

**IN THE  
INTERNATIONAL CRIMINAL COURT**

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**PROSECUTOR**

**v.**

**TWENTY-SEVEN SOLDIER NATIONALS OF FATAR**

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**MEMORIAL FOR THE VICTIMS' ADVOCATE**

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**September 13, 2006**



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## **STATEMENT OF JURISDICTION**

The Marijani victims in Razachstan request that the International Criminal Court exercise its jurisdiction over the Fatari defendants, pursuant to Article 12 of the Rome Statute.

## **QUESTIONS PRESENTED**

1. Does the International Criminal Court have jurisdiction to try the Fatari defendants for Crimes Against Humanity and War Crimes they committed in Razachstan pursuant to Articles 17, 18 and 19 of the Rome Statute of the ICC;
2. Is the recently elected provisional government in Razachstan willing and able to conduct judicial proceedings against the Fatari defendants for crimes committed against Marijani victims;
3. Do the victims have standing to participate in ICC proceedings?

## STATEMENT OF FACTS

After almost a decade of warfare and occupation, the nation of Razachstan recently held democratic elections and is rebuilding its government. ICC Problem ¶ 1. During Razachstan's nine years of occupation by the nation of Qurac, Quraci forces committed nearly 1.5 million violent crimes against the Marijani, who are Razachstani citizens, but are also members of a disparaged social caste considered to be the "lowest of the low." *Id.* Following the Quraci occupation and the United Nations (U.N.) liberation of Razachstan, incidents of violence against Marijani citizens continued when a rogue Fatari regiment of U.N. Peacekeeping Forces entered Razachstan's Buchari province. ICC Problem ¶ 3. These Fatari soldiers took control of a Marijani village, killed nine men, raped and mutilated seventeen women, and tortured several villagers. ICC Problem ¶ 7. However, prior to the commencement of hostilities by other nations, Razachstan suffered its own record of human rights abuses against Marijani citizens, with more than 500,000 violent crimes against the Marijani reported annually. ICC Problem ¶ 1.

Despite the long period of political and physical unrest in Razachstan, the U.N. only first took notice of the brutal nature of the Quraci occupation in February 2002, where pursuant to a Security Council Chapter 7 resolution, it sent peacekeeping forces to aid in the negotiations for Quraci withdrawal. ICC Problem ¶ 2. On November 12, 2003, twenty-seven soldiers from Fatar, a neighbor of Qurac, became frustrated with the U.N. negotiations and marched into Buchari, perpetrating war crimes and crimes against humanity against the Marijani villagers for more than a year. ICC Problem ¶¶ 3, 7.

More than a year later, the U.N. liberated the main base of Quraci occupation, which finally led to Quraci surrender on December 12, 2004. ICC Problem ¶ 4. A provisional government in Razachstan was established soon afterwards, but the Fatari deserters were not discovered and arrested until February 2005 when U.N. forces monitoring the upstart government in Razachstan conducted a survey mission in Buchari. ICC Problem ¶¶ 5, 7.

Confusion as to where and how the Fatari troops would be tried for murder and rape soon ensued and it soon became apparent that Razachstan was not properly equipped to bring justice to the victims for crimes of murder, rape, and torture. ICC Problem ¶ 8. The Razachstani provisional government wavered between two extreme factions: a lynch mob who wanted to immediately execute the Fatari soldiers without a trial and those politicians who downplayed the brutality of the crimes and disparaged the victims – the Marijani people. *Id.* While the new

Razachstani government debated whether it could try the defendants for these serious crimes, the Fatari government initially made no effort to exercise jurisdiction over its nationals. *Id.* Finally, after months of dissension, Razachstan, a signatory to the Rome Statute of the International Criminal Court (“ICC”) prior to the Quraci occupation, willingly acceded to ICC jurisdiction and referred the defendants to the Hague in April 2005. ICC Problem ¶¶ 6, 8.

Pursuant to Articles 7 and 8 of the Rome Statute of the ICC, the Fatari soldiers were subsequently charged with Crimes against humanity of murder, War Crimes of willful killing, War Crimes of attacking civilians, War Crimes of excessive incidental death, injury, or damage, and War Crimes of murder in May 2005. ICC Problem ¶ 9. However, despite willingly transferring the defendants to the custody of the ICC after conceding that it was unable to properly conduct a trial, Razachstan challenged ICC jurisdiction a month after referring the case to the ICC. ICC Problem ¶ 10. At this time, the new prime minister of Razachstan, Khalid Faraz, called for the immediate return of the Fatari defendants and stated that Razachstan now had the capacity to conduct a fair trial for war crimes, a mere four months after it conceded otherwise. *Id.* In addition, prior to any Razachstani investigation of the murder, Faraz promised not to execute the defendants if they were found guilty of the heinous crimes of rape, mutilation, torture, and murder. *Id.*

Currently, the government of Fatar, also a signatory to the Rome Statute, and representatives for the Fatari defendants are contesting Razachstani jurisdiction in favor of that of the ICC, and have stated that the provisional government is incapable of rendering a fair criminal trial in this instance. ICC Problem ¶ 12. Similarly, representatives of the Marijani Liberation Front (“MLF”), an organization representing the interests of the villagers who lived under brutal Fatari military control, immediately challenged the Prime Minister’s conviction to return the trial to Razachstani courts. *Id.* MLF argued that the only venue where the Marijani victims would receive justice for their suffering was in the ICC, since Marijanis have a long history of violent treatment and discrimination due to the historically embedded caste system in Razachstan. ICC Problem ¶¶ 1, 11.

## SUMMARY OF PLEADINGS

- I. Under the Rome Statute of the ICC, the victims in a case referred to ICC jurisdiction are properly allowed to take part in the proceedings and offer testimony and input at all stages of the prosecution of the defendants. In this proceeding, the Marijani villagers are properly considered victims and have standing to petition the Court.
  
- II. The instant case satisfies all the requirements for admissibility under Article 17 of the Rome Statute, with the ICC being the ultimate arbiter of admissibility. Both Razachstan and Fatar are State parties to the ICC and are obligated to accept ICC jurisdiction. The crimes of rape, mutilation, murder, and other injuries inflicted on the Marijani victims are serious enough to satisfy the gravity requirement and the defendants are not being put in double jeopardy. Finally, Razachstan has shown an unwillingness and inability to properly conduct a criminal trial in this matter. While ICC jurisdiction has been challenged within the time limit stipulated in Article 18 of the Rome Statute, Razachstan has not shown that it has taken steps to investigate the charges against the Fatar defendants, another requirement in Article 18 and the Prosecutor has ceased all investigations of crimes committed by Fatar defendants. Additionally, Razachstan must bring a challenge at the earliest opportunity, which it clearly did not do since it referred the case to the ICC on its own initiative.
  
- III. III.A. The Court must consider the unwillingness by considering factors delineated in Article 17 of the Rome Statute, including whether the national proceedings are being used as a pretense for shielding a defendant from prosecution, whether a State is initiating an investigation in order to delay justice, and whether the State is incapable of rendering justice due to issues of impartiality and independence. In determining inability, the ICC must judge whether a nationally sponsored trial is impractical due to the collapse of the judicial system.  
  
III.B. The circumstances in Razachstan are such that the government is unable to conduct a trial that meets the standards for the service of justice given the commission of such grievous violent crimes. Razachstan has suffered a decade of occupation and

political upheaval which has ravaged all branches of government. It is exactly because of such circumstances that led to the creation of U.N.-led tribunals in Yugoslavia and Rwanda and the widespread ratification of the Rome Statute of the ICC.

III.C. Razachstan's impartiality and independence with respect to judicial proceedings must be questioned given government statements guaranteeing that certain sentences would be foreclosed prior to any investigation of the matter and questioning whether the Marijani victims deserve justice in this case. When addressing whether a state is willing to bring defendants to justice, the ICC is tasked with considering whether trials can be conducted in an impartial and independent manner. Given the deeply embedded caste system disfavoring the Marijani people, it is extremely unlikely that a newly established Razachstani court system can fairly adjudicate a case of War Crimes and Crimes Against Humanity in which the principal victims are historically disfavored minorities. Considering that the Razachstani government has done nothing to curtail incidents of violence and systematic discrimination against Marijani citizens, this Court should consider whether Razachstan is suddenly demanding the return of the Fatari defendants in order to shield them from a real prosecution and to prevent the Marijani victims of the Fatari soldiers' crimes from receiving reparations for their injuries.

## PLEADINGS

### IV. THE MARIJANI VICTIMS IN RAZACHSTAN HAVE THE RIGHT TO PARTICIPATE IN THE ICC PROCEEDINGS AGAINST THE FATARI DEFENDANTS.

The victims of the Fatari defendants in this case are properly allowed to participate in the current criminal proceedings, as the ICC was designed to allow for the input of the victims of violent crimes at all stages of the prosecution. Victims are expressly given the ability to make representations to the Pre-trial Chamber to request authorization and an investigation of a criminal matter. Rome Statute, art. 17. Additionally, victims are able to submit observations to the ICC during any Article 19 challenges to jurisdiction or admissibility. Rome Statute, art. 19(3). Indeed, many scholars have argued that a large benefit of the ICC and U.N. established tribunals is the deference to victims' rights and opportunities for victim participation in trial proceedings. *See* Yael Danieli, 27 *CARDOZO L. REV.* at 1648-49 (2006) (commenting on the rights of victims at the ICC to participate in criminal trials and receive forms of protection); Eric Blumenson, 44 *COLUM. J. TRANSNAT'L. L.* at 839-40 (2006) (discussing the affirmative duty of the ICC to prosecute criminals for human rights abuses on behalf of victims); Jon M. Van Dyke, 8 *CHAP. L. REV.* at 170 (2005) (arguing that ad hoc tribunals are important in "prosecuting and punishing wrongdoers").

The Pre-trial Chamber recently ruled that victims have a right to participate in proceedings when it recognized six victims in the Democratic Republic of the Congo as able to submit observations during investigations of war crimes abuses of rape, mutilation, torture, conscripting child soldiers, and murder. Like the victims in the Lubanga Dyilo trial, the Marijani victims of the Fatari defendants' horrific will prove classifications as victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the court." ICC Rules, rule 85. This Court is also tasked with "protecting the safety, physical and psychological well-being, dignity and privacy of victims and witnesses," as well as establishing principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation." Rome Statute, art. 68(1), 75(1). Finally, a trust fund has also been established for the victims of crimes under the jurisdiction of the ICC. Rome Statute, art. 79.

V. THE ICC HAS JURISDICTION TO TRY THE DEFENDANTS FOR CRIMES AGAINST HUMANITY AND WAR CRIMES PURSUANT TO ADMISSIBILITY FACTORS STATED IN ARTICLES 17, 18, AND 19 OF THE ROME STATUTE.

The Rome Statute painstakingly details the conditions under which a case is admissible to the jurisdiction of the ICC, and the charges against the Fatari defendants satisfy all the prerequisites for ICC adjudication. The ICC has jurisdiction over the most heinous crimes which are of concern to the international community, including Genocide, Crimes Against Humanity, War Crimes, and Crimes of Aggression. Rome Statute, art. 5. The nature of these crimes is of such grave concern for the international community that the proper forum for adjudication is the ICC, a notion that Razachstan has historically supported. ICC Problem ¶ 6.

Razachstan is a signatory to the Rome Statute prior to the Quraci occupation almost a decade ago and is a current State party to the ICC and the Fatari defendants are nationals of a ICC State party. *Id.*; ICC Problem Clarifications. Due to its status as a State party to the Rome Statute, Razachstan is under an obligation to accept this Court's jurisdiction for crimes which have international significance such as the crimes against humanity and war crimes outlined in Article 5. Rome Statute, art. 12(1). Similarly, the Office of the Prosecutor classified these criminal violations as crimes against humanity and war crimes within the jurisdiction of the ICC and commenced an official investigation. ICC Problem ¶ 9; Rome Statute, art. 7-8. In doing so, the Prosecutor considered whether the information provides a "reasonable basis to believe a crime within the jurisdiction of the [ICC]" has been committed, admissibility issues, and the gravity of the crime and the interests of the victims. Rome Statute, Art. 53(1).

While Razachstan has a right to challenge jurisdiction as a according to Articles 18 and 19 of the Rome Statute – Razachstan is a state that has jurisdiction based on the territoriality principle of international law – the reasoning for its doing so following its own referral to the jurisdiction of the ICC must be questioned. Rome Statute, art. 18(1), 19(2). When Razachstan made a jurisdictional challenge pursuant to Articles 18 and 19 of the Rome Statute it did so merely a month after voluntarily referring the case to ICC jurisdiction, a move that invites the suspicion that Razachstan is delaying an investigation of the defendants in this matter. ICC Problem ¶ 10. Although its petition satisfies the time requirements set forth in Article 18 and Article 19, which note that a challenge must be made within one month of receiving notice of ICC claims to jurisdiction and prior to the start of the trial, Razachstan has not shown initiative in

investigating the charges against the Fatari defendants, another requirement stipulated in Article 18. Rome Statute, art. 18(1)(2); art 19(4). There is no evidence before this Court that signifies that Razachstan is investigating or has investigated the Fatari nationals pursuant to the requirements of Article 18. *Id.*; ICC Problem ¶ 10. Therefore, the Court should be wary of accepting the Razachstani petition to exercise jurisdiction over this matter.

In preliminary matters, the ICC exerts broad jurisdiction to determine whether a case before it is admissible. Rome Statute, art. 17. While the Rome Statute allows for complementarity with respect to national adjudications, it also states that “the Court *shall* determine that a case is inadmissible” when it corresponds to an enumerated exception to the Court’s jurisdiction. Rome Statute Preamble; Rome Statute, art. 17(1). By logical extension, the Court is similarly empowered to determine that it must accept a case that is not admissible in any other jurisdiction due to its failure to fit into one of the enumerated categories. *Id.* Thus, as all signatories are aware and support with their signature to the Statute, the ICC is the ultimate arbiter of the admissibility of cases that may come before it. Rome Statute, art. 12(1).

The Rome Statute provides a test to evaluate whether a case is inadmissible to the jurisdiction. Rome Statute, art. 17(1). A case is inadmissible if the defendant would be put in double jeopardy, the alleged conduct is not of sufficient gravity, or a willing and able State that has jurisdiction has been or is genuinely investigating or prosecuting the alleged act. *Id.* In the instant case, the Fatari defendants have not yet faced trial in Razachstan, the ICC, or any other court. ICC Problem ¶ 7. Here the Fatari defendants raped, tortured, and murdered Marijani villagers living in Razachstan under Quraci occupation, certainly crimes of sufficient gravity. ICC Problem ¶¶ 2, 7. The next section will illustrate that Razachstan is unwilling and unable to genuinely prosecute the Fatari defendants for War Crimes and Crimes Against Humanity.

VI. RAZACHSTAN’S GOVERNMENT IS UNABLE AND UNWILLING TO TRY THE DEFENDANTS FOR THE CRIMES OF MURDER, RAPE, AND TORTURE AGAINST MARIJANI VICTIMS.

- A. In addressing admissibility issues, the Court must determine whether Razachstan is unwilling or unable genuinely to carry out the investigation and prosecution of the Fatari defendants according to Article 17 the Rome Statute and relevant international law.

Even if the Court finds that the objection to ICC jurisdiction is well-pleaded, under the Rome Statute, the ICC is unable to proceed with the investigation and trial proceedings against criminal defendants if a state with jurisdiction is mounting an investigation and prosecution in the matter. Rome Statute, Art. 17(1). However, the ICC may exercise jurisdiction if the state party is “unwilling or unable genuinely to carry out the investigation or prosecution.” *Id.* In issuing its determination on the issue of unwillingness, the Court must consider while “having regard to the principles of due process recognized by international law,” whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

Rome Statute, art. 17(2). When considering whether the State court is unable to conduct proceedings, the ICC must determine “whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.” Rome Statute, art. 17(3). If even one of these elements is present, the ICC must assume jurisdiction over the case. Rome Statute, art. 17(2)-(3).

B. Razachstan is unable to conduct a criminal trial due to severe political upheaval and a collapse of its national judicial system and will unduly delay justice in this matter.

If a nation’s criminal trial system is unavailable or is compromised because of “substantial or total collapse,” the state should be considered unable to initiate an investigation and prosecution of a criminal matter. Rome Statute, art. 17(3). While the Prosecutor has the power to reconsider the admissibility of a controversy, it must do so based on new facts or information. Rome Statute, Art. 53(4). Razachstan has contested ICC jurisdiction by noting that they have now have a criminal court to try the Fatari defendants in this case. ICC Problem ¶

10. However, the political situation in Razachstan remains unchanged since the ICC first assumed jurisdiction. *Id.* To illustrate, Razachstan willingly acceded to ICC jurisdiction a mere month before it asserted a newfound eagerness to prosecute the defendants for their crimes against the Marijani people. *Id.* The government of Razachstan has suffered a severe political upheaval after almost a decade of foreign occupation and has just recently elected a provisional government. ICC Problem ¶ 1. Therefore, this Court must consider whether the national courts in Razachstan are now equipped to investigate and prosecute criminal matters as serious as murder, torture, and rape. Rome Statute, art. 17.

Following periods of war and political unrest, new democracies struggle with maintaining rule of law and the its judiciaries are often ill-equipped with the capacity to handle new caseloads and have difficulty locating evidence, questioning witnesses, and maintaining impartiality. *See* Ruti Teitel, 106 YALE L.J. at 2037 (explaining that using criminal trials after periods of upheaval “to construct transition implies a profound dilemma created by the tension of mediating discontinuity and continuity in the law”); M. Cherif Bassiouni, 38 CORNELL INT’L L.J. at 342-45 (2005) (noting that the Iraqi Special Tribunal was necessary to ensure that criminals were brought to justice due to an crumbling judiciary system).

It was for this reason that ad-hoc tribunals have been used recently to prosecute perpetrators of Genocide, War Crimes, and Crimes Against Humanity in the former Yugoslavia and in Rwanda, societies in which there was also a substantial collapse of the national judiciary system. *See* ICTY Statute; ICTR Statute; IST Statute; Rwanda Report (outlining the road to establishing an effective and independent judiciary in Rwanda following years of warfare and genocide). Both the ICC and international criminal tribunals were envisaged as a means for victims to get justice after years of warfare that ravaged national governmental offices rendered judicial institutions either obsolete or incapable of handling justice. *See* Jacob Katz Cogan, 27 YALE J. INT’L L. at 117-18 (2002) (positing that the “Rome Statute’s provisions and the practice of the international tribunals require these courts to aspire to the highest standards set by international human rights treaties, customary international law, and general principles of law”); Dorothea Beane, *Deferral of National Prosecutions* (illustrating how criminal tribunals exercise primacy when they assume jurisdiction and how regulations allowing the deferral of national prosecutions are key to the operation of a effective criminal tribunal ).

Razachstan is suffering a similar fate to that in the former Yugoslavia, Rwanda, and other nations with newly established democratic institutions. ICC Problem ¶¶ 1, 7, 8. This Court should follow the practiced precedent of international criminal tribunals and the express provisions in the Rome Statute, barring the national prosecution of a case in which there is a collapse of the State judiciary. The natural conclusion is that the national courts in Razachstan are unable to effectively bring the Fatari defendants to justice in this case.

- C. The ICC is the appropriate venue to ensure judicial impartiality and Razachstan's poor treatment of its Marijani citizens raises the possibility that Razachstan is unwilling to genuinely prosecute, is shielding the defendants from any real prosecution, and is delaying the proceedings.

When determining whether a court is “unwilling genuinely to prosecute,” the Court must consider the definitions of unwilling set forth in Article 17, which mention a State intent to delay the proceedings, shield the defendants from prosecution, and conduct a partial and non-independent trial through its national judiciary. Rome Statute, art. 17(2). In all these matters, the Court must look to Razachstan's intent in challenging ICC jurisdiction. *Id.*

On the issue of delaying proceedings, Article 19 states that when a state brings a jurisdictional challenge against the ICC, the Prosecutor must suspend all investigation of the case. Rome Statute, art. 19(7). Therefore, at present, there are no investigations of the rape, mutilation, casualties, and murders committed by the Fatari defendants unless Razachstan is affirmatively taking investigative steps at the moment. ICC Problem ¶¶ 1, 7, 8. There is currently no evidence to suggest that Razachstan is proceeding with an investigation into the heinous Crimes Against Humanity and War Crimes in the instant case. ICC Problem ¶¶ 1-12. Since Razachstan was the State party to the ICC which referred the proceedings to the Hague, it is odd indeed that it would challenge jurisdiction pursuant to guidelines of the Rome Statute a month after agreeing that the ICC was a proper place to try the Fatari defendants for their crimes. ICC Problem ¶¶ 8, 9, 10. By referring the case and then “taking it back,” Razachstan has effectively manipulated the Rome Statute in an effort to delay a criminal investigation of the defendants. However, the Court may counteract this measure by determining that such an action is indicative of an unwillingness *genuinely* to effectively prosecute. Rome Statute, art. 17(1).

Next, it is important to take the characteristics of the victims into account when considering whether a state party is willing to prosecute for crimes committed against them. The

victims in this matter are of the Marijani caste, considered to be the lowest rung of society in Razachstan. As a result of their “lowest of the low” status, the Marijani people have suffered violent human rights abuses at the hands of the Quraci occupiers, the Fatari defendants in this case, *and* by their own Razachstani government for more than a decade, with millions of violent crimes reported during this period. ICC Problem ¶¶ 1, 7.

The Rome Statute requires a guarantee of impartiality in order for a national prosecution to proceed. Rome Statute, art. 17(2). However, Razachstan is unwilling to continue with an impartial prosecution of the Fatari nationals; its government demonstrated this fact during the proceedings in which officials made premature determinations on the guilt and innocence of the Fatari defendants and have disparaged the Marijani victims. ICC Problem ¶ 10. The independence of the judiciary in Razachstan also must be scrutinized. Rome Statute, art. 17(2). While the Prime Minister offered this Court a guarantee that the death penalty will not be used if the Fatari defendants are found guilty rape, torture and murder in his courts, he has not offered similar promises of an effective remedy from the nation’s judiciary free from the longstanding prejudices against the Marijani victims. ICC Problem ¶ 10. The fact that Razachstan’s executive and legislative branches are making assurances on behalf of a new criminal court, discussing whether the Marijani victims deserve justice, and determining what sentencing options are appropriate indicates that an independent judiciary does not exist in Razachstan. *Id.*

The ICC is also instructed to turn to international law norms for guidance on evaluating whether a State is concerned with bringing about justice for the victims of international atrocities. Rome Statute, art. 17. International law has prescribed standards for states with respect to remedies for the violations of rights and freedoms. According to almost universally adopted International Covenant on Political and Civil Rights (ICCPR), State parties must “ensure that any person whose rights and freedoms as herein recognized are violated shall have an effective remedy . . . [and] ensure that any person claiming a such remedy shall have his right thereto determined by competent judicial, administrative, or legal authorities . . . and to develop the possibilities of judicial remedy.” ICCPR, art. 2(3).

The U.N. Human Rights Committee in a number of instances has interpreted the ICCPR as requiring the state to conduct a criminal investigation in cases of torture and murder, noting that sanctions and monetary damages are not adequate redress to the victims. *See* Aldana-Pindell, 35 VAND. J. TRANSNAT’L L. 1399, 1416 (2002) (citing *Chongwe v. Zambia* ¶ 7 (2000));

*Vicente et al. v. Colombia* ¶ 10 (1997); *Atachahua v. Peru* ¶ 10, (1996); *Bautista v. Colombia* ¶ 8(3) (1995); *Rodriguez v. Uruguay* ¶ 14 (1994); *Tshiongo v. Zaire* ¶ 7 (1993)). Even in states that are not signatories to the ICCPR and the Universal Declaration of Human Rights (UDHR), the widespread adoption of these international conventions has signified that they should be considered international customary law, and therefore, instructive principles of human rights law. Restatement § 102(2), 103(2) (1986). Therefore, the ICCPR principles with respect to providing remedies for victims and guaranteeing competent judicial authorities are persuasive in the instant case, no matter what the signatory status of Razachstan and Fatar might be. *Id.*

In Razachstan, however, members of the government have made statements on the record that they disagree with the notion that the Marijani people deserve a judicial remedy for the atrocities perpetrated against them by the Fatar defendants. ICC Problem ¶ 8. This indicates an intent to shield the defendants from a *genuine* prosecution. *Id.* Organizations in Razachstan with the mission of protecting the rights of Marijani people have also expressed doubt that the Razachstani judicial system will convict defendants who have injured citizens who have been subject to over a decade of violent crime and discrimination. ICC Problem ¶ 11.

It is therefore apparent in this case that the Razachstani government is “unwilling genuinely to prosecute” based on its tactics which have caused a delay in the investigations, a historical unwillingness to mete out justice to those citizens it deems to be lowly, and indicators that Razachstan is unwilling to impartially conduct criminal proceedings in an independent court system.

## **PRAYER FOR RELIEF**

The Marijani victims respectfully request that the International Criminal Court:

- a) Exercise jurisdiction over the Fatari soldiers for Crimes Against Humanity and War Crimes pursuant to Articles 17, 18 and 19 of the Rome Statute;
- b) Find the defendants guilty of Crimes Against Humanity of murder, War Crimes of willful killing, War Crimes of attacking civilians, War crimes of excessive incidental death, injury or damage, and War Crimes of murder;
- c) Provide reparations to the Marijani victims and their families for the Crimes Against Humanity and War Crimes perpetrated against them.