green uniforms without insignia led by an identified former officer of Morokan security services, Ahmed Kajimi, were also present in the building. When Xeros police and members of the armed forces attempted to enter the building around 9am they were met with heavy gunfire. As a result, all the police officers were killed. Other masked soldiers without insignia were also seen around one of the Xeros military headquarters in the west part of Akantea, as reported by the Xeros Gazeta. Shortly after, in the afternoon of the same day, a bomb explosion destroyed the facade of the same

Xeros military headquarters. A car bomb outside the gates of the police headquarters failed to explode but the RP managed to capture several police officers. In the evening, militaries without insignia occupied the main police building. Over the next three weeks there was increasing violence within Xeros as armed persons wearing RP scarves appeared in the streets of Xeros chanting slogans advocating Xeros return to Morok and firing on anybody who opposed them. Some by-standers trying to escape the movements of RP were observed by people overlooking the scenes from high-rise apartment building, to be seized and taken away. Most protests now turned into street fights with Xeros police and armed forces causing severe injuries on both sides as well as several people killed: 12 from the Xeros armed forces and the police, 5 RP members and 10 militaries without insignia

27. The Morok Government complained to the Xeros Government that the conflict was causing civilians to flee into Morok requiring the construction of an emergency refugee camp between Lobos and the border with Xeros.
28. In November 2017, the Morokan military reported intensive movement of troops and equipment from Morok into the separatist-controlled parts of north-western Xeros. The Organization for Security and Co-operation in Morokian Peninsula (OSCMP) Special Monitoring Mission observed convoys of heavy weapons and tanks in the north-west territory of Xeros without insignia. OSCMP monitors further stated they observed vehicles transporting ammunition and soldiers' dead bodies crossing the border under the guise of humanitarian aid convoys. As of early December 2017, OSCMP observed over 21 such vehicles marked with the Morokan military code for soldiers killed in action. On those vehicles, further armed persons with red scarves were seen together with other persons, including women and children. By end of November, around 200 civilians from Xeros were also seen crossing the border with Willandra to escape the tensions and for fear of being captured and detained by Morok. The majority of the persons seen there did not seem to be of Bazu ethnicity.
29. Over mid-October Xeros started losing control of parts of Xeros including the port, close to Akantea as well as part of the capital city. Militaries without insignia as well as RP militias took control of strategic positions and infrastructure in Xeros, including the main media locations, the main armed forces buildings and the police headquarters in Akantea.
30. On 2 November night, about 100 militaries coming from Xeros snuck across the border from the eastern part, striking one of the few small industrial towns situated in the south of Morok. Thanks to the use of drones, and the intelligence information gathered by Ahmed Kajimi and timely shared with Don Mir, once Xeros forces were spotted moving back across the border into Xeros, Morok Commander, David Azmir, authorized an airstrike by helicopters under his operational control. The helicopters targeted Xeros forces with high explosive rockets and 30mm cannon rounds. Battle Damage Assessment revealed that the aircraft killed a significant percentage of Xeros forces that had crossed the border, although some survivors escaped. When the helicopters attacked, 40 civilians were killed.
31. The day after, Morok made a publicly released statement surprised by the attacks coming from Xeros last night but given the offence, Morok was obliged to respond. Don Mir hoped that such an episode would not be repeated. He went on to say that any repeat of the attack would be catastrophic for the peace and stability of the region.
32. Reports from the OSCMP and the articles from the Xeros Gazeta indicated numbers of armed persons were travelling to Xeros by small boats at night or creeping through the swamps on the western side of the land bridge between Xeros and Morok. Authorities in Xeros called upon Morok to stop armed persons leaving Morok for Xeros. Prime

Minister Mir responded with statements to the effect that Morok was sending its army to patrol its approaches to Xeros but the fighting in Xeros was an internal affair of Xeros own making because it refused to consider legitimate claims for reunification with Morok.

33. On the 15<sup>th</sup> of November, a foreign independent journalist, Marsha Pixel, visited Lobos University for a conference. She immediately emailed her colleagues so that a piece could be published as soon as possible saying that she had been secretly invited by opponents of the Morok Government to observe a prison camp set up on the western outskirts of Lobos to hold people that RP and suspected Morok militaries without insignia had allegedly removed from Xeros. She said she knew that more than one hundred (100) people, including children, were guarded by Morok. She reported that members of Xeros police were also held in there. She also had confirmations that Marcus Roberts and other journalists were detained in a different nearby camp. Masha Pixel also saw militaries without insignia going back and forth from the camp and in nearby areas. As she left Morok, her journal published her email with photos. Prime Minister Mir immediately attacked 'foreign media' that sought to harm Morok interests. He went on to say that the camp held people who had fled the violence in Xeros and because those people opposed reunification they were a threat to Morok society, which is why they were confined to the camp. After lengthy negotiations, in December 2017, the Morok government secretly approved access to the camps to some delegates of the International Committee of the Red Cross (ICRC). Two weeks later the ICRC delivered a confidential report to the Morok government.
34. As the fighting in Xeros intensified an increasing number of refugees fled Xeros, most heading to Willandra. In response to the fighting and flow of refugees, in December 2017, Willandra stationed armed troops along its southern border with Morok and across its southern coastline. Willandra also stationed armed patrol boats to blockaded access from its territory to Xeros. Fighting on Xeros slowly spread until 29 December 2017. At that time, the RP with the support of Ahmed Kajimi and other men in green uniforms kept control over strategic locations and infrastructure in the north west of Xeros. A military camp was set up close to the port facilities where captured persons from Xeros were temporarily detained. Xeros maintained control on the south eastern part of the country. Some RP forces as well as militias in anonymous uniforms were killed; others were captured and detained in the south of the country. Reports from the Willandra based NGO "Emergency Rescue" (ER) as well as "Journalists without borders" indicated from the areas of Xeros controlled by RP of widespread arbitrary detention, torture, disappearance of civilians.
35. On 15 January 2018 the authorities in Xeros reported the atrocities and called upon Morok to stop supporting RP and to disclose where missing people from Xeros were being held. In response Prime Minister Mir said 'we are witnessing an internal civil war in Xeros caused by their own failure to recognize legitimate calls for reunification, it is their civil war', 'our observers have reported many human rights abuses by Xeros military'.
36. On 18 January 2018, following diplomatic discussions over the previous 48 hours with Xeros authorities, the armed forces of Willandra entered Xeros. Over a period of three weeks most of RP were killed, captured or fled to Morok.
37. Prime Minister Mir told international media outlets that while Morok was not surprised that the peoples of Xeros wanted a return to Morok rule, a return to their homeland. When reports emerged on 25 May 2018 from within Xeros that some captured militia were members and former members of the Morok armed forces with two identified as

having close ties to Prime Minister Mir, he publically denied the links saying ‘this is fake news, fabricated by Xeros’.

38. A planned trade trip to Agora by Prime Minister Mir on 30 May 2018 was cancelled at the last moment followed by Prime Minister Mir announcing his retirement from office due to ill health. His deputy became the new Prime Minister. Her first act was to thank him for his great work. The former Prime Minister took his family to Switzerland for a holiday in the Alps while he attended a medical clinic.
39. On 1 October 2018 the ICC Prosecutor presented indictments concerning the recent violence in Xeros naming the former Prime Minister Don Mir as the accused. On hearing about the indictments Don Mir boarded an international flight for Morok but fighter planes intercepted the flight as it passed near Willandra airspace and was forced to land in Willandra. Ex-Prime Minister Don Mir was arrested by Willandra police and handed over to the ICC. He vehemently protested his innocence and also opposed the jurisdiction of the ICC to hear the charges against him, suggesting instead that the proper forum for such charges is the courts in Morok. The new Prime Minister of Morok issued press statements in support of the former Prime Minister Mir.
40. The Pre-trial Chamber I of the ICC issued an order pursuant to rule 58 of the Rules of Procedure and Evidence so that the challenge to admissibility can be heard at the confirmation of charges hearing. At this hearing the court will also decide whether to confirm the following three (3) charges put forward by the Prosecutor against former Prime Minister Don Mir:

#### **Charges:**

**Count One** – With respect to the enforced disappearance of persons from 1 January 2003 to date from Morok and Xeros,

on the basis of individual criminal responsibility (Article 25(3)(b) of the ICC Statute), or in the alternative on the basis of common purpose liability (Article 25(3)(d) of the ICC Statute) the crime against humanity of “*enforced disappearance of persons*” under Article 7(1)(i) of the ICC Statute.

**Count Two** – With respect to the attacks on the midday of the 6<sup>th</sup> of March and on the night of the 2<sup>nd</sup> November 2017

on the basis of command responsibility (Article 28 (b) of the ICC 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*” under Article 8(2)(b)(iv) of the ICC Statute.

**Count Three** – With respect to the transfer of persons since November 2017 from Xeros to Morok and Willandra,

on the basis of common purpose liability (Article 25(3)(d) of the ICC Statute), for **contributing to the** commission of the war crime of “*transfer or deportation*” under Article 8(2)(b)(viii) of the ICC Statute.