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International Criminal Court

The Prosecutor v. Mr. Sengota

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1. Softland is a State in the continent of Greatland. It attained independence from Roland in the

year 1973. Within a decade of its independence, Softland began experiencing geographical and economic difficulties. River Thoga flowing through Softland divides the country into northern and southern provinces. For various historical reasons northern Softland was considered educationally and economically developed in comparison to southern Softland. After its independence from Roland, people hailing from northern Softland occupied most of the influential political and bureaucratic positions in the country. This created disenchantment among the people of southern Softland and led to political unrest on several occasions leading to violence.

2. Softland's population consists of several ethnic groups. Two ethnic groups constituted 80% of the total population of 20 million. These groups were of Kamila ethnicity 58%, and Simlahi ethnicity 22%. Five other ethnic groups constituted the remaining 20% of the total population of Softland. Of the five smaller ethnic groups, Kumis constitute 12% of the total population. More than 95% of these five smaller ethnic groups live in southern Softland. Kamila and Simlahi ethnic groups follow the Mayavar religion, in its variant forms. It is claimed by Kamilas that they follow the most authentic form of Mayavar religion in accordance with its religious texts. However, they accept that Simlahis in their practices are very similar to Kamilas. Kamilas have major differences with Kumis. Kamilas argue that though the Kumis claim that they belong to Mayavar religion their practices are contradictory to the religious texts of Mayavar religion. People belonging to other smaller ethnic communities follow other religions.

3. Kamilas believe that the Mayavar religion is the only faith where human beings can achieve eternal peace. Mayavar religion has historically always been headed by a male individual known as Rito, who hailed from a single family from the Kamila ethnicity from northern Softland. The religious head - Rito exercises significant influence on all the followers of Mayavar religion. Rito also influences the voting of Mayavars, thus enjoying significant political clout, irrespective of the political party that holds power in Softland. However, despite claims from the Kumis that they also follow the Mayavar religion, they do not consider Rito as their religious head. They have their own religious head who is known as the Zomi.

4. Softland is home to several important historical monuments and places of cultural value, reflecting the history and life of the people of Softland for millennia. Some of the earliest origins of human civilization are traced to the banks of river Thoga, which is referred to as the Thoga civilization by historians. Softland realizing the utmost significance of the same has been constantly engaged in adopting and implementing necessary legal and institutional measures at the domestic level to protect its cultural property and heritage. In addition to domestic measures Softland also became a party to several important international treaties dealing with the protection of cultural property and heritage. These treaties include the *Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954*, and its two protocols, *Convention concerning the Protection of the World Cultural and Natural Heritage of 1972* and *the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003*. Softland nominated some of the important sites of cultural heritage and property for listing under the relevant conventions. Accordingly several cultural heritage and property sites in Softland are listed on the relevant lists of the conventions dealing with the protection of cultural heritage and property.

5. Over the years there has been a growing feeling among some sections of Kamila ethnic group that the smaller ethnic groups in southern Softland, mainly Kumis who claim to belong to Mayavar religion, are not strictly following the Mayavar religious practices and some of their practices are not prescribed by any of the important texts of Mayavar. The Kumis are culturally distinct from other Mayavars. They are also distinct in their dressing style. Though they believe in same religious texts as Mayavars, some of their practices are completely different from other Mayavars. Kamilas feel that a Mayavar should perform rituals which include reciting prayers, at least once every day. It is also expected of Mayavars that they should visit the religious site Dowali once in a week. Kumis do not follow these rituals. On the other hand they have their own specific rituals that they follow.

6. The biggest annual festival of Kumis takes place in the second week of July every year. The festival is spread over three days. During the festival, Kumi people customarily visit a specific place called 'Kimochi-Torami', means '*Gods resting place*' in their language. There are seven such places in southern Softland. These places are located in the outskirts of the towns. Kumi

people reach their nearest Kimochi-Torami to celebrate their annual festival. Kimochi-Torami is an open area roughly equivalent to a football stadium. It has an ordinary fencing of one metre height, just to denote the border of the space. It has several gates. 26 small houses, which look like huts, and are beautifully and artistically built in the area. It is believed by Kumis that during the annual festival the Gods would descend to the ground and reside in these huts. During these three days of the festival people in groups sing prayers to the Gods. The groups of people who sing these songs are not formally trained. However, there is an informal system of learning from each other. These prayers are sung in the form of folk songs. Along with them other performers also join in chorus. This singing goes on uninterruptedly for three days, with performers changing after every four hours. The singing has a particular style of its own and goes on in the form of argumentation.

7. Kumis specifically link this form of singing to Kimochi-Toramis. They consider that there is a spiritual link between the songs and the Kimochi-Toramis. One without the other does not signify any spiritual value. After the festivities, these places are abandoned till four weeks before the next annual festival cycle begins. It is believed and followed by Kumis that when there are no festivities these places should not be visited for the purpose of maintaining their purity and sanctity. This practice is respected and followed by people belonging to other ethnicities as well. Despite being practiced only by Kumis, people belonging to other ethnic groups also visit Kimochi-Toramis during the annual festival to watch and enjoy the performances. Keeping in view their cultural and religious significance, and based on the nomination by the government of Softland, Kimochi-Toramis are listed on the *Representative List of the Intangible Cultural Heritage of Humanity*, under the Convention for the *Safeguarding of the Intangible Cultural Heritage of 2003*.

8. Some sections of Kamilas believe that Softland belongs to Mayavars and Mayavar should become the religion of the State. The Kamilas who subscribe to this view are mostly from southern Softland. They attribute the backwardness of southern Softland to the lack of uniform acceptance of Mayavar religion by all ethnic groups. Those who believed that Mayavar should be made the religion of the State initiated a campaign across Softland. However there has been a stiff resistance to this demand from other ethnic groups. Most concerted forms of resistance to

the idea of Mayavar as the religion of the State came from Kumi people. It was reported in the media in the month of April 2015, there were attacks on the people and the properties belonging to ethnic minority groups. The attacks were reported to have taken place mainly in southern Softland. The Government of Softland declared that making Mayavar as State religion would only be feasible after consulting with the ethnic minority groups and it has to be spelt out in accordance with the prevailing laws as to what such a decision would imply in the governance of the country and its people.

9. This notwithstanding violent attacks on ethnic minority groups became frequent in several parts of southern Softland. On the night of 05 May 2015 in the city of Vantalya, a house belonging to the Zomi, the religious head of Kumis was attacked, leading to the destruction of its outer parts. On the next day a group called Mayavars for Mayavar Religion (MMR) in a video message with a person speaking with his head covered took responsibility for the same. In the video he declared that the Mayavar belief system had a holistic understanding of human life and provided ways and means of achieving eternal peace. Therefore to reach that eternal peace it is not wrong to resort to every reasonable method to attain the eternal peace. Two days after the video message the Government declared that those who take law into their hands would be dealt with appropriately. Security forces began arresting people alleged to have any association with MMR. In the month of July 2015, in the province of Jemia in southern Softland, police made several arrests. Later the police chief held a press conference in Vantalya, the administrative capital of Jemia wherein he informed that they received reliable information through their investigations that MMR had received lethal weapons from across the borders. He appealed to the people not to get carried away by the MMR. There was a sharp increase in the confrontation between armed groups of the MMR and the security forces soon after this.

10. In January 2016, Human Rights Monitor (HRM), a non-governmental organization released a report stating that more than 400 people were arrested in 2015, who allegedly belonged to MMR and that they were involved in planning and execution of several criminal acts. MMR in the meanwhile started recruiting more people into its fold. In the first week of February 2016 the media reported that MMR's armed groups had increased dramatically in numbers and strength. After intensive confrontations between the MMR and government forces for two months in

March and April 2016, and with the retreat of Softland government forces. southern Softland came under the control of the MMR. Soon MMR started controlling the territory by taking part in regulating the governance. MMR declared the new name of southern Softland as the Mayavar Land. Mr Babiyola was instituted as the President of MMR and also the President of Mayavar Land. Mr Babiyola formed a team of twenty people for the purpose of governance. Each one of them was entrusted with a specific department. Mr. Sengota was appointed as the chief of the Culture department.

11. Mr. Sengota was known for his scholarship in Mayavar religious texts. On several occasions during the conflict he gave interviews to the media wherein he clearly stated that most of the practices of Kumi people were anti Mayavar and particularly their annual festival celebrations at the Kimochi-Torami. He asserted that the Mayavar religion does not believe in Gods descending down to the ground. It is the people who would reach the God. Therefore he suggested that the Kumis should stop celebrating their annual festival and stop attaching any value to Kimochi-Toramis.

12. Mr. Sengota often spoke to the media and mostly on religious matters. He always underlined the need for making the Mayavar as the state religion. On 05 May 2016 it was reported that MMR issued a pamphlet in Mayavar Land (Southern Softland) in which it appealed to all the Kumis that they refrain from celebrating their annual festival which would fall in the second week of July 2016. The pamphlet appealed to them that they stop giving any significance to Kimochi-Toramis and they should abandon those places permanently. In response to this, Zomi the head of Kumis, issued a statement addressed to all the Kumis that they should go ahead with their preparatory work for their annual festival. He said that this festival was celebrated every year for more than two hundred years and it would take place in Kimochi-Toramis only. On 10 and 11 May 2016, Mr Sengota visited four of the seven Kimochi-Toramis in Mayavar Land (Sothern Softland). His visits were covered live by the media houses and channels. In the interviews he explained that he wanted to convey the message that he respected the sentiments of the Kumi people but would disapprove of their practices. When media asked whether they would stop Kumis from celebrating their annual festival, he said that festival would not be held, but that

would be achieved by convincing Kumis. The Zomi responded that Kumis would celebrate annual festival at Kimochi-Toramis as it happened every year.

13. On 20 May 2016, before the dusk, more than two hundred people gathered near each of the two Kimochi-Toramis. These two Kimochi-Toramis are located in two different places and distance between two is more than one hundred kilometers. In front of a few media persons, the people who gathered there started digging the two Kimochi-Toramis. Since there were not many physical structures in these places they demolished all the small hut like constructions built for the previous year's annual festival. They also destroyed the fencing of these places. They further dug the places to make them unusable for the planned annual festival. When media people questioned those involved in the destruction, they said that they were part of the cultural security guards formed by Mr. Sengota. They replied that they were performing the duty that was entrusted to them by their religious heads, particularly Mr Sengota who has thorough knowledge of Mayavar religious texts. They further emphasized that it should not be considered as ordained by any individual but should be considered as ordained by God. They were fulfilling the God's will under the Mayavar texts. The electronic media aired the destruction of two Kimochi-Toramis.

14. On 21 May 2016 media approached Mr. Sengota for his views on the attack on two Kimochi-Toramis. He expressed his regrets for the destruction. However, he said that it was the adamant attitude of the Kumis that led to this destruction. He observed the same purpose could have been achieved more honorably had the Kumis and their leadership consented to his views. He further shared that he had engaged with the Kumis to find a solution for this issue. However, it did not materialize. When the media asked about his role in the destruction he evaded the question. He added that Kumis should cooperate with them in making southern Softland (he underlined that now it is Mayavar Land) a homogenous land of Mayavars. When asked whether remaining Kimochi-Toramis would also meet the same fate, he answered that he would leave it to the people to decide.

15. After the attacks on two Kimochi-Toramis, the religious head of Kumis, the Zomi called upon his ethnic community to mobilise themselves peacefully to protect their religious sites and

their ethnic identity. Hundreds and thousands of Kumis came out and participated in the peaceful protests across southern Softland. The Zomi in consultation with his ethnic group elders decided and declared that from 08 July to 15 July 2016 the Kumi people should reach their nearest Kimochi -Toramis including the two destroyed sites.

16. These dates were chosen because that was the week of the annual day celebrations of Kumis. It was also informed that there would not be any annual festival celebrations in 2016. From 08 July onwards people started moving towards their nearest Kimochi-Toramis. The elders of the Zomi and Kumi ethnic community decided that people should reach the Kimochi-Toramis on foot because that would help highlight the issue and to generate support from other ethnic groups. Many people had to walk for more than 100 kilometres to reach their nearest Kimochi-Torami. Large number of Kumis reached their nearest place by 8 July 2016. However, people kept joining in till 15 July. On the last day there was a press release issued by the organisers of the protest which pointed out that the protest was successful as nearly half a million Kumis took part in the protest. However the press release highlighted that more than 500 people went missing and they were receiving the news that some of those who went missing were found dead at several places. The press release also pointed out that the cultural security guards who were instrumental in destroying two Kimochi-Toramis were in the forefront in attacking Kumi people. They underlined that they were attacking under the orders of Mr Sengota.

17. The Human Rights Monitor (HRM) released a report to the media meet on 25 July 2016. The report contained the details of 56 people who had died. The report stated that the dead bodies were found near to the routes through which large number of people passed to reach Kimochi-Toramis. The report further pointed out that no action was taken by the police. The report mentioned that despite apprehensions that there might be physical attacks on the Kumis, no security was provided on the routes that had traversed to reach the Kimochi-Toramis. HRM report underlined that there were deep wounds on some of the bodies of the dead and suspected that it must have been caused by the attackers. The HRM stated that they, along with other human rights groups and individuals, would request the Prosecutor of the International Criminal Court (ICC) to conduct investigation into the violations of international humanitarian law and human rights law.

18. Mr. Sengota in his interview to the media expressed ignorance of deaths. He said that the task of cultural security guards was to do everything to protect the cultural integrity of Mayavar Land. He said that the deaths might have occurred because of sunstroke as people were walking for long distances under severe hot temperatures and Kumi leadership should not have asked people to walk for long distances keeping in view the weather conditions. He also said that it was not possible to provide security on every route.

19. Meanwhile, in the month of August 2016, through various diplomatic channels, Softland government sought the support of neighboring State of Mojavi. Mojavi sent its armed forces into the southern Softland. Softland armed forces joined Mojavi forces and an intense conflict erupted continued for two weeks between the MMR armed groups and the Softland and Mojavi forces. Softland forces took the control over southern Softland by the first week of September 2016. Most of the MMR cadres surrendered to the Softland forces after the take over.

20. The office of the Prosecutor of the ICC initiated preliminary investigations and issued arrest warrants against four individuals. Mr Sengota was one of them. In response to the arrest warrant by the ICC, the Softland government promptly arrested Mr Sengota and surrendered him to the ICC. Mr. Sengota was charged with the following crimes under the Statute of the ICC. The case is before the trial chamber of the ICC.

-Mr. Sengota was charged with committing the war crime under article 8(2) (e) (iv) of the Statute of the International Criminal Court for the acts committed on 20 May 2016.

-Mr. Sengota was charged with committing the crime against humanity of murder under article 7 (1) (a) of the Statute of the International Criminal Court for the acts committed from 08 July to 15 July 2016.

Along with the treaties mentioned earlier, Softland is a party to the Four Geneva Conventions of 1949 and two Protocols additional to the Geneva Conventions of 1977. Softland ratified the Statute of the International Criminal Court on 15 May 2012.

Written and oral arguments on behalf of the Prosecution and Defence are to be confined to these two charges. Counsel for both sides are to make arguments with respect to the applicability of the charges and whether the "Elements of Crimes"(United Nations Doc. PCNICC/2000/1/Add.2 (2000), with relevant parts reproduced below) have been met for each of the two charges. Counsel are expected to bring to the Court's attention relevant jurisprudence of the international and national courts and tribunals and other documentation. Questions relating to jurisdiction and admissibility may not be raised unless they are substantially linked to the merits of the case.

Note: The Counsels do not have freedom to choose the case; they are required to argue both cases.

ELEMENTS OF CRIMES

Article 7 (1) (a) - Crime against humanity of murder

Elements

1. The perpetrator killed¹ one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

Article 8 (2) (e) (iv) - War crime of attacking protected objects²

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

¹ The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts.

² The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.