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International Criminal Court

At

The Hague

1. The Prosecutor vs. Jingo Crackle

2. The Prosecutor vs. Lama Suki

Facts of the Case

1. Nooba gained independence from 200 years long colonial rule in the 1950's but this independence was marred by the partition of the country on the basis of religious demographics. The partition of Nooba led to a short but bloody civil war between two religious groups, i.e. Dijé and Hist. There was a complete breakdown of law and order; many died or were massacred in riots. It was estimated that up to 12.5 million people were displaced and half a million perished. The country that seceded from Nooba is Kimatan, bordering the northwest part of Nooba. After the huge migration during and after the partition, Nooba has 81% Dijé, 14% Hist and 5% others, and Kimatan has 98% Hist and 1% Dijé and 1% others.
2. Due to the violent nature of partition, there have been conflicts and tensions between the two countries ever since, especially because a substantial minority of Hists lives in Sutasat, the northwest of Nooba. Since the partition, Kimatan laid its claims on Sutas, as majority of people in the area are Hists. Nooba and Kimatan fought four wars over Sutas, i.e. in years 1957, 1965, 1971 and 1999. All other times, both the countries have been involved in several skirmishes over the control of border areas.
3. Since 1958, there has been unrest among the Hists of Sutas, some favouring accession of Sutas to Kimataan, and some favouring complete independence. The Government of Nooba was so occupied with the wars with Kimatan, that any democratic, economic and social reforms in Sutas took back seat. Hence, the dispute between the Government of Nooba and local Hists over greater autonomy gained momentum. First in 1988 and then in 1998, an internal conflict arose between Hists in Sutas and the Government of Nooba over local elections. Hists complained about systematic discrimination and mistreatment by Noobian authorities. In 1999, a series of demonstrations, strikes and attacks on the Government of Nooba began.

4. In 2000, under the leadership of Luke Skittle, the Hists in Sutas started to organise themselves in a rebel group, favouring Sutas accession to Kimatan, which called itself the Hist Liberation Front (HLF). HLF launched a series of coordinated attacks against several major Noobian cities with the object of carving out Hists controlled state in the northwest region of Nooba. By 2003, the conflict escalated into the most important internal security issue in Nooba. Thousands of people died during fighting between HLF and the Government. Nooba accused the Kimatan Government and Army of supporting and training HLF to fight in Sutas. According to official figures released by Sutas Authorities in March 2009, there were 3,400 disappearance cases and 47,000 people died in the conflict.

5. In October 2009, a general election took place in Nooba, in which the Dijé Peoples Party ousted the Noobian Nationalist Party. Dijé Peoples Party always advocated for Nooba to be a Dijé only country, contrary to the constitution of Nooba which states Nooba to be a secular country. On 24 October 2009, the new Prime Minister of Nooba, Lama Suki of Dijé Peoples Party, in his victory speech to the nation criticised the efforts of the previous Government in dealing with HLF. Lama Suki further called upon the Dijé people to join hands to get rid of Hists from the country. As a result, the tension between the two countries, Nooba and Kimatan increased and Government officials, including various ministers, have been using unfriendly language criticising one another.

6. The Kimatan Government and Hist religious groups in Kamatan expressed indignation and condemned Lama Suki's victory speech in the strongest terms. The Kimatan army increased its activities around the border under the command of Colonel Jingo Crackle, protector of Luke Skittle. On 25 February 2010, a series of explosions took place throughout Sutas, each targeting a police station, security installations manned by Noobian officers and Dijé residential areas. HLF claimed responsibility for the bombings. Thousands of Sutas Dijés were killed as a result of the explosions, including women and children. Hundreds of Dijé women were raped by HLF rebels. Tens of thousands of Sutas Dijés emigrated as a result of violence.

7. In response to the violence, Nooba under the leadership of Prime Minister and Minister of Defence, Lama Suki, deployed 600,000 army personnel in Sutas equipped with emergency powers, which allow the military to curtail civil liberties. According to Hist people, this led to constant harassment of the civilian population, who were constantly subjected to searches of their persons and homes with warrants, elderly people and women were subjected to ill treatment by the forces. The army personnel arrested ten young civilians of the Hist religion under the suspicion of their involvement in exploding bombs at one of the security posts in Sutas. The detainees were humiliated, their hands and legs were tied, and they were kept in solitary confinement for endless hours without food and water. The Amnesty International reported that the detainees were choked to death using Chlorine and Chloropicrin. The activities of Noobian army personnel further escalated the violence between the HLF and the Noobian army, as weapons continue to flow into Sutas from Kimatan enabling HLF to do greater damage.
8. A coalition of international human rights organisations including Human Rights Watch, the International Federation for Human Rights, and the Amnesty International reported the use of heavy arms, explosive and chemical weapons in populated areas with no discrimination between civilians and army. The rebels are engaged in ethnic cleansing by exterminating Sutas Dijés. Various reports claim that the Nooba troops have been engaged in widespread humanitarian abuses and have engaged in extrajudicial killings. The International Commission of Jurist reported that a Nooba Army Unit is alleged to have forcefully entered in the houses of Hists people and raped 30 to 100 women aged between 13 and 70. The Government's inability to protect the people from both its own troops and the rebel forces led to the erosion of support for the Government.
9. Nooba and Kimatan both are members of the United Nations. Both are parties to the Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, the International Convention on Civil and Political Rights, 1966 and other International Humanitarian Law Conventions which prohibit the use of certain weapons during the hostilities. Nooba is not a signatory to and thus also not a state party to the Rome Statute of International

Criminal Court, 1998; Kimatan has been a state party to the ICC Statute since August 2000.

10. Following these actions, on 29 November 2013 the United Nations Security Council convened an emergency meeting. Acting under Chapter VII of the United Nations Charter and Article 13 (b) of Rome Statute, the Council vide Resolution 2019 referred the situation since 24 October 2009 to the International Criminal Court (ICC) and urged all states to co-operate with the Court, whether or not it was party to the Rome Statute. Nooba refused to recognise the court's jurisdiction.

11. On 15 January 2014, the Prosecutor submitted to the Pre-Trial Chamber two applications for an arrest warrant for Colonel Jingo Crackle and Lama Suki pursuant to Article 58 of the Statute. The Prosecutor's application was based on the following charges:

Charges against Colonel Jingo Crackle

Since 25 February 2010 in Sutas, Colonel Jingo Crackle with HLF jointly committed, as a joint criminal enterprise, within the meaning of Article 25(3) (a) of the Statute:

1. "Crimes against Humanity" under Article 7(2) of the International Criminal Court Statute (the Statute);
2. "war crimes" by intentionally directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities under Article 8(2)(b)(i) of the Statute; wilful killings under Article 8(2)(a)(i); destruction of property under Article 8(2)(b)(xiii) and committing rape under Article 8(2)(b)(xxii) of the Statute;
3. "Responsibility of the Commander and other superiors" of HLF and their actions in Sutas under Article 28 of the Statute.

Charges against Lama Suki

Lama Suki was charged with the following crimes:

1. On 24 October 2009 and on subsequent dates Lama Suki committed incitement to genocide under Article 6 and Article 25 (3) (e) of the Statute;
2. "war crime" of inhuman treatment and unlawful confinement of ten young civilian of Hist religion in Sutas under Article 8 (2) (a) (ii)& (vii) of the Statute;

3. "Responsibility of the Commander" and the actions of the Noobian army in Sutas against civilian population under Article 28 of the Statute; directing use of prohibited weapons under Article 8 (2) (b)(xx) of the International Criminal Court.

12. On 22 January 2014 the Pre-Trial Chamber issued arrest warrants for Colonel Jingo Crackle and Lama Suki. It requested all other State parties to the Rome Statute to cooperate within their jurisdiction in the arrest and surrender of Colonel Jingo Crackle and Lama Suki.

13. On 1 February 2014, Lama Suki travelled to Zydan to participate in an annual summit of group seven regional states. Although Zydan is a state party to the Rome Statute since 2008, it did not arrest Lama Suki, taking the position that doing so would violate his Head of State Immunity.

14. On 2 February 2014, Colonel Jingo Crackle visited Meran, a Hist majority country and a non-state party to attend a multi religious conference. The conference venue was on the border with Astram, a state party to Roman Statute. Colonel Jingo Crackle remained in Meran territory, when he was approached by private security staff for a security check. Understanding it to take place in Astram, he refused, and was thereby forcibly removed, his name discovered on the ICC warrant when he was identified, and taken into custody at Astram on 3 February 2014. On 4 February 2014, the accused claimed unlawful arrest and abduction to Astram in a surrender hearing which the National Court and responsible Minister of Astram rejected in light of Article 59 (4) of the Rome Statute.

15. The two cases have been brought by the Prosecutor before the Pre-Trial Chamber for the confirmation of charges set out in the arrest warrant:
 - (i) The Prosecutor v. Colonel Jingo Crackle;
 - (ii) The Prosecutor vs. Lama Suki.

16. Prior to the confirmation hearing the Pre-Trial Chamber received 84 applications from the residents of Sutas, nationals of Nooba claiming excessive atrocities from HLF. All victims have been granted the right to participate in the confirmation hearing. The victims are under protection and referred to as nos. W01-W84.

17. The Pre-Trial Chamber for the Confirmation Hearing seeks submissions from the Prosecution and defence on the following issues:

The Prosecutor v. Colonel Jingo Crackle:

- (a) In the light of proposed charges, the jurisdiction of the Court;
- (b) The legality of the arrest of Colonel Jingo Crackle and the question of appropriate remedy, if any; and
- (c) The scope of participation for victims W01-W84. Victims have announced the intention to submit additional evidence in relation to HLF atrocities during Confirmation Hearing.

The Prosecutor vs. Lama Suki:

- (a) Whether the charges against Lama Suki constitute a cognisable case against humanity under the Statute; and
- (b) Whether the customary international law doctrine of Head of State Immunity precludes Zydan from arresting and surrendering Lama Suki to the ICC.

18. The Pre-Trial Chamber of the International Criminal Court has decided to hear the matters simultaneously.

The Counsel for Prosecution and Defence are required to submit their written memorials and present their oral arguments separately for the two cases as per the issues raised against each individual. The Counsels are required to present their oral arguments separately and simultaneously during the trial process. The Prosecutor and Defence are required to argue both cases.

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