

**THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS
THE 2023 INTERNATIONAL HUMANITARIAN LAW MOOT COURT COMPETITION**

IN THE MATTER BETWEEN

PROSECUTION

V.

Ms. LUSHOMO NGALA (DEFENDANT)

MEMORIAL FOR THE DEFENSE

TEAM NUMBER: FIM23-70

PAGES: 19

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LIST OF ABBREVIATIONS

ACJHR – African Court of Justice and Human Rights

AI – Artificial Intelligence

AP I - Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

AP II - Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

Art(s). – Article(s)

AWS – Autonomous Weapon System(s)

CIHL – Customary International Humanitarian Law

GC IV – Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention)

Hague Regulations - Convention No. IV respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907

IAC – International Armed Conflict(s)

ICJ – International Court of Justice

ICRC - International Committee of the Red Cross

ICTR - International Criminal Tribunal for Rwanda

ICTY - International Criminal Tribunal for the former Yugoslavia

IHL – International Humanitarian Law

Malabo Protocol - Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights

NIAC – Non-International Armed Conflict(s)

Para. - Paragraph

Rome Statute - Rome Statute of the International Criminal Court, 17 July 1998

ULF – Uzuri Liberation Front

URAP – Uzuri Reunification and Autonomy Party

VCLT – Vienna Convention on the Law of Treaties

LIST OF AUTHORITIES

LAWS

Convention No. IV respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague

Customary International Humanitarian Law

Geneva Convention relative to the Protection of Civilian Persons in Time of War

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights

Protocol on the Statute of the African Court of Justice and Human Rights

Rome Statute of the International Criminal Court

Vienna Convention on the Law of Treaties

CASES

Prosecutor v Abu Garda (Decision on the Confirmation of Charges) ICC-02/05-02/09 (8 February 2010)

Prosecutor v Galic (Judgment on Charges) ICTY-IT-98-29-T (5 December 2003)

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Tristan Ferrero, 'Report on Expert Meetings regarding Occupation and Other Forms of Administration of Foreign Territory' (ICRC, 2012)

1. STATEMENT OF JURISDICTION

The Malabo Protocol, under article 3 vests the Court with jurisdiction to be exercised in accordance with its other provisions. This jurisdiction includes international criminal jurisdiction. In the Malabo Protocol's annex of the amended statute, article 13 indicates that the Court has jurisdiction regarding crimes contained in the statute. Ms. Lushomo Ngala is charged with war crimes, one of the crimes enumerated in the Malabo Protocol, hence the Court has jurisdiction. Nonetheless, the defense reserves the right to challenge the admissibility of this case before the honorable Court, which shall be argued in the pleading of this memorial.

2. PLEADINGS

2.1 THE CASE IS INADMISSIBLE BEFORE THE ACJHR

2.1.1 Bukada's national jurisdiction takes precedence and must be respected

The ACJHR is an international judicial organ with complementary jurisdiction.¹ It has to be ascertained that a national court with jurisdiction isn't willing or isn't able to carry out investigation or prosecution, if the ACJHR is to be allowed to exercise its jurisdiction.²

The Kingdom of Bukada is willing and able to carry out both the investigation and prosecution of Ms. Lushomo on the alleged counts of war crimes. Although Bukada hasn't initiated investigations, this decision is not a result of Bukada's unwillingness or inability to investigate and prosecute. Bukada did not investigate and prosecute Ms. Lushomo only until her detention – a few months after the case was referred to the court. When deciding not to investigate Ms. Lushomo for the time being, Bukada was rightly cautious. The decision was not a result of Bukada's need to shield Ms. Lushomo, nor to

¹ Margaret M. Deguzman, 'Complementarity at the African Court' in Charles C. Jalloh, Kamari M. Clarke and Vincent O. Nmeielle (ed), *The African Court of Justice and Human and Peoples' Rights in Context* (CUP, 2019) 645

² Malabo Protocol (adopted 27 June 2014, entered into force 2019) art. 46H

unjustifiably delay the matter. It was rather a justifiable, pragmatic approach which took into account the intricacies of the legal and political situation in Uzuri, Kedibonye and Salima. By adjudicating a case closely related to the ongoing armed conflict in Uzuri, Bukada will implicate itself in a complex situation. There are no facts indicating that Bukada, after the resolution of the conflict wouldn't subsequently investigate and prosecute.

Bukada's intent to bring Ms. Lushomo to justice can be understood further by the fact that it had detained Ms. Lushomo so that she can be tried by the Court³ even though Bukada was under no obligation to effect this arrest⁴ as it is not a party to the Malabo Protocol and the Additional Protocols to the Geneva Conventions.⁵

2.1.2 None of the pre-conditions under art. 46E bis of the Malabo Protocol regarding the exercise of jurisdiction are fulfilled

Under art. 46E bis, it is provided that at least one of the four enumerated preconditions must be fulfilled for the Court to exercise jurisdiction. In clarifying that none of the four conditions had been fulfilled, the defense submits that the disputed region of Uzuri is the territory of neither Kedibonye nor Salima. Art. 29 of the VCLT says that treaties apply only within the territory of a signatory. Uzuri became an autonomous entity when the URAP assumed power in 2001, with significant legislative and executive autonomy.⁶ The Malabo Protocol's adoption and entry into force came after a decade of Uzuri's autonomy. An express statement to the effect that the ratification of the Malabo Protocol by either Kedibonye or Salima would extend to the disputed, autonomous territory of Uzuri had not been made. Therefore, preconditions under art. 46E bis (a) and (c) are not fulfilled since the alleged war crimes were

³ Statement of Agreed Facts, para. 29

⁴ Malabo Protocol art. 46L; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 art. 88

⁵ Statement of Agreed Facts, para. 31

⁶ Ibid., para. 5

not committed in the territory of a state party to the Malabo Protocol and since the victims were not nationals of such state party. 46E bis (b) is clearly not fulfilled as well because the accused is a national of Bukada⁷, which is not a state party to the Malabo Protocol. The precondition under art. 46E bis (d) is not fulfilled. Although Ms. Lushomo might have committed acts that threaten the vital interest of a state party, namely Salima, such acts must have been extraterritorial, i.e., must have been committed outside of Salima. Ms. Lushomo permanently resides and works in Salima, since her company is headquartered in Salima's capital.⁸ During the alleged commissions of war crimes, and until she fled to Bukada, Ms. Lushomo was in Salima and contacted Kedibonye officials through virtual means. She made the decision to provide products of her company remotely. All of her acts which can be alleged to have threatened the vital interests of Salima were committed when she was in Salima.⁹

2.2 THE LACK OF SUBSTANTIAL GROUNDS TO BELIEVE THAT THE WAR CRIME OF UNLAWFUL CONFINEMENT SEEN UNDER ART. 28D(A)(vii) OF THE MALABO PROTOCOL HAS BEEN COMMITTED

2.2.1 The inapplicability of the laws of occupation

The war crime of unlawful confinement was not committed as the detention of Uzuri residents was not carried out in the context of an occupation or an armed conflict. There are three requirements to conclude that a territory of another state has been occupied - (i) the presence of foreign forces (ii) the ability to exercise authority over the territory in question and (iii) the non-consensual nature of the belligerent occupation.¹⁰ The first requirement of occupation is that there be foreign forces in the occupied territory **with a view to enforcing the occupation.**¹¹ The Kedibonye armed forces entered Uzuri to assist the

⁷ Ibid., para. 6

⁸ Ibid.

⁹ Ibid., paras. 10, 14

¹⁰ Tristan Ferrero, 'Report on Expert Meetings regarding Occupation and Other Forms of Administration of Foreign Territory' (ICRC, 2012) 10

¹¹ Ibid.

police force in maintaining peace and order.¹² The second requirement is also not fulfilled since Kedibonye is unable to exercise authority over Uzuri. A legally constituted political party URAP holds the utmost legislative and administrative authority in Uzuri. The third requirement is not fulfilled since Uzuri's police force called for Kedibonye's armed forces to help quell protests. The lack of consent among Uzuri residents doesn't amount to the fulfillment of the 'non-consensual' requirement since Kedibonye forces were present in Uzuri to uphold law and order, and not to occupy. Because there was no belligerent occupation since 2001, the Geneva Conventions, APs and customary rules of IHL aren't applicable in regards to this count.

2.2.2 Acts that constitute unlawful confinement under IHL were not committed

Kedibonye strictly adhered to the rules and didn't arbitrarily arrest Uzuri residents. Under art. 78 of the GC IV, occupying powers are allowed to arrest protected persons for imperative reasons of security. Kedibonye had found that residents had planned acts of resistance against the Kedibonye armed forces.¹³ Hence, there was an imperative reason of security for detaining these residents.

Secondly, residents were expressing their support to the ULF, a terrorist organization according to Kedibonye law.¹⁴ Terrorist organizations pose significant threat. Numerous legislations consider the expression of support to a terrorist organization a criminal offense.¹⁵ Uzuri residents that Kedibonye detained were either involved in riots or were supporting the ULF and justifying its acts. Both of these classes of citizens pose significant threat to Kedibonye, hence, as a security measure must be detained.

In effecting these arrests, Kedibonye adhered to procedural requirements. The government first obtained data from Asadat and identified residents who were protesting and supporting the ULF.¹⁶ Then, only

¹² Statement of Agreed Facts, para. 8

¹³ Ibid., para. 9

¹⁴ Ibid., para. 4

¹⁵ See for instance, Malabo Protocol art. 28G (B)

¹⁶ Statement of Agreed Facts, para. 10

effected the arrest of residents which Kedibonye ascertained were either participating in riots or expressing their support to the ULF. In line with art. 78 of the Fourth Geneva Convention, there exists a body which reviews the government's decision to detain. There are also two appellate courts that reconsider the decision of the Court that reviews the government's decision.¹⁷

There is the war crime of 'unlawful confinement' when arrests within the context of an occupation (which the defense contends isn't the characteristic of the case at hand) are effected contrary to the rules of IHL.¹⁸ Kedibonye's detention of Uzuri residents was made in accordance with the substantive and procedural requirements of IHL and does not constitute the war crime of 'unlawful confinement'.¹⁹

2.3 THE ACTS ALLEGEDLY CONSTITUTING THE WAR CRIMES OF INTENTIONAL ATTACKS AGAINST PROTECTED PERSONS AND PROPERTY WERE COMMITTED IN THE CONTEXT OF A NON-INTERNATIONAL ARMED CONFLICT

The defense enters this intermission before proceeding to deal with remaining issues. The acts in question regarding attacks against protected persons and on protected property were committed in the setting of a NIAC. Under IHL, it is provided that IACs and NIACs can co-exist.²⁰ The conflict between Salima and Kedibonye is of course an IAC. However, that war should be considered distinctly from the conflict between the ULF and Kedibonye.²¹ As per para. 16, Salima had dropped weapons in Uzuri for the ULF. This act does not render the conflict between Kedibonye and the ULF an IAC since it is a mere act of support. For a NIAC to become an IAC, the intervening state (Salima) must direct or control the insurgent party (ULF) in attacking Kedibonye. Salima neither directed nor controlled the ULF's acts, rendering its intervention inadequate in changing the status of the NIAC between Kedibonye and the ULF to an IAC.²²

¹⁷ Ibid., para. 15

¹⁸ CIHL, Rule 99

¹⁹ *Prosecutor v Prlic et al.* (Judgment on Sentence) ICTY-IT-04-74-T (29 May 2013)

²⁰ *Prosecutor v Katanga* (Judgment on Charges) ICC-01/04-01/07 (7 March 2014)

²¹ *Prosecutor v Lubanga* (Judgment pursuant to art. 74 of the Statute) ICC-01/04-01/06 (5 April 2012)

²² Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC, 2016) 74

2.4 THE LACK OF SUBSTANTIAL GROUNDS TO BELIEVE THAT THE WAR CRIME OF INTENTIONAL ATTACKS AGAINST PLANNED PROTECTED PERSONS SEEN UNDER 28D(E)I and III HAS BEEN COMMITTED

2.4.1 Civilians attacked by using Bird Target had lost their status as protected persons

As a rule, civilians are protected persons under IHL.²³ Their status as protected persons can only be derogated in a few instances,²⁴ one of which is their direct participation in hostilities.²⁵ To qualify as direct participation in hostilities a specific act must meet the following criteria – (i) the act must be likely to adversely affect the military operations of a party to an armed conflict (threshold of harm), (ii) there must be a direct causal link between the act and the harm likely to result either from the attack or from a coordinated military operation of which the act constitutes an integral part (direct causation) and (iii) the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).²⁶

Civilians blocked the streets to halt the advances of Kedibonye armed forces, which is likely to result in affecting the military operations of the armed forces (fulfilling the threshold of harm).²⁷ The military harm the Kedibonye armed forces would incur is a direct effect of the civilians' blockade (fulfilling the requirement of causation). And the civilians' acts were done in cooperation with ULF forces who urged the civilians to block the streets by distributing pamphlets (fulfilling the belligerent nexus requirement).²⁸ It necessarily follows that the civilians who were attacked during the confrontation at the Old Town Plaza were directly participating in hostilities, weren't protected persons and hence were 'lawful targets'.

²³ *Prosecutor v Katanga* (Judgment on Charges) ICC-01/04-01/07 (7 March 2014)

²⁴ CIHL, Rule 6

²⁵ *Prosecutor v Galic* (Judgment on Charges) ICTY-IT-98-29-T (5 December 2003)

²⁶ Nils Melzer, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' (ICRC, 2009) 46

²⁷ Statement of Agreed Facts, para. 20

²⁸ *Ibid.*

The attack was also unintentional. Kedibonye forces have already been attacked by ULF fighters that had blended in with the civilian population. When Bird Target reported that there was a fighter with an RPG, a weapon that can deal a huge blow to Kedibonye forces, the gunner is justified in attempting to take this fighter out. The civilians' death and injury were incidental and they weren't targeted as such. Owing to an RPG's potential damage, the civilians' death and injury is also not excessive to the military advantage gained by eliminating the soldier with the RPG.²⁹

2.4.2 Adom is a weapon system complicit with the rules of IHL

AWS aren't expressly regulated by IHL.³⁰ However, IHL, with a view to protect civilians and civilian objects during armed conflicts in predicaments where certain weapons not definitely recognized by IHL are employed, expressly prohibits the use of weapons that (i) attack indiscriminately and (ii) inflict a disproportional amount of damage to civilians and civilian objects compared to military advantage.³¹

The defense submits that Adom did not launch an indiscriminate attack. Adom is a weapon programmed to direct every attack against combatants and military objectives³² and indeed, did launch every attack against lawful targets. Its effects are limited such that it attacks objectives it was programmed to target previously. It is hence a weapon that complies with the principles of distinction and proportionality.

In choosing weapons, there's the duty to ascertain that the chosen weapon will avoid, if not, minimize the death of protected persons and property, in relation to the principle of precaution, by 'doing everything feasible'.³³ When Kedibonye chose to use Adom, it had done everything feasible to use a weapon that could avoid the loss of protected persons. Its helicopter fleet had been destroyed by Salima's

²⁹ CIHL, Rule 14

³⁰ Neil Davison, 'Autonomous Weapon Systems Under International Humanitarian Law, a Legal Perspective' (2017) 30 UNODA Occasional Papers 7

³¹ ICRC, 'ICRC Position on Autonomous Weapon Systems' (2021) 7

³² Statement of Agreed Facts, para. 23

³³ CIHL, Rule 17

air force³⁴ and its ground forces were losing to the ULF, which has been using the mountainous terrain to its advantage.³⁵ The only means of warfare left was the AWS Adom. Therefore, even if incidental losses ensued as a result of Adom's use, they couldn't have been avoided as Kedibonye did everything feasible in choosing its means in conducting the military operation to take back Uzuri.

2.4.3 The attacks by Adom against alleged protected persons

2.4.3.1 The attack against protected persons at the St. Eligius Church

The defense concedes that protected persons had been attacked by Adom on October 13, 2022 but nevertheless contends that (i) the attack was unintentional and (ii) the casualties were incidental. In choosing to deploy Adom, alleged perpetrators didn't intend to inflict any harm to protected persons. The effectiveness, predictability and reliability of Adom had already been optimized during the development phase and witnessed when it conducted successful attacks.³⁶ The incident at St. Eligius was an accident. Even though Adom has been tried and tested, this doesn't completely remove the prospects of an accident, which is inherent in all weapons. The occurrence of an accident, after all precautionary measures have been taken by the alleged perpetrators indicates that the attack was unintentional.

Churches are ULF fighters' hotspots and similar to every other church in the area, there were presumably numerous ULF fighters at the St. Eligius Church. The presence of more ULF fighters than civilians can be deduced from the fact that the funeral was Major Faustino Mbabazi's, a military officer and from the fact that the funeral was held north of Jabulani, a ULF stronghold. Hence, in attacking the Church, Kedibonye gained concrete and direct military advantage that exceeded the loss of protected persons.

2.4.3.2 The attack against protected persons at the Mountainview Sanitorium

³⁴ Statement of Agreed Facts, para. 22

³⁵ Ibid., para. 17

³⁶ Ibid., para. 25

As will be seen in the subsequent section, the Mountainview Sanitorium was a military objective. Therefore, it had become a lawful target that Kedibonye was allowed to attack. The presence of protected persons within this military objective does not bar the right of Kedibonye to attack the objective provided that the incidental deaths were not excessive to the direct and concrete military advantage that Kedibonye gained and provided that the Kedibonye armed forces took care to spare the protected persons. Since the attack on the sanitorium is within the confines of IHL and since the deaths that ensued were incidental, there are no reasonable grounds to conclude that the protected persons were attacked intentionally.

2.5 THE LACK OF SUBSTANTIAL GROUNDS TO BELIEVE THAT THE WAR CRIME OF INTENTIONAL ATTACKS AGAINST PROTECTED PROPERTY SEEN UNDER ART. 28D (E)(IV) WAS COMMITTED

2.5.1 The attack on the St. Eligius Church

Military objectives are those objects which by their nature, location, purpose or use make an effective contribution to military action (of the enemy belligerent) and whose partial or total destruction, capture or neutralization offers a definite military advantage (to the attacking belligerent).³⁷ Since the churches were the only geographical markers in Northern Uzuri, ULF fighters frequently met there.³⁸ These churches where the fighters met made an effective contribution to the ULF's military efforts. Destroying St. Eligius means destroying a ULF hotspot, which would offer definite military advantage to Kedibonye.

2.5.2 The attack on the Mountainview Sanitorium

The sanitorium is a medical unit entitled to enhanced protection under IHL. However, this doesn't preclude its status as a lawful target since it has presumably been used to commit acts harmful to the enemy.³⁹ This can be deduced from the fact that sanitoria are used by the ULF as command centers and

³⁷ CIHL, Rule 8

³⁸ Statement of Agreed Facts, para. 24

³⁹ CIHL, Rule 28

munition storage units,⁴⁰ and from the fact that the sanitorium is found deep within ULF territory.⁴¹ Because of this, the sanitorium, during Adom's attack, had lost its status as a specially protected property. The fact that it has lost special protection, however, doesn't necessarily mean that it isn't protected so long as it is a civilian object.⁴² However, due to its use, the sanitorium had become a military objective and had consequently lost its status as protected property. Similar to the St. Eligius Church, it can be reasonably assumed that the sanitorium was used to make an effective contribution for the ULF's military operations as the front keeps its munition stockpiles and commands attacks in such sanitoria. Attacking this establishment would undoubtedly offer definite military advantage to Kedibonye.

2.6 THE LACK OF SUBSTANTIAL GROUNDS TO BELIEVE THAT MS. LUSHOMO NGALA IS INDIVIDUALLY CRIMINALLY RESPONSIBLE AS PER ART. 46B OF THE MALABO PROTOCOL FOR THE ALLEGED WAR CRIMES SEEN ABOVE

2.6.1 Ms. Lushomo is not individually criminally responsible for unlawful confinement

Ms. Lushomo didn't know that Kedibonye was going to use AfrOpt to detain Uzuri residents as the government didn't mention its application in Uzuri.⁴³ Since Ms. Lushomo has significant dealings with Kedibonye, it was her apprehension that Kedibonye was going to use AfrOpt to monitor its own citizens that pose security risks. Therefore, she did not knowingly aid the Kedibonye government in detaining Uzuri residents.⁴⁴

Even after arrests were effected by the Kedibonye government, there are no grounds on which Ms. Lushomo's criminal responsibility can be established for failure to refuse the provision of AfrOpt. Ms.

⁴⁰ Statement of Agreed Facts, para. 24

⁴¹ Ibid., para. 26

⁴² Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC, 2016) 145

⁴³ Statement of Agreed Facts, para. 14

⁴⁴ *Prosecutor v Mbarushimana* (Decision on the Confirmation of Charges) ICC-01/04-01/10 (16 December 2011)

Lushomo wasn't aware of the detainees status as protected persons owing to the peculiar political predicament in Uzuri. She also can't be expected to know that Kedibonye's mass detention was carried out in the context of a military occupation.⁴⁵

2.6.2 Ms. Lushomo is not individually criminally responsible for the war crime of intentional attacks against protected persons in relation to the AI targeting software – Bird Target

Ms. Lushomo was only involved during the development stage of Bird Target AI targeting software and did not direct the attack.⁴⁶ The military units of Kedibonye would open fire in 10 seconds during this time the gunner can open or abort fire.⁴⁷ This ultimately makes the person directing the attack the gunner and not Ms. Lushomo. Additionally, the Bird Target software was tested in a computer simulation between August 26 and September 3, and had generally positive results. It should be noted here that her contribution even helped mitigate civilian casualties.⁴⁸ Furthermore, in this instance as established above, the attack was directed against civilians that were directly taking part in hostilities. Therefore, Ms. Lushomo is not individually criminally liable.

2.6.3 Ms. Lushomo is not individually criminally responsible for the war crime of intentional attacks against protected persons and property in connection with the AI software – Adom

Ms. Lushomo had no intention or knowledge on her part to be found liable because of the fact that Adom, once activated, can select and attack targets independently.⁴⁹ She has no concrete knowledge on the situation which, after activation, the weapon system might be deployed and violations of IHL would occur, where it would occur and at what time.⁵⁰

⁴⁵ Thereby failing to fulfill Rome Statute - Elements of Crimes under art. 8(2)(a)(vii)-2 elements 3,4, and 5

⁴⁶ *Prosecutor v Seselj* (Trial Judgment) ICTY-IT-03-67-T (31 March 2016)

⁴⁷ Statement of Agreed Fact, para. 19

⁴⁸ Ibid.

⁴⁹ Ibid., para. 22

⁵⁰ *Prosecutor v Mbarushimana* (Decision on the Confirmation of Charges) ICC-01/04-01/10 (16 December 2011)

There was no knowledge on Ms. Lushomo's part that protected persons or property would be the object of attack. Even though it was reported by the software engineers to Ms. Lushomo Ngala that the Adom AI struggled to make decisions in situations where the identify target was not a military objective or civilian objects, she instructed that the software be patched up in order to prevent Adom from accidentally targeting a civilian object.⁵¹ This response by Ms. Lushomo shows that there was no intention on her part to cause any harm to civilians or civilian objects. Since she was dubbed an IT genius and an AI visionary her opinion weighs more than the doubts expressed by the software engineers that the patch would not be sufficient.⁵² Nevertheless, to air on the side of caution Ms. Lushomo asked the software engineers to keep a close eye on Adom's operation and to patch up the targeting software as needed.⁵³ This clearly shows the intention of Ms. Lushomo not to attack civilians or civilian objects.

3. CONCLUSION

The defense pleads with the honorable Court to consider the arguments forwarded thus far in accordance with the relevant sources and:

1. Rule that the case is inadmissible before the ACJHR
2. Rule that there is lack of substantial grounds to conclude that the war crimes of (a) unlawful confinement, (b) intentional attacks against planned protected persons and (c) attacks on protected property have been committed
3. Rule that there is lack of substantial grounds to believe that Ms. Lushomo is individually criminally responsible for the war crimes enumerated above and consequently, to decline to confirm the charges.

Respectfully submitted by the defense counsel.

⁵¹ Ibid., para. 27

⁵² Ibid., para. 6

⁵³ Ibid., para. 27