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Competition

15 - 16 May, 2021

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**INTERNATIONAL COURT OF JUSTICE
SPECIAL AGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF PEMOLA (APPLICANT) AND THE STATE OF
BOLIRIA & REPUBLIC OF MAKONDA (RESPONDENTS) TO SUBMIT TO THE
INTERNATIONAL COURT OF JUSTICE THE DIFFERENCES BETWEEN THE THREE
STATES CONCERNING THE OKUZAN REFUGEES FROM MAYZAN
Jointly notified to the Court on 31 January 2021**





**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 31 January 2021

On behalf of the Federal Republic of Pemola, State of Boliria and the Republic of Makonda, in accordance with Article 40 (1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Special Agreement for submission to the International Court of Justice of the differences between the Applicant and the Respondent concerning the Okuzan Refugees from Mayzan, signed in The Hague, The Netherlands, on the thirty first day of January in the year two thousand twenty-one.

Sasha Braus

Her Excellency Sasha Braus
Ambassador of the Federal Republic of Pemola
To the Kingdom of The Netherlands

Springer

His Excellency Cornelius Springer
Ambassador of the State of Boliria
To the Kingdom of The Netherlands

Jean Kirstein

His Excellency Jean Kirstein
Ambassador of the Republic of Makonda
To the Kingdom of The Netherlands



SPECIAL AGREEMENT
SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE FEDERAL
REPUBLIC OF PEMOLA, STATE OF BOLIRIA AND THE REPUBLIC OF MAKONDA ON
THE DIFFERENCES BETWEEN THEM
CONCERNING THE OKUZAN REFUGEES FROM MAYZAN

The Federal Republic of Pemola (“the Applicant”) and the State of Boliria, Republic of Makonda (“the Respondents”) (hereinafter “the Parties”):

Recalling that the Parties are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Considering that difference have arisen between them concerning the protection of Okuzan refugees of Mayzan and other related matters;

Recognizing that the Parties have been unable to settle these differences by direct negotiations;

Desiring further to define the issues to be submitted to the International Court of Justice (“the Court”) for resolution;

In furtherance thereof the Parties have agreed as follows:

Article 1

The Parties submit the questions contained in the Special Agreement (together with Corrections and Clarifications to follow) (“the Case”) to the Court pursuant to Article 40(1) of the Court’s Statute.



Article 2

It is agreed by the Parties that the Federal Republic of Pemola appear as Applicant and the State of Boliria and Republic of Makonda as Respondent, but such agreement is without prejudice to any questions of the burden of proof.

Article 3

- (a) The Court is requested to decide the Case on the basis of the rules and principles of international law, including any applicable treaties
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its judgement on the question presented in the Case.

Article 4

- (a) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the 2nd NALSAR Public International Law Moot Court Competition, 2021.
- (b) The Parties request the Court to order that the written proceedings should consist of Memorials presented by each of the Parties not later than the date set forth in the Official Schedule of the 2nd NALSAR Public International Law Moot Court Competition, 2021.

Article 5

- (a) The Parties shall accept any Judgement of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any judgement, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorised, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this thirty first day of January in the year two thousand twenty-one, in triplicate in the English language.



Sasha Braus

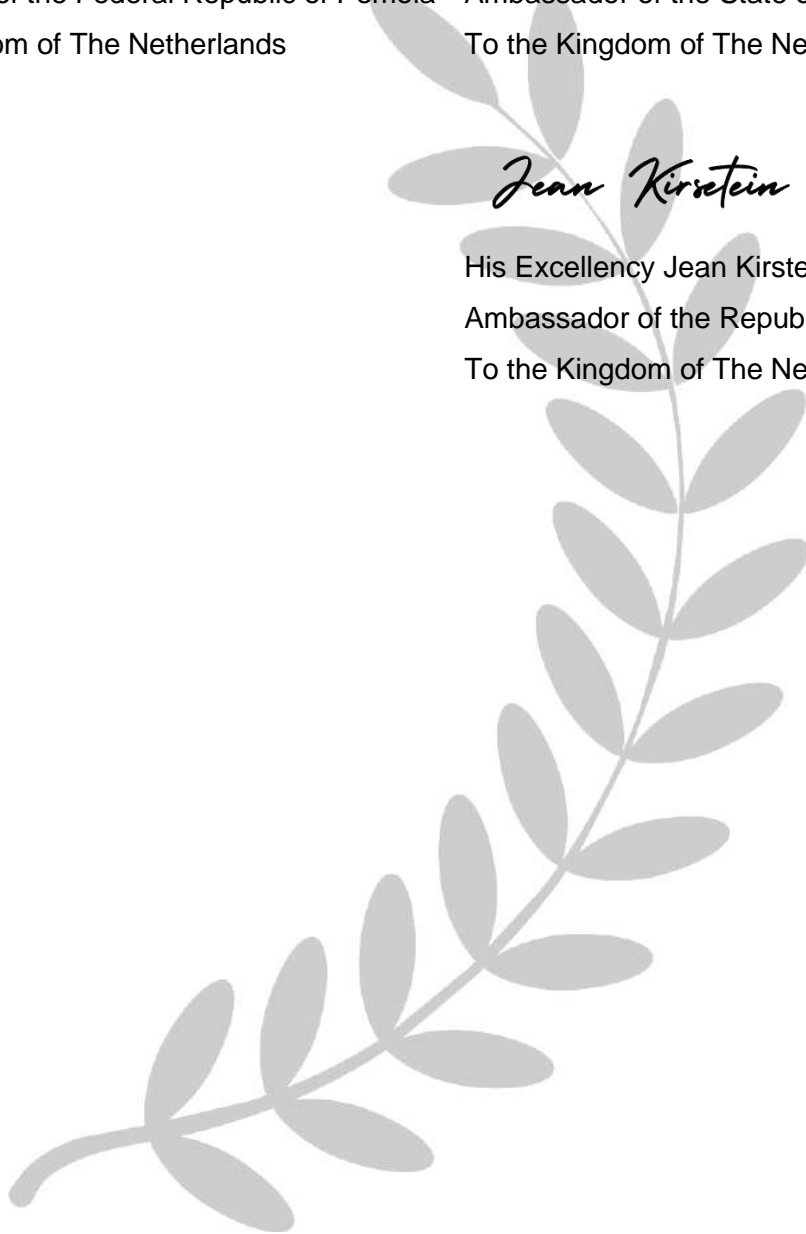
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STATEMENT OF AGREED FACTS

CASE CONCERNING THE OKUZAN REFUGEES OF MAYZAN

(Federal Republic of Pemola v. State of Boliria and Republic of Makonda)

1. The Democratic Republic of Mayzan, is a sovereign coastal country that shares its borders with the State of Boliria in the North-East, the Federal Republic of Pemola to the North-West and the southern border of Mayzan is the Calasian Sea. These three countries are part of the continent of Kuwei which is located to the north of the Calasian Sea. To the south of the sea is the continent of Beyul. The country closest to Kuwei is the peninsular Republic of Makonda.
2. The Republic of Mayzan's is a secular unitary republic as laid down in its 1960 Constitution. The President is responsible for deciding and supervising the general policies of Mayzan. The President is the Commander-in-Chief of the armed forces, controls the military intelligence and security operations, and has the sole power to declare a state of emergency and war in the country. Should it come to such a situation, it is in their power to entrust the command of the Mayzan armed forces to the current Minister of Interior Affairs. According to the Constitution of the Republic of Mayzan the powers of the government are vested in the legislative, the judicial and the executive branches, functioning under the supervision of the President.
3. For convenience in governing its territory, Mayzan is divided into four provinces. These are: Eastern Province, Western Province, Northern Province and Southern Province. After the enactment of the Constitution, Mayzan adopted representative constitutional democracy as the form of governance. Despite criticism on the fairness and transparency in the electoral system, elections are held every 5 years to elect successive governments.
4. Mayzan's economy is largely dependent on its fishing industry. With very few big urban centres and a majority of the population living in small towns or villages, the natural topography of the country has gained attention of travellers over the last 30 years. State investment in tourism in the last three decades has made Mayzan a popular



tourism destination. It is estimated that 78% of the working population of Mayzan are either employed in the fisheries or earn an income from tourism. 17% of the population rely on agriculture and 5% are involved in other sectors.

5. Looking at the demographics of the country, approximately 67% are ethnic Mayzanos, and Okuzans make up 28%, and the final 5% of the population belong to other ethnic groups. A majority of Mayzanos follow the religion of Kyarim whereas Okuzans practice Shinzou. Okuzans share very similar ethnic features to the Bolirians and the Okuza language is very close in sound and structure to the Bolirian language. Most Okuzan settlements can be found in the North-East districts of Mayzan in the Eastern Province, close to the border with Boliria. Expert Ethnographers have stated that while there are shared similarities between the Okuzans and Bolirians, which is perhaps as a result of proximity in geographic location, the Okuzans are a distinct ethnic group indigenous to the country of Mayzan.
6. Historically, the Okuzans have been a marginalised group in the Democratic Republic of Mayzan. There is a general misconception among the citizens of Mayzan that Okuzans are in fact Bolirian people who settled in Mayzan illegally. The Okuzans predominantly depend on agriculture and livestock rearing for their livelihood and over 96% of the population live in the Eastern Province. Two-thirds of the Eastern province is hilly-terrain and socio-economic development in the area has been significantly slower than in other parts of Mayzan. Employment and livelihood opportunities are limited in this part of the country. Access to healthcare, education and other basic services is difficult which is why most young Mayzanos shift out of the Eastern Province when possible for better opportunities. Literacy rates among the Okuzan are very low, with only 20% of the population having finished secondary school. However, the National Democratic Party (NDP) government (in power between 1988-1993 and subsequently 2003-2008) brought about affirmative action and scholarships at the school and university level for academically gifted Okuzans. The misbelief that Okuzans are illegal immigrants and the perceived special treatment that was given to them led to hostility towards Okuzans by the majority Mayzanos. There had been a steady increase in cases of violence against the Okuzans which led the NDP



government to enact the Okuzan Protection Against Violence Act, 2006. This law sought to fast-track cases of ethnic violence against the Okuzans and took a zero-tolerance approach to the such violence.

7. The Mayzan Nationalist Front (MNF) which was started in 1984 was a party formed by the ex-Chief of Army of Mayzan, Doler Raz. Its political manifesto is for a homogenous Mayzano state – “for the Mayzano People by the Mayzano people, one Nation under one religion”. The MNF has maintained a close relationship with the armed forces of Mayzan and several of the Party’s political leaders are ex-military. Over the decades, the MNF has steadily gained popularity among the majority Mayzano ethnic group. In 2003, they managed to secure a considerable number of seats in Parliament and were leaders of the Opposition to the ruling NDP government. In the 2008 election, the MNF won and took over power and was re-elected in 2013 with a resounding mandate.
8. Over the course of the decade that the MNF have been in power, the government steadily dismantled protections for minorities and did away with affirmative action measures and policies that had been put in place by previous governments. Barely 10 years after its enactment the Okuzan Protection Against Violence Act, 2006 was repealed. The MNF government’s justification for this was that such legislations and policies were put in place when minorities required such protections. However, recent government surveys show that minority groups are adequately represented and protected and do not require preferential treatment over the Mayzano people. The government failed to provide the data that showed this despite NGOs like the Mayzano Human Rights Centre requesting and advocating for concrete proof of this.
9. Several Okuzan community leaders and rights activists have benefitted from the government’s policies of affirmative action. Over the years, the Okuzan people have protested against the MNF led government’s discriminatory actions. However, with little support from Mayzanos, there was no demonstrable change in their favour in these policies. Nevertheless, these protests garnered international support and many rights groups and NGOs criticised the Government of Mayzan and warned against its continued marginalization of the Okuzan people.



10. Mobilizing the Okuzan people, in 2016, the Okuzan People's Front was started seeking to be part of the government processes. OPF declared that they would peacefully protest and democratically fight for the equal treatment of all people in Mayzan. They demanded the government protect the rights of citizens equally. The OPF quickly grew a strong social media presence and used their platform to bring awareness to the plight of Okuzans in Mayzan. The group received support from across the world and many donated to their cause to keep the movement alive.
11. In late 2017, leading up to the next election, Mr. Baden Haler, the Minister for Interior Affairs, made several speeches drumming up anti-Okuzan sentiments among the people in the audience. He stated that the Okuzan people are not truly citizens of Mayzan and they are trying to divide the Mayzano State with their protests. He said that the Okuzan people are paid by the enemies of Mayzan to ensure the destruction of the country. Other political leaders in MNF, taking after Mr. Haler's lead, began to use similar rhetoric in their campaigns for re-election. As a result of this, violence against Okuzan people increased sharply in 2017-18. NGOs like the MHRC, Okuzan Rights Group and Amnesty International reported on these incidents and called for the government to take swift action to bring perpetrators to justice. However, no action was ever taken.
12. On 15 January 2018, the MNF government was re-elected with a substantial mandate and OPF failed to secure any seats in parliament. Fearing for their future, OPF and Okuzan community leaders made a call for a nationwide protest to be observed on 18 January 2018. Mayzan witnessed nationwide protests on this day and these protests were overwhelmingly successful in the Eastern Province. News media reported that there was a large-scale mobilization of people from all walks of life who were concerned about the MNF government's next term and what it meant for the human rights of the people of Mayzan.
13. On 31 May 2018, the MNF Government made an announcement to review the citizenship of the people of Mayzan. In its press statement announcing this move the government said:



“National security reports received by the Ministry of Interior Affairs has given the Government reason to believe that there are several thousand illegal immigrants living in the country and benefiting from rights that are exclusively reserved for the citizens of Mayzan. In order to handle this issue, the Government of Mayzan will be reviewing the citizenship documents of all the people currently residing in Mayzan commencing on 02 July 2018. Those determined to be within the sovereign territory of Mayzan without valid documentation would be detained and deported.”

14. This announcement was met by outrage among rights groups which saw this as a direct response to Okuzan people trying consolidate and fight for their rights. On 01 June 2018, the United Nations High Commissioner for Human Rights called for the immediate suspension of this process and called upon the Government of Mayzan to uphold the rights of the people in its territory and arrive at a rights-based solution to handle the situation of irregular migration in the. On 29 June 2018, a report was brought out by the Mayzan Human Rights Centre which found that this process would unfairly impact the Okuzan people as low levels of education and being a largely rural population, very few Okuzans had access to documentation that proved their citizenship. Professor Buten Kaya from the Centre for Statelessness and Inclusion at Mayzan National University wrote an editorial for the Mayzan Herald in which he concluded that *“Despite the jus soli citizenship law in the country, it is well within the realm of possibility that this exercise in citizenship scrutiny could result in a situation of statelessness of true-born citizens of Mayzan. All because they do not have a piece of paper.”*
15. On 01 July 2018, 3 bombs exploded at parking garages at the 3 busiest market centres in Tobe, Garol, and Palim, the 3 biggest cities of Mayzan. There were a total of 5 deaths and 14 injured in these attacks. Early next morning, on 02 July 2018, a video was released on YouTube under the name Freedom Fighters of Okuzan (FFO). The FFO claimed responsibility for the attacks that had taken place over the weekend. The FFO said that this was a warning to government to stop the citizenship scrutiny process



and if not, they would resort to all means necessary to achieve their objective. The OPF quickly released a statement denouncing the violence:

The Okuzan People's Front condemns the violence perpetrated by the group calling itself Freedom Fighters of Okuzan. The views and actions expressed by the FFO are not representative of the OPF or the Okuzan people. We send our condolences and prayers to the families who have been impacted by this act of terrorism.

16. The Minister for Interior Affairs, Baden Haler, responded to the attacks and the video released by FFO in a press conference on 02 July morning. He stated that the government would take all necessary measures to maintain law and order in Mayzan. He said that the government was prepared to deal sternly and swiftly with all those who disrupt the peace and tranquility of the country. In the early morning of 03 July, the President declared a state of emergency and cut access to internet in the Eastern Province. Police forces started arresting Okuzan people under the pretext that they were linked with FFO. On 09 August 2018, The Mayzan Herald reported that more than 3000 Okuzans had been arrested in the past month. Many were booked under the Mayzan Terrorism Law, 2015. Bader Halden explained that all the arrests were being made in accordance with the law and confidential sources of information that were available to the government. He added that all those arrested would be dealt with in compliance with all the procedural guarantees under the Mayzan legal system.
17. The Eastern Province continued to remain under a state of emergency as the military were brought in to monitor movement between villages and towns. Curfews were placed and people were not allowed to leave their homes after 6pm every night. The police continued to make arrests across towns and villages in the Eastern Province. Okuzans who were living in other parts of Mayzan were also being arrested without an option to seek bail. Most leaders of the OPF were also arrested. Fearing for their future, the Okuzan people began to flee across the border to Boliria, seeking asylum.



18. By the first week of September 2018, thousands of Okuzans had crossed into Boliria as a result of events that had occurred in Mayzan. The Bolirian government reacted quickly to the influx of Okuzans by creating temporary camps. The United Nations High Commissioner for Refugees (UNHCR) assisted the government by providing food supplies, tents and sanitation facilities to the incoming refugees. By the end of October 2019, UNHCR estimated that more than 100,000 Okuzans were living in the makeshift camps on the Bolirian side of the border. Despite the government's quick and positive response to the inflow of Okuzan people, as well as the assistance by the humanitarian organizations on the ground, the condition of the camps were reported to be deplorable. The Bolirian Times reported the paucity of food supply and sanitary amenities.
19. To this end, the Ministry of Home Affairs, Bolirian Government started the process of Refugee Status Determination (RSD) on 04 November 2018, in order to provide the Okuzan refugees with documentation so that they may leave the camps and have access to livelihoods and better facilities within the country. The UN High Commissioner for Human Rights lauded the Bolirian Government's efforts and stated that "Boliria is setting an example to other countries on what it means to honour a State's commitment to the Convention relating to the Status of Refugees"
20. Despite its best efforts, the Bolirian government was unable to keep up with influx of Okuzan people into Boliria. Caseworkers who were conducting the RSD process were overworked and the number of cases continued to increase without reprieve as the situation in Mayzan remained tense. Furthermore, Boliria is a developing country and could only redirect a certain budget and number of resources towards the assistance of the Okuzan asylum-seekers and refugees.
21. In June 2019, Boliria had registered and provided documentation to over 200,000 Okuzan refugees. The state of emergency in the Eastern Province of Mayzan continued to be implemented almost a year later. The people in the province continued to be cut off from the rest of the world with no access to internet. Curfews continued to be implemented and military presence only increased in the area. The Government of



Mayzan claimed that this continued state of emergency was in order to ensure the peace and security of its citizens. By mid-2019, the influx of Okuzan to Boliria has reduced to about a few dozen every month.

22. In May 2020, the Government of Mayzan lifted the state of emergency in the Eastern Province. By this time, Boliria had registered approximately 300,000 Okuzan refugees in its territory. Over the past two years, Boliria had shouldered a large burden by assisting so many Okuzans. Furthermore, there was a growing sentiment of resentment among the Bolirian people for Okuzans who had received basic amenities at the taxpayers' expense and were now looking for jobs in direct competition with the Bolirian workforce.
23. Seeing a potential crisis on its hands, in early June 2020 the Bolirian Prime Minister was scheduled to visit Mayzan, the matter of Okuzan refugees was added to the agenda of the meeting between the Prime Minister and the President. Consequently, on 08 June 2020, the two governments announced that they had reached a Memorandum of Understanding regarding the Okuzan refugees. The MoU stated that Mayzan agreed to welcome back all Mayzan citizens who were currently living in Boliria. The MoU added that if citizens did not have any documentation to prove their citizenship, they would be detained for a period of two weeks during which the documentation would be arranged for by the Ministry of Interior Affairs.
24. Once the MoU was announced, rights groups in both countries expressed their concerns regarding the detention upon return for those who did not have documentation proving their citizenship. The Government of Mayzan clarified that this was part of the procedure established by law under the Mayzan Immigration Control Act, 1988. On 15 June 2020, owing to the MoU signed with Mayzan, the Government of Boliria announced that it would begin the process of cessation of refugee status of Okuzan refugees within its territory as the circumstances under which refugee status had been provided have ceased to exist. To this effect, refugee protection for Okuzans in Boliria would end with effect of 01 January 2021.



25. Once again fearing for their lives, Ozukan refugees in Boliria resorted to moving towards the Beyul continent which would require them to cross the Calasian Sea. The most straightforward option was to reach the Republic of Makonda. Smugglers from Boliria and Makonda seeing a lucrative opportunity in transporting Okuzan people, began to reach out to refugee families at the camps and other parts of Boliria. It was reported that pre-decided groups of Okuzans would reach the coast at night and be smuggled across the sea to Makonda. In September 2020, the Makonda government stated that it had received more than 3000 Okuzans at its ports and would comply with its obligations under international law and would take every measure to prevent irregular migration.
26. Over the next month, Makonda's neighbouring countries, Joran and Ligos also reported receiving Okuzan people at their ports. On 03 November 2020, Makonda, Joran and Ligos entered into a Memorandum of Understanding on maritime security. The understanding stated that there would be coordinated activities involving security measures in the Calasian Sea, in order to prevent illegal migration. The MoU further stated that, being parties to the 1951 Refugee Convention and its Protocol, they would comply with all the obligations under international law. However, they would take every measure to prevent illegal entry into their territories. The MoU further stated that the three States would coordinate their activities over the sea in preventing illegal entry of people.
27. Makonda in coordination with the other two coastal States, increased its coast guard surveillance as was concluded in the MoU. It was reported that more than 10000 Okuzan people were interdicted in a period of two months from November to end December 2020. On 05 January 2021, the Foreign Minister of Makonda, along with the Foreign Ministers of Joran and Ligos issued a press statement in Makonda's capital, Sarin. As per the press statement the three countries stated that all the measures undertaken by with regard to maritime surveillance were in accordance with their international legal obligations. Their security measures in the high seas of the Calasian Sea were very much within the applicable legal framework. At the same time, in Boliria, the Jinoras, an Okuzan family were the first to be sent back to Mayzan.



28. On 15 January 2021, the Makonda Daily News newspaper broke the story that more than 200 people drowned in the Calasian Sea on the night of 13 January 2021. It was reported that all of them were Okuzan refugees from the Eastern Province of Mayzan who were attempting to reach Makonda. As was the case with smuggler boats that had been transporting Okuzans over the past few months, the boat that was travelling on 13 night was filled beyond its capacity. It was suspected that there were no survivors of the tragedy. This incident drew the attention of the international community. World leaders appealed to the concerned States to address the situation and prevent further loss of lives. A strong opinion emerged that there was a need for humanitarian approach to prevent future such incidents.
29. On 20 January 2021 the international NGO Human Rights Alert (HRA), a non-profit human rights organization released a report named '*The Innocent, The Imprisoned, and The Impunity: The Situation of Okuzans in Mayzan*'. In the report, the NGO detailed how Mayzanos who were arrested over two years ago were still in prison with no hope of bail. The report also provided case studies of human rights violations by the armed forces that continue to be stationed in the Eastern Province. Okuzan women had been brutally raped, Okuzan crops had been burned and homes had been razed to the ground. When media outlets questioned the Mayzan government about this damning report, Minister Baden Haler stated that this was false propaganda being spread by groups that had vested interests against Mayzan. Any situation of injustice would be dealt with as per the procedures established by the sovereign laws of Mayzan. It should be noted that the report also briefly discussed the maritime security measures taken by Makonda as well as the cessation of refugee status by Boliria. Human Rights Alert stated that these measures were in clear violation of the principle of *non-refoulement*. The report also stated that the government of Mayzan refused to provide HRA with any information on the families that had returned from Boliria in the recent weeks.
30. On 25 January 2021, the Federal Republic of Pemola which shared its western border with Mayzan, initiated a trilateral dialogue between Boliria and Makonda. While very



few Okuzans (approximately 1000 as per the State's records) had managed to reach Pemola due to transport routes being unviable, Pemola believed that all nations are bound to resolve refugee crises under the global obligation to protect people from racial discrimination and uphold the principles of *non-refoulement*. Therefore, Pemola sought to negotiate a solution for the Okuzan people with Boliria and Makonda. The representatives from both Boliria and Makonda insisted that their countries were fulfilling all obligation under international law and the meeting concluded without a solution. It was decided that the dispute over the nature of legal obligations should be referred to the International Court of Justice (ICJ). Accordingly, Pemola, Makonda and Boliria enter into this special agreement on 31 January 2021 and submit the same to the International Court of Justice in accordance with Article 40 (1) of the Statute of the Court. It is agreed in the special agreement that Pemola would act as the Applicant and Boliria and Makonda as the Respondents.

31. Accordingly, Pemola requests the Court to adjudge and declare that:

- a. Boliria and Makonda have an obligation under international law to provide protection to all those Okuzan asylum seekers from Mayzan who seek its protection;
- b. Boliria's measures of cessation of refugee status and Makonda's measures interdicting the Okuzan people on the Calasian Sea are in violation of their obligations under international law, specifically Convention Relating to the Status of Refugees of 1951 and its Protocol Relating to the Status of Refugees of 1967, the International Covenant on Civil and Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, United Nations Convention on the Law of the Sea of 1982 and under other relevant international laws.
- c. Boliria and Makonda have an *erga omnes* obligation to the principle of *non-refoulement*.
- d. Boliria and Makonda have an obligation under international law to prevent the Okuzan people from being left stateless.



32. Boliria and Makonda request the Court to adjudge and declare that:

- a. Boliria and Makonda have conformed with all obligations under international law to provide protection to Okuzan refugees who fall under their jurisdiction;
- b. Boliria's measures of cessation of refugee status and Makonda's measures interdicting the Okuzan people on the Calasian Sea are not violation of their obligations under international law, specifically Convention Relating to the Status of Refugees of 1951 and its Protocol Relating to the Status of Refugees of 1967, the International Covenant on Civil and Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, United Nations Convention on the Law of the Sea of 1982 and under other relevant international laws.
- c. Boliria and Makonda do not have an *erga omnes* obligation to the principle of *non-refoulement*.
- d. There is no situation of statelessness for the Okuzan people that arises in this case and Boliria and Makonda have no obligation to address it.

33. Some of the relevant treaties to which Pemola, Boliria and Makonda are both parties to are: Convention Relating to the Status of Refugees of 1951 and the Protocol Relating to the Status of Refugees of 1967, International Covenant on Civil Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, International Convention on the Elimination of Racial Discrimination of 1965, Convention on the Rights of the Child of 1989, Convention on the Elimination of All Forms of Discrimination against Women of 1979, United Nations Convention on the Law of the Sea of 1982, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988, and the Vienna Convention on the Law of Treaties of 1969.

