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International Bar Association's ICC Moot Court Manual

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About the International Bar Association the global voice of the legal profession

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world.

It has a membership of over 55,000 individual lawyers and 206 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community as well as being a source of distinguished legal commentators for international news outlets.

Grouped into two divisions – the Legal Practice Division and the Public and Professional Interest Division – the IBA covers all practice areas and professional interests, providing members with access to leading experts and up-to-date information.

Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practices and professional responsibilities relating to the practice of business law around the globe.

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Foreword

International criminal law has advanced dramatically since the early 1990s. It has been used to address the horrors of conflicts in the former Yugoslavia, Rwanda and Sierra Leone. Heads of state who would previously have ended their days peacefully are now put before courts for offences of appalling violence and destruction. Men such as Slobodan Milošević, Ratko Mladić, Charles Taylor and Thomas Lubanga Dyilo have been arrested and put on trial for crimes that ‘shock the conscience of mankind’.

The use of international criminal trials as a weapon against crimes against humanity and genocide is now a regular part of the international community’s response to crises all over the world.

International courts use a combination of the law and practice of the world’s major justice systems. The system is broadly adversarial, with the prosecutor responsible for bringing charges against an accused. But many of the rules of evidence and procedure that are common in inquisitorial systems are also employed.

Security problems associated with these trials have led to some special rules being developed to deal with issues such as witness protection and confidential sources of evidence.

The development in international criminal law led to an agreement in 1998 to establish a permanent international criminal court. One hundred and thirty nine countries have now become signatories to the Rome Statute, creating the International Criminal Court based in The Hague (ICC).

The ICC uses the mixed system of procedural law developed at the various international tribunals. Influenced in part by the experience of those tribunals, an agreed set of rules on procedure and evidence has been established under which the ICC will operate.

The ICC provides an excellent model for an international moot court competition. It allows students from any jurisdiction to participate on equal terms, as it follows the procedure of the ICC, rather than that of a national system. Students in civil or common law systems alike can follow the comprehensive new system of the ICC.

The crimes under the jurisdiction of the ICC, typically referred from on-going international situations, make an enthralling subject for students.

This manual aims to provide students and educators with a comprehensive guide on how to set up an ICC moot court exercise.

All five moot court problems made available in this manual, staged under ICC rules of procedure and evidence, consider a fictitious set of facts that deal with genocide, crimes against humanity, or war crimes, in accordance with article five of the Rome Statute. They will include many of the elements found in real international trials, but will not be drawn from any identifiable situation.

The present manual has been made possible through a grant from the Democracy Fund of the Open Society Institute. The authors have put together a series of five compelling moot problems and a thorough yet accessible guide, which will provide users with a deeper understanding of the workings of the ICC. Earlier versions of the manual have been reviewed by a panel of experts. We kindly invite users to contact the IBA with feedback on the manual.

Mooting is a unique and invaluable experience that adds tremendous value to any legal education. By way of these materials, the IBA strives to make this experience easily available to students everywhere.

A handwritten signature in black ink, appearing to read 'Mark Ellis'. The signature is written in a cursive, flowing style with a large initial 'M'.

Mark Ellis

IBA Executive Director

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A Toolkit on International Criminal Law for Judges, Prosecutors and Lawyers



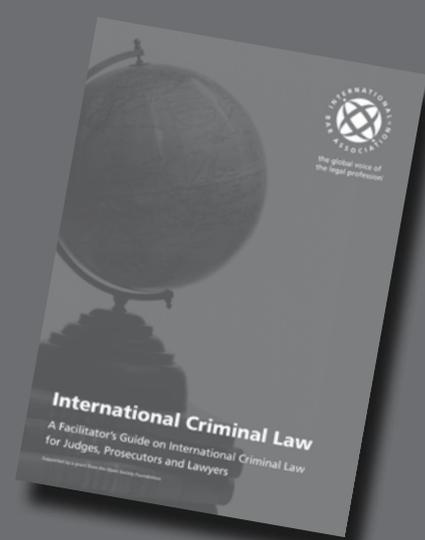
The International Bar Association's Human Rights Institute (IBAHRI) has developed an international criminal law toolkit which aims to:

- familiarise legal professionals with the principles of international criminal law;
- promote understanding of how those responsible for international crimes should be tried;
- strengthen the application of international criminal law principles in domestic and international legal practice; and
- build the capacity of domestic institutions to fight impunity and ensure accountability for international crimes.

Parallel to the evolution of an international justice framework, international criminal law has bearing on the refinement of the domestic criminal justice process. This toolkit is therefore equally relevant to capacity-building programmes for judges, prosecutors and lawyers working in criminal justice at the domestic level.

The IBAHRI international criminal law toolkit comprises:

- *International Criminal Law: A Manual for Judges, Prosecutors and Lawyers* (2010) – English, French and Arabic language versions
- *Manual Update* (2013)
- *Facilitator's Guide* (2013)



Available to download at: <http://tinyurl.com/IBA-ICL-Manual>

About the International Bar Association's Human Rights Institute

Established in 1995, the International Bar Association's Human Rights Institute (IBAHRI) works to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI has been actively involved in building capacities of judges, prosecutors and lawyers, delivering training of the highest standards in human rights and international criminal law. Benefiting from the IBA's global network of lawyers, judges, bar associations and law societies, the IBAHRI brings together experts to facilitate training for legal professionals in jurisdictions across the world.





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The International Criminal Court

A Moot Court Exercise for Students

The Prosecutor v Jaque Abbadi

Drafted by Laurie McNabb
Edited by Professor Alex Whiting

Produced by the
International Bar Association 2014

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Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given an ICC judgment involving events which happened during a civil war in a fictional country, Nahili. During the armed conflict, war crimes were committed which were so serious that the International Criminal Court in The Hague wanted to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes; you can find descriptions of these crimes on pages 47–49 below (extracts from the Rome Statute).

The man whose trial concerns you in this exercise is called Jaque Abbadi. He was the defendant (person accused of crimes, sometimes referred to as the accused) in a trial at the ICC in 2012. The accusations against him were made by the prosecutor and his team of lawyers. The trial was conducted by a Trial Chamber of three judges. At the end of his trial, the Trial Chamber convicted him (found him to be guilty) of war crimes (Article 8).

He now wishes to appeal to the Appeals Chamber. This is a court of five judges which has the power to decide that the Trial Chamber was wrong in its decision. Jaque Abbadi is asking them to overturn the decision of the Trial Chamber.

You will be conducting a part of his appeal. You will need people to act the following roles:

- The Appeals Chamber judges – five;
- Mr Abbadi’s defence lawyers – at least two but can be a team of up to six;
- the prosecutor and his lawyers – at least two but can be a team of up to six;
- two witnesses; and
- the registrar.

The judges, the defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the presiding judge. He/she has control of the court and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the prosecutor. The leader of the defence lawyers is lead counsel for the defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams all work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage, whether it is questioning of the witness or presenting an argument. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant, Jaque Abbadi, but you should note that he will not be saying anything in court during his appeal. His lawyers will say anything that needs to be said on his behalf.

Preparation in teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective and decide who should present each argument and question each witness. There are at least four different roles which need to be played: questioning Witness 1; questioning Witness 2; presenting Argument 1; and presenting Argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers and what is likely to influence them in coming to a decision – but they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the person you have chosen to play the defendant and the two witnesses to join the team of defence lawyers. The registrar can join the judges.

The court hearing

The judges will sit at the front of your courtroom. The defence lawyers will sit on their right and the prosecution lawyers on their left. The defendant will sit behind his lawyers.

Although the participants are playing the part of international judges or lawyers, there is no need for them put on voices or accents. The people playing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement or make up information which they have not been given.

The hearing will take place as follows:

The presiding judge will declare the proceedings open in the appeal of Jaque Abbadi against the prosecutor. He will ask the prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The presiding judge will then ask lead counsel for the defence to introduce his team of lawyers.

The lawyers in the court will all call the judges ‘Your Honour’ or ‘Your Honours’ at all times. They must remember that all the things they say must be addressed to the judges and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

REGISTRAR: I declare this session of the International Criminal Court open. The first case listed today is the prosecutor against Jaque Abbadi. Judge Green presiding.

PRESIDING JUDGE: *This is an appeal hearing in the case of Jaque Abbadi. Both parties have prepared written submissions to the court. I call upon the prosecutor to introduce his team.*

LEAD PROSECUTOR: *Your Honours, I am Victor Black. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...].*

LEAD DEFENCE COUNSEL: *Your Honours, I am Maria White. I am the lead counsel for the defence. I am assisted by the following lawyers [...].*

PRESIDING JUDGE: *Thank you. I understand this is an appeal by the defendant. I therefore invite the defence to begin and to present their first argument.*

The presiding judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long or repeat the same arguments, thereby wasting time.

The first argument (Argument 1)

The presiding judge will then ask the defence to proceed with their first argument.

A defence lawyer will tell the judge very briefly what the first argument is. He will say that he wants to call two new witnesses. The presiding judge will ask the prosecutor if he has any objection. The prosecutor will say no. The presiding judge will then give the defence permission to call the witnesses.

Witness 1

A defence lawyer will call the first witness, Colonel Prezen Dinari. The registrar will bring the witness into the court: He will sit opposite the judges. The registrar will ask him to repeat after him:

I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.

A defence lawyer will then stand up and ask the witness questions. He would normally start by asking his name, age and where he lives. He may then ask whether and how the witness knows the defendant. Then he will ask the witness questions which will allow the witness to tell the court what the defence wants the court to hear – in this case, a summary of his proposed testimony is presented in a statement given by him. These questions, asked of the party's own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as 'leading'). The witness must give his own evidence in his own words.

When the defence lawyer has finished, he will say to the presiding judge that he has no further questions. The presiding judge will then ask the prosecution whether they have any questions. A prosecuting lawyer will stand up and will ask the witness some questions. He will be trying to show that the witness cannot be sure of what he has said to the defence. He may try to show that the witness is lying. These questions, asked of the other party's witness, are called cross-examination. When asking these questions, the lawyer is allowed to suggest answers to the witness. Getting

angry or harassing a witness is not allowed and the presiding judge must intervene to stop this happening, where necessary.

When the prosecution lawyer has finished, he will say to the presiding judge that he has no more questions. The presiding judge will ask the defence if there is anything else they want to ask. The defence may have no further questions or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the prosecution. The defence should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the presiding judge may have some questions for the witness. Any of the other judges may also ask a question if the presiding judge allows them to. The judges do not have to ask any questions at all but they may wish to clear up any points they think the defence and prosecution has left out.

The presiding judge should remember throughout this procedure that he is in charge. If he thinks that the lawyers are taking too long or repeating themselves he can tell them to hurry up. If he thinks they are bullying the witness he can tell them to stop.

After the witness has finished being questioned, the presiding judge will thank him for coming and tell him he may now leave the court.

Witness 2

The same procedure will be followed with the second witness, Raja Obert.

Legal argument

After the witnesses have given evidence the court will hear the first legal argument.

The presiding judge will ask the defence to present their argument. This is the argument that the Trial Chamber was wrong to find that the defendant had effective command and control, or effective authority and control, over the special forces of the Army of God (AoG) and that he knew or, owing to the circumstances at the time, should have known that the special forces of the AoG were committing or about to commit crimes. The defence will further argue that the Trial Chamber erred in finding that the defendant failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. If the defence can persuade the judges that the new evidence presented casts doubt on the prosecution case, the judges will have to find that under Article 28, he is not guilty of the crimes which were committed by the members of the AoG. The new evidence which the Appeals Chamber has just heard will be very useful in making this argument.

When the defence lawyer has finished presenting the argument, a prosecution lawyer will present the prosecution arguments on the same issue. It may be useful to decide in advance that each side has a certain amount of time – for example, ten minutes – to present their argument. If either side continues for too long the presiding judge may ask them to hurry up.

After these presentations the presiding judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the presiding judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

The second argument (Argument 2)

The presiding judge will then ask the defence to present their second argument. This is the argument that the Trial Chamber erred in law in the standard to be applied to an individual who is alleged to have committed a crime ‘jointly with another’. The argument will proceed in the same way as the first argument.

After the arguments have been heard, the presiding judge will tell the court that the session is closed and the judges will now retire to consider their judgement.

The judges’ decision

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not. If the defence wins Argument 1 then the Appeals Chamber would enter a ‘not guilty’ on counts 1 and 2 with regard to the defendant’s responsibility as commander’ known as superior responsibility. Argument 2, which is based on the defendant’s participation as a joint perpetrator, hinges on the legal standard that was applied. In other words, the defence argues that the Trial Chamber applied an incorrect standard and by doing so, reached a wrong conclusion. If the Appeals Chamber finds that the Trial Chamber did apply an incorrect standard to joint perpetrator liability then they would either; remand the case to the Trial Chamber to re-examine the evidence in light of the correct standard; or review the evidence themselves in light of the correct standard.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgement. If any judge disagrees with the judgement of the majority, he may briefly tell the court why.

The presiding judge then closes the session.

The competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

- good structure to questions and submissions;
- clarity in argument;

- quick thinking in response to arguments from the opposition;
- clear understanding of the issues when answering questions from judges;
- good use of language;
 - clear and confident speech.

Remember, a team may lose the judges' decision on the facts and law but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and did not like about each team's performance. They will then announce the winner.

Do

JUDGES

- Do keep order in the courtroom;
- listen carefully to what the witnesses are saying; and
- ask questions of the witnesses only once the prosecution and defence have finished their questions.

PROSECUTORS

- Do speak slowly and clearly;
- give your questions or speech a structure which can be followed by you; and
- write down your questions for witnesses.

DEFENCE COUNSEL

- Do speak slowly and clearly;
- concentrate on your best point; and
- remember that time will probably go more quickly than you plan for.

WITNESSES

- Do learn what the statement says, so you don't have to keep checking it before answering each question;
- stick to what is said in the statements; and
- speak slowly; remember people may be writing down what you say.

Don't

JUDGES

- Don't let the lawyers harass the witnesses;
- let the lawyers run over the time allowed; or
- interrupt the lawyers too often.

PROSECUTORS

- Don't use emotional language; stick to the facts and the law;
- ask the witnesses for opinions; just ask about the facts; or
- try to make the witness look stupid or small.

DEFENCE

- Don't use personal insults about the prosecution case; stick to the facts and the law;
- repeat points made by other members of your team; or
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear).

WITNESSES

- Don't make jokes or try to be smart;
- refer to things you've heard from other people; or
- make arguments about the law; that is for the lawyers.

The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing very serious crimes.

When was an International Criminal Court first suggested?

An international criminal court was first suggested at the end of the 19th century but it was not possible for the countries of the world to reach agreement about what its powers would be. During the last decade of the 20th century pressure for such a court grew. This led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that can take some time as different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined and the Rome Statute therefore came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY?

The ICC differs from the International Court of Justice (ICJ) in that it tries people, not states. The International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia: Bosnia Herzegovina, Croatia, Macedonia and Serbia.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape and deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have joined or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council, where there is a threat to international peace and security.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. Additionally, such people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why weren't Slobodan Milošević and Saddam Hussein tried by the ICC?

Milošević was not tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein and, in addition, Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

There is a prosecutor, who is elected by the representatives of the countries which have joined. He is the Head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What happens if the judges decide after all the evidence that a defendant is guilty of a crime?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens next?

If a defendant is acquitted of all charges he will be free to go and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment or, in particularly serious cases, to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

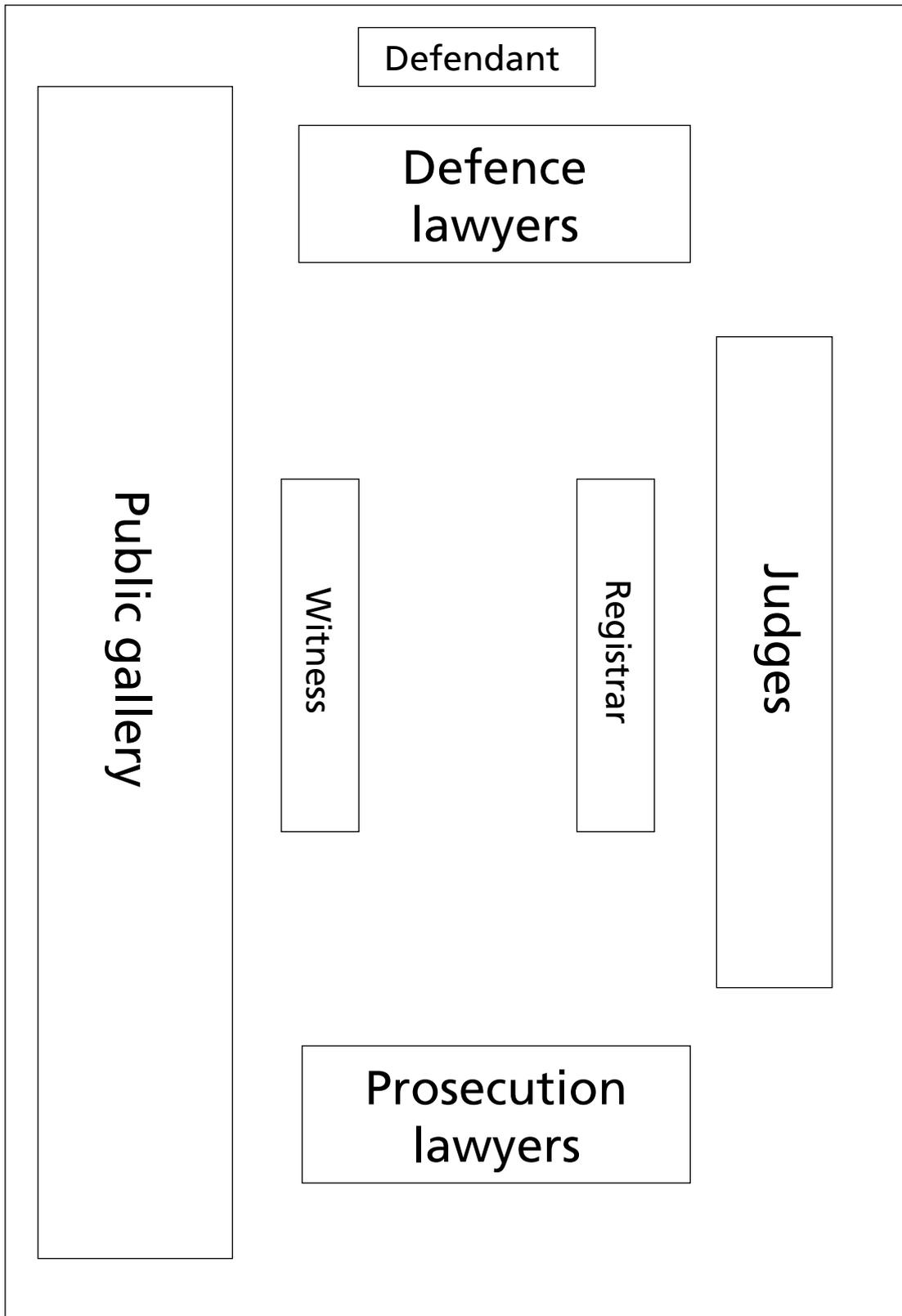
If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence. However, he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example, if new witnesses have come forward.

Where does the defendant serve his prison sentence?

Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

Courtroom Layout



People and Places

Nahili	The name of the country (before the split) in which the fighting took place.
Touka	Self-declared state within Nahili that is seeking to take control over the country and expel all non-Toukans, namely the Zarcans.
Zarcans	Minority of population which formed its own army and is fighting the Toukans – the Zarcans also want their own state known as Zarca.
Restoria	A neighbouring country which was friendly to Nahili and is now aligned with the self-declared state of Touka and its President Jaque Abbadi.
Jaque Abbadi	President of self-declared state of Touka and Supreme Commander-in-Chief of Toukan Army – the defendant.
Special Forces of the Army of God (AoG)	Militia from Restoria sent to assist the Toukan Army in their civil armed conflict.
Colonel Prezen Dinari	Colonel in the former army of Nahali and principal in the Ministry of Defence of Touka as Chief of Main Staff.
Lieutenant Mazen Ghadi	Lieutenant in the Special Forces of the AoG.
Raja Obert	Former Adviser to the Chief Priest of the Order of Maynam; now defected from the AoG and seeks asylum in The Hague.
Eva Trazen	Zarcans civilian who witnessed war crimes committed by special forces of the AoG in late March 2010.
Pierre Cousta	UN observer who witnessed war crimes committed on 25 March 2010 during Operation Wipe-Out and was confronted by the special forces of the AoG.
Colonel Colin Paliston	Present at meeting with President Abbadi.
Honourable Chief Priest	Chief Priest of the Order of Maynam Army of God.

Timeline

Year	Date	Event
1970	14 September	Jaque Abbadi born.
2004		Election of President of Nahili – Malin Baracad – allegations of election fraud. He went on to become a heavy-handed dictator and began to split the country along political, economic and religious grounds into two groups – the Toukans and the Zarcans.
2009		President Baracad was assassinated and the country immediately split into the two sides. The self-declared state of Touka was formed and Jaque Abbadi was elected President. War broke out between the Toukans and the Zarcans.
2010	Early January	Special Forces of Army of God (AoG) arrived in Nahili to take up arms with the Toukan army and fight against the Zarcans.
2010	05 March	Abbadi signs an order subordinating the special forces of the AoG to the 6th Corps of the army of Touka for purposes of Operation Wipe-Out which was to commence on 25 March 2010 in the Deep Pocket of the northern province of Zarca.
	15 March	President Abbadi is briefed on the launching of Operation Wipe-Out.
	25 March	Operation Wipe-Out is launched and a witness reports observing intense shelling around civilian areas.
	26 March	Intelligence reports of enemy fire and reports of civilian casualties, looting and destruction of property in the zone of responsibility of the 6th Corps.
	26 March	SIS intelligence report of killings of women, children and prisoners of war by the special forces of the AoG.
	27 March	The war has ended with victory by the Toukan army. In a special referendum and election, the country's name was formally changed from Nahali to Touka, and President Jaque Abbadi was re-elected as President of Touka for a term of eight years.
	30 March	Awards ceremony for the special forces of the AoG.
2010	May	The ICC <i>proprio motu</i> commenced an investigation into alleged war crimes and crimes against humanity committed during the war between the Toukans and the Zarcans in 2010 in the former territory of Nahali.
2011	February	Pre-Trial Chamber of the ICC confirmed charges against Jaque Abbadi.

Year	Date	Event
	14 March	Prosecutor of the ICC applied for a warrant of arrest to be issued against Jaque Abbadi.
	25 April	Abbadi is arrested and thereafter brought to The Hague.
2012	January	Trial commences at the ICC.
	July	Trial ends.
	October	Judgment issued in <i>Prosecutor v Jaque Abbadi</i> .
	December	Raja Obert defects from the AoG and seeks asylum in The Hague.
2013	January	Colonel Prezen Dinari has been arrested and extradited to the ICC for war crimes committed during Operation Wipe-Out.

Annex 1

International Criminal Court Judgement of the Trial Chamber in the case of Prosecutor against Jaque Abbadi

Original: English

Case No:ICC/12-001/34

Date: 8 October 2012

Situation in Nahali *The Prosecutor v Jaque Abbadi* Appeals Court

The Judgment of the Trial Chamber in the case of Prosecutor against Jaque Abbadi

Background

1. Nahali, under the leadership of former President Pale, signed and ratified the Rome Statute for the International Criminal Court. It has therefore been a member of the ICC since its inception on 1 July 2002.
2. In May 2010, the Prosecutor of the ICC *proprio motu* commenced an investigation into alleged war crimes and crimes against humanity committed during the war between the Toukans and the Zarcans in 2010 in the former territory of Nahali.
3. The ICC has issued warrants of arrest for a number of senior members of the Toukan government for war crimes committed in March 2010. It has also issued warrants for several commanders of the special forces of the Army of God (AoG) and the Supreme Leader of Restoria.

Jaque Abbadi

4. Jaque Abbadi was born in Nahali on 14 September 1970 and is now 43 years old. When former President Baracad of Nahali was assassinated in 2004, the country of Nahali split into two factions – the Toukans and Zarcans. The self-declared state of Touka was formed and Jaque Abbadi was elected the President of Touka.
5. At the time of the events described in the Indictment, Abbadi was the President of the self-declared state of Touka and, by virtue of his status as President, the Commander-in-Chief of the Toukan army.

6. In March 2010, he was in command of the special forces of the AoG, who were subordinated to the 6th Corps of the Toukan military.

Arrest of Jaque Abbadi

7. On 14 March 2011, the prosecutor of the ICC applied for a warrant of arrest to be issued against Jaque Abbadi in respect of events which occurred in the northern province of Zarca during March 2010.
8. On 25 April 2011, with the assistance of secret police, Jaque Abbadi was arrested in Restoria and thereafter was conveyed to The Hague to be tried by the ICC.
9. The defendant has been in ICC custody since his arrest.

Charges

10. In February 2011, the Pre-Trial Chamber confirmed the following charges against Jaque Abbadi:

COUNT 1

Pursuant to individual criminal responsibility under Article 25 of the Rome Statute and alternatively to responsibility of commanders and other superiors under Article 28 of the Rome Statute for violations of:

- war crimes under Article 8(2) (e) (i) of the Rome Statute for intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, between 25-27 March 2010 during Operation Wipe-Out in the northern province of Zarca in the self-declared state of Touka.

COUNT 2

Pursuant to individual criminal responsibility under Article 25 of the Rome Statute and alternatively to responsibility of commanders and other superiors under Article 28 of the Rome Statute for violations of:

- war crimes under Article 8(2) (e) (xii) of the Rome Statute for destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of conflict, between 25–27 March 2010 during Operation Wipe-Out in the northern province of Zarca the self-declared state of Touka.

Trial

11. Jaque Abbadi denied both counts.
12. His trial began in January 2012 and lasted six months.

13. At the conclusion of the trial, the case was adjourned for three months for the judgment to be prepared.

Prosecution evidence

14. The Prosecution evidence was that Abbadi was a close friend of Buti Larkan, the Supreme Leader of Restoria, and in early 2010, he accepted military assistance from the government of Restoria by way of its special forces of the AoG (hereinafter ‘special forces’) and heavy-duty military equipment. He accepted the services of the special forces because his armed forces of Touka were small and weak and they lacked discipline and proper training. In addition, the Toukan army did not have the necessary military equipment necessary to complete the mission at the heart of the conflict which was to have an ethnically pure state of Touka.
15. After the arrival of the special forces, in reference to planning Operation Wipe-Out which was to take place between 25–27 March 2010, Abbadi was recorded on tape as stating that ‘[w]e have to get rid of these Zarcans once and for all’ – meaning ethnically cleansing the self-declared state of Touka. Abbadi further instructed his close advisers to brief him every hour during the operation and to report any crimes to the military police. Abbadi further instructed that the commanders should be instructed in the Geneva Conventions. This shows that he was aware of the propensity of the special forces to commit war crimes and crimes against humanity, the likelihood of this occurring during Operation Wipe-Out and that he was briefed throughout the operation. The tape further shows that there was an attempt to cover up. Assistant Minister of Defence Cozan Paliston mentioned that he did not feel comfortable with the special forces participating due to their reputation. A section of the tape is then erased in an attempt to hide the fact that the reputation of the special forces was that they had the propensity to commit war crimes and crimes against humanity, which, as later witnesses testified, was common knowledge around the world.
16. The special forces trained alongside the armed forces of Touka and were issued Toukan uniforms. On 5 March 2010, Abbadi issued an order subordinating the special forces to the 6th Corps of the army of Touka and placing them ‘under their command’. This is a clear *de jure* subordination.
17. In terms of *de facto* subordination, the evidence demonstrates that the special forces trained alongside the Toukan army and they participated in several operations together. Abbadi visited the training camp and thanked the special forces for assisting them in defeating the Zarcans. In addition, after Operation Wipe-Out, Abbadi awarded the members of the special forces with the highest medal of honour for the state of Touka.
18. UN observer Pierre Cousta, a General in the Malton foreign government, testified that it was common knowledge that the Toukans were bringing in outside help from the group of mercenaries who were ruthless and lawless and ‘killed everything in sight’. He also testified that many Zarcans had known this, thus causing them to flee prior to the Operation.
19. General Cousta testified that he had an experience with members of the special forces who were in the presence of other members of the Toukan army and who threatened to kill them ‘just as they had killed others that day who “got in their way”.’

20. The evidence clearly demonstrates that members of the special forces committed war crimes and that Abbadi committed these crimes through the special forces of the AoG and is therefore criminally responsible pursuant to Article 25(3). Witnesses Eva Trazen and UN observer Pierre Cousta both testified to civilians being executed and homes being looted and burned to the ground. Witness Trazen's husband was taken as a prisoner of war and has never been seen again, presumed to be dead. UN observer Cousta testified about intense shelling and rockets firing around the UN compound and he witnessed dead civilian bodies everywhere, some shot at close range. He also observed houses burning for a several mile radius around the compound. Both witnesses observed the perpetrators as wearing Toukan military clothing with yellow armbands, which were worn by the special forces.
21. There was significant evidence that Abbadi was sent notice of crimes being committed and there is no documentation or other evidence indicating that he ever took any action against the perpetrators. On 26 March 2010, the President's office was sent a telex, which was received by Major Jensik, Abbadi's Chief Adviser, from the Secret Intelligence Service (SIS) informing him of atrocities being committed by the special forces, including beheadings of prisoners of war, execution of civilians – woman, children and the elderly – and an admission of one member of the special forces that they were carrying out these crimes in a 'widespread and systematic' fashion across the province of Zarca during and after Operation Wipe-Out.
22. The prosecution asserts that the copy of this report, on which there was a notation 'Do not forward to the Man' with the initials PD, is a forged document and should be disregarded by the Trial Chamber. There was no authentication of this report when submitted by the Defence.
23. In a second report, the Command of the Toukan Military District 5 Intelligence Sector to the Intelligence Administration of the Toukan Army/Main Staff, of which Abbadi is a member, informs them of reports of civilians being killed at random and property being looted and burned.
24. Therefore, the evidence clearly shows that the defendant knew of the crimes or, owing to the circumstances at the time, should have known that the special forces were committing or about to commit such crimes and failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
25. The evidence further clearly shows that the defendant committed the crimes jointly with the special forces. There was a joint understanding that the territory of the self-proclaimed country of Touka would be rid of the Zarcans once and for all and this common understanding included the awareness that crimes would be perpetrated during the combat operations in order to eliminate the Zarcans rebel forces and civilians. Through his actions described above, the defendant contributed to the commission of the crimes.

Defendant's evidence

26. The defence does not dispute that crimes were committed by the special forces during Operation Wipe-Out but rather that the special forces were not under the command and authority of the Toukan army and, furthermore, that the defendant did not have knowledge of any crimes that had been committed.
27. The defence further asserts that the defendant is not criminally responsible pursuant to Article 25(3) as the prosecution has failed to prove that as a co-perpetrator his assistance was essential and that the crimes would not have been committed absent the defendant's involvement. The defendant was not present in the area of operations during Operation Wipe-Out and there is no direct evidence, credible or otherwise, to show that he agreed with a common plan which resulted in the commission of the relevant crimes.
28. The defendant presented in his defence a witness who had been a Lieutenant in the special forces, Mazen Ghadi. Ghadi testified that the special forces were not subordinated to the 6th Corps but rather were on a mission of their own based on their ideologies and their belief that the Zarcans were a group of infidels 'that needed to be reckoned with.' He testified that the special forces were sent to Touka to help their 'spiritual brothers' who were seeking to restore the former country of Nahali to the devout country it was under the leadership of the President Baracad and to get revenge for his assassination. Although they wore the uniforms of the Toukan army for the sake of convenience, they separated themselves by wearing yellow armbands. The special forces engaged in several combat operations sitting alongside the Toukan troops and, on at least two occasions, fought battles on their own.
29. The payment of the special forces demonstrates that they were not on the payroll of the Toukan government. Rather they were paid in cash in a blank envelope. This is not the usual method of payment for troops under the authority of a government.
30. The defendant asserts that there is no evidence that the defendant ever received the letter from UN observer Pierre Cousta reporting crimes, nor of the Command of Toukan Military District 5 Intelligence Section to the Main Staff reporting on crimes committed. Although the defendant's office was the named recipient of the report, there is no evidence that the report was ever received.
31. Similarly, the defendant introduced a document sent to the defendant from the Secret Intelligence Service reporting on beheadings of prisoners of war, executions of civilians and other crimes by the special forces, which at the bottom of the document had a notation showing that the report was not to be sent to the defendant and was initialled by his second-in-command Colonel Prezen Dinari. This document shows that the defendant was not on notice of crimes committed and, in fact, was shielded from these facts.
32. The defendant admitted into evidence an order to the Commander of the special forces in Nahali from the Chief Priest Order of Maynam instructing them to 'eliminate [...] at any cost' the Zarcans who are 'agents of evil' and to '[t]ake no prisoners'. This document clearly shows that the special forces were under the command and authority of their religious leader – the Chief Priest – and not under the command and authority of the Toukan army.

33. The defendant challenged the tape recording in that it cannot be inferred from the recording that the so-called erased section was about the propensity of the special forces to commit crimes. The witness who authenticated the statement admitted that it appears from the document that the defendant fulfilled his legal obligations to be notified of war crimes and that he took all steps to ensure that the troops were aware of the Geneva Conventions, that he be notified of any crimes committed and that those committing crimes be referred to the military police.

Factual findings

1. The defendant does not dispute, and the Trial Chamber finds, that war crimes were committed by the special forces of the AoG, between 25–27 March 2010, during Operation Wipe-Out in the northern part of the Zarca province in the self-declared state of Touka. Those crimes, including unlawful attacks on civilians resulting in unlawful killings of innocent civilians, and attacks on civilian property, are set out in detail in Annex 3 to the judgment.
2. The sole issue, therefore, for the Trial Chamber is whether or not the defendant should be criminally responsible for those war crimes.
3. Beginning in 2009, the former country of Nahali split into two factions, with one group forming the self-proclaimed state of Touka. Jaque Abbadi was elected the President of Touka. By virtue of his presidency, he was also the Commander-in-Chief of the Toukan army.
4. The second group, known as the Zarcans, inhabited the province of Zarca in the former country of Nahali – now the self-proclaimed state of Touka. The province was essentially run by Zarcans rebels who were fighting to overthrow the Abbadi regime and to have their own state of Zarca.
5. War raged on between the Toukans and the Zarcans in 2009–2010.
6. In early 2010, President Abbadi accepted an offer of assistance from the Supreme Leader of the country of Restoria, which was to send his special forces of the Army of God (AoG) to Touka to assist the Toukan army in suppressing and defeating the Zarcans and putting an end to the civil war. The defendant needed the assistance of the special forces because the Toukan army was small and weak and they lacked discipline and proper training. In addition, the Toukan army did not have the necessary military equipment necessary to complete the mission of ending the war and ‘get[ting] rid of the Zarcans once and for all’, resulting in an ethnically pure state of Touka.
7. One hundred members of the special force of the AoG arrived in Touka and began training alongside members of the Toukan army. They were issued Toukan military uniforms which they wore. Although they wore a yellow armband to distinguish themselves from the other members of the Toukan army, the Trial Chamber does not find that wearing an armband negates the fact that the special forces were part of the Toukan army. The Trial Chamber finds that the defendant visited the training camp and thanked them for assisting the Toukan army. The Trial Chamber finds that the special forces participated in several operations with the Toukan army.

8. In early March 2010, planning was underway for a military operation called Operation Wipe-Out. On 5 March 2010, the defendant issued an order explicitly subordinating the special forces of the AoG to the 6th Corps of the army of Touka and ‘under their command’. This order was sent to, inter alia, Lieutenant Commander of the special forces, Mazen Ghadi, and to Commander Lamis Averta of the 6th Corps. Thus the Trial Chamber finds that the special forces of the AoG were *de jure* subordinated to the 6th Corps.
9. On 15 March 2010, a meeting was held by the defendant to discuss the final plans for Operation Wipe-Out. Also present were Commander Blixel, Colonel Colin Paliston and Colonel Prezen Dinari, Chief of Main Staff/Ministry of Defence. At this meeting, the defendant stated that ‘[w]e have to get rid of the Zarcans once and for all’. As noted above in paragraph 15, the Trial Chamber finds that this proves intent on the part of the defendant to have an ethnically pure state of Touka. Although the defendant stated that the commanders should be instructed in the Geneva Conventions and he asked to be informed of any crimes that were committed and that the perpetrators be referred to the military police, these were empty words and the defendant did not take any further steps to ensure that his instructions were being carried out.
10. The Trial Chamber finds that part of the tape was erased intentionally, drawing an inference that there was a cover-up. However, the Trial Chamber cannot speculate on what had been discussed. This evidence, as argued by the prosecution, cannot support a finding that the defendant knew about the propensity of the special forces to commit crimes. Notwithstanding, the Trial Chamber finds that there was other ample evidence demonstrating this. There was evidence presented that the special forces of the AoG had a world-wide reputation for committing war crimes and the Zarcans population knew of this and fled the area when they learned about the arrival of the special forces. It is not reasonable to conclude that the civilian population would know of this and not the defendant.
11. The defendant was directly informed of crimes that were being committed by the special forces during Operation Wipe-Out by three sources. The first source is from by UN observer Cousta, who testified that he sent a direct correspondence to the defendant about an incident involving the special forces which demonstrated they had killed and would kill innocent civilians. The second source is a report from the Toukan Military District 5 Intelligence Sector to the Intelligence Administration of the Toukan Army/Main Staff, informing the Defendant of civilians being killed at random, property being looted and essentially what amounted to a scorched earth policy. The third source is the telex from the Secret Intelligence Service informing the defendant of atrocities being committed by the special forces, including beheadings of prisoners of war, execution of civilians, woman and children and the elderly, across the area of operations during between 25–26 March 2010. The Trial Chamber is unable to give any weight to the evidence as regards beheadings because there has been no eyewitness testimony and the bodies of the prisoners of war have not been found as of the present date.
12. As regards the SIS telex, the Trial Chamber rejects the defendant’s argument that the telex was never sent to the defendant due to a handwritten note at the bottom of the page of a second copy of this telex. There was no authentication of this document and the Trial Chamber finds that it was forged after the fact in an attempt to shield the defendant from criminal responsibility.

13. The Trial Chamber finds that, although acknowledging that the special forces may have had their own agenda to eliminate the Zarcans based on religious ideologies, this does not negate the fact of their subordination to the Toukan army.
14. The Trial Chamber does not give weight to the defendant's argument that the method of payment – cash in an envelope – goes to prove that the special forces were paid by a source outside the Toukan government. The defendant in raising this issue was not able to show that the other members of the Toukan army were paid in a different manner. Although the Trial Chamber acknowledges that this method of payment was unusual, it cannot draw any inferences from the evidence in favour of the Defendant.

Sentence

1. Having found the defendant guilty of two counts of war crimes, we now proceed to consider the matter of sentencing.
2. The crimes of which the defendant has been convicted are extremely serious. He used his power as President and Commander-In-Chief of the Toukan armed forces to kill innocent civilians during an armed conflict. He has not expressed regret for his actions and, to the present day, he continues to deny that he committed any crimes. This shows that he has no genuine regret.
3. The court takes into account the age and background of the defendant.
4. Under Article 77 of the Rome Statute, the court has the power to impose the following penalties:
 - (i) imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (ii) a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
5. The court does not in this instance consider that a term of life imprisonment is justified either by the gravity of the crime or by the individual circumstances of the defendant.
6. However, we consider that a lengthy determinate sentence is required in a case where crimes of this magnitude have been committed.
7. Having taken into account all relevant factors, we consider that the correct sentence in respect of all the crimes of which the accused has been convicted is one of 25 years of imprisonment.

Signed:

Judge: _____

Judge: _____

Judge: _____

Dated: _____

Annex 2

International Criminal Court Grounds of Appeal against Conviction and Sentence Lodged by the Defendant

Original: English

Case No:ICC/12-001/34

Date: 1 December 2012

Situation in Nahili *The Prosecutor v Jaque Abbadi* Appeals Court

Judges:

Registrar:

Grounds of Appeal against Conviction and Sentence Lodged by the Defendant

Prosecutor:

Defence:

The defendant appeals against his conviction and sentence, under Article 81 of the Rome Statute. The appeal is made on the following grounds:

A. Error of fact

1. The Trial Chamber erred in finding that the prosecution proved that Abbadi had effective command and control, or effective authority and control, over the special forces of the Army of God (AoG) and that he knew, or owing to the circumstances at the time, should have known that the special forces of the AoG were committing or about to commit crimes.
2. The Trial Chamber erred in finding that Abaddi failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
3. The credible facts are that by virtue of his status as President, Jaque Abbadi was the Chief Commander of the armed forces of Toukan. The 6th Corps of the Toukan army carried out Operation Wipe-Out between 25 and 27 March 2010 in the northern province of Zarca resulting in the end to the war between the Toukans and Zarcans. Although an order was issued subordinating the special forces of the AoG to the 6th Corps for purposes of

Operation Wipe-Out, this *de jure* subordination did not give Abbadi effective command and control, nor effective authority and control, over those special forces. There is no credible evidence that any commander of the 6th Corps issued orders to the special forces. Rather, the special forces were on a mission of their own based on their zealous ideologies.

4. The Trial Chamber failed to take into account the document from the Chief Priest of the Order of Maynam which clearly shows that the special forces of the AoG were under the control of religious leaders and not under the command of the army of Toukan. The Trial Chamber also erred in not giving due weight to the evidence of Lieutenant Ghadi which casts a reasonable doubt – demonstrating that the special forces were on a mission to restore Nahali to the devout country it had been under the former President; they trained on their own and had their own camp separate and independent from the Toukan army and they engaged in operations on their own apart from the Toukan army. The Trial Chamber erred in assessing the evidence of the unusual method of payment to the members of the special forces of the AoG – all of this evidence raised a reasonable doubt that the special forces were under the command and control of the Toukan army.
5. Abbadi specifically stated on tape that the special forces of the AoG were assisting the Toukans and that they had their own commanders. The defendant further ordered that those commanders be instructed of the Geneva Conventions and that he wanted to be briefed every hour during the operation and informed of everything that was going on. In addition, the defendant informed his subordinates that he wanted any reports of crimes committed to be referred to the military police for investigation and prosecution if necessary. Therefore, Abbadi properly discharged his duties in ensuring that all necessary measures were taken in compliance with the Geneva Conventions.
6. The Trial Chamber failed to give weight to the ambiguity in the telex to Abbadi from the Secret Intelligence Service (SIS) indicating that the telex was intercepted and not transmitted to the defendant.
7. There is new evidence not available at the time of trial which the Appeals Chamber is requested to consider:
8. Since the conviction, Colonel Prezen Dinari has been arrested and extradited to the ICC by Restoria. He is in The Hague and awaiting his own trial and is prepared to give evidence on Abbadi's behalf. A summary of his evidence is contained in a statement which the Appeals Chamber is asked to admit pursuant to Article 83(2) of the Rome Statute. This new evidence clearly shows that the special forces of the AoG were not under the effective control of Abbadi and that he did not know nor, owing to the circumstances at the time, should he have known that the special forces of the AoG were committing or about to commit crimes.
9. Since the conviction, Raja Obert, the former personal adviser to the Chief Priest of the Order of Maynam, has defected from the AoG, was expelled from Restoria and is under death threats from members of the AoG. He is seeking asylum in The Hague. He is also now ready to give evidence on the defendant's behalf. His evidence is that the special forces of the AoG were under the command of their god through the Chief Priest of the Order of Maynam and that the special forces were paid by that Order and not the Toukan military. Their mission

was to eliminate all Zarcans because they are evil-doers and act contrary to the laws set down by the god of the AoG. They were ordered by the Chief Priest to kill all prisoners of war. The special forces did not take or obey any orders given by the commanders of the army and particularly of the 3rd Corps. The special forces killed civilians and prisoners of war during Operation Wipe-Out and stole as much war booty as they could and then torched every house. They were under a ‘scorched earth’ order from above.

10. The Appeals Chamber is therefore requested to call the two new witnesses to give evidence on behalf of the defendant under Article 83(2) of the Rome Statute.
11. In light of the new evidence that the Appeals Chamber is requested to amend the decision of the Trial Chamber convicting the defendant on counts 1 and 2 of the indictment and replace the decision with one of acquittal.

B. Error of law

1. The Trial Chamber erred in law in the standard to be applied to an individual who is alleged to have committed a crime ‘jointly with another’.
 - 1.1. In particular, the Trial Chamber applied the approach that was set forth in the dissenting opinion of Judge Fulford in ICC Judgement Situation in the Democratic Republic of the Congo in the case of *The Prosecutor v Thomas Lubanga Dyilo*, 14 March 2012, ICC-01/04-01/06, rather than applying the correct legal standard set down by the Pre-Trial Chamber in the Decision on the Confirmation of Charges in the *Lubanga* case. This was clearly in error. In doing so, the Trial Chamber held that to be liable pursuant to Article 25(3) (a) of the Rome statute, they had to be convinced beyond a reasonable doubt that Jaque Abbadi contributed to the commission of the crimes notwithstanding his absence from the scene and that the Prosecutor was not required to prove that he controlled or masterminded the commission of the crimes. The Fulford approach, in holding that ‘the word “commits” simply requires an operative link between the individuals’ contribution and the commission of the crime’, implies a significantly lower standard for finding the defendant criminally responsible than is supported in international law.
 - 1.2. The word ‘commits’ in the Statute requires that the contribution must be ‘essential’ and that the crimes would not have been committed absent the defendant’s involvement.
 - 1.3. The contribution of the co-perpetrator must be ‘essential’. The wording of Article 25(3) (a), namely that the individual ‘commits such a crime [...] jointly with another’, requires that the offence be the result of the combined and coordinated contributions of those involved – at least two persons. The five elements of joint commission include the following:
 - 1.3.1. the ‘existence of an agreement or common plan between two or more persons’;
 - 1.3.2. the ‘co-ordinated essential contribution made by each co-perpetrator resulting in the realisation of the objective elements of the crime’;

- 1.3.3. '[t]he suspect [must] fulfil the subjective elements of the crime with which he or she is charged';
 - 1.3.4. '[t]he suspect and the other co-perpetrators (a) must all be mutually aware of the risk that implementing their common plan may result in the realisation of the objective elements of the crime, and (b) must all mutually accept such a result by reconciling themselves with it or consenting to it'; and
 - 1.3.5. '[t]he suspect [must be aware] of the factual circumstances enabling him or her to jointly control the crime'.
- 1.4. The Statute differentiates between the responsibility and liability of those persons who commit a crime under Article 25(3)(a) and those who are accessories to it (Article 25(3)(a)–(d)). Co-perpetration that requires an essential contribution allows for the different degrees of responsibility to be properly expressed and addressed.
 - 1.5. The perpetrator must perform an essential role in accordance with the common plan and it is in this sense that his contribution, as it relates to the exercise of the role and functions assigned to him, must be essential.
 - 1.6. The accused, although not needing to be present at the scene of the crime, so long as he exercised jointly with others, control over the crime.
2. The evidence did not substantiate a finding that Jaque Abbadi had made an essential contribution to the common plan that resulted in the commission of the relevant crimes.

Annex 3

International Criminal Court Response by the Prosecutor to the Grounds of Appeal against Conviction and Sentence Lodged by the Defendant

Original: English

Case: No:ICC/12-001/34

Date: 8 January 2013

Situation in Nahili *The Prosecutor v Jaque Abbadi* Appeals Court

Judges:

Registrar

Response by the Prosecutor to the Grounds of Appeal against Conviction and Sentence Lodged by the Defendant

Prosecutor:

Defence

The Prosecutor opposes the defendant's appeal. This response is made on the following grounds:

A. Error of fact

1. The Prosecutor contends that the Trial Chamber did not err in finding that Jaque Abbadi had effective authority and control in that he issued an order subordinating the special forces of the AoG to his 3rd Corps of the Toukan army. He admitted that the special forces were trained mercenaries and that he needed their assistance to commit ethnic cleansing of Zarcans from the country of Nahali/Touka. He showed up at the training camp of the special forces to thank them for coming to their aid in defeating the Zarcans and following Operation Wipe-Out he presented the special forces with the highest medal of honour of the country of Touka.
2. The Trial Chamber did not err in finding that Abbadi knew of the propensity of the special forces to commit crimes and that the circumstances were such that he was aware that crimes might be committed during Operation Wipe-Out. He referred to this in the tape recording

of a meeting just prior to the launching of Operation Wipe-Out. The Trial Chamber did not err by finding that Abbadi was informed of the crimes through a telex received in his office from the Secret Intelligence Service (SIS) and he failed to take measures as a result of receiving this information. The prosecution asserts that the Trial Chamber did not err in determining that the copy of that report with a hand-written note on it was forged after the fact. Abbadi was further put on notice by another intelligence report reporting crimes being committed against civilians and property in the area of the operation and by a direct communication from a UN observer reporting crimes being committed by the special forces during the time period and in the area of operations of Operation Wipe-Out.

3. The prosecution does not oppose the defendant calling two witnesses who were not previously available to support his defence. However, the prosecutor has seen the statements of these witnesses and does not believe that they will alter the Trial Chamber's clear view of the evidence as a whole.

B. New witness 1

1. The witness (Colonel Prezen Dinari) has an obvious motive to give evidence which is favourable to his own case. He himself is awaiting trial on charges of war crimes and has a reason to lie about what happened. He is clearly trying to show that Abbadi did not have knowledge that the special forces were reputed for killing prisoners of war and civilians and that the special forces were not under his command. The evidence he will give in support of Abbadi is likely to be self-serving and thus not reliable. At any rate, his evidence should not be a basis for reversing the conviction.

C. New witness 2

1. The witness (Raja Obert) also has an obvious motive to give evidence which will assist him in obtaining asylum. He is a war criminal himself and no weight should be given to his testimony. Although the Prosecutor for the ICC gave him immunity from Prosecution, there is a question as to whether or not that immunity should be nullified in light of the fact that he did not fully disclose to the prosecution that he was to give evidence to the Appeals Chamber on behalf of Abbadi. Furthermore, even if the prosecution of the ICC granted him immunity, the national court of Touka may still prosecute the witness.

* * *

D. Error of law

3. The prosecutor submits that the Trial Chamber applied the correct standard to the defendant on the theory of joint perpetration.
 - 3.1. There is no clear dividing line between the various modes of liability under Article 25(3) (a)–(d) of the Statute, especially between 'accessories' and 'principals', and the plain text of Article 25(3) defeats the argument that subsections (a)–(d) must be interpreted so as to avoid creating an overlap between them.

- 3.2. The possible modes of commission under Article 25(3) (a)–(d) of the Statute were not intended to be mutually exclusive.
 - 3.3. There is no legal basis (in interpreting Article 25(3) for concluding that ordering, soliciting or inducing a crimes is a less serious form of commission than committing the crime ‘through another person’.
 - 3.4. The plain reading of Article 25(3) (a) establishes the criminal liability of co-perpetrators who contribute to the commission of the crime notwithstanding their absence from the scene. It is unnecessary to invoke the control of the crime theory in order to secure this result.
 - 3.5. Individuals who are involved indirectly can be prosecuted as co-perpetrators. Nothing in the Statute requires that the contribution must involve direct, physical participation at the execution stage of the crime and, instead, an absent perpetrator may be involved. The word ‘commits’ simply requires an operative link between the individual’s contribution and the commission of the crime.
4. Even if the Appeals Chamber is to rule that the Trial Chamber applied an incorrect standard and that the prosecution was required to prove beyond a reasonable doubt that the Accused make a substantial contribution to the common plan that resulted in the commission of the relevant crimes, the burden has been met.
 - 4.1. The credible evidence demonstrated that the defendant was a close friend of the Supreme Commander of Restoria and they shared the same religious and ideology beliefs. It was common knowledge throughout the world that the special forces of the Army of God were trained mercenaries who took no prisoners. The defendant willingly accepted their entry into the army of Touka and for the purpose of Operation Wipe-Out because he knew his own forces could not succeed without their aid. He issued an order subordinating the special forces of the Army of God to the 6th Corps of the Toukan army. He did this knowing that there was a strong probability that the special forces would commit crimes against humanity and war crimes. He also shared the view to ethnically cleanse the area of any remaining Zarcans, including woman and children by stating that ‘[w]e have to get rid of these Zarcans once and for all’. The defendant attended the training of the special forces and awarded them the highest medal of honour for the state of Touka, even after being put on notice of the crimes they had committed. The defendant’s contribution was essential in that the crimes would not have been committed, or would not have been committed in the same way, without the involvement of the defendant. In other words, the AoG would not have been able to participate in the conflict alongside the Toukan troops and could not have acted on their own in committing crimes with impunity without the approval, orders and tacit agreement of the defendant.

Annex 4

Statement of Prezen Dinari International Criminal Court

Original: English made in Nahili

Case No: ICC/12-001/34

Statement of Prezen Dinari (Colonel in former army of Nahali and principal in the Ministry of Defence of Touka as Chief of Main Staff)

My name is Prezen Dinari. I am a Colonel in the army of Touka formerly the army of Nahali and have served my country for the past 20 years. I am also the Chief of Staff within the Ministry of Defence and was in that position in March 2010. I was a close adviser to our former President Baracad and am a close adviser and confidant of President Abbadi.

I was present at a meeting on 15 March 2010, in which the launching of Operation Wipe-Out was discussed. I have read a copy of the transcript of the tape of that meeting.

I want to first state that I don't recall what was said by Colonel Colin Paliston regarding the reputation of the special forces of the AoG but I know for a fact that President Abbadi had no knowledge that the special forces were reputed for killing prisoners of war and civilians. I knew that but President Abbadi did not have that knowledge. When President Abbadi mentioned that any crimes committed by 'his forces' he was referring to the army of Touka. The special forces of the AoG were not under the command and control of the army of Touka.

I have been shown an order signed by President Abbadi allegedly subordinating the special forces of the AoG to the army of Touka for purposes of Operation Wipe-Out. I can honestly say that I have never seen this document before and I would question its validity. The special forces were on a mission of their own and had nothing to do with the army of Touka. Their mission was based in their religion and ideological beliefs – the Army of God believed that the Zarcans were the root of all evil in the world. This was common knowledge.

When President Abbadi said that 'we have to get rid of these Zarcans once and for all' he meant the army of Zarca. He never would have meant the civilians. President Abbadi is a noble man.

I have seen a purported intelligence report on crimes committed by the special forces of the AoG. The handwriting at the bottom is not mine and although the initials are mine I did not write that note. I have no idea who wrote that note and I swear to that. I do not know whether or not President Abbadi had knowledge of the crimes that had been committed by the special forces, if in fact there were crimes committed. I have not seen any proof of that yet – just rumours.

Signed: Prezen Dinari

Dated: 1 February 2013

Annex 5

Statement of Raja Obert International Criminal Court

Original: English made in Restoria

Case No: ICC/12-001/34

Statement of Raja Obert

I am the former adviser to the Honourable Chief Priest of the Order of Maynam of the Army of God. I have recently defected from the Army of God because I no longer agree with their doctrine. I am seeking asylum in The Hague, the Netherlands, and I am willing to give evidence in the appeal of the conviction of President Jaque Abbadi.

I had been approached by prosecutors of the ICC to give a statement about members of the Toukan government and military and special forces of the AoG as to their participation in crimes committed during Operation Wipe-Out in exchange for immunity from prosecution. I was interviewed by prosecutors and gave a statement which I signed. I do not know if I will be asked to testify against anyone when they are arrested. I told them the truth. At the time I was granted immunity and gave my statement, I did not tell the prosecution that I had been asked by the defence to provide evidence on appeal in the case against President Abbadi and they did not ask. They did not ask me any questions about President Abbadi during the interview I guess because he had already been convicted and they were looking at others.

In February 2010, the Honourable Chief Priest sent me to Touka to make sure that the special forces carried out their mission which was to wipe the Zarcans from the face of the earth because the Zarcans were evil-doers and acted contrary to the laws set down by the God of the AoG. There was essentially a 'scorched earth' policy laid down by the Chief Priest.

I was present from time to time on the battlefield but did not directly participate in the fighting. I saw many soldiers of the 6th Corps and the special forces of the AoG during Operation Wipe-Out killing civilians who were not armed in any way, including old men, woman and children. They also stole war booty from homes and then torched the houses. The Honourable Chief Priest ordered the special forces to kill all prisoners of war. I witnessed several beheadings of Zarcans prisoners some of whom had been captured by the Toukans and handed over to the special forces. I never killed anyone and was sickened by the whole situation which is one reason I have chosen to defect. My conscience is clear and I want to do what is right by testifying against those who killed innocent human beings.

I also want to do what is right by helping to free President Abbadi. He was used by the Chief Priest of the Order of Maynam to carry out the mission of AoG without knowing what was going on. He is a noble man and we all knew it. I spoke with him several times over during February and March when the special forces were in training and then fighting alongside the Toukans. He came to our camp during training and we acted like normal soldiers. But after he left we took off the training

uniforms they had given us and went back to training as mercenaries do. Any free time we had we watched videos of leaders of the AoG preaching their doctrine.

I have no reason to lie because I have already been granted immunity by the Prosecution for my statements about other members of the Toukan military, in particular Colonel Prezen Dinari, whom I know for a fact did know about the beheadings of prisoners and killings of civilians. I know this because he and I discussed this. He seemed quite pleased with what was happening on the ground. But he wanted to keep this information from reaching Abbadi because he knew Abbadi would not approve and would have had Colonel Dinari arrested. Also, President Abbadi had told Dinari that he would make him Vice-President if Touka won the war and all of Nahili became the state of Touka.

Signed: Raja Obert

Dated: 13 February 2013

Annex 6

Statement of Lieutenant Ghadi International Criminal Court

Original: English made in Restoria

Case No: ICC/12-001/34

Statement of Lieutenant Ghadi

My name is Mazen Ghadi. I was born in Gabor, Restoria and I am 28 years old.

I am a Lieutenant in the special forces of the Army of God (AoG) and held this rank and position in March 2010.

In March 2010, I was deployed along with 99 other members of the special forces of the AoG from our base in Azrad, Restoria, to Nahali to assist the army of Touka in defeating the Zarcans. The Toukans are our spiritual brothers who were seeking to restore Nahali to the devout country it was under President Baracad and to seek revenge for his assassination. The Zarcans violate all of the spiritual laws of the Honourable Chief Priest and even flaunt its rebellion of the rules by engaging in debauchery.

Along with the 100 strong troops, we brought with us a lot of combat equipment such as heavy artillery tanks, multiple missile launchers and long-range artillery, as well as anti-aircraft missiles and IED vehicles, all of which the Toukans did not have. In early March, we engaged in combat training alongside the troops of the Toukan army for three weeks under their training commander. We were given the uniforms of the army of Touka but we wore our special yellow armbands to distinguish ourselves from the others. At one point during the training, the General of the Touka army, Jaque Abbadi, showed up at the training camp and thanked the special forces for coming to their aid in defeating the Zarcans army. I know that General Abbadi was also the president of Nahali.

I do not recall whether or not as part of the training we were schooled in the rules of war or the Geneva conventions.

We engaged in several combat operations fighting alongside the Toukan troops. Generally we would hear from our special forces Chief Commander where the operation was to take place – the perimeter calculations and intelligence information on the theatre of combat. I do not know where he received his information from. I can think of two occasions when we fought in battles on our own. I do not know where the Toukan troops were at the times we engaged in these battles. I had 30 men under my command. I do not recall seeing an instruction from the Chief Priest of the AoG to wipe out the Zarcans at all costs but I could have. The Zarcans were a group of infidels that needed to be reckoned with.

I do not know who was paying my salary. I assume it was the government of Restoria but it could have been the Toukan army. Once per month I received a blank envelope with a cash payment.

I recall specifically the final operation known as 'Operation Wipe-Out'. We met with Toukan troops and received instructions from their Commanding officer as to where and when the operation was to take place. The operation lasted only two days as we crushed the Zarcans. The war was over by 27 March 2010. Their troops surrendered and were turned over to us where we had a prison off site of the Toukan army compound. I recall seeing an order from the Chief of the Main Staff/Defence Ministry of the Toukan army to the 6th Corps Commander instructing him to turn over the prisoners to the special forces of the AoG to process and detain them. I was not involved in that process and do not know what happened after the prisoners were captured.

Three days after Operation Wipe-Out, there was a medals ceremony where each member of the special forces of the AoG was awarded the highest medal of honour from the country of Touka. I was introduced to several dignitaries at that ceremony, whose names I do not recall. I do remember seeing President Abbadi there, however.

A few days after the ceremony we returned to Restoria.

Signed: Mazen Ghadi

Dated: 10 February 2011

Annex 7

Statement of Eva Trazen International Criminal Court

Original: English made in Nahali

Case No: ICC/12-001/34

Statement of Eva Trazen

My name is Eva Trazen. I am 52 years old and live in a refugee camp on the border of Nahali and Erqay. I used to live in Nahali and am a member of the Zarcan peoples.

In March 2010, I was living in the town of Dien, in the northern province of Zarca in Nahali. I lived with my husband, three children and two grandchildren. We lived a peaceful life and did not want to be involved in the political situation. My husband was forced to join the Zarca army and left our home in early March. He never returned and his body has not been found. I was told that he participated in an operation towards the end of March that resulted in the end of the war. My husband's brother said that my husband was captured by the Toukan army. That is the last time anyone has seen my husband.

Because my husband was gone we had no way to support ourselves and the government of Touka issued a notice that they were taking our home and we had to leave. We had nowhere to go but to this camp run by the United Nations. There is hardly enough food to feed my children and grandchildren and clothing to keep us warm. Every night we huddle together for warmth under the tarp with just a small our kerosene lamp for heat and cooking. I want to return to Dien and my home but no one is able to give me any information about how this can be done.

I remember that the fighting was much worse towards the end of March. All you could hear were rockets and shelling day and night. Many of my friends and relatives fled Dien and it is a good thing because their homes were completely demolished. As far as I know there were no Zarcan troops in our town. We were a small town and not close to any large cities in the northern province of Zarca. But almost everyone's home was burned down and all the shops were smashed and the goods were gone. People in civilian clothes were shot and left dead by the side of the road and cattle and sheep were simply slaughtered as well and left. The rotting bodies created a stench I don't think I will ever forget. I know all of this because I saw this with my own eyes. For some reason my neighbourhood was left untouched and when we heard that the war was over we went out looking for food and help. Finally the UN set up a temporary shelter for us and then we were transported across the border.

I would like to tell you about one incident that I saw during the fighting. We spent most of our time in the cellar but one day it seemed particularly quiet and I went upstairs to get a clean blanket and clothes and I saw out of my bedroom window soldiers going from house to house and I heard gunshots and saw the soldiers coming out of the houses carrying televisions and suitcases. I could tell that these were Toukan soldiers because of their uniform. All of a sudden

I heard a knock on the door and I froze. Then someone smashed the window to my front door and I heard footsteps entering – it seemed to be two men who were speaking in a language I did not understand. They started shouting something and then I heard movement downstairs and then they exited. I was able to peek through the curtains to see what was going on and I saw two Toukan soldiers wearing yellow armbands carrying my television to a truck parked outside which was loaded with suitcases, televisions and washing machines. The two men got into the truck and drove off.

Later on I learned that three of my neighbours had been killed – shot point blank in the head.

Signed: Eva Trazen

Dated: 14 June 2010

Annex 8

Statement of UN Observer Pierre Cousta International Criminal Court

Original: English made in Nahili

Case No: ICC/12-001/34

Statement of UN Observer Pierre Cousta

My name is Pierre Cousta and I am a General in the Malton foreign ministry. I was a UN observer and stationed in Nahali from November 2009 until August 2010.

The UN compound was set up in the northern province of Zarca to protect the minority civilian population during the civil war in Nahali between the Toukans and the Zarcans.

The Toukans and Zarcans had been in conflict for more than one year but the situation became critical around January 2010. Not only had the fighting increased but the rains came and our camp was flooded and presented unsanitary conditions for those refugees that we had taken in. It was quite a challenging time for myself and other UN aid workers.

A lot of Zarcans civilians were starting to flee their homes to just over the border of Nahali into Aubertine. Most of those fleeing were women, children, elderly and the infirm – those men too old or sick to fight in combat. From January to March we saw a steady column of tractors and trucks loaded with civilians and goods travelling on the road through Zarca province to Aubertine. In February 2010, we interviewed many of these refugees and they were fearful of what was to come – they had heard that the Toukans were bringing in a group of mercenary-militias from the west and that these individuals were ruthless and killed everything in sight. This was common knowledge among the civilians and we had also heard this from our intelligence sources.

In early March, most of the Zarcans civilians had fled Nahali and the fighting intensified. In late March – I recall the exact date because it was my birthday – on 25 March at 0400, all of a sudden there was intense shelling and rockets firing all around the UN compound. We could hear explosions in the distance and smell burning and from our lookout tower we saw plumes of smoke in every direction. We did not dare to go out to see what was happening for several hours while the intense shelling continued. At about 1100 the shelling seemed to let up a bit and we left the compound to assess the situation.

What we saw shocked us. For a several mile radius most of the houses were burned to the ground or were still burning. There were cattle slaughtered everywhere and dead human bodies along the side of the road – men, women and children. It appeared that these persons were fleeing on the road on foot and were shot down. In front of two houses we saw a person shot in the doorway – the door was still open and goods were scattered all over the yard. We examined some of these bodies and noted that it appeared that these persons were shot at close range and did not die as a result of rockets or shelling. I know these things because in my civilian life I was a medical examiner.

As we were driving around and taking notes we came upon a checkpoint and about a dozen Toukan soldiers wearing yellow armbands jumped out in front of our vehicle pointing AK-47s at us. We were startled but kept calm. We put up our hands to show that we were not armed and stopped the vehicle. One soldier opened the door and started shouting at me in a language I had not heard before and he grabbed and dragged me out of the car. My colleague, Major MacDougall seated, in the passenger side of the car, was also dragged out. Then the men started shouting at each other and one soldier who seemed to be in command came up and shouted at the other soldiers who let us go and then stood back. The soldier in command spoke Nahali and we were relieved. I did not understand who would be wearing Toukan military uniforms but not speaking Nahali. I do not recall whether or not the person who spoke Nahali wore a yellow armband.

This soldier asked us who we were and what we were doing. When I told him we were UN observers, he spit on the ground and said that the UN was as evil as the Zarcans. I asked him what battalions and corps his troops were from and he said, 'We are the special forces for the Army of God and we are here to help our brothers'. At that point I understood who we were dealing with and my fear level rose. This soldier seemed okay however and I just remained polite and calm.

After the soldier seemed to have exhausted questions of us he returned to the group of soldiers and they started arguing and shouting again. They were very animated. I looked over at my colleague who was looking down at the ground. Finally, after what seemed like an eternity, the soldier in charge came over to us. He ordered us into our vehicle and told us to return to our compound and not to be seen again or they would kill us just as they had killed others that day who 'got in their way'.

We immediately returned to the compound and I wrote a report and sent it to several persons and agencies including President Abbadi himself.

Signed: Pierre Cousta

Dated: 9 September 2010

Annex 9

Transcript of Tape Recording of Meeting with President Jaque Abbadi on 15 March 2010 International Criminal Court

Original: English made in Nahili

Case No: ICC/12-001/34

Transcript of tape recording of President Jaque Abbadi

Time: 1000

Date: 15 March 2010

CHIEF OF MAIN STAFF/MINISTRY OF DEFENCE (COLONEL PREZEN DINARI): Mr President, everyone you requested is present.

PRESIDENT ABBADI: Let's begin. General Blixel do you have a report?

COMMANDER BLIXEL: Yes, Mr President. Zarcan troops are situated mainly in the Deep Pocket in the northern province of Zarca, holding steady at seven degrees north; 142 due east. On 25 March 2010 at 04:00 the 6th Corps will launch Operation Wipe-Out with 300 troops including 100 special forces of the AoG. The Operation is maximum three days and is intended to inflict the most destruction and damage to the Zarcans.

COLONEL COLIN PALISTON: I thought the special forces of the AoG were just intended for clean-up – why are they involved in Operation Wipe-Out? I don't feel comfortable with this. You know their reputation for... *(the rest of the sentence appears to have been erased.)*

PRESIDENT ABBADI: Yes, I understand Colonel. But we have no choice. Our troops have just not been able to finish the job. We have to get rid of these Zarcans once and for all. Our forces are too small and weak, are undisciplined and lack proper training. The special forces are trained mercenaries and we need their assistance. Their commanders should be reminded of the Geneva Conventions. I want any reports of crimes committed by any of my forces referred to the military police for investigation and prosecution if necessary. Any further information to report Commander Blixel?

COMMANDER BLIXEL: No, Mr President.

PRESIDENT ABBADI: Thank you. This meeting is adjourned. God be with the 6th Corps commanders and their subordinates. I want to be briefed every hour during the operation and informed of everything that is going on.

The tape ends.

Annex 10

Document Issued by Chief Priest of Order of Maynam International Criminal Court

Translation into English: XXXXXX

Logo/of Order of Maynam

From: Chief Priest Order of Maynam
To: Lieutenant Ghadi, Special Forces, Nahali/Touka

Our God of the universe has sent a clear message to the most Honourable Chief Priest, his most high and humble servant.

Zarcans are agents of evil and must be eliminated at any cost. Take no prisoners.

Government of Touka has been assured that all costs will be taken care of.

I commend you to the hands of our Leader.

Annex 11

Intelligence Report of the Administration of the Toukan Army/Main Staff dated 26 March 2010 International Criminal Court

Translation from Toukan to English: XXXXXXXXX

/handwritten: 2010//illegible

Command of Toukan Military District 5, Intelligence Sector

Class: 804-03/10 – 02/12

Reg number: 3479-23-10-352

Zarca valley, 26 March 2010

To: Intelligence administration of the Toukan army/main staff/

Intelligence report: / illegible/

Report sent at 21:00 hours

Information sent:

Report compiled by Lt Sergeant Manwul Casian

00542/?9/809962722/illegible/

Today, during the day, the enemy fired several artillery projectiles in the general area of the towns of Gosil and Dien.

0054309809963722/illegible/

In the zone of responsibility of the Toukan 6th Corps, units are working intensely on finding and crushing small broken groups of enemy; reports of civilians being killed at random and property looted and much burning reported everywhere.

/stamp/

RECEIVED: 26 March 2010

Registry number 5307 /illegible/

/a signature

Annex 12

Order Issued by Chief Commander of Army of Toukab dated 5 March 2010 International Criminal Court

Translated into English /handwritten/3403

/Coat of arms of the Republic of Toukan

**Republic of Toukan
Ministry of Defence
Dondo**

Class:

Number:/handwritten:/513-01-10-2448

Dondo, 05 March 2010

On the basis of Article 22, paragraph 2, item 26 of the Toukan Law on Defence, and in order to proceed with liberating the territory of the Republic of Touka, I hereby

ORDER

For the purposes of Operation Wipe-Out to commence on 25 March 2010 at 0400 in the Deep Pocket of the northern province of Zarca, the special forces of the AoG are hereby subordinated to the 6th Corps of the army of Touka and under their command.

President and Chief Commander of Army of Touka

Jaque Abbadi

/signed and stamped/

To: Assistant Minister of Defence, Colonel Cozan Paliston

Chief of Main Staff, Colonel Prezen Dinari

6th Corps, Commander Lamis Averta

Military District No 5, Major Fatar Lindey

Special forces of AoG, Lt Commander Mazen Ghadi

Annex 13

Secret Intelligence Service Report dated 26 March 2010 addressed to President and Chief Commander of Army of Touka, Jaque Abbadi International Criminal Court

26 March 2010

**To: President and Chief Commander of Army of Touka: Jaque Abbadi
From Secret Intelligence Service (SIS)**

Subject matter: Crimes committed by special forces of the AoG

Received intelligence information from northern province of Zarca that soldiers dressed in Toukan uniforms and wearing yellow armbands are committing atrocities against Zarcan prisoners of war and civilians. Reports of beheadings of the prisoners and execution of civilians who are not participants in combat. Killings of women, children and the elderly. Interview of one member of special forces of the AoG confirms these events have been widespread and systematic in the province of Zarca during and after Operation Wipe-Out.

Please advise as to course of action to take.

Telex received by Major Jensik

Office of Chief Adviser to President Abbadi

Annex 14

Secret Intelligence Service Report dated 26 March 2010 addressed to President and Chief Commander of Army of Touka, Jaque Abbadi

(This is the same document as Annex 13
but with a handwritten note at the bottom)

International Criminal Court

26 March 2010

**To: President and Chief Commander of Army of Touka: Jaque Abbadi
From Secret Intelligence Service (SIS)**

Subject matter: Crimes committed by special forces of the AoG

Received intelligence information from northern province of Zarca that soldiers dressed in Toukan uniforms and wearing yellow armbands are committing atrocities against Zarcian prisoners of war and civilians. Reports of beheadings of the prisoners and execution of civilians who are not participants in combat. Killings of women, children and the elderly. Interview of one member of special forces of the AoG confirms these events have been widespread and systematic in the province of Zarca during and after Operation Wipe-Out.

Please advise as to course of action to take.

Telex received by Major Jensik

Office of Chief Adviser to President Abbadi

Handwritten note at the bottom reads:

DO NOT FORWARD TO THE MAN

With initials: PD

Annex 15

Relevant Extracts from the Rome Statute

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) the crime of genocide;
 - (b) crimes against humanity;
 - (c) war crimes;
 - (d) the crime of aggression.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, 'war crimes' means:
 - * * *
 - (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - * * *
 - xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
 - (a) The Prosecutor may make an appeal on any of the following grounds:
 - (i) procedural error;
 - (ii) error of fact; or
 - (iii) error of law.
 - (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
 - (i) procedural error;
 - (ii) error of fact;
 - (iii) error of law; or
 - (iv) any other ground that affects the fairness or reliability of the proceedings; or decision.
2.
 - (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
 - (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under Article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
 - (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

Article 83

Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
 - (a) reverse or amend the decision or sentence; or
 - (b) order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.



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The International Criminal Court

A Moot Court Exercise for Students

*The Prosecutor v Charlotte McAngela
Thankey Seamstress*

Drafted by Adejoké Babington-Ashaye and Felicity Gerry
Edited by Steven Kay QC

Produced by the
International Bar Association 2014

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Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given documents relating to a case before the ICC involving events which happened during a period of conflict in a fictional country, Fraternia. During the conflict, a number of war crimes and crimes against humanity may have been committed that are so serious that the Prosecutor in the ICC wants to put people on trial for them. The ICC has jurisdiction over serious crimes such as genocide, crimes against humanity and war crimes. You can find descriptions of these crimes in the Rome Statute, Articles 5 and 8.

The fictional person whose trial concerns you in this exercise is called Charlotte McAngela Thankey Seamstress. She was the defendant (person accused of crimes) arrested by the ICC on 15 July, 2013. The accusations against her are made by the prosecutor and his team of lawyers. The prosecutor wants Charlotte McAngela Thankey Seamstress to be tried on five counts of war crimes.

The prosecutor has made a request to the Pre-Trial Chamber to confirm two charges against Charlotte McAngela Thankey Seamstress. Confirmation of charges is a process in which the Pre-Trial Chamber decides whether there is sufficient evidence on which the accused can be sent for full trial by a Trial Chamber. Under the Rome Statute, the Pre-Trial Chamber has to ‘determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged’. In order to do this the prosecutor can call evidence and present an outline of his case.

The prosecutor has decided to call two witnesses to the court to give evidence to support the charges.

You will be conducting a part of this case. You will need people to act the following roles:

- the Pre-Trial Chamber judges – three;
- Charlotte McAngela Thankey Seamstress’s defence lawyers – at least two but can be a team of up to six;
- the prosecutor and his lawyers – at least two, but can be a team of up to six;
- two witnesses; and
- the registrar (the administrator of the court).

The judges, the defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the presiding judge. He has control of the court and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the prosecutor. The leader of the defence lawyers is lead counsel for the defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams each work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage, whether it is questioning of the witness or presenting an argument. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant Charlotte McAngela Thankey Seamstress but you should note that she will not be saying anything in court during her case. Her lawyers will say anything that needs to be said on her behalf.

Preparation in teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective and decide who should present each argument and question each witness. There are at least four different roles which need to be played: questioning Witness 1; questioning Witness 2; presenting Argument 1; and presenting Argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers and what is likely to influence them in coming to a decision – but they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the person you have chosen to play the defendant to join the team of defence lawyers and the two witnesses to join the team of prosecution lawyers. The registrar can join the judges.

The court hearing

The judges will sit at the front of your courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left. The defendant will sit behind his lawyers.

Although the participants are playing the part of international judges or lawyers, there is no need for them put on voices or accents. Also the people playing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement or make up information which they have not been given.

The hearing will take place as follows:

The presiding judge will declare the proceedings open in the prosecution application to confirm the charges against Charlotte McAngela Thankey Seamstress. He will ask the prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The presiding judge will then ask lead counsel for the defence to introduce his team of lawyers.

The lawyers in the court will all call the judges ‘Your Honour’ or ‘Your Honours’ at all times. They must remember that all the things they say must be addressed to the judges, and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

REGISTRAR: *I declare this session of the International Criminal Court open. The first case listed today is the Prosecutor against Charlotte McAngela Thankey Seamstress. Judge Green presiding.*

PRESIDING JUDGE: *This is pre-trial hearing in the case of Charlotte McAngela Thankey Seamstress. Both parties have prepared written submissions to the court. I call upon the prosecutor to introduce his team.*

LEAD PROSECUTOR: *Your Honours, I am Victor Black. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...].*

LEAD DEFENCE COUNSEL: *Your Honours, I am Maria White. I am the lead counsel for the defence. I am assisted by the following lawyers [...].*

PRESIDING JUDGE: *Thank you. I understand this is an application by the prosecutor asking the court to confirm the charges in this case. I therefore invite the prosecutor to begin and to present their charges.*

The presiding judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long or repeat the same arguments, thereby wasting time.

Presenting the charges

The presiding judge will then ask the prosecutor to present the charges. A prosecutor will read the charges to the court and will briefly outline the case against the defendant. He will tell the court that he intends to call two witnesses in support of the charges. The presiding judge will then give the prosecution permission to call the witnesses.

Witness 1

A prosecution lawyer will call the first witness, Witness 1. The registrar will bring the witness into the court. He will sit opposite the judges. The registrar will ask her to repeat after him:

I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.

A prosecution lawyer will then stand up and ask the witness questions. He would normally start by asking her to state her name and age, and where she lives. He may then ask whether and how the witness knows the defendant. Then he will ask the witness questions which will allow the witness to tell the court her story. These questions, asked of the party's own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as 'leading'). The witness must give their own evidence in their own words.

When the prosecution lawyer has finished, he will say to the presiding judge that he has no further questions. The presiding judge will then ask the defence whether they have any questions. A defence lawyer will stand up and will ask the witness some questions. He will be trying to show that the witness cannot be sure of what she has said. He may try to show that the witness is lying, or that she was mistaken, or that she does not know as much as she thinks she knows. These questions, asked of the other party's witness, are called cross-examination. When asking these

questions, the lawyer is allowed to suggest answers to the witness. Getting angry or harassing a witness is not allowed and the presiding judge must intervene to stop this happening where necessary.

When the defence lawyer has finished, he will say to the presiding judge that he has no more questions. The presiding judge will ask the prosecution if there is anything else they want to ask. The prosecution may have no further questions or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the defence. The prosecution should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the presiding judge may have some questions for the witness. Any of the other judges may also ask a question if the presiding judge allows them to. The judges do not have to ask any questions at all but they may wish to clear up any points they think the defence and prosecution have left out.

The presiding judge should remember throughout this procedure that he is in charge. If he thinks that the lawyers are taking too long or repeating themselves he can tell them to hurry up. If he thinks they are bullying the witness he can tell them to stop.

After the witness has finished being questioned, the presiding judge will thank her for coming and tell her she may now leave the court.

Witness 2

The same procedure is then followed with the second witness, Witness 2.

Prosecution conclusion

The prosecution will then ask the judges to confirm the indictment based on the evidence they have heard. The presiding judge will thank him and ask the defence if they have any objection to the confirmation of the charges. A defence lawyer will say that the defence have two arguments.

Legal argument

The presiding judge will ask the defence to present their argument. This is the argument that there is not sufficient evidence that the crimes occurred. It is outlined in the defence documents.

When the defence lawyer has finished presenting the argument, a prosecution lawyer will present the prosecution arguments on the same issue. It may be useful to decide in advance that each side has a certain amount of time – for example, ten minutes – to present their argument. If either side continues for too long the presiding judge may ask them to hurry up.

After these presentations the presiding judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the presiding judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

The second argument

The presiding judge will then ask the defence to present their second argument.

Argument 2 is only relevant if Argument 1 has failed; if Argument 1 is won by the defence, there would be no need to consider the second argument. However, the judges will not consider their judgement until after both arguments have been heard. So it is necessary for the lawyers to present both arguments in full.

After the arguments have been heard, the presiding judge will tell the court that the session is closed and the judges will now retire to consider their judgement.

The judges' decision

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not. They can decide to confirm only some of the charges, or only some parts of them; for example, they can find that the computer virus attacks constitute any of the four counts of war crimes but not the hostage rescue. They can also decide that the hostage rescue constitutes a war crime but the computer attack does not.

ARGUMENT 1

- If they decide the defence should win, they will find that there is insufficient evidence to establish substantial grounds to believe that Seamstress is individually criminally responsible pursuant to Article 25(3) (a) of the Statute. They should therefore refuse to confirm the charges against the defendant.
- If they decide that the defendant should not win argument 1, they should go onto to consider argument 2.

ARGUMENT 2

- If they decide the defence should win Argument 2, they should declare that there is insufficient evidence to establish substantial grounds to believe that the conduct charged as a crime against humanity was part of a widespread or systematic attack directed against the Fraternalian civilian population, and that there is no evidence that Seamstress acted while knowing that the civilian population was being attacked or that her acts comprised part of those attacks. Additionally, they should declare that there is insufficient evidence to establish substantial grounds to believe that Seamstress is responsible for the crimes committed by AEU and MEW troops.
- If they decide the defence should not win Argument 2, the Pre-Trial Chamber should confirm the charges and send Charlotte McAngela Thanky Seamstress for trial.

For the purposes of the exercise it would be helpful if the judges gave an opinion on Argument 2, whatever their decision on Argument 1.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgment. If any judge disagrees with the judgment of the majority, he may briefly tell the court why.

The presiding judge then closes the session.

The competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

- good structure to questions and submissions;
- clarity in argument:
 - quick thinking in response to arguments from the opposition;
 - clear understanding of the issues when answering questions from judges;
- good use of language;
 - clear and confident speech.

Remember, a team may lose the judges' decision on the facts and law but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and did not like about each team's performance. They will then announce the winner.

Do

JUDGES

- Do keep order in the courtroom;
- listen carefully to what the witnesses are saying; and
- ask questions of the witnesses only once the prosecution and defence have finished their questions.

PROSECUTORS

- Do speak slowly and clearly;
- give your questions or speech a structure which can be followed by you; and
- write down your questions for witnesses.

DEFENCE COUNSEL

- Do speak slowly and clearly;
- concentrate on your best point; and
- remember that time will probably go more quickly than you plan for.

WITNESSES

- Do learn what the statement says, so you don't have to keep checking it before answering each question;
- stick to what is said in the statements; and
- speak slowly; remember people may be writing down what you say.

Don't

JUDGES

- Don't let the lawyers harass the witnesses;
- let the lawyers run over the time allowed; or
- interrupt the lawyers too often.

PROSECUTORS

- Don't use emotional language; stick to the facts and the law;
- ask the witnesses for opinions; just ask about the facts; or
- try to make the witness look stupid or small.

DEFENCE

- Don't use personal insults about the prosecution case; stick to the facts and the law;
- repeat points made by other members of your team; or
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear).

WITNESSES

- Don't make jokes or try to be smart;
- refer to things you've heard from other people; or
- make arguments about the law; that is for the lawyers.

The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing serious international crimes.

When was an International Criminal Court first suggested?

An international criminal court was first suggested at the end of the 19th century but it was not possible for the countries of the world to reach agreement about what the court's powers should have been. During the last decade of the 20th century pressure for such a court grew. The emerging consensus led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that took some time since different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined and the Rome Statute came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY, or the ICTR in Tanzania?

The ICC differs from the International Court of Justice (ICJ) since it tries people, not states. Unlike the ad hoc international criminal courts, it's a permanent venue for prosecution of serious international crimes. In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia Herzegovina, Croatia, Macedonia, Serbia. The International Criminal Tribunal for Rwanda (ICTR) only deals with crimes committed in Rwanda during the genocide of 1994.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape and deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have signed and ratified the Rome Statute or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council. If the UN Security Council decides that there is a threat to international peace and security, it can refer a situation to the International Criminal Court.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. Additionally, under the principle of complementarity, people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why isn't Radovan Karadžić being tried by the ICC?

Karadžić is not being tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein and, in addition, Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

Fatou Bensouda is the chief prosecutor at the ICC. She was elected by the representatives of the countries which have joined the Rome Statute system. She is the Head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What are the options available to the court after the judges review all the evidence?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens after the Trial Chamber makes its decision?

If a defendant is acquitted of all charges he will be free to go and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment, or in particularly serious cases to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence but he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example, if new witnesses have come forward.

Where does the defendant serve his prison sentence?

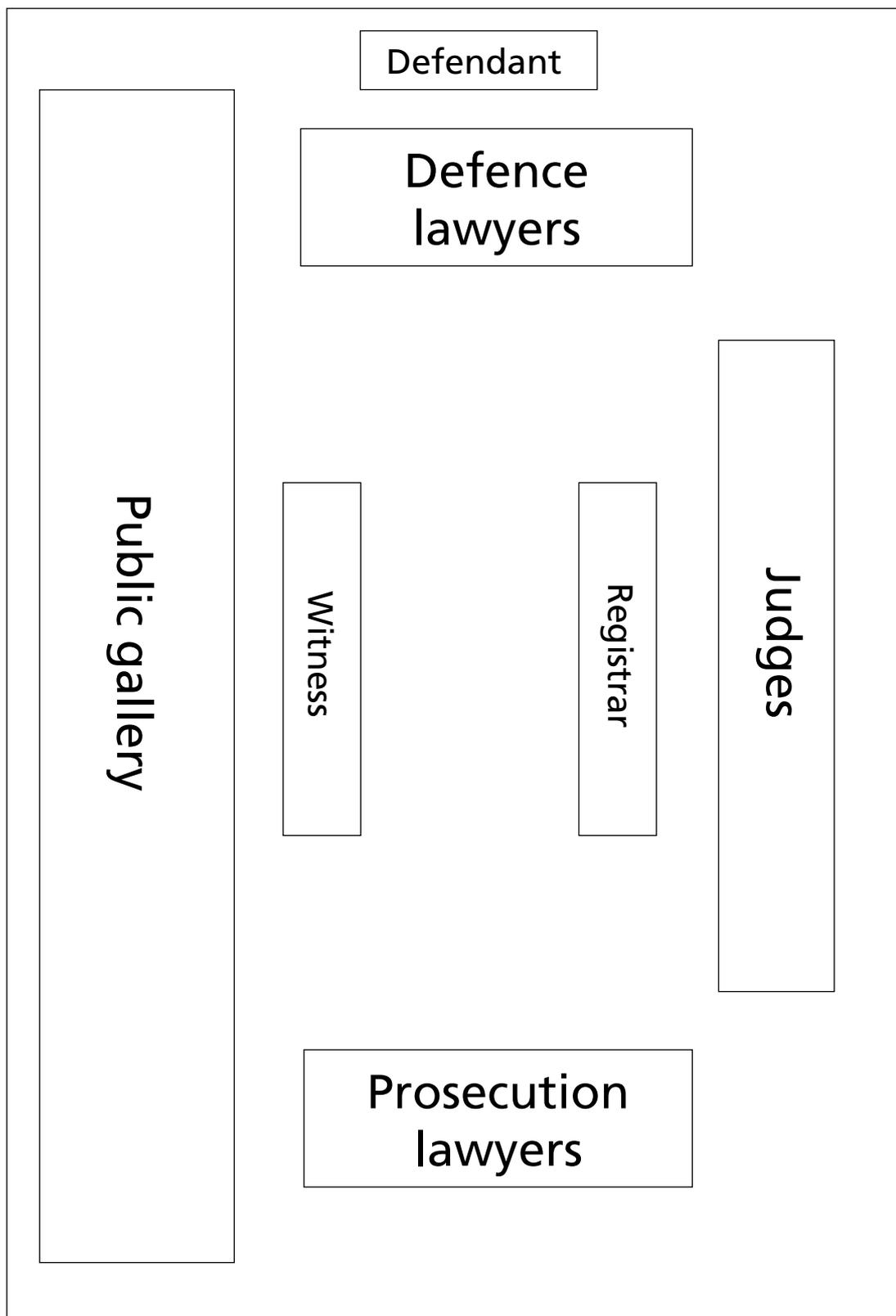
Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

Where can I find out more about the work of the International Criminal Court?

The ICC has an excellent website. There you will find lots of information about how the court operates and news about what is happening in the current cases.

The website address is: www.icc-cpi.int.

Courtroom Layout



People and Places

Fraternia	A small island country on the fictional continent of ‘Diversity’ where the alleged atrocities took place.
Damawara	A town in Fraternia where the majority of the crimes are alleged to have taken place.
Femina	A town in Fraternia where the presidential palace is based.
Philandria	A neighbouring country whose government is alleged to have supported the rebellion in Fraternia.
Jing-Jing	A border town in Philandria.
Lothondo	A village in Philandria.
Charlotte McAngela Thankey Seamstress	The accused and former leader of the National Jingoistic Front of Fraternia (NJFF).
AEU	Anti-Extremism Unit established by Charlotte Seamstress.
NJFF	National Jingoistic Front of Fraternia.
Testy Osteroné	Former President of Fraternia.
Andra Phobio	Rebel leader of the Philandrian rebel group Movement for the Emancipation of Women (MEW).
Bambi Seamstress	Leader of the Fraternian rebel group Fraternians against Misandry (FAM).
San Lockarie	FAM Military Commander.
Natalie Macdonald	World famous photographer.
Dancia Sulay	Former MEW soldier.
Lara Smallfarm	Officer of the AEU.

Timeline

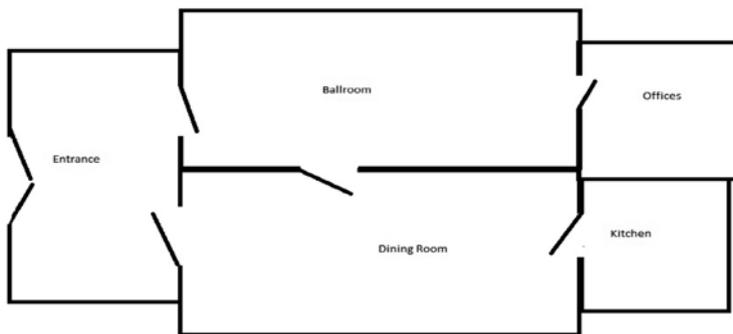
Year	Date	Event
1963	25 March	Charlotte McAngela Thankey Seamstress was born.
1985	1 October	Fraternia gained independence from the United Kingdom.
2004	February	Charlotte Seamstress returns to Fraternia to take up the position of Minister of Justice.
2004	20 September	Fraternia signs and ratifies the Rome Statute.
2006	Mid-2006	Seamstress returns as the head of the NJFF.
2009	15 March	The Second Civil War in Fraternia starts.
2011	March	Seamstress loses control of Fraternia and flees to the United Kingdom.

Maps

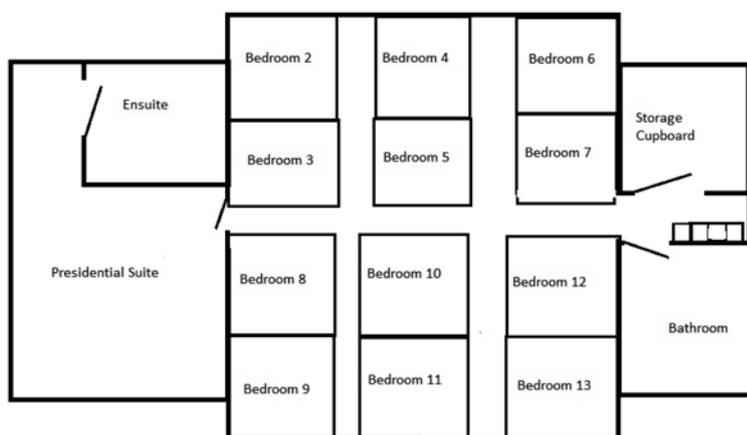
1. Map of Fraternia and Philandria



2. Plan of the presidential palace – ground floor



3. Plan of the presidential palace – first floor



Annex 1

Document Containing the Charges against Charlotte McAngela Thankey Seamstress International Criminal Court

Original: English

Case No: ICC/13-013/23

Date: 07 January 2013

Pre-Trial Chamber IV

Before: Judge XXX

Judge XXX

Judge XXX

Situation in Fraternia *In the Case of the Prosecutor v Charlotte McAngela Thankey Seamstress*

Source: Office of the Prosecutor

The Prosecutor of the International Criminal Court pursuant to [his/her] authority under Article 61(3)(a) of the Rome Statute (hereinafter referred to as ‘Statute’) charges:

Charlotte McAngela Thankey Seamstress

with war crimes and crimes against humanity, as set forth below:

I. The person charged

1. Born in Fraternia on 25 March 1963, Seamstress earned a law degree at the London School of Economics in the United Kingdom. She was a successful lawyer in the UK for many years before returning to Fraternia in February 2004 to work in the government as the first female Minister of Justice. Seamstress enjoyed enormous public support upon her return; however, she quickly fell out with the government and publicly accused the president of sexual harassment and discrimination. Embittered following fraud allegations against her, which she claimed were false and retaliatory, Seamstress went into exile and trained in guerrilla warfare in the jungles of South America. She returned to Fraternia in the middle of 2006 as the head of a resistance group, the National Jingoistic Front of Fraternia (NJFF) and initiated a civil war leading to the overthrow of the incumbent president Testy Osteroné. Seamstress gained

control of a large portion of Fraternia and participated in a peace deal brokered by former UN Secretary General Kofi Annan which ended the civil war. A presidential election was scheduled and Seamstress was elected president in an election which saw a high voter turnout and was widely considered to have been fair.

2. During her time in office, Seamstress installed the all-female Anti-Extremism Unit (AEU), the special Operations Division of the Fraternian National Army comprised of former members of the NJFF which she used as her own private army. She also dismissed or demoted many male members of the military. Domestically, opposition to her regime grew as she sought to bring about legislation to subjugate the male population.

II. Charges

Count 1: Terrorist acts and persecution as a crime against humanity (Article 7(h) of the Statute);

Counts 2 and 3: Crimes against humanity: murder (Article 7(1)(a) of the Statute) and rape (Article 7(1)(g) of the Statute);

Counts 4 and 5: War crimes: murder (Article 8(2)(c)(i) of the Statute); rape (Article 8(2)(e)(vi) of the Statute); and pillaging (Article 8(2)(e)(v) of the Statute).

3. The prosecution contends that there is evidence in this Document Containing the Charges ('DCC') to meet the threshold required under Article 61(7) of the Rome Statute, namely 'sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged'.

III. Statement of facts

A. Background

4. Fraternia is a small commonwealth country in the fictional continent of Diversity which became independent in 1985. It is a middle-income country with a population of approximately 2.5 million people. Among its main exports are oil, cobalt, cotton and granite. Following its independence from the United Kingdom, Fraternia largely enjoyed political stability until the first civil war in 2007.
5. Despite Fraternia's position as a key economic player in Diversity and a chief exporter of oil to the UK, Fraternia ranks low on the UNDP (United Nations Development Programme) Human Development Index, primarily with respect to gender equality and education. Though 60 per cent of its population is female, women only gained the right to vote in 2001. Despite this significant advancement, women were still arbitrarily denied the right to vote in municipal and local elections until the accused, Seamstress, took office as President of Fraternia on 1 April 2007. Additionally, most girls and young women were only educated to secondary school level and there were significant drop-out rates among girls in rural areas.

Civil unrest

6. On or around 15 March 2009, a rebellion against Seamstress began in northern Fraternia, led by a group of men and women calling itself Fraternalians against Misandry (FAM). The group was headed by her sister, Bambi. The political wing of FAM campaigned for equality of all sexes. At the same time the military wing engaged in clashes against Government forces. FAM has been reported, in local and international media, to have received support from the government of the neighbouring State, Philandria. Additionally, media sources claim that FAM troops committed atrocities against Seamstress's supporters in the north. This uprising signalled the beginning of the Second Fraternalian Civil War.
7. By early 2010, FAM had gained control of northern Fraternia. By the summer, Seamstress's government controlled only about a third of Fraternia and the central part of the country. Desperate to quell the uprising, Seamstress called for assistance from a rebel group in Philandria known as the Movement for the Emancipation of Women (MEW). In a public broadcast, Seamstress welcomed the arrival of MEW forces into Fraternia, and praised its leader, Andra Phobio for being 'a friend in her time of need'. The prosecution has evidence to support a finding that following their entry into Fraternia, MEW forces went on a rampage, killing several civilians perceived to be FAM supporters. Witnesses have also testified that MEW forces were seen looting civilian homes and carrying pillaged goods to their bases across the border.
8. In or about October 2010, AEU and MEW forces in a joint operation killed San Lockarie a leading member of the FAM who had advocated for a cease fire. Prosecution witnesses allege that San Lockarie's killing was done under Seamstress's direct orders.
9. At a charity gala in December 2010, world famous celebrity photographer Natalie MacDonald was entertained by Seamstress at her Presidential Palace. Prosecution witnesses testify that MacDonald and Seamstress talked at length and Seamstress was overheard telling MacDonald details of the joint operations conducted by AEU and MEW forces, how MEW forces were very demanding in their requests for supplies and food but how she was satisfied with their work and had given Andra Phobio's troops *carte blanche* in Fraternia. MacDonald is also said to have been present during a telephone conversation between Seamstress and Phobio. Shortly afterwards, prosecution witnesses testify to seeing Phobio arriving at the presidential palace with bags of uncut diamonds.
10. In March 2011 Seamstress lost control of Fraternia to her sister Bambi and fled to the United Kingdom where she was detained by UK authorities and transferred to The Hague to await trial. As FAM forces took hold of central Fraternia, MEW forces fled back to Philandria in a hurry leaving many of their guns, telecommunication devices and log books behind. These items were collected by FAM forces and many of these were handed to the ICC Prosecutor's investigation team.

IV. Territorial, temporal and material jurisdiction of the court

11. Fraternia signed and ratified the Rome Statute of the International Criminal Court on 20 September 2004. The court therefore has jurisdiction over the crimes committed on the territory of Fraternia from 1 July 2002 onwards.
12. All the crimes referred to in this document containing the charges occurred in Fraternia from 15 March 2009 to March 2011.
13. At all times relevant to the document containing the charges an armed conflict existed in Fraternia.
14. Conduct charged as a crime against humanity was part of a widespread or systematic attack directed against the Fraternalian civilian population in furtherance of a State policy. With regard to conduct charged as a crime against humanity, Seamstress acted while knowing that the civilian population was being attacked and that her acts comprised part of those attacks.

V. Facts relevant to Article 7 chapeau elements

15. The crimes against humanity alleged in the DCC occurred in the context of a widespread or systematic attack against the Fraternalian civilian population during the Second Civil War. From early 2010, AEU and MEW forces under the authority of Seamstress perpetrated mass rapes, mass looting and killings against the civilian population in specific locations as they advanced in, and retreated out of Fraternia. These locations include but are not limited to Damawara in central Fraternia. In these locations, AEU and MEW forces raped and sexually tortured male members of the Fraternalian civilian population believed to be in opposition to Seamstress. Property belonging to Fraternalians were also looted by MEW forces and taken to their base in Jing-Jing, a border town in Philandria.

VI. Facts relevant to Article 8 chapeau elements

16. The war crimes alleged in the DCC occurred in the context of a protracted armed conflict between troops supporting Seamstress and FAM troops headed by Bambi.

VII. Facts relevant to the individual charges

17. In or around October/November 2010, AEU and MEW forces numbering about 200 advanced into the town of Damawara and occupied the town. During AEU/MEW occupation, the men in the town were sexually tortured and some castrated as retaliation for having been perceived to have supported the rebels.
18. On or about 31 October 2010, between 65 and 70 men were rounded up in the town square by AEU/MEW forces. There, they were tortured and castrated in front of their wives, daughters and sisters who were forced to watch. It is alleged that some of the genitalia were cooked and frozen.

19. On or about 31 October 2010, AEU/MEW troops forced [Redacted] to watch the castration of her fiancé and father in the Damawara town square. After watching the castration, AEU/MEW troops forced [Redacted] to collect the genitalia of some of the men and along with other women were forced to cook and freeze the genitalia. [Redacted]'s fiancé died as a result of his injuries, while her father [Redacted] suffered severe mental and psychological trauma and faces a need for lifelong medical care and attention.
20. On or about 31 October/early November 2010, between 25 to 30 men died as a result of the torture and castration. Their bodies were buried in cement in the town square. On or about 5 November 2010, [Redacted] and 12 other women were made to dig a mass grave by AEU/MEW forces. [Redacted] stated that she personally was forced to throw seven male castrated bodies into the mass grave and observed the other women being forced to throw male bodies into the mass grave. [Redacted] observed AEU/MEW mixing a liquid which she later realised was cement when it was poured over the grave.
21. In November 2010, [Redacted] recalls hearing screaming coming from the home of a neighbour, Mr [Redacted]. When she went to see what was happening, she observed three female AEU/MEW forces raping and performing other sexual acts on Mr [Redacted]. Mr [Redacted] later died from his injuries.
22. Between October 2010 and March 2011, MEW forces were repeatedly seen by prosecution witnesses carrying looted items from various towns and villages, including Damawara, across the border to Jing-Jing, Philandria. These looted items belonged to civilians and consisted of mattresses, beds, televisions, refrigerators and laptops, to name a few.
23. Following the killing of San Lockarie, prosecution witness [Redacted], a former AEU Commander, was present as Seamstress celebrated what she termed 'a major victory in this war'. [Redacted] overheard Seamstress give orders to Andra Phobio that all men over 65 years of age in Femina should be buried alive in cement. [Redacted] observed that Seamstress was very angry with the male population in Femina because she believed that they had leaked information to the rebel forces controlled by San Lockarie and her sister Bambi, and she said they should be tortured as 'payback'. Seamstress ordered [Redacted] to tell her soldiers located in the following towns [Redacted] to also identify men aged 65 years and above, torture and castrate them and bury them alive. Though [Redacted] was sent on this mission, she absconded.

VIII. Individual criminal responsibility under Article 25(3)

24. Without excluding any other applicable mode of liability, Seamstress is individually criminally responsible pursuant to Article 25(3)(a) of the Statute for the crimes against humanity and war crimes referred to in Articles 7 and 8 of the Rome Statute, and as described in this DCC, which she committed jointly with Andra Phobio through AEU and MEW troops. Seamstress's responsibility as a co-perpetrator includes crimes committed as part of her common plan with Phobio to quell the uprising and maintain Seamstress's rule as president. Seamstress's role as creator and head of the AEU and benefactor of MEW troops gave her control over the crimes committed pursuant to the common plan.

25. Seamstress also made the essential contributions required to meet the criteria set in Article 25(3)(a). The prosecutor has substantial evidence to believe that Seamstress provided for the international transportation of MEW troops from Philandria into Fraternia and the local transportation within Fraternia. MEW troops were seen using communication devices such as Thurayas (satellite phones) and driving in government issued vehicles which bore the official Presidential seal of Fraternia. Seamstress also provided logistical support to MEW forces at their various bases. Logistical support included food, weapons, ammunition, clothing and funding. Seamstress ensured coordination between AEU troops and MEW forces. Finally, AEU troops were created by Seamstress and used entirely by her as her personal army as she fought against the rebels. She gave them direct orders and was actively involved in setting the military strategy with Andra Phobio.
26. Seamstress also encouraged AEU/MEW troops through public statements over the radio. She was aware of the atrocities committed against the male civilian population but did not take action against AEU/MEW forces.

Additional information

27. The prosecutor seeks to call Natalie MacDonald as a witness; however she is refusing to travel to The Hague to give evidence, citing commitments to American *Vogue*. The Prosecutor requests that the Pre-Trial Chamber compels Ms MacDonald's presence at the confirmation of charges hearing.

Annex 2

Defence Response to the Document Containing the Charges against Charlotte McAngela Thankey Seamstress International Criminal Court

Original: English

Case No: ICC/13-013/23

Date: 07 January 2013

Situation in Fraternia Pre-Trial Chamber IV

Judges:

Registrar:

Defence Response to the Prosecution Application for Confirmation of Charges against Charlotte McAngela Thankey Seamstress

Prosecutor:

Defence:

I. The person charged

1. The prosecution summary in relation to Seamstress is accurate as to her birth and background. However, the correct facts are that, prior to leaving for South America, Seamstress was subjected to sexual harassment and discrimination at the hands of the former president, Testy Osteroné. She was also the victim of false fraud allegations. The history has been falsely related to discredit Seamstress and this was accepted in the deal brokered by Kofi Annan. She returned to Fraternia in the middle of 2006 as the head of a resistance group, the National Jingoistic Front of Fraternia (NJFF) and accepts she was responsible for freeing Fraternia from the yoke of Testy Osteroné's power and subsequently elected in a fair and proper manner.
2. During her time in office, Seamstress sought to bring equality to her country. She created the all-female Anti-Extremism Unit (AEU), the special Operations Division of the Fraternian National Army, comprised of former members of the NJFF which she used for her own private protection. She gave women opportunity and demonstrated to her people that

women were capable of achieving great things. She dismissed or demoted many of Testy Osteroné's supporters who tried to undermine the changes she was making. This was not to subjugate the male population but to bring equality.

II. Charges

3. It is contended by Seamstress that she is not responsible for any atrocities which took place during the second civil war and that these were committed by FAM and/or forces from Philandria. She denies any alleged command responsibility and any suggestion that San Lockarie's killing was done under her direct orders.
4. It follows that Seamstress contends that there is no evidence in the Document Containing the Charges (DCC) to meet the threshold required under Article 61(7) of the Rome Statute, namely 'sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged'.

III. Statement of facts

5. Save for the allegations against Seamstress, the prosecutor's summary of the background and civil unrest is correct.

IV. Territorial, temporal and material jurisdiction of the court

6. No issue is taken on jurisdiction.

V. Facts relevant to all contentions by the prosecution

7. It is submitted that in order for charges to be properly confirmed then the prosecution must act faithfully and accurately in accordance with the available evidence and not on generality, speculation or supposition.
8. The defence submits that the prosecution has failed to produce any evidence at all to support the allegation of acts of terrorism and insufficient evidence in relation to the remaining charges.
9. The defence submits that the prosecution has failed in its duty to indicate the facts and circumstances underlying the remaining charges in terms of times, locations and details of alleged command responsibility such that the lack of specificity prevents the Pre-Trial Chamber from confirming the charges.
10. Whilst it is conceded that it is impossible for the prosecution to identify each individual act of alleged atrocity, it is submitted that the prosecution failed to prove whether those who died were substantially Fraternal men or whether they died through general violence, castration, being buried alive in cement or by some other means. The evidence available from the two witnesses [Redacted] is insufficient to prove that the actions were carried out by Seamstress's supporters and insufficient to prove that those actions were on the orders of Seamstress.

11. The evidence given by the prosecution to support a finding that following their entry into Fraternia, MEW forces went on a rampage, killing several civilians perceived to be FAM supporters is false, unreliable and deficient. The witnesses alleging that MEW forces were seen looting civilian homes and carrying pillaged goods to their bases across the border are biased and their evidence does not reach the requisite standard of proof.
12. The defence submits that the prosecution has failed in its duty to specify each piece of evidence that links Charlotte Seamstress to those acts of violence.
13. It is contended by the defence that an analysis of the evidence, if properly specified, demonstrates that very few Fraternian men died by means other than general violence during the wide period of time currently outlined by the prosecution and that the evidence, such as it is, does not demonstrate knowledge or responsibility by or on behalf of Charlotte Seamstress.
14. It is further contended by the defence that, once properly specified, there is insufficient evidence to demonstrate that those who died were not supporters of Charlotte Seamstress. It follows that the prosecution has failed to discharge the defence assertion that many of those who died were slaughtered by military forces controlled by San Lockarie and Bambi Seamstress.
15. In relation to the characterisation of the alleged acts of castration, it is submitted that the assertion by the prosecution that these were acts of sexual violence is inaccurate.
16. In relation to the general allegation that Charlotte Seamstress issued instructions to her military commanders, save for those dates and times that are given in the application, any reference to general or standing instructions is insufficiently precise and should be rejected.
17. In relation to alleged motivation in relation to diamonds and mining deposits, it is submitted that the evidence does not give rise to a sufficiently clear support for an allegation to be properly proved.
18. It is conceded that in or about October 2010, San Lockarie a leading member of the FAM was killed. This was not done under Seamstress's direct orders and the evidence is insufficient to establish command responsibility.
19. It is conceded that there was a charity gala in December 2010 at the presidential palace and that world famous celebrity photographer Natalie MacDonald was present. They are old friends. It was a noisy event. The evidence from the plans of the presidential palace demonstrates that prosecution witnesses could not have overheard any of the alleged conversations. There was *tarte blanche* for pudding and Phobio brought almond favours for the female guests.
20. It is accepted that in March 2011 Seamstress lost control of Fraternia to her sister Bambi and fled to the United Kingdom where she was detained by UK authorities and transferred to The Hague to await trial.

21. It is submitted that, on the current application, no adverse conclusion can be drawn against Charlotte Seamstress. There is no evidence that conduct charged as a crime against humanity was part of a widespread or systematic attack directed against the Fraternalian civilian population and no evidence that Seamstress acted while knowing that the civilian population was being attacked nor that her acts comprised part of those attacks. The evidence as a whole points to responsibility by FAM and/or forces from Philandria.
22. Accordingly, the defence requests that the application for confirmation of charges be refused.

Annex 3

Declaration of Charlotte McAngela Thankey Seamstress

My name is Charlotte McAngela Thankey Seamstress. I was born in the town of Femina in Fraternia and I am 48 years old. I have one sister called Bambi. She has been jealous of me since we were young children as my parents believed me to be more intelligent and paid for my education and not hers.

I regard myself as the mother of my country. I am its protector and I love it as my own child. I deny all the allegations made against me. I am being set up by dishonest generals and US arms dealers who run their shipments through my country to avoid tax.

As a child growing up in Fraternia it was very difficult. The country was run by men and the situation for the girl child was perilous. Women were denied the right to vote for the longest time and the maternal mortality rate was sky-high because the Health Minister did not consider it necessary to invest the requisite funds in women's healthcare. I was fortunate that my family understood the benefit of a good education for a woman and I was sent to study law at the London School of Economics in the United Kingdom. I became a successful lawyer in the UK for many years but my heart was always in my country. I had to return to improve the welfare of female Fraternians for the country's good.

In 1999 I returned to Fraternia to work in the government as the first female Minister of Justice. I was the person who persuaded the former President, Testy Osteroné, to sign and ratify the Rome Statute for the International Criminal Court. He was a drunk and he sexually harassed me but I used this to the advantage of my country and gained his signature on the Treaty and subsequent ratification. I believed in the international community and the international negotiations I had over the Treaty made me believe that the international community would support my country in the event of civil war.

My role as Minister of Justice required me to travel around the world. I often flew to New York City, to the UN, where I met with other world leaders. World leaders welcomed me and wanted to agree trade terms, particularly over mining rights. Realising I was the most likely successor, the men in the Fraternian Government accused me of fraud and said that I was shopping on 5th Avenue on government funds when I should have been working. This was not true and the pictures of me in Saks 5th Avenue are misleading. It has always been believed that my country is rich in diamonds and I was doing research. In any event, it was also clear Osteroné was trying to pay me back for publicly accusing him of sexual harassment during my now famous CNN interview.

For a while I went into exile and trained in guerrilla warfare in the jungles of South America. I returned to Fraternia as the head of a resistance group, the National Jingoistic Front of Fraternia (NJFF) and initiated a civil war. This was to protect my country from the vicious male leaders who ruled Fraternia with violence. My group gained control of a large portion

of Fraternia and I was instrumental in negotiating a peace deal that ended the civil war, after which I was elected President.

I was the first female President of Fraternia serving from 1 April 2007 until my resignation on 1 April 2011. I created jobs for women and gave them the right to vote and to participate in Government. I created a special elite force of women called the Anti-Extremism Unit (AEU) as part of the Fraternian National Army so that crimes against women in my country would be properly and sympathetically investigated. I admit that I dismissed or demoted many male members of the military but this was because of their harsh and improper treatment of civilian women. Additionally, many of these men did not have the requisite training and were appointed because of their allegiance to Testy Osteroné. I wanted a clean military. I introduced laws to ensure that the opinions of female civilians would be considered before those of the males. This was not to subjugate the male population as has been suggested but was to ensure that women's voices, which had been silenced for so long, would now be heard.

The border between Fraternia and neighbouring Philandria is a porous one and in 2009, male Philandrian forces sought to enter my country and create civil war, aligning themselves with a burgeoning rebellion in the north – Fraternians against Misandry (FAM). It is FAM which committed atrocities in my country. They were backed by the mostly male government of Philandria and led by my sister Bambi who wanted to be President herself. I was not responsible for any atrocities but the situation led to the Second Fraternian Civil War. Forces and weapons from Philandria poured over the border. FAM began to spread propaganda against me, trying to brainwash the people and turn them against me. I believe that my sister had done a deal with someone corrupt in the US or China. She was having an affair with her leading commander, a man named San Lockarie. He spoke fluent English and Chinese.

To protect my country, I was forced to call for assistance from a rebel group in Philandria known as the Movement for the Emancipation of Women (MEW). I had lost control of most of the land areas but I still had control of the media. I made a public broadcast welcoming the arrival of MEW forces into Fraternia and praised its leader, Andra Phobio, for being 'a friend indeed' when I was in need.

Andra Phobio is an experienced leader and an expert in guerrilla tactics. I appointed her Honorary Military General. Together with my forces, she was able to quell the FAM uprising and San Lockarie was killed. This was not under my direct orders but was a natural consequence of his aggressive behaviour and involvement in combat. I did not order the terrorising, murder, torture and rape of the male population in towns and villages in central Fraternia. You have to understand that during civil war it is difficult to control everything and if there were some rascals who did that, they did it absolutely without my authorisation. Phobia and I discussed general military strategy but she was in control of her troops and did not involve me in day-to-day operations. I gave guidance and directions, always entreating the military and Phobia's troops to abide by the international laws of war. As a lawyer, I knew the importance of respecting the rights of civilians and general principles on the conduct of war. I made sure that the military commanders had the brochures and disciplined any and every conduct which went against my orders. I was also very busy negotiating with international leaders for assistance in quelling this uprising. My role in negotiating peace and talking with the international community meant that

it was impossible for me to micro-manage the behaviour of every citizen. I was in command but had no day-to-day responsibility for the conduct of my forces as I had appointed experienced commanders whose reports to me have been false and misleading as was their evidence to this court on behalf of the prosecution.

I have seen and heard the evidence of bodies of men over 65 recovered in cement in my home town of Femina. I know nothing of this nor did I order my soldiers, who were fighting to regain control of my country, to castrate men. In December 2010, during my charity gala, one of my guards told me that she had been offered 'goats' balls' by a local butcher. I knew what this meant and I called the forces in the field and specifically ordered them to stop.

As peace was being negotiated, I decided to hold a charity gala in December 2010 and to invite all my international friends, ambassadors and dignitaries. World famous celebrity photographer Natalie MacDonald was there. We are old friends and she also knows Andra Phobia. I wanted her to travel the country and take pictures of the atrocities committed by FAM rebels, so the world could see what they were doing. We spent time together but we did not discuss politics or diamonds, as the prosecution alleges.

My sister accused me of being more interested in throwing parties for international celebrities than government. This was not true but she used the gala dinner as evidence and the people believed her. Their support waned and I lost control of Fraternia. I fled to the United Kingdom where to my horror I was detained by UK authorities and transferred to The Hague to await trial. I feel betrayed not only by my sister and the Fraternians but also by the international community.

I am a peacemaker not a war criminal. I have struggled for years to bring peace to my country which has been riven by warring male factions and I am being unfairly scapegoated for the atrocities that occurred during the Second Civil War. My presidency was marked by my attempts to promote peace in my country. I worked hard to negotiate peace agreements and to persuade the notorious San Lockarie to end the conflict and I brought about other peace promoting measures. I also significantly improved the situation for women in my country. All these efforts and no recognition.

Evidence against me has been bought and secured through favours provided by those commanders and my corrupt sister who seek to feather their own nests at my expense. I have been framed again and this time the institution I helped support is investigating and prosecuting me. But as a firm Christian, I believe that God is on my side and the truth will come out.

Annex 4

Statement of Prosecution Witness, Danicia Sulay

My name is Danicia Sulay but all my friends call me Dandy. While I was in the Movement for the Emancipation of Women (MEW), I was also known by my combat name ‘Razor Sharp’! I am 30 years old; I don’t know my exact date of birth but my mother told me I was born in 1982. I was born in Lothando village in Philandria.

I joined MEW in November 2008 after some recruiters came to my village. I was told that the leader, Andra Phobio, would help me further my education and that joining MEW was an excellent opportunity to develop job skills as a woman. I remember I was excited and my parents were extremely hopeful. As you can imagine, I was very surprised and disappointed when I travelled for half a day to MEW’s headquarters in Jing-Jing to discover that MEW was a military rebel group. Instead of learning skills like cooking, sewing and typing, the women and girls in the group were taught how to plant land mines, handle AK-47s and throw grenades accurately. I wanted to return to my village, but I was told it was too late and I could not leave.

I was involved in a number of combats in Philandria against the Philandrian Government. I acquired the name ‘Razor Sharp’ because I was very precise in my shooting skills. I even became an instructor to new recruits and began to earn a little money. Sometime in June 2010, my battalion of MEW troops was called to meet with Andra Phobio. She told us that we were being sent to help her good friend, the President of Fraternia. I don’t know her name. We left two days later and crossed the border into Fraternia. It did not take long; it was about a day’s journey for those of us who went by road. I heard that some others, especially commanders, went by the President’s private plane. Until then I had never been to Fraternia but I had heard a lot about it. I heard that there was a lot of merchandise there which we did not have in Philandria. In fact, I used to dream of going there to buy things for my mother who is a petty trader. Anyway, when I got there I saw indeed that what I had heard about Fraternia was true but there was no time to go shopping – we were there for war.

I was involved in a number of combats with the rebels in Fraternia. Andra Phobio is a very hands-on leader, so she would travel often to the combat zones and meet with us. She always raised our morale with speeches and songs. She once told us that the President had given her authority to wipe out all the rebels and we should do anything and everything, and that she would back us up. At a point, I was stationed in Damawara which is in the central part of Fraternia. That was a tough station because the civilians, instead of supporting our efforts to keep peace, kept leaking information to the rebels. I know that this made Andra Phobio very angry. Also, I thought that the AEU soldiers who were there with us were useless. They were not as well trained as we were and would waste bullets by shooting with bad aim. Additionally, they kept the greater share of the food rations, even though everyone knew that we deserved more rations because we worked harder. It was ridiculous to see them in combat with us. Whenever we went on joint missions, instead of leading us and showing the way to the specific locations, AEU soldiers would hide behind MEW troops. In any event, it did not matter because we always got the job done.

I remember once in Damawara, Andra Phobio came to visit and she used the radio stationed next to the sleeping area. I was on a break then and could hear her entire conversation from my room. She was speaking with the President. I remember she kept saying 'my President this', 'my President that'. They were discussing the military strategy. Phobio gave the President some military intelligence, which the president said she already knew! She then gave Phobio some instructions. She was insisting we should move further up north and that San Lockarie was the main problem. Andra Phobio agreed with the president's plan. I remember that they also discussed the problems we were having with the useless AEU forces and she promised to fix it.

I have never seen the President of Fraternia. The investigators asked me if I was there when she arrived in Damawara. I don't know exactly when she arrived but I was in Damawara for a number of months and I do not remember seeing her at all.

Secretly I was very happy when the war was over. I was tired of the fighting and I did not like the way the war was being carried out. In addition, I was quite angry that I had spent many years of my life fighting wars when I would have preferred to be in school. So, when the rebels started coming, we scattered very quickly back to Philandria and I used that opportunity to flee back to my village.

I saw many MEW soldiers taking things from civilians and I also heard that looting occurred. I saw this with my own eyes. They took things like televisions, mattresses, and even food items. I never did that.

I heard that men were raped and tortured. I was not directly involved in this at all. One of my colleagues told me that she was involved in something like that, but she has since died.

Annex 5

Statement of Defence Witness, Lara Smallfarm

My name is Lara Smallfarm. I was born on 1 April 1988. I am 25 years old.

I live in the town of Femina with my female partner who is a chef at the presidential palace. I was an officer in the AEU during the time of the second civil war with specific responsibility for guarding Charlotte Seamstress during entertainment events at the palace.

I was officially on duty 24 hours a day but at night I would swap shifts with another officer and visit my partner in the kitchens or grab some sleep in my room which is near to the presidential suite (see map showing suite, office, kitchen and the room where I would sleep).

In December 2010 there was a gala dinner at the presidential palace. I remember there was a big fuss as Natalie MacDonald, the famous photographer was meant to be attending. We were all very excited and my partner was very busy in the kitchen. My President was dividing her time between her presidential suite and her office so I had to move with her to different parts of the palace on a daily basis. I would stand outside and guard the door of her suite. If she was at work in her office, I would generally be outside the door or in the office next door where there was a coffee machine. She made lots of phone calls and worked very hard. I heard her talking about making sacrifices for the good of our country.

I remember that during the second civil war there was a shortage of meat. This was a real worry in the lead up to the gala dinner as my President wanted the dinner to be a great success. My partner asked me to go home to our home town of Femina and to see the butcher there for some choice cuts of meat. I understand that it is alleged that some of the men of Femina were castrated and some were buried in cement during the late part of 2010 and that bodies of men have been recovered from the area just outside the town of Femina.

On 17 December 2010, I travelled to Femina at night. I was meant to be on duty but had swapped shifts with another soldier so that I could go to see the butcher of Femina. The journey is about five miles and I took an armoured vehicle from the presidential grounds. I travelled alone and I took a gun and a large knife for my own protection. I arrived in the town at about midnight. The town was always lively at night with lots of bars and restaurants so the butcher is always open late.

The butcher was a woman. I understand that it is now alleged that she was a member of MEW and engaged in killing the men of Femina. I can state that on the day I met with her she was at work in her butchery. She had a large quantity of meat available including a special delicacy which she called 'goats' balls'. I did not buy any 'goats' balls' as that was not on the list given to me by my partner. I made my way back to the presidential palace, passing some road works on the way.

When I got back to the palace at about 0500, my President was awake and very angry that I was not there. I explained that I had been to buy meat from the butcher of Femina and that she had sold me some fine steak. I told my president about the 'goats' balls' and she became very angry.

I followed her to her office where she telephoned the butcher. I did not hear the whole of the conversation but I did hear her telling the butcher 'stop doing what you are doing!' She later told my partner not to cook any meat and the guests were served vegetarian dishes that night. At the time I assumed she didn't like goat meat. I now realise she was telling MEW to stop killing and castrating men.

I did not take part in the castration of men that night and I did not see any men being buried in those road works. I just went to do the shopping. I have not seen the butcher of Femina since.

Annex 6

Application for Victim Participation

APPLICATION FORM

Request for Participation in Proceedings and Reparations at the ICC for Individual Victims

* The sections below are extracts from the victim participation application form prepared by the legal NGO, Safety, on behalf of five male victims A-001 to A-005 aged between 23 and 40.

PART B – INFORMATION ABOUT THE ALLEGED CRIME(S)

1. *What happened to the victim(s)? Describe the event(s) in as much detail as possible.*

Victims A-001 to A-005 are male citizens of Fraternia and were raped and castrated in Damawara during the second civil war by AEU/MEW forces. On or about 10 November 2010, the town of Damawara was ambushed by AEU soldiers and foreign troops belonging to Andra Phobio. All these troops worked on the command of then President Seamstress. When the attack commenced, the men of the town began to flee, as the horrors of what these soldiers did to men in other villages and towns had spread. However, victims A-001 to A-004 were caught and brought back to the town square. Victim A-005 did not flee, thinking instead it was better to hide in a closet in his home, but he was found and also taken to the town square. The victims testify that the women in the town were brought out to witness the rape and castration of the men. Those who did not survive the castration were buried in cement. None of the victims were members of the rebel group. The men also were unarmed at the time of the attack.

2. *When did the event(s) occur? If possible, please specify day(s), month(s) and year(s), or where the exact dates are not known please provide any information that will enable us to identify the dates.*

The event occurred on or about 10 November 2010.

3. *Where did the event(s) take place? If necessary, attach a drawing or a map of the location. Please be as specific as possible, and also, if possible, please refer to the district/province or the nearest town/city.*

The event occurred in Damawara, central Fraternia.

4. *Who does the victim believe is responsible for the event(s)? If possible, explain why the victim believes this.*

The person ultimately responsible, according to the victims, is former President Seamstress. The rapes and torture were committed by female members of the AEU and MEW who were under her command.

PART C – INFORMATION ABOUT THE INJURY, LOSS OR HARM SUFFERED

5. *What effect did the events have on the life of the victim and others around him/her?*

The victims' lives have been completely devastated. They each require medical treatment for the rest of their lives. All the victims have been denied the ability to either procreate further or at all. Victim A-003, aged 23 years old, is unmarried and would never have children. None of the women in the town would marry him.

6. *Describe physical or mental injury, emotional suffering, harm to reputation, economic loss and/or damage to property or any other kind of harm.*

See response to No 5. In addition, there has been significant damage to the victims' reputation. They are often mimicked and called 'women' by those in the community. In addition to the physical, mental injury and emotional suffering, their homes were also looted. Several items such as mattresses, televisions and a motorcycle (belonging to victim A-004) were looted by troops affiliated with former President Seamstress.

PART D – PARTICIPATION IN THE PROCEEDINGS

7. *Does the victim want to present his/her views and concerns in ICC proceedings?*

Yes, they all do.

8. *If yes, why does the victim want to participate in the proceedings?*

They are seeking justice for the crimes which were committed against them.

PART E – REPARATIONS

9. *Would the victim like to apply for reparations? (ie, does the victim want something to be done for what he/she suffered?)*

Yes No

10. *If yes, what would the victim want?*

The victims want monetary compensation and long-term medical care.

11. *If reparations are ordered, who does the victim want the benefit to go to? (tick more than one if necessary)*

The victim The victim's family

The victim's community (please specify the community)

Other

PART F – REPRESENTATION

12. *Does the victim have a lawyer?*

The victims are represented by the legal NGO called Safety.

13. *If the victim does not have a lawyer, would the victim like assistance from the ICC to find a lawyer?*

N/A

14. *Until the victim has a lawyer, would he/she like to be represented by the court's lawyers for victims (the Office of Public Counsel for Victims)?*

Yes No

PART G – COMMUNICATION OF IDENTITY

15. *Would the victim have any reason to be concerned about his or her security, well-being, dignity or privacy or that of any other person if his or her identity were to be revealed to the defence or the ICC Prosecutor?*

Yes, they have reasons to be concerned about their safety.

16. *If yes, what are the reasons?*

The victims are seriously concerned that many members of AEU still have weapons and can easily identify them and attack them. Additionally, though President Seamstress is no longer in Fraternia, she still has political supporters. The victims would like to receive protection in the event of testimony in The Hague. Ideally, they would like to be relocated from Fraternia, preferably to a large city somewhere on the continent of Diversity, where they can have a new identity, start a new life and have access to long term medical care.



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The International Criminal Court

A Moot Court Exercise for Students

The Prosecutor v Jonathan Chau

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Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given documents relating to a case before the ICC involving events which happened during a period of conflict in a fictional country, Sajeekistan. During the conflict, a number of war crimes may have been committed that are so serious that ICC wants to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes; you can find descriptions of these crimes below (extracts from the Rome Statute, Articles 5 and 8).

The fictional man whose trial concerns you in this exercise is called Jonathan Chau. He was the defendant (person accused of crimes) arrested by the ICC on 15 July 2013. The accusations against him are made by the prosecutor and his/her team of lawyers. The prosecutor wants Jonathan Chau to be tried on five counts of war crimes.

The prosecutor has made a request to the Pre-Trial Chamber to confirm two charges against Jonathan Chau. Confirmation of charges is a process in which the Pre-Trial Chamber decides whether there is sufficient evidence on which the accused can be sent for full trial by a Trial Chamber. Under the Rome Statute, the Pre-Trial Chamber has to 'determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged'. In order to do this the prosecutor can call evidence and present an outline of his case.

The State of Tapor is asking the Pre-Trial Chamber to refuse the request by the prosecutor.

The prosecutor has decided to call two witnesses to the court to give evidence to support the charges.

You will be conducting a part of this case. You will need people to act the following roles:

- the Pre-Trial Chamber judges – three;
- Jonathan Chau's defence lawyers – at least two but can be a team of up to six;
- the prosecutor and his lawyers – at least two, but can be a team of up to six;
- two witnesses; and
- the registrar (the administrator of the court).

The judges, the defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the presiding judge. He has control of the court and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the prosecutor. The leader of the defence lawyers is lead counsel for the defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams each work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage, whether it is questioning of the witness or presenting an argument. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant Jonathan Chau, but you should note that he will not be saying anything in court during his case. His lawyers will say anything that needs to be said on his behalf.

Preparation in teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective, and decide who should present each argument and question each witness. There are at least four different roles which need to be played: questioning Witness 1; questioning Witness 2; presenting Argument 1; and presenting Argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers and what is likely to influence them in coming to a decision – but they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the people you have chosen to play the defendant to join the team of defence lawyers and the two witnesses to join the team of prosecution lawyers. The registrar can join the judges.

The court hearing

The judges will sit at the front of your courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left. The defendant will sit behind his lawyers.

Although the participants are playing the part of international judges or lawyers, there is no need for them to put on voices or accents. Also, the people playing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement or make up information which they have not been given.

The hearing will take place as follows:

The presiding judge will declare the proceedings open in the prosecution application to confirm the charges against Jonathan Chau. He will ask the prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The presiding judge will then ask lead counsel for the defence to introduce his team of lawyers.

The lawyers in the court will all call the judges ‘Your Honour’ or ‘Your Honours’ at all times. They must remember that all the things they say must be addressed to the judges, and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

REGISTRAR: *I declare this session of the International Criminal Court open. The first case listed today is the Prosecutor against Jonathan Chau. Judge Green presiding.*

PRESIDING JUDGE: *This is pre-trial hearing in the case of Jonathan Chau. Both parties have prepared written submissions to the court. I call upon the prosecutor to introduce his team.*

LEAD PROSECUTOR: *Your Honours, I am Victor Black. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...].’*

LEAD DEFENCE COUNSEL: *Your Honours, I am Maria White. I am the lead counsel for the defence. I am assisted by the following lawyers [...].’*

PRESIDING JUDGE: *Thank you. I understand this is an application by the prosecutor asking the court to confirm the charges in this case. I therefore invite the prosecutor to begin and to present their charges.*

The presiding judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long or repeat the same arguments, thereby wasting time.

Presenting the charges

The presiding judge will then ask the Prosecutor to present the charges. A prosecutor will read the charges to the court and will briefly outline the case against the defendant. He will tell the court that he intends to call two witnesses in support of the charges. The presiding judge will then give the prosecution permission to call the witnesses.

Witness 1

A prosecution lawyer will call the first witness, Witness 1. The registrar will bring the witness into the court: She will sit opposite the judges. The registrar will ask her to repeat after him:

‘I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.’

A prosecution lawyer will then stand up and ask the witness questions. He would normally start by asking her to state her name and age, and where she lives. He may then ask whether and how the witness knows the defendant. Then he will ask the witness questions which will allow the witness to tell the court her story. These questions, asked of the party’s own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as ‘leading’). The witness must give their own evidence in their own words.

When the prosecution lawyer has finished, he will say to the presiding judge that he has no further questions. The presiding judge will then ask the defence whether they have any questions. A defence lawyer will stand up and will ask the witness some questions. He will be trying to show that the witness cannot be sure of what she has said. He may try to show that the witness is lying, or that she was mistaken, or that she does not know as much as she thinks she knows. These questions, asked of the other party's witness, are called cross-examination. When asking these questions, the lawyer is allowed to suggest answers to the witness. Getting angry or harassing a witness is not allowed and the presiding judge must intervene to stop this happening where necessary.

When the defence lawyer has finished, he will say to the presiding judge that he has no more questions. The presiding judge will ask the prosecution if there is anything else they want to ask. The prosecution may have no further questions or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the defence. The prosecution should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the presiding judge may have some questions for the witness. Any of the other judges may also ask a question if the presiding judge allows them to. The judges do not have to ask any questions but they may wish to clear up any points they think the defence and prosecution have left out.

The presiding judge should remember throughout this procedure that he is in charge. If he thinks that the lawyers are taking too long or repeating themselves he can tell them to hurry up. If he thinks they are bullying the witness he can tell them to stop.

After the witness has finished being questioned, the presiding judge will thank her for coming and tell her she may now leave the court.

Witness 2

The same procedure is then followed with the second witness, Witness 2.

Prosecution conclusion

The prosecution will then ask the judges to confirm the indictment based on the evidence they have heard. The presiding judge will thank him and ask the defence if they have any objection to the confirmation of the charges. A defence lawyer will say that the defence have two arguments.

Legal argument

The presiding judge will ask the defence to present their argument. This is the argument that there is not sufficient evidence that the crimes occurred. It is outlined in the defence documents.

When the defence lawyer has finished presenting the argument, a prosecution lawyer will present the prosecution arguments on the same issue. It may be useful to decide in advance that each side has a certain amount of time – for example, ten minutes – to present their argument. If either side continues for too long the presiding judge may ask them to hurry up.

After these presentations the presiding judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the presiding judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

The second argument

The presiding judge will then ask the defence to present their second argument.

Argument 2 is only relevant if Argument 1 has failed; if Argument 1 is won by the defence, there would be no need to consider the second argument. However, the judges will not consider their judgement until after both arguments have been heard. So it is necessary for the lawyers to present both arguments in full.

After the arguments have been heard, the presiding judge will tell the court that the session is closed and the judges will now retire to consider their judgement.

The judges' decision

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not. They can decide to confirm only some of the charges, or only some parts of them; for example, they can find that the computer virus attacks constitute any of the four counts of war crimes but not the hostage rescue. They can also decide that the hostage rescue constitutes a war crime but the computer attack does not.

ARGUMENT 1

- If they decide the defence should win, they will find that there is not sufficient evidence to establish substantial grounds to believe that the war crimes happened on either 12 or 16 September. They should therefore refuse to confirm the charges against the defendant.
- If they decide that the defendant should not win Argument 1, they should go onto to consider Argument 2.

ARGUMENT 2

- If they decide the defence should win Argument 2, they should declare that there is not sufficient evidence to establish that Jonathan Chau was responsible as a superior for the crimes charged.
- If they decide the defence should not win Argument 2, the Pre-Trial Chamber should confirm the charges and send Jonathan Chau for trial.

For the purposes of the exercise it would be helpful if the judges gave an opinion on Argument 2, whatever their decision on Argument 1.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgment. If any judge disagrees with the judgment of the majority, he may briefly tell the court why.

The presiding judge then closes the session.

The competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

- good structure to questions and submissions;
- clarity in argument:
 - quick thinking in response to arguments from the opposition;
 - clear understanding of the issues when answering questions from judges;
- good use of language;
 - clear and confident speech.

Remember, a team may lose the judges' decision on the facts and law but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and did not like about each team's performance. They will then announce the winner.

Do

JUDGES

- Do keep order in the courtroom;
- listen carefully to what the witnesses are saying; and
- ask questions of the witnesses only once the prosecution and defence have finished their questions.

PROSECUTORS

- speak slowly and clearly;
- give your questions or speech a structure which can be followed by you; and
- write down your questions for witnesses.

DEFENCE COUNSEL

- Do speak slowly and clearly;
- concentrate on your best point; and
- remember that time will probably go more quickly than you plan for.

WITNESSES

- Do learn what the statement says, so you don't have to keep checking it before answering each question;
- stick to what is said in the statements; and
- speak slowly; remember people may be writing down what you say.

Don't

JUDGES

- Don't let the lawyers harass the witnesses;
- let the lawyers run over the time allowed; or
- interrupt the lawyers too often.

PROSECUTORS

- Don't use emotional language; stick to the facts and the law;
- ask the witnesses for opinions; just ask about the facts; or
- try to make the witness look stupid or small.

DEFENCE

- Don't use personal insults about the prosecution case; stick to the facts and the law;
- repeat points made by other members of your team; nor
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear).

WITNESSES

- Don't make jokes or try to be smart;
- refer to things you've heard from other people; or
- make arguments about the law; that is for the lawyers.

The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing serious international crimes.

When was an International Criminal Court first suggested?

An international criminal court was first suggested at the end of the 19th century but it was not possible for the countries of the world to reach agreement about what the court's powers should have been. During the last decade of the 20th century pressure for such a court grew. The emerging consensus led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that took some time since different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined and the Rome Statute came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY, or the ICTR in Tanzania?

The ICC differs from the International Court of Justice (ICJ) since it tries people, not states. Unlike the ad hoc international criminal courts, it's a permanent venue for prosecution of serious international crimes. In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia Herzegovina, Croatia, Macedonia, Serbia. The International Criminal Tribunal for Rwanda (ICTR) only deals with crimes committed in Rwanda during the genocide of 1994.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape, deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have signed and ratified the Rome Statute or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council. If the UN Security Council decides that there is a threat to international peace and security, it can refer a situation to the International Criminal Court.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. Additionally, under the principle of complementarity, people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why isn't Radovan Karadžić being tried by the ICC?

Karadžić is not being tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein and, in addition, Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

Fatou Bensouda is the chief prosecutor at the ICC. She was elected by the representatives of the countries which have joined the Rome Statute system. She is the Head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What are the options available to the court after the judges review all the evidence?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens after the Trial Chamber makes its decision?

If a defendant is acquitted of all charges he will be free to go and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment, or in particularly serious cases to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence but he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example, if new witnesses have come forward.

Where does the defendant serve his prison sentence?

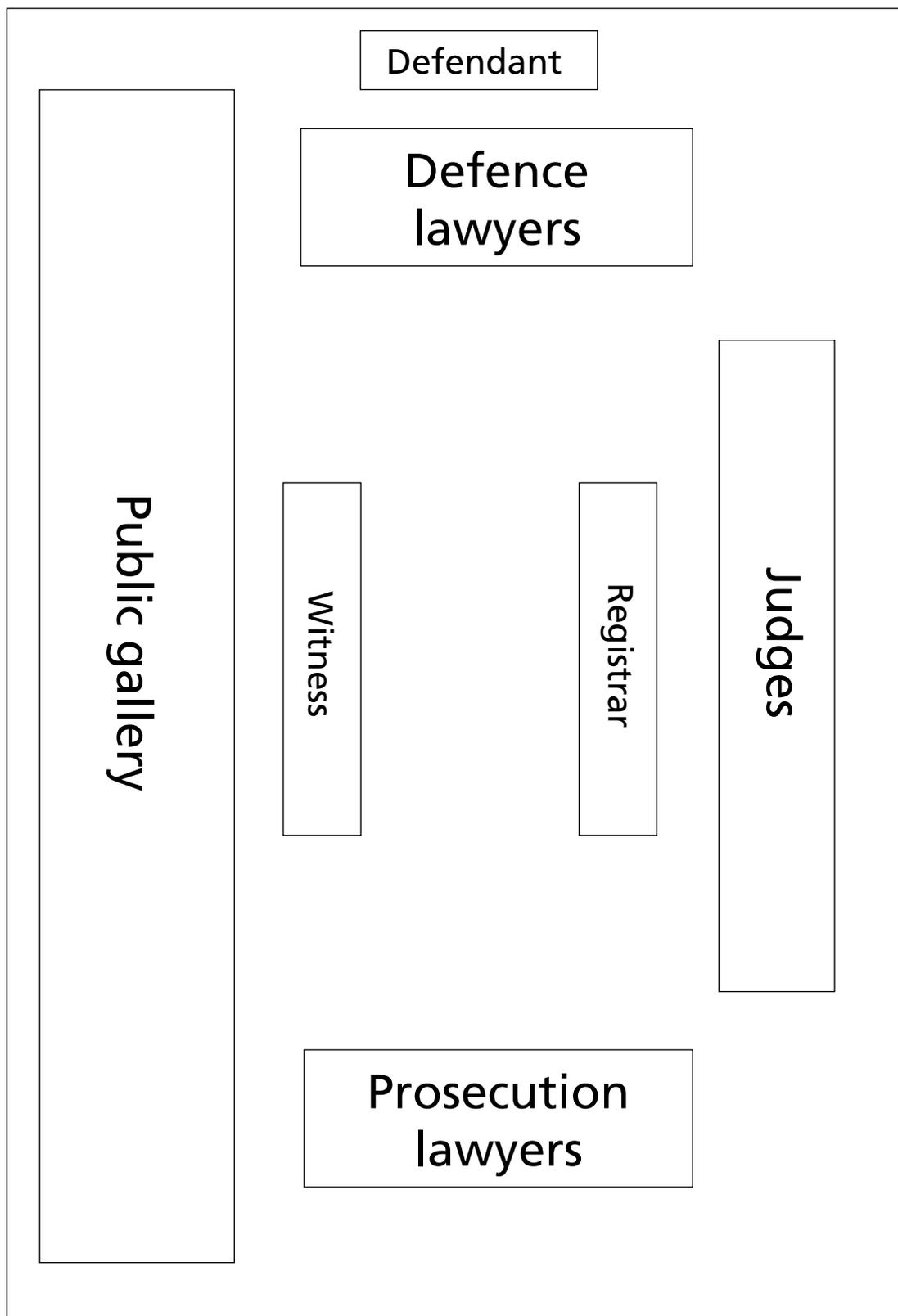
Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

Where can I find out more about the work of the International Criminal Court?

The ICC has an excellent website. There you will find lots of information about how the court operates and news about what is happening in the current cases.

The website address is: www.icc-cpi.int.

Courtroom Layout



People and Places

Albus, Piru	Defence Minister of Sajeekistan.
BMS	Bastian Mandate of Sinraj – official Bastian administration of Sinraj Territory.
Chau, Jonathan	Prime Minister of Tapor.
Sajeekistan	A developing country with a largely Sardu population.
Sardu	Predominant religion in Sajeekistan.
SIA	Sajeek Int'l Airport.
Sinraj Territory	Territory that becomes Tapor after Bastian terminates its administration.
Tapor	A highly developed country with a largely Tappist population.
Tappism	Predominant religion in Tapor. Followers referred to as 'Tappists'.
TRM	Tapor Resistance Movement – Fought for the creation of the state of Tapor.
TAF	Tapor Armed Forces – the military of Tapor.
TSF	Tapor Special Forces Unit – an elite military commando squad which is part of the TAF. The TSF rescues Tapor hostages.
V7	Weaponised virus that attacked Sajeek nuclear facilities.
WVU	Weaponised Virus Unit – Tapor military special unit that was created to develop weaponised viruses.

Timeline

Year	Date	Event
1918–1955		Bastian governs the Sinraj Territory.
1955		The new sovereign state of Tapor created by UN Mandate after Bastian terminates its administration of Sinraj.
1955–2009		Twelve separate military confrontations or skirmishes between Sajeekistan and Tapor.
2010	February	Sajeekistan announces plans to build nuclear power plants and refine fissile materials for fuel.
2011	April	Sajeekistan completes construction of one power plant.
2011	1 July	Intelligence suggests that Sajeekistan will have the capacity to produce weapons-grade uranium by the Fall of 2012.
	15 July	Tapor Parliament led by PM Chau authorises and funds the Weaponised Virus Unit.
2012	January–August	Escalating tensions between Tapor and Sajeekistan over Sajeekistan’s nuclear programme.
	12 Sept	V7 weaponised virus attacks Sajeek nuclear facilities.
	12 Sept	Sajeekistan seizes Taporian Airline aeroplane.
	16 Sept	TSF raid SIA and liberate Tapor hostages.
	17 Sept	Chau televised statement to nation about hostage rescue.
	November	Sajeekistan refers situation to ICC.
	1 December	Sajeek Minister of Justice releases report that indicates V7 came from Tapor.
2013	6 January	GA Resolution on Sajeekistan attacks.
	30 March	ICC issues arrest warrants against Chau.
	15 July	Chau surrenders to ICC.

Annex 1

Request for Confirmation of Charges against Jonathan Chau International Criminal Court

Original: English

Case No:ICC/

Date:

Situation in Sajeekistan Pre-Trial Chamber

Judges:

Registrar:

Prosecutor's Request for Confirmation of Charges against Jonathan Chau

Prosecutor:

Defence:

Background

1. Sajeekistan is a developing country with a population of about 13 million people. An overwhelming majority of the Sajeekistan population practice the Sordu religion. The Sajeekistan military is poorly equipped and trained. There are abundant sources of uranium ore in Sajeekistan.
2. Sajeekistan shares a border with Tapor, a country with a population of five million who primarily practice the Tappist religion. Tapor is very developed and prosperous and it has one of the world's best equipped and trained militaries. There are major religious sites for both the Sordu and Tappist religions in Tapor.
3. From about the 12th century, the region covering both the modern day states of Sajeekistan and Tapor (the 'region') was ruled by tribal groups whose power and borders varied over time. There were two main ethnic groups in the region – Sajeeks and Tapor. Ethnic Sajeeks lived predominantly in the portion that became Sajeekistan in 1918. Ethnic Tapor lived predominantly in the portion of the territory that ultimately became the State of Tapor in 1955.

4. The Tapor culture has a rich tradition that values urban living, education and commercial enterprise. The Sajeek culture is equally rich, emphasising a nomadic and pastoral lifestyle. Traditionally, many Sajeeks remove their sons and daughters from school as soon as they are strong enough to help tend the livestock. Despite the differences, the two cultures co-existed peacefully for many hundreds of years in the region.
5. Around the 16th century, Sajeek tribes began to convert to the Sordu religion whose tenants buttressed the Sajeek pastoral culture. In a short time, nearly all Sajeeks became Sordu. The Tapor gradually aligned with the Tappist religion which extolled the virtue of education, personal liberty, gender equality and free enterprise.
6. In the 17th century, the Tapor culture began to flourish. The Tapor built towns and businesses, becoming successful enough to buy pastoral land from poor Sajeek villages to make way for further development. Many Tapor began to employ Sajeeks. A class system emerged, giving Tapor a higher status than Sajeeks.
7. Tapor success and expansion was seen as a threat to the Sajeek way of life and perceived as an attack on the main tenants of the Sordu religion. Tapor cities and development confined and segmented traditional Sajeek pastoral ranges driving Sajeeks from the fields into Tapor towns where they languished in poverty.
8. In 1745, Bastian, an industrial colonial power, colonised the region and governed it as a colony for 173 years. It did not intervene in local politics as long as the inhabitants paid taxes. A flat tax scheme – while neutral on its face – imposed a disproportionate hardship on the poorer Sajeeks further radicalising them.
9. Sajeeks began to focus on Tappism as the source of their plight. Virulent anti-Tappist movements in Sajeek towns and villages quickly grew in popularity. The movements increasingly persecuted Tapor towns and villages with acts of violence. In the 1880s, Sordu clerics began to advocate for Sajeeks to reclaim their ‘stolen’ lands by invading Tapor towns and ‘restoring the Sordu way of life’. Sajeek radicals began to attack Tapor towns with ruthless violence. In 1889, Sajeek tribesmen invaded a small town on horseback and infamously beheaded the entire population of a Tapor village.
10. The news of the massacres spread quickly amongst Tapor. Many Tapor took refuge in other countries. A substantial number of Tapor settled in Bastian where they organised into political groups that agitated for an independent sovereign state of ‘Tapor’.
11. In 1918, Bastian devised a plan to settle the conflict: artificially dividing the region into the states of Sajeekistan and Sinraj. The new state of Sajeekistan was given its independence immediately. However, Bastian continued to govern Sinraj as a protectorate, officially known as the Bastian Mandate of Sinraj (BMS). The border of Sinraj approximated the de facto borders of the territory once occupied by Tapor. However, by 1918, most of the Sinraj was inhabited by Sajeeks.
12. In the years between WWII and 1955, the Tapor diaspora began to migrate back to the BMS. Tapor appealed to the BMS governors for their independence and eventually more extremist elements founded the Tapor Resistance Movement. The Tapor Resistance

Movement fought for an independent Tapor and targeted the Bastian governing authority with acts of violence. By the early 1950s the colonial era was coming to an end and Bastian was also frustrated by the perpetual violence in the region. In 1954, Bastian referred the BMS situation to the United Nations, proposing BMS be renamed Tapor and recognised as a new independent state before the United Nations. By 1954, 28 per cent of the population of BMS were ethnic Tapor.

13. During the United Nations negotiations on the creation of Tapor, Sajeekistan claimed that BMS was historically part of Sajeekistan, was occupied by a majority of Sajeeks and was illegally occupied by Bastian who had no legitimate right to express any opinion on the future of the BMS. Sajeekistan claimed that the BMS territory should be returned and re-integrated into its borders and they objected to the creation of a Tapor state.
14. Tapor was officially created by United Nations Security Council mandate on 1 March 1955, an act not recognised by Sajeekistan.
15. From 1955 to the present, high ranking political officials in Sajeekistan have consistently used rhetoric that Tapor does not have a right to exist and should be 'wiped off the face of the earth'. Senior officials have been quoted as saying: 'Sajeekistan declares war on the infidel Tapor and illegitimate state of Tapor'. The current Sajeekistan Defence Minister Piru Albus stated in 2007 that 'Sajeekistan will use all means at its disposal to destroy Tapor infidels and the illegitimate Tapor state'.
16. Twelve days after the creation of Tapor on 1 March 1955, the Sajeekistani Army invaded Tapor. The Tapor Armed Forces had been trained and well-armed by Bastian prior to its departure. The TAF quickly routed the Sajeek forces in a conflict that became known internationally (and humiliatingly in the view of the Sajeek people) as the 'Four-Day Rout'.
17. Fifteen years later, Sajeekistan again prepared to invade Tapor on 1 December 1970. But the TAF again destroyed the Sajeek forces amassed at the border (80,000 troops and 8,000 tanks), this time in a matter of hours. Immediately afterward, TAF forces moved into Sajeekistan and established a de-militarised zone along the Sajeekistan/Tapor border. The occupied zone was six miles wide and 18 miles long. On 15 January 1971, Tapor Prime Minister F Askit addressed the United Nations and stated that Tapor would occupy the 'Sajeek Strip' for its own protection until Sajeekistan withdrew its declaration of war, its violent rhetoric and acknowledged Tapor's right to exist as a sovereign state. The 'Sajeek Strip' has been occupied by Tapor ever since 2 December 1970.
18. From 1978 to 1989, Tapor cities were attacked 18 times by Sajeek suicide bombers, causing 144 Tapor civilian deaths.
19. From 1994 to the present, Tapor has been attacked with 1,200 rockets launched from locations within Sajeekistan. While Sajeekistan doesn't officially claim responsibility for these attacks, it renews its violent rhetoric on each occasion and has taken no public action to investigate or stop the rocket attacks.

Conflict of September 2012

20. In February 2010, Sajeekistan announced that it was building a series of nuclear power plants to meet the country's vast unmet demand for energy. It announced that it would begin to develop the technology to produce fissile materials in order to fuel the plants. The Prime Minister and head of the Taporian parliament Jonathan Chau objected to the Sajeek nuclear programme in an address to the UN Security Council, claiming that it 'posed a grave and irrevocable threat to Tapor as the materials could easily be modified for use in weapons'. Chau requested that the Security Council issue a resolution that specifically prohibited Sajeekistan from pursuing or developing any nuclear capabilities but the Security Council did not issue any resolution on the matter.
21. By April 2011, Sajeekistan had completed the construction of one nuclear power plant. It was unable to commence operation since it lacked refined uranium fuel. Sajeekistan could have converted the plant to use conventional fossil fuel but there is no evidence that it has made plans to do so.
22. In the summer of 2011, a major western newspaper reported that Sajeekistan had made significant progress in their nuclear programme and would be able to produce weapons-grade plutonium by the autumn of 2012. The article relied on three different sources all identified as 'senior Sajeekistani officials'. Sajeekistan already possessed short-range missiles that could be retro-fitted with nuclear warheads, although Sajeekistan Defence Minister Albus publicly stated that it would not develop nuclear warheads for these missiles.
23. On 15 July 2011, Tapor parliament approved and funded the creation of a new military unit called the 'Weaponised Virus Unit' (WVU). In the Tapor parliamentary scheme, the Prime Minister could veto all acts of parliament. Chau did not veto the WVU funding proposal. He signed it into law. The Weaponised Virus Unit began operations shortly thereafter under the command of Colonel Rapot of the Tapor Armed Forces (TAF). Colonel Rapot was directly subordinated to Defence Minister Jose Sardus, the overall commander of the TAF. Minister Sardus is a member of the cabinet of President Jonathan Chau and communicates with him on a daily basis.
24. Between January and August 2012, tensions between the two countries escalated over the nuclear issue. Prime Minister Chau gave four major addresses to the UN Security Council requesting a resolution condemning Sajeekistan, banning the Sajeekistan nuclear program and sanctions for violations. The UN Security Council did not issue any resolutions or take any action. Sajeekistan responded with vitriol to each of the Chau addresses exhorting Sajeekistan's right and duty to provide clean energy to its population as a sovereign state.
25. At 0100 am on 12 September, Sajeekistan was attacked by a weaponised computer virus that becomes known as the V7. The V7 primarily infected and disabled vital computer-based control systems at Sajeekistan nuclear facilities, incapacitating Sajeekistan's ability to continue to refine uranium for any industrial (or military) use. The virus also collaterally destroyed a large number of Sajeek military assets that had computer components and a significant number of Taporian government computer systems. The affected Sajeek computers

included some vital medical systems in Sajeek hospitals that caused the deaths of 48 patients. Two persons died in Tapor when the V7 caused the computer-based power grid in one neighbourhood to shut down for several hours during an extreme heat wave. The Taporian authorities were able to quickly restore the power grid to normal operation.

26. The Defence Minister Albus held a press conference. At the conference, Albus stated that computer scientists in his office had inspected the V7. Albus stated: 'it is close to a scientific certainty that Tapor devised, developed and deployed the V7 against us. The V7 attack is an egregious act directed against civilians that is a war crime and crime against humanity. The world should condemn Tapor.'
27. Based on the Commission's conclusions, Sajeekistan declared that Tapor had attacked Sajeekistan and that Sajeekistan must defend itself against future attacks against civilians. Late in the evening on 12 September, Sajeekistan seized a Taporian Airlines jet that happened to be on the tarmac at Sajeekistan International Airport (SIA) at the time. Minister Albus stated publicly he suspected that one or more of the passengers had deployed the V7 in Sajeekistan. 40 Taporian civilians were detained as 'enemies of Sajeekistan' and held prisoner at the airport hotel by the Sajeekistan military.
28. On 16 September, the major international human rights organisation Warcrimes Watchdog issued a press release citing previous instances of brutality by the Sajeekistan military against Tapor civilians. Warcrimes Watchdog called on the Sajeekistan majority to respect international human rights and refrain from any instances of torture or ill treatment of the Taporians.
29. That night, 100 Tapor Special Forces (TSFs) agents in three helicopter gunships clandestinely flew into Sajeekistan and landed at SIA. Relying on the element of surprise and its overwhelming military superiority, the TSF force easily overtook the surprised Sajeekistan military forces at SIA, gained entry to the airport and liberated the Tapor hostages. The TSFs routed and killed 300 Sajeek military fighters at SIA, destroyed 12 Sajeek fighter jets at SIA and destroyed the airport's runways and fuel infrastructure. In addition, the TSF destroyed all suspected anti-aircraft (AA) installations within a ten kilometre radius of KIA, even though Sajeek AA had a practical range of only two kilometres and the TSF helicopters had defence systems that were completely effective against the antiquated Sajeek AA. In the process, the TSFs destroyed one of Sajeekistan's most revered Sordu temples located eight kilometres from KIA and killed approximately 110 civilians. The entire TSF raid took twelve hours and at the conclusion the TSF rescued all of the hostages and took them back to Tapor. The TSF sustained only twenty casualties, including eleven fatalities.
30. On 17 September, Jonathan Chau, the Prime Minister and head of the Taporian parliament, issued a statement on national television in Tapor that he was pleased to announce that based on his executive war powers inherent in the Tapor constitution he had authorised a mission to rescue the Taporian hostages which had been successfully carried out by the TSF.
31. On 1 December, Sajeekistan's minister of technology conducted a press conference to announce that his department has conducted extensive studies on the V7 virus and he could confirm that the TAF WVU created and deployed the virus. The minister asserted that their

study established that the V7 was designed to attack five gateway organisations with the intention that the gateway organisations would provide the means for the V7 to spread to the ultimate nuclear targets. The tactic of targeting gateway organisations led to collateral damage of government and medical computer systems. Tapor does not issue any statement confirming or denying this announcement.

32. A well-researched story in a major newspaper cited several eminent scientists who opined that the V7 could only have reached Sajeek nuclear systems by exploiting the gateways.

Jurisdiction of the Court

1. Both Sajeekistan and Tapor are signatories to the Rome Statute of the International Criminal Court.
2. In November 2012 Sajeekistan referred the situation in Sajeekistan to the Prosecutor of the ICC.
3. On 30 March 2013, following an application by the prosecutor to the Pre-Trial Chamber, the court issued a warrant of arrest for Jonathan Chau on five counts of war crimes, for four relating to the computer virus attacks of 12 September and one relating to the 16 September attacks.

Arrest of Jonathan Chau

4. On 15 July 2013, Chau travelled to The Netherlands and delivered himself to the authority of the ICC.

The proposed charges

1. The Prosecutor seeks the confirmation of the following charges against Jonathan Chau, pursuant to the provisions of Article 8 bis of the Rome Statute:

Count 1

Wilful killing under Article 8(2)(a)(i) of the Rome Statute:

- in respect of acts committed against the State of Sajeekistan by the use of computer virus on 12 September 2012.

Count 2

Extension Destruction of Property Not Justified by Military Necessity under Article 8(2)(a)(iv) of the Rome Statute:

- in respect of acts committed against the State of Sajeekistan by the use of computer virus on 12 September 2012.

Count 3

Intentionally directing attacks against civilian objects, that is, objects which are not military objectives under Article 8(2) (b) (ii):

- in respect of acts committed against the State of Sajeekistan by the use of computer virus on 12 September 2012.

Count 4

Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated under Article 8(2) (b) (iv) of the Rome Statute:

- in respect of acts committed against the State of Sajeekistan by the use of computer virus on 12 September 2012.

Count 5

Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated under Article 8(2) (b) (iv) of the Rome Statute.

- in respect of acts committed against the State of Sajeekistan at and near the Sajeekistan International Airport on 16 September 2012.

Evidence in support of the proposed charges

6. There is evidence available to the court from two sources:
 - Dr. Ramadong; and
 - Benazira Khanish.
7. When Jonathan Chau was interviewed by investigators from the Office of the Prosecutor he refused to answer any of their questions.

Basis of responsibility

8. For both occurrences on 12 and 16 September, the prosecutor alleges that:
 - Chau was a person in a position effectively able to exercise control over or to direct the political or military action of Tapor; and
 - Chau is responsible as a superior under Article 28(b) of the Rome Statute.
9. It is not alleged that he is guilty of personally committing these acts, but he is responsible for the actions of the subordinates under his effective authority and control.
10. As Prime Minister, Head of State and Leader of Parliament, Jonathan Chau was in a superior/subordinate relationship to all military forces of Tapor. The evidence shows that he took no steps to stop it. The prosecution will argue that he was therefore responsible under Article 28(b) of the Rome Statute for crimes committed by his subordinates.

.....

Prosecutor

Date:

Annex 2

Submission by the Defence on Request for Confirmation of Charges against Jonathan Chau International Criminal Court

Original: English

Case No:

Date:

Situation in Sajeekistan Pre-Trial Chamber

Judges:

Registrar:

Submission by the Defence on Request for Confirmation of Charges against Jonathan Chau

Prosecutor:

Defence:

The defence will make the following submissions:

Submission 1: Lack of evidence of crimes

The defence submits that there is not 'sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged' as required under Article 61(7) of the Rome Statute.

1. There is no direct evidence that any crimes were committed in and against the state of Sajeekistan on 12 September and at or near the Sajeekistan International Airport on 16 September.
2. The 12 September computer virus damaged Tapor and Sajeekistan infrastructure.
3. The prosecutor cannot establish that the computer virus that caused the damage on 12 September, of both Tapor and Sajeekistan systems, was created in Tapor or somehow emanated from Tapor. Even if it were shown that Tapor government or military had created the V7, the use of the V7 in these circumstances was consistent with the Geneva Conventions and other laws and customs of *International Humanitarian Law*.

4. The prosecutor cannot establish that the defendant, Prime Minister Chau, ordered, knew of or was in any way responsible for the computer virus that infected Tapor and Sajeekistan.
5. The actions of the TSF on 16 September were legally justified under International Law.
6. The TSF acted responsibly and in accord with the Geneva Conventions and the Rome Statute, as well as common law concepts of International Humanitarian Law, when it limited its attack to Sajeek forces at the SIA.
7. The TSF acted responsibly and in accord with the Geneva Conventions, the Rome Statute, as well as common law concepts of International Humanitarian Law, when it limited its military response to specific targets such as Anti-Aircraft (AA) batteries. Any collateral damage occurred due to the Sajeekistan military placing their AA batteries in the middle of the civilian population, specifically surrounding the Temple.
8. The Prosecutor relies on the hearsay evidence given by Benazira Khanish.
9. Although hearsay evidence is admissible under the Rome Statute, such evidence cannot constitute sufficient evidence to establish substantial grounds to believe a person is guilty of a crime.
10. The evidence given by Dr Ranadong does not corroborate the evidence of Benazira Khanish.
11. Dr Ranadong gives no evidence that proves crimes occurred.
12. In particular, Dr Ranadong gives no evidence which shows that the specific crimes alleged by the prosecutor occurred.
13. In addition, Dr Ranadong's evidence is self-serving and is given with the purpose of attacking Dr Ranadong's political competition.

Submission 2: No superior responsibility

Jonathan Chau did not have superior responsibility for the 'Weaponised Virus Unit' which allegedly created the V7 virus and targeted it at Sajeekistan on 12 September. Chau was not in command or control of the Tapor Special Forces (TSF) allegedly responsible for the acts committed at and near the Sajeekistan International Airport on 16 September. Neither the Weaponised Virus Unit which allegedly created the V7 virus and targeted it at Sajeekistan, nor the Tapor Special Forces (TSF) were 'subordinates under his effective authority and control' as required under Article 28(b) of the Rome Statute.

1. As Prime Minister, Head of State and Leader of Parliament, Jonathan Chau was not responsible for crimes/acts allegedly committed on 12 and 16 September against Sajeekistan.
2. Jonathan Chau was not in a position of superiority over the Weaponised Virus Unit and over Tapor Special Forces (TSF).
3. Jonathan Chau did not know about any crimes which may have been allegedly committed against Sajeekistan.

- Jonathan Chau neither knew nor consciously disregarded information about these acts being allegedly committed by the Weaponised Virus Unit and Tapor Special Forces (TSF).

.....

Defence Counsel

Date:

Annex 3

Statement of Dr William Ranadong International Criminal Court

Original: English

Case No:

Statement of Dr William Ranadong, Former Member of Parliament, Tapor 1999–2012

My name is William Ranadong. I am Taporese. I was born and raised in Tapor. I am of the Sordu faith and have always been in the minority population in Tapor.

After years of practising medicine in Tapor, primarily in Sordu communities, I entered politics. I did so because of the continuing deterioration of relations between Tapor and my parent's homeland, Sajeekistan.

When I entered politics I learned a great deal about the prior military incidents involving Tapor and Sajeekistan. Although most were border skirmishes, both militaries were actively involved and many lives were lost, primarily in Sajeekistan.

I was elected to the Tapor parliament in 1999 and joined the committees that dealt with foreign relations and the military. It was during my early years in parliament that I became friendly with Jonathan Chau, current Prime Minister of Tapor. The Prime Minister and I debated the strategy of these skirmishes, debated the need to reconcile with Sajeekistan and debated the need for such an advanced and costly military in Tapor.

My understanding is that the Prime Minister's knowledge of the military stemmed from his early years spent in service of his country as a helicopter pilot. He told me that he was involved in some of the skirmishes that had previously occurred with Sajeekistan.

On one occasion, the Prime Minister related to me that his belief that during armed conflicts, if a legitimate military target was near a civilian population the military was justified in killing as many civilians as necessary to accomplish the military objective.

The Prime Minister's anti-Sajeekistan views became more polarised over the years and he eventually ascended to lead the most virulent anti-Sajeekistan political party, TAPME. In 2005, TAPME controlled a majority of seats in the parliament and Chau became the Prime Minister. In speeches during his last campaign, Prime Minister Chau explicitly and repeatedly stated that Tapor was justified in destroying the atomic/nuclear capabilities of Sajeekistan as it posed an immediate, existential threat to Tapor. It must be said, however, that other politicians were using the same rhetoric and generally Taporian political speeches are discounted by the population as meaningless bluster.

In the next few years, border skirmishes escalated and became more violent. Parliament was briefed some time in 2009 about four significant military border engagements in the prior six

months that involved tanks, artillery and small arms between the Tapor and Sajeek militaries. In January, hundreds of antiquated rockets were fired by unknown belligerents against Tapor civilian areas. Sajeekistani officials issued statements that rogue extremist groups were responsible for the rocket attacks. There was no evidence that Sajeekistan took any actions to identify the persons or parties responsible. Most of the rockets were successfully defended by Tapor's sophisticated missile defence systems. In addition, the Tapor missile defence system would automatically and instantly fire a retaliatory surface-to-surface missile against the calculated Sajeekistan launch location. 172 Sajeeks were killed by these retaliatory rockets, a majority of them thought to be Sajeek militants but there is really no way to confirm such things. As a response to the rocket attacks, approximately a thousand civilians fled the border areas of both countries.

The parliament was advised in closed-door sessions about the Sajeekistan nuclear programme, including fears that their nuclear development could be used militarily. There was no tangible evidence of this and when questioned about this lack of evidence, the Tapor military briefing officers could only respond by saying that scientifically the conversion of fissile materials to 'weapons-grade' was quite straightforward and readily accomplishable by Sajeekistan's scientists. Some members of parliament felt this was insufficient evidence of a tangible threat but many others felt that nuclear weapons posed such a grave threat to Tapor that any nuclear capability was unacceptable. I don't recall Prime Minister Chau speaking at this briefing but he was present.

In 2011 the parliament approved the Weaponised Virus Unit. Of course some members opposed this action.

When the computer virus attack of 12 September happened, it occurred to those of us in the minority in the parliament that it had come from Tapor's WVU. I recall seeing the Prime Minister, Defence Minister Jose Sardus and Colonel Rapot in a lengthy meeting that day. I later had the chance to ask him if he knew anything about this event and he said, 'William, you know I can't comment on active military operations. Parliament will be officially briefed later today or tomorrow.'

I was alarmed to learn that Sajeekistan had responded to the virus attack by seizing one of our aeroplanes. Parliament was briefed by the military that same day and told that no citizens had yet been harmed but the situation was very tense. We were told that some Taporians were being questioned concerning the virus attack of 12 September and the military was concerned they might be harmed.

I would have opposed the armed excursion of the Tapor military on 16 September but parliament was not involved in the decision to send in the Tapor Special Forces as this was done as an executive order of Prime Minister Chau.

Parliament was briefed concerning all the bombings, including the bombing of the Sajeek National Temple of Reconciliation and Peace that caused the death of over 110 civilians. I recall being in the same room with Prime Minister Chau just prior to his appearance on TV. He definitely referred to the civilian casualties in the bombing as 'expected collateral damage'.

/signature/

Dr William Ranadong

Annex 4

Statement of Benazira Khanish International Criminal Court

Original: English transcription from Sajeek

Case No:

Statement of Benazira Khanish

My name is Benazira Khanish. I am 21 years old and have lived in Sajeekistan all my life. I am Sordu. I lost my dear brother and several cousins, who served in the Sajeekistan military. They were killed in battles with the Tapor military, my brother being the hero of our glorious victory over Tapor at the border crossing at the River Khan.

My younger brother is a computer scientist in the Sajeek military and he told me about his work that clearly indicated the V7 was created by the Tapor army. They said that this computer virus was definitely sent by the Taporese because the code included commentaries in the Tapor language and used words and phrases that were the same as what the Tapor military uses.

I work nearby the Sajeekistan International Airport (SIA) and my brothers told me to be careful because Sajeekistan military forces had seized a plane from Tapor that was full of Taporese.

I decided to not go to work that day thinking the situation was dangerous. Instead, I took my mother to our temple, the Sajeek National Temple of Reconciliation, thinking we would be safe as the temple was not close to the airport. We were with a lot of other friends and neighbours who had also gone to the temple. I saw several big guns about 100 metres behind the temple that day.

I recall hearing sirens and loud explosions at the airport. Shortly afterward, the guns behind the temple began shooting into the sky. It was very loud and we could not see what they were shooting at. I never saw a helicopter while I was at the temple.

A short time later, there was a big explosion in and around the temple. My mother had gone to help care for some crying children. There was a large fire. I tried to get to the room to help the children. That's when I learned that my mother had been killed.

Later I observed that the guns had been totally destroyed, the temple was damaged and lots of civilians were killed.

/signature/

Benazira Khanish

3 February 2013

Annex 5

Statement of Jonathan Chau International Criminal Court

Original: English made in Tapor

Case No: ICC/

Statement of Jonathan Chau

My name is Jonathan Chan. I am the Prime Minister of Tapor. I stand before the court an innocent man, accused by political opponents of ‘criminal acts’ under the Rome Statute. Because I respect the Rule of Law, because my country is a signatory of the Rome Statute, because I am innocent, I have voluntarily come to this court.

I intend to establish that the actions taken by my government on 12 and 16 September 2012 were legal and justified. I do not, with this statement, admit to personal responsibility or responsibility as the Head of State, for specific alleged offences. I do, however, intend to present to this court a vigorous factual and legal defence to the crimes allegedly committed in defence of my citizens, my country.

Let me be very clear about this. I am here because I believe that this is a political prosecution. I am not here to assist a politically influenced prosecution of me, as Head of the State of Tapor, a country which has been attacked in so many ways since our birth a few decades ago. Therefore, I make this preliminary statement but will never make myself available to a prosecutor involved in what is nothing more than a witch hunt.

/signature/

Jonathan Chau

18 July 2013

Annex 6

Relevant Extracts from the Rome Statute of the International Criminal Court

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) the crime of genocide;
 - (b) crimes against humanity;
 - (c) war crimes;
 - (d) the crime of aggression.

* * *

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, 'war crimes' means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) wilful killing;
 - (ii) torture or inhuman treatment, including biological experiments;
 - (iii) wilfully causing great suffering, or serious injury to body or health;
 - (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

- (vii) unlawful deportation or transfer or unlawful confinement;
 - (viii) taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned

- nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) declaring that no quarter will be given;
 - (xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) pillaging a town or place, even when taken by assault;
 - (xvii) employing poison or poisoned weapons;
 - (xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123;
 - (xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) taking of hostages;
 - (iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (v) pillaging a town or place, even when taken by assault;
 - (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
 - (vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) killing or wounding treacherously a combatant adversary;
 - (x) declaring that no quarter will be given;
 - (xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

* * *

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for

punishment for a crime within the jurisdiction of the Court if that person:

- (a) commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- (c) for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- (d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) be made in the knowledge of the intention of the group to commit the crime;
- (e) in respect of the crime of genocide, directly and publicly incites others to commit genocide;
- (f) attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

* * *

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (i) that military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (i) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) the crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

* * *

Article 60

Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in Article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.
3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.
5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.
2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
 - (a) waived his or her right to be present; or
 - (b) fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:
 - (a) be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
 - (b) be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
 - (a) object to the charges;
 - (b) challenge the evidence presented by the Prosecutor; and
 - (c) present evidence.
7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
 - (a) confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
 - (b) decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
 - (c) adjourn the hearing and request the Prosecutor to consider:
 - (i) providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.
8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.
9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this Article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.
10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this Article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to Article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

Annex 7

Relevant Extracts from The Rules of Procedure and Evidence of the International Criminal Court

Proceedings with regard to the confirmation of charges under Article 61 Rule 121

Proceedings before the confirmation hearing

- (b) The Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a judge of the Pre-Trial Chamber shall be appointed to organise such status conferences, on his or her own motion, or at the request of the Prosecutor or the person;
 - (c) All evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.
3. The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.
 4. Where the Prosecutor intends to amend the charges pursuant to Article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing.
 5. Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.
 6. If the person intends to present evidence under Article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.
 7. The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.
 8. The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.
 9. The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth

in Article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

10. The Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

Rule 122

Proceedings at the confirmation hearing in the presence of the person charged

1. The presiding judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The presiding judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.
2. If a question or challenge concerning jurisdiction or admissibility arises, rule 58 applies.
3. Before hearing the matter on the merits, the presiding judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.
4. At no subsequent point may the objections and observations made under sub-rule 3 be raised or made again in the confirmation or trial proceedings.
5. If objections or observations referred to in sub-rule 3 are presented, the presiding judge of the Pre-Trial Chamber shall invite those referred to in sub-rule 3 to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.
6. If the objections raised or observations made are those referred to in sub-rule 3, the Pre-Trial Chamber shall decide whether to join the issue raised with the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.
7. During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with Article 61, paragraphs 5 and 6.
8. The Pre-Trial Chamber shall permit the Prosecutor and the person, in that order, to make final observations.
9. Subject to the provisions of Article 61, Article 69 shall apply *mutatis mutandis* at the confirmation hearing.



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The International Criminal Court

A Moot Court Exercise for Students

The Prosecutor v Alphonse Tamar

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Produced by the
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Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC).

In this exercise, you are given documents relating to a case before the ICC involving events which happened during a period of conflict in a fictional country, Westeros. During the conflict, a number of war crimes may have been committed that are so serious that the ICC wants to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes. The fictional man whose trial concerns you in this exercise is called Alphonse Tamar. He was the defendant (person accused of crimes) and he was convicted of four counts of war crimes on a theory that he aided and abetted those crimes. The case is now on appeal before the Appeals Chamber.

The Appeals Chamber is permitting three additional witnesses to give testimony on appeal.

You will be conducting a part of this case. You will need people to act the following roles:

- the Appeal's Chamber judges – five;
- Alphonse Tamar's defence lawyers – at least two but can be a team of up to six;
- the prosecutors— at least two, but can be a team of up to six;
- counsel for the victims—at least two, but can be a team of up to six;
- three witnesses; and
- the registrar (the administrator of the court).

The judges, the defence lawyers, the victims counsel, and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the presiding judge. He or she has control of the court and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the lead prosecutor on the case. The leader of the defence lawyers is lead counsel for the defence. The leader of the victims counsel is lead counsel for the victims. These three leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams each work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking on each argument or when questioning a witness. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant Alphonse Tamar but you should note that he will not be saying anything in court during his case. His lawyers will say anything that needs to be said on his behalf.

Preparation in teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective, and decide who should present each argument and question each witness. There are at least eight different roles which need to be played: questioning witness 1; questioning witness 2; questioning witness 3; presenting argument 1; presenting argument 2; presenting argument 3; presenting argument 4; and presenting argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers and what is likely to influence them in coming to a decision – but they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the person you have chosen to play the defendant to join the team of defence lawyers and the witnesses to join the team that is calling them. The registrar can join the judges.

The court hearing

The judges will sit at the front of your courtroom. The defence lawyers will sit on their right, and the prosecution lawyers on their left. The defendant will sit behind his lawyers.

Although the participants are playing the part of international judges or lawyers, there is no need for them put on voices or accents. Also, the people playing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement or make up information which they have not been given.

The hearing will take place as follows:

The presiding judge will announce that the court will now hear the appeal in the case of Prosecutor v Alphonse Tamar. He or she will ask the prosecutor to introduce the team of prosecution lawyers. The presiding judge will next ask lead counsel for the defence to introduce the team of defence lawyers. The presiding judge will then ask lead counsel for the victims to introduce the team of victims lawyers.

The lawyers in the court will all call the judges ‘Your Honour’ or ‘Your Honours’ at all times. They must remember that all the things they say must be addressed to the judges, and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

REGISTRAR: *I declare this session of the International Criminal Court open. The first case listed today is the Prosecutor against Alphonse Tamar. Judge [...] presiding.*

PRESIDING JUDGE: *This is appeal in the case of Alphonse Tamar. Both parties have prepared written submissions to the court. I call upon the prosecutor to introduce the prosecution team.*

LEAD PROSECUTOR: *Your Honours, I am _____. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...].*

LEAD DEFENCE COUNSEL: *Your Honours, I am _____. I am the lead counsel for the defence. I am assisted by the following lawyers [...].*

LEAD VICTIMS COUNSEL; *Your Honours, I am _____. I am the lead counsel for the victims. I am assisted by the following lawyers [...].*

PRESIDING JUDGE: *Thank you. I understand this is an appeal by both the prosecution and the defence. I also understand that we will have three additional witnesses, two called by the defence and one called by the prosecutor. I invite the prosecutor to call their witness.*

The presiding judge is responsible for maintaining order in the court. He or she should make sure that only one person is speaking at a time and that the person speaking is not interrupted by the other side. The presiding judge should also make sure that the lawyers do not speak for too long or repeat the same arguments, thereby wasting time.

Witness 1

A prosecution lawyer will call the first witness, X. The registrar will bring the witness into the court: The witness will sit opposite the judges. The registrar will ask him to repeat after him:

I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.

A prosecution lawyer will then stand up and ask the witness questions. The lawyer would normally start by asking her to state his name and age, and where he lives. The lawyer may then ask whether and how the witness knows the defendant. Then he or she will ask the witness questions which will allow the witness to tell the court his story. These questions, asked of the party's own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as 'leading'). The witness must give their own evidence in their own words.

When the prosecution lawyer has finished, he or she will say to the presiding judge that there are no further questions. The presiding judge will then ask the defence whether they have any questions. A defence lawyer will stand up and will ask the witness some questions. He or she will be trying to show that the witness cannot be sure of what she has said. He may try to show that the witness is lying, or that she was mistaken, or that she does not know as much as she thinks she knows. These questions, asked of the other party's witness, are called cross-examination. When asking these questions, the lawyer is allowed to suggest answers to the witness. Getting angry or harassing a witness is not allowed and the presiding judge must intervene to stop this happening where necessary.

When the defence lawyer has finished, he or she will say to the presiding judge that there are no more questions. The presiding judge will ask the prosecution if there is anything else they want to ask. The prosecution may have no further questions or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the defence. The prosecution should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the presiding judge may have some questions for the witness. Any of the other judges may also ask a question if the presiding judge allows them to do so. The judges do not have to ask any questions but they may wish to clear up any points they think the defence and prosecution have left out.

The presiding judge should remember throughout this procedure that he or she is in charge. If the presiding judge thinks that the lawyers are taking too long or repeating themselves he or she can tell them to hurry up. If the presiding judge thinks they are bullying the witness he or she can tell them to stop.

After the witness has finished being questioned, the presiding judge will thank her for coming and tell her she may now leave the court.

Witnesses 2 and 3

The same procedure is then followed with the second and third witnesses, but they will be called by the defence. The defence will conduct the examination in chief and the prosecution will conduct the cross-examination.

Legal argument

The presiding judge will ask the defence to present their argument on the first of the three issues that they have raised on appeal. The argument is outlined in the document that is the Directions from the Appeals Chamber.

When the defence lawyer has finished presenting their argument, the prosecution lawyer will present the prosecution response/argument on the same issue. It may be useful to decide in advance that each side has a certain amount of time – for example, ten minutes – to present their argument. If either side continues for too long the presiding judge may ask them to hurry up.

After, or during, these presentations the presiding judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the presiding judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

Second through to fifth arguments

The presiding judge will then ask the defence to present their second argument. The prosecution will then respond. The same process will occur for the third argument of the defence.

The prosecution will then present their two arguments, with defence response after each one.

After the arguments have been heard, the presiding judge will tell the court that the session is closed and the judges will now retire to consider their judgment.

The judges' decision

The judges will then discuss among themselves what decision they will reach on the five grounds raised on appeal. They must decide with regard to each argument whether they think that the defence should win or not. They will decide whether to reverse or affirm each ground individually. The Appeals Chamber should decide each ground raised.

If the judges cannot agree they should take a vote. The decision of the majority should prevail.

The judges will then return to court and read out their judgment. If any judge disagrees with the judgment of the majority, he or she may briefly tell the court why.

The presiding judge then closes the session.

The competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges.

The assessors will be looking for:

- good structure to questions and submissions;
- clarity in argument:
 - quick thinking in response to arguments from the opposition;
 - clear understanding of the issues when answering questions from judges;
- good use of language;
 - clear and confident speech.

Remember, a team may lose the judges' decision on the facts and law but win the competition.

At the end of the Moot Court the assessors will summarise what they liked and did not like about each team's performance. They will then announce the winner.

Do

JUDGES

- Do keep order in the courtroom;
- listen carefully to what the witnesses are saying; and
- ask questions of the witnesses only once the prosecution and defence have finished their questions.

PROSECUTORS

- Do speak slowly and clearly;
- give your questions or speech a structure which can be followed by you; and
- write down your questions for witnesses.

DEFENCE COUNSEL

- Do speak slowly and clearly;
- concentrate on your best point; and
- remember that time will probably go more quickly than you plan for.

WITNESSES

- Do learn what the statement says, so you don't have to keep checking it before answering each question;
- stick to what is said in the statements; and
- speak slowly; remember people may be writing down what you say.

Don't

JUDGES

- Don't let the lawyers harass the witnesses;
- let the lawyers run over the time allowed; or
- interrupt the lawyers too often.

PROSECUTORS

- Don't use emotional language; stick to the facts and the law;
- ask the witnesses for opinions; just ask about the facts; or
- try to make the witness look stupid or small.

DEFENCE

- Don't use personal insults about the prosecution case; stick to the facts and the law;
- repeat points made by other members of your team; or
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear).

WITNESSES

- Don't make jokes or try to be smart;
- refer to things you've heard from other people; or
- make arguments about the law; that is for the lawyers.

The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing serious international crimes.

When was an international criminal court first suggested?

An international criminal court was first suggested at the end of the 19th century but it was not possible for the countries of the world to reach agreement about what the court's powers should have been. During the last decade of the 20th century pressure for such a court grew. The emerging consensus led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that took some time since different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined and the Rome Statute came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY, or the ICTR in Tanzania?

The ICC differs from the International Court of Justice (ICJ) since it tries people, not states. Unlike the ad hoc international criminal courts, it's a permanent venue for prosecution of serious international crimes. In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia Herzegovina, Croatia, Macedonia, Serbia. The International Criminal Tribunal for Rwanda (ICTR) only deals with crimes committed in Rwanda during the genocide of 1994.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape and deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have signed and ratified the Rome Statute or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council. If the UN Security Council decides that there is a threat to international peace and security, it can refer a situation to the International Criminal Court.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. Additionally, under the principle of complementarity, people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why isn't Radovan Karadžić being tried by the ICC?

Karadžić is not being tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein and, in addition, Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

Fatou Bensouda is the chief prosecutor at the ICC. She was elected by the representatives of the countries which have joined the Rome Statute system. She is the Head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What are the options available to the court after the judges review all the evidence?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens after the Trial Chamber makes its decision?

If a defendant is acquitted of all charges he will be free to go and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment or, in particularly serious cases, to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence but he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example, if new witnesses have come forward.

Where does the defendant serve his prison sentence?

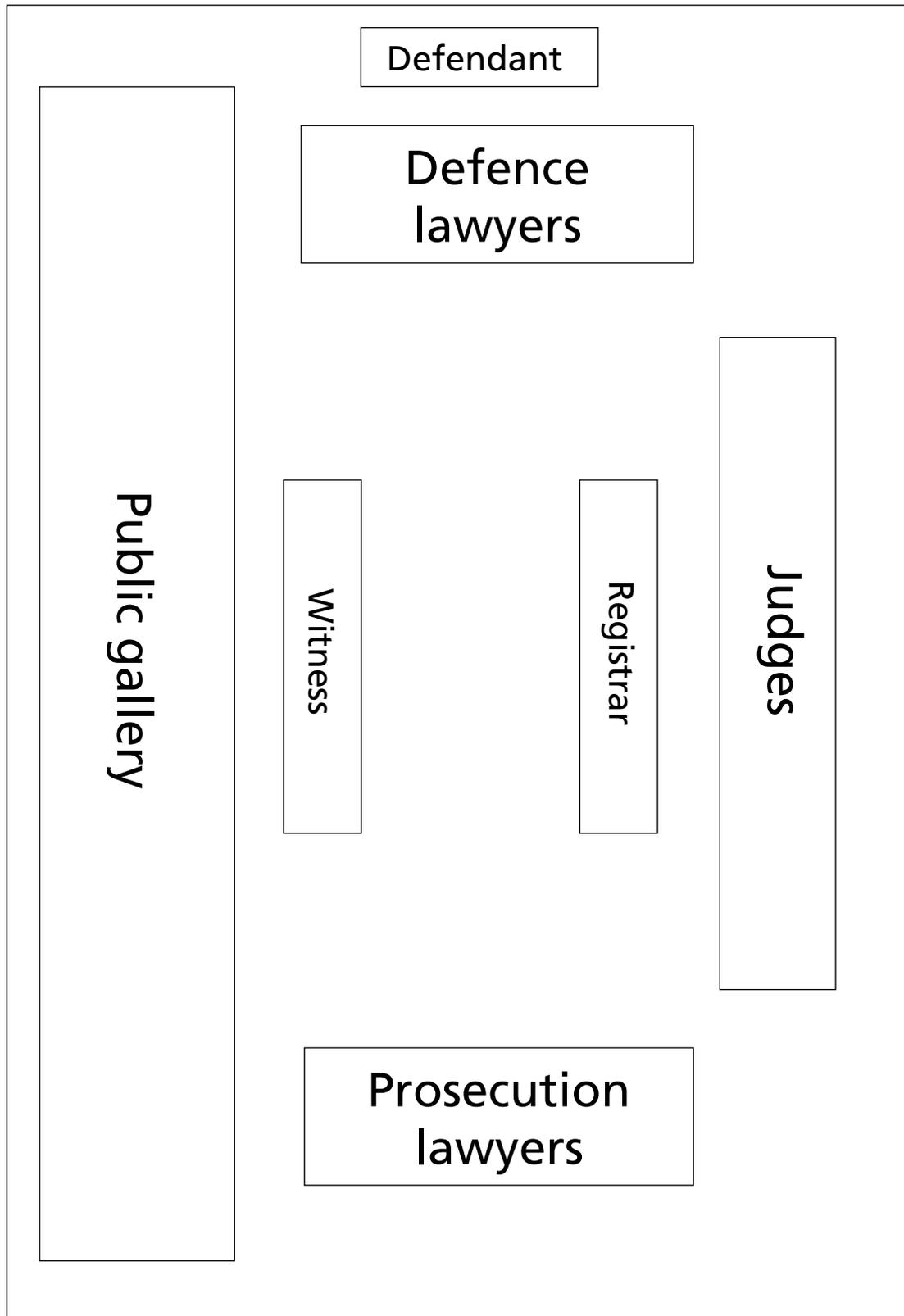
Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

Where can I find out more about the work of the International Criminal Court?

The ICC has an excellent website. There you will find lots of information about how the court operates and news about what is happening in the current cases.

The website address is: www.icc-cpi.int.

Courtroom Layout



People and Places

Westeros	A country in which the fighting during a civil war occurred.
Essos	A country bordering Westeros in which the Accused, Alphonse Tamar, was located.
Ghiscar	A country that borders both Westeros and Essos from which Tamar was transferred to the ICC.
Sothoryos	A country that borders both Westeros and Essos in which Tamar formed his rebel group, the PFE.
Alphonse Tamar	The Accused, former President of Essos.
Caleb Saffro	Leader of the FFW, now deceased.
PFE	Patriotic Front of Essos, the rebel group of Tamar.
FFW	Freedom Fighters of Westeros, the rebel group in Westeros.

Timeline

Year	Date	Event
1978		Tamar born in Essos.
Late 1990s		Tamar forms the PFE.
Late 1990s		The FFW is formed.
2000		Tamar's PFE invades Essos and the first civil war begins in Essos.
2003		Tamar's PFE overthrows the government in Essos.
2004		The first civil war in Essos ends.
2004		Tamar elected as President of Essos.
2005	December	The FFW launch an invasion into Westeros and the civil war begins.
2006		Elections take place in Westeros (the FFW fail to win).
2007		Peace negotiations in Westeros fail.
2007		The second civil war in Essos begins.
2008		Tamar re-elected as President of Essos.
2008		The FFW take control of the major diamond mining areas of Westeros.
2008	December	The FFW launch a multifaceted offensive on the capital of Westeros.
2010		The second civil war in Essos ends.
2010		Tamar flees Essos.
2010		ICC Pre-Trial Chamber I unseals an arrest warrant for Tamar.
2010		A new President is appointed in Essos.
2010		Successful multi-party elections are held in Westeros.
2011		Tamar is arrested in Ghiscar and transferred to the ICC in The Hague.
2012		Charges are confirmed against Tamar in Pre-Trial Chamber I.
2012		Trial commences in against Tamar in Trial Chamber I and concludes on 20 December 2012.
2013	1 March	Trial Chamber I's Judgment pursuant to Article 74 of the Statute – Tamar is convicted of all charges.
2013		Tamar lodges an appeal against his conviction.

Annex 1

Excerpt from Judgment of Trial Chamber I in the Case of the Prosecutor v Alphonse Tamar International Criminal Court

Original: English

Case No: ICC-06/07-08/09

Date:

1 March 2013

Trial Chamber I

Before: Judge Kathryn Harlan, Presiding Judge

Judge Elizabetta Rodriguez

Judge Michelle Flaubert

Situation in the Democratic Republic of Westeros in the Case of The Prosecutor v Alphonse Tamar Judgment Pursuant To Article 74 of The Statute

Trial Chamber I of the International Criminal Court, in the case of The Prosecutor v. Alphonse Tamar, issues the following judgment pursuant to Article 74 of the Statute:

I. The Accused

1. The Accused, Alphonse Tamar was born on 1 January 1978 in Silverhill, the capital city of the Republic of Essos. Tamar was the second eldest of nine children and, by his own testimony, was from a 'humble' background.
2. After completing his high school studies Tamar began studying for a degree in accountancy and business at Silverhill University in 1996. After graduating with honours, Tamar was offered a post in the Ministry of Commerce. In 1998 Tamar was appointed Director General of General Service and Administration under the Minister of Commerce. He was dismissed from this post a year later, following allegations of embezzlement. In the wake of these allegations, Tamar fled to the neighbouring country of Sothoryos.
3. Whilst in Sothoryos, Tamar formed a rebel group which he called the Patriotic Front of Essos (PFE). The stated aim of the PFE was to overthrow the existing government of Essos.

During the late 1990s Tamar's PFE received military training in a secret camp in the north of Sothoryos. On 25 December 2000 the PFE, led by Tamar, invaded Essos. Civil war ensued between the PFE and the state army of Essos, as well as other rebel groups. In 2003 Tamar's PFE staged a successful coup d'état and overthrew the government of Essos. In 2004 elections were held and Tamar was elected as President of Essos.

4. Between 2004 and 2007, peace ensued in Essos and Tamar proved to be a popular President both amongst the people of Essos and on the international stage. However, in 2007 civil war again erupted in Essos when a rebel group headed by Prince Jonas launched a sudden offensive on Tamar's Presidential residence in Silverhill and the central government offices. Elections were again held in Essos in 2008. Tamar was re-elected, having secured a landslide victory with 75 per cent of the vote. The conflict in Essos nevertheless continued until October 2010.
5. In October 2010, following a sustained attack on Silverhill, Tamar again fled to neighbouring Sothoryos. On 1 December 2010, Pre-Trial Chamber I of the ICC unsealed an arrest warrant against Tamar. However, Sothoryos, which is not a state party to the ICC, refused to surrender Tamar to the Court. In August 2011 Tamar unexpectedly left Sothoryos and travelled to another neighbouring country, Ghiscar. Ghiscar, which is a state party to the ICC, arrested Tamar and arranged for his surrender to this court. In September 2011 Tamar was transferred to the ICC detention centre in The Hague, where he is currently held. A confirmation of charges hearing was held before Pre-Trial Chamber I, which confirmed the charges against Tamar on 15 April 2012. The charges comprise four counts:

COUNT 1: Crimes against humanity of murder;

COUNT 2: Crimes against humanity of rape and sexual slavery;

COUNT 3: War crimes of rape and sexual slavery; and

COUNT 4: War crime conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities at the Ferrero mine.

These crimes collectively will be referred to as 'Charged Crimes'. Trial commenced on 10 September 2012 and concluded on 20 December 2012. Tamar was convicted on all counts under a theory of responsibility of aiding and abetting.

II. Context

6. Westeros is a country which neighbours Essos, Sothoryos and the Harlaw Ocean. Westeros has six million inhabitants and has some 15 different ethnic groups. The majority of the population are Muslim, with a significant Christian minority. In 2010 Essos was ranked as the world's second poorest country, according to its gross domestic product (GDP). Westeros suffers from low employment rates, low literacy rates and poor healthcare. However, Westeros is a country which is rich in mineral resources. In particular, Westeros is one of the largest producers of diamonds in the world. Westeros's diamond wealth has done very little to benefit the inhabitants of this country. Westeros gained independence from its colonial ruler

in the 1960s and thereafter operated as a parliamentary democracy. The political situation in Westeros declined during the late 1970s through to the 1990s and in 1998 Westeros became a one-party state. The ruling party came under criticism from both its own discontent population and the outside world because of its corrupt and oppressive regime.

7. Essos neighbours Westeros. Unlike Westeros, Essos is a landlocked country. It shares its border with Westeros, Sothoryos and Ghiscar. It has a population of approximately four million people, who comprise some 15 different ethnic groups. Christianity is the major religious denomination in Essos. Like Westeros, Essos is ranked amongst the poorest countries in the world. Although it exports its natural resources such as rubber, iron ore and timber, Essos has relied heavily upon foreign aid and investment for many years. Like Westeros, Essos has a fractured political history. Over the last 50 years, it was ruled by a succession of dictators who had little tolerance for those who did not agree with their regimes. In response to a succession of corrupt regimes and rulers, a number of rebel groups formed in the late 1990s. One of these rebel groups was the PFE led by Tamar.
8. In the late 1990s, a group named the Freedom Fighters of Westeros (FFW) formed in opposition to the ruling party in Westeros. This group initially comprised students; however, it later became an armed rebel group. In the late 1990s members of the FFW received military and guerilla training alongside the PFE in the neighbouring country of Sothoryos. Caleb Saffro emerged as the leader of the FFW. In December 2005 the FFW launched an attack on Westeros from a remote, mountainous area of Essos. Following the December 2005 invasion, the FFW quickly became notorious for the widespread crimes it committed against the civilian population of Westeros. In particular, in the run-up to elections in Westeros in 2006, the FFW amputated the hands and fingers of many civilians to prevent civilians from taking part in elections and in demonstrations against the decision to hold elections. Amidst peace negotiations in 2007 (which ultimately failed), the FFW made a public apology for the heinous crimes that it had committed against the people of Westeros. This was widely reported in the international press. In December 2008, the FFW launched a massive, multifaceted offensive. The offensive initially targeted the biggest diamond mining area of Westeros and eventually the offensive continued into the capital of Westeros, resulting in the most notorious episode of crimes against civilians in the conflict. The FFW were forced from the capital by pro-government forces and a regional peacekeeping force in January 2009. However, the FFW maintained control over much of the country, including the diamond mining areas in the south of Westeros. The conflict ensued until August 2010 when the FFW, depleted of funds and resources and lacking their leader, Saffro, who had died of ill health in February 2010, agreed to lay down their arms. In September 2010 multi-party elections were held in Westeros and Aminata Kapila was elected as President.
9. In October 2010, President Kapila requested that the ICC investigate war crimes and crimes against humanity allegedly committed during the civil war in Westeros. Westeros is a state party to the ICC.

III. Jurisdiction and admissibility of the case

10. Neither party contests the jurisdiction and admissibility of this case before the court. The case was referred by Westeros, a state party. The court has jurisdiction over the subject matter and the accused. The temporal jurisdiction of the court over crimes committed after 1 July 1 2002 is also met. Although Essos is not a state party and Tamar is not a national of a state party, the alleged crimes occurred on the territory of state party, Westeros. This satisfies the precondition to jurisdiction. Admissibility is satisfied because Westeros's self-referral is equivalent to a determination of unwillingness and or inability.

IV. The prosecution case

11. The prosecution has charged the accused, Tamar, with:

COUNT 1: Crimes against humanity of murder;

COUNT 2: Crimes against humanity of rape and sexual slavery;

COUNT 3: War crimes of rape and sexual slavery; and

COUNT 4: War crime conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities at the Ferrero mine.

These Charged Crimes allegedly occurred during a multifaceted offensive in late 2008, which culminated in an attack on the capital city of Westeros and in the Ferrero region of Westeros at the Ferrero diamond mine, between 2008–2009. The prosecution argues that the accused is guilty of these crimes as a co-perpetrator and on the basis of aiding and abetting. The Trial Chamber will first address whether each of the Charged Crimes has been committed, then it will address whether the accused is guilty of these crimes under the two theories of liability advanced by the prosecution.

* * *

VII. Child soldiers

Applicable Law

5. Article 8(2)(e)(vii) of the Rome Statute proscribes as a war crime, '[c]onscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities'. The corresponding elements for this crime are as follows:
 - (i) the perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities;
 - (ii) such person or persons were under the age of 15 years;
 - (iii) the perpetrator knew or should have known that such person or persons were under the age of 15 years;

- (iv) the conduct took place in the context of and was associated with an armed conflict not of an international character;
 - (v) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.
16. In interpreting these elements, we adhere to this Chamber's previous findings regarding these elements from the *Lubanga* case. 'Conscription' and 'enlistment' are both forms of recruitment, in that they refer to the incorporation of a boy or a girl under the age of 15 into an armed group, whether coercively (conscription) or voluntarily (enlistment). The status of a child under 15 who has been enlisted or conscripted is independent of any later period when he or she may have been 'used' to participate actively in hostilities, particularly given the variety of tasks that he or she may subsequently be required to undertake. Although it may often be the case that the purpose behind conscription and enlistment is to use children in hostilities, this is not a requirement of the Rome Statute. The offences of conscripting and enlisting are committed at the moment a child under the age of 15 is enrolled into or joins an armed force or group, with or without compulsion.
17. Those who participate actively in hostilities include a wide range of individuals, from those on the front line (who participate directly) through to the boys or girls who are involved in a myriad of roles that support the combatants. All of these activities, which cover either direct or indirect participation, have an underlying common feature: the child concerned is, at the very least, a potential target. The decisive factor, therefore, in deciding if an 'indirect' role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target.

* * *

The Trial Chamber's factual conclusions regarding child soldiers

19. The Trial Chamber has heard the testimony of witnesses X and Y, two of the individuals from the Ferrero diamond mine operated by the FFW from December 2008 until the end of the conflict. The Trial Chamber finds the testimony of these two witnesses to be credible and accepts that witness X was 14 when he was used as a guard at the mine and that witness Y was 11 when she was part of the FFW force at the mine.
20. The Trial Chamber heard the testimony of witness Z. The Trial Chamber finds that witness Z was a credible witness. Witness Z also testified that she was used as a guard at the mine. However, witness Z was unable to give clear evidence about her age. The Trial Chamber finds that the prosecution has failed to prove beyond reasonable doubt that witness Z was under 15. The Trial Chamber accepts Z's evidence that there were children as young as 10 or 11 at the mine.
21. The Trial Chamber also heard evidence from witness TF1-001. It is to be recalled that the Trial Chamber found TF1-001 to be a generally credible witness. Witness TF1-001 was an FFW camp commander in the Ferrero region. TF1-001 gave evidence that fighting occurred sporadically in the area of the Ferrero diamond mine throughout the period from 2005–

2010. He visited the Ferrero diamond mine on two occasions in 2009 and testified that he observed children as young as about 11 or 12 guarding the mines for the FFW. The Trial Chamber accepts TF1-001's evidence.

22. The Trial Chamber heard expert evidence about the FFW's practice of using child soldiers throughout the conflict. The Trial Chamber accepts that Elizabeth Duggart has expertise on this issue and the conflict in Westeros. Indeed, the status of Elizabeth Duggart as an expert and her evidence was not challenged by the defence. The Trial Chamber has also placed reliance upon the reports of various non-governmental organisations, such as the Save the Child Soldiers organisation.
23. Thus evidence was presented during the trial that established that it was the general practice of the FFW to use children aged 11–14 years to guard civilians who were forced to mine for diamonds by the FFW and to have the children carry weapons to ensure that these civilians did not escape. If civilians refused to work or tried to take diamonds from the mining area, the mine's guards, including those who were children, were ordered to beat or kill them.
24. The specific charge against the accused concerns the Ferrero diamond mine. From the evidence of the general practice, and the testimony of X, Y and TF1-001 related specifically to the Ferrero mine, the court finds that children were used as guards at the mine and as assistants to the FFW.

Legal conclusions regarding child soldiers

25. The Trial Chamber concludes that, in general, children under the age of 15 were conscripted and enlisted into the FFW's armed forces, and were used in hostilities. The guarding of military objectives amounts to active participation in hostilities. In a conflict such as the one at issue, where diamonds were mined and sold to raise revenue to finance war efforts, the use of a child to guard a diamond mine put the child at sufficient risk to constitute illegal use of the child pursuant to Article 8(2)(e)(vii) of the Rome Statute. Control over the diamond mines in Westeros was crucial for the war effort of the FFW. As the diamond mines were in highly contested and strategic locations, the Trial Chamber finds that they were potential military targets. The Trial Chamber finds that due to the high risk of enemy attacks, those children who were used to guard the mines were in direct danger of being caught in hostilities. The Trial Chamber therefore finds that those children who were used to guard the mines were being used to participate actively in hostilities. Accordingly, the prosecution has proven beyond a reasonable doubt that at least two child soldiers under the age of 15 were enlisted and used by the FFW forces in violation of Article 8(2)(e)(vii).
26. Although the general practice alone would be insufficient to support the charge against the accused, the general practice in combination with the testimony of X about his role at the Ferrero diamond mine, coupled with the testimony of TF1-001, establishes beyond a reasonable doubt that children under the age of 15 were conscripted or enlisted to guard the Ferrero diamond mine and that this also constituted use of the children in active participation in hostilities.
27. The Trial Chamber further concludes that, in general, children under the age of 15 were

conscripted or enlisted into the FFW armed group to assist the FFW in its military efforts.

28. Although the general practice alone would be insufficient to support the charge against the accused, the general practice in combination with the testimony of Y about her role in cooking and cleaning for the FFW at the Ferrero diamond mine establishes beyond a reasonable doubt that children under the age of 15 were conscripted or enlisted into the FFW in the sense that they were enrolled into or joined the armed group.

* * *

Conclusions regarding the charged crimes

30. The Trial Chamber finds that all of the Charged Crimes were perpetrated by the FFW forces within Westeros during the conflict that lasted from December 2005 to the end of 2009. Accordingly, the next issue the Trial Chamber must address is whether the accused is liable for the perpetration of these crimes. The prosecution has advanced two theories of liability, arguing that the accused is guilty of the Charged Crimes as both a co-perpetrator and as an aider and abettor in their commission by the FFW forces. The Trial Chamber addresses each of these theories in turn.

VIII. Theories of Liability

A. Co-Perpetration

APPLICABLE LAW

31. Articles 25(3) (a) to (d) establish the modes of individual criminal responsibility under the Statute, other than the '[r]esponsibility of commanders and other superiors'. Under Article 25(3) (a), an individual can be convicted of committing a crime:

- (i) individually;
- (ii) jointly with another; or
- (iii) through another person.

Under Articles 25(3) (b) to (d), an individual can be convicted of:

- (i) ordering, soliciting or inducing a crime;
- (ii) acting as an accessory to a crime; or
- (iii) contributing to a crime committed by a group acting with a common purpose.

32. The prosecution has charged the accused as a co-perpetrator under Article 25(3) (a) of the Statute for the Charged Crimes. The prosecution alleges that the accused was a co-perpetrator in a common plan to conscript or enlist children into an armed force or to use them in hostilities, or to engage in rape and sexual slavery, or to kill civilians. In determining the elements required for a conviction under this theory of liability, we turn to this Chamber's prior findings from the *Lubanga* case. In *Lubanga*, this Chamber found that

to hold an accused liable under the theory of co-perpetration set out in Article 25(3) (a), the prosecution must prove beyond a reasonable doubt in relation to each charge that:

- (i) there was an agreement or common plan between the accused and at least one other co-perpetrator that, once implemented, will result in the commission of the relevant crime in the ordinary course of events;
- (ii) the accused provided an essential contribution to the common plan that resulted in the commission of the relevant crime;
- (iii) the accused meant to commit the Charged Crimes or he was aware that by implementing the common plan these consequences of the Charged Crimes ‘will occur in the ordinary course of events’;
- (iv) the accused was aware that he provided an essential contribution to the implementation of the common plan; and
- (v) the accused was aware of the factual circumstances that established the existence of an armed conflict and the link between these circumstances and his conduct.

The Trial Chamber accepts these determinations as to the requirements for co-perpetration under Article 25(3) (a), as well as the *Lubanga* court’s reasoning in making these determinations, in full.

* * *

B. Aiding and Abetting

APPLICABLE LAW

35. Article 25(3) (c) provides:

Under Article 25(3) (c) of the Rome Statute, ‘a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person... [f]or the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.’

36. The interpretation of what Article 25(3) (c) requires the prosecution to prove beyond a reasonable doubt to find a person liable under this ‘aiding and abetting’ is an issue of first impression for this court. Accordingly, we look to how the other International Tribunals have interpreted the ‘aiding and abetting’ standard under their own statutes. The jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) have been considered by the Trial Chamber.

37. After considering the case law from the ICTY and the SCSL, the Trial Chamber adopts the following interpretation of aiding and abetting:

- (i) the Accused provided practical assistance, encouragement, or moral support to the perpetration of a crime or underlying offence;
- (ii) [...]
- (iii) such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence;
- (iv) the Accused performed an act with the knowledge that such act would assist the commission or furtherance of a crime or underlying offence, or that he was aware of the substantial likelihood that his acts would assist the commission of underlying offence.

38. The Trial Chamber concludes that the above factual findings prove beyond a reasonable doubt that the accused aided and abetted the commission of the Charged Crimes committed by the FFW forces. The accused's action in purchasing the FFW's diamonds both with money and arms shipments provided the FFW the means that the group used to commit the Charged Crimes, which had a substantial effect on the commission of the crimes. Moreover, the accused's statements to Saffro in 2007 evidence beyond a reasonable doubt that the accused provided this support with the knowledge that his assistance was helping the FFW carry out the Charged Crimes.

* * *

IX. The Trial Chamber's factual conclusions regarding liability

- 40. Based on its consideration of the evidence presented, the Trial Chamber finds the following facts to be true with respect to the issues of whether the Accused is liable for the Charged Crimes as a co-perpetrator or as an aider and abettor.
- 41. The Trial Chamber finds that in 2006, Saffro, the leader of the FFW, contacted the Minister of Defence of Essos to ask for support and supplies. The Essos Minister stated that they could not engage in support of a rebel group in another sovereign state. However, the Minister indicated that Tamar and the Essos government would be willing to buy diamonds from the FFW and that however the FFW chose to use that money was their business. Further, from 2007–2009, Tamar's government bought shipments of diamonds from the FFW.
- 42. On one occasion Tamar, through his subordinates, brokered a major shipment of arms and ammunition to the FFW in exchange for diamonds. It is uncontested that some of these arms and ammunition were used by the FFW during the late 2008 multifaceted offensive. It is also uncontested that the FFW also obtained large quantities of arms by confiscating the weapons of the government troops in the course of the conflict.

On another occasion in 2007, Saffro met personally with Tamar in Essos. According to Emanuel Cinta, a credible witness who attended the meeting, Tamar asked for increased diamond shipments. Saffro said he did not have the manpower to mine more diamonds than he was already doing. Tamar replied that the FFW needed to control and use the population better in the diamond mining efforts. Tamar commended Saffro on the use of the 'younger generation' and encouraged more efforts along those lines.

Further, in mid-2008, Saffro met Tamar on a second occasion in Essos. General Gabriel Jalloh, whom the Trial Chamber found to be a credible witness, testified about this meeting, at which he was present. Saffro explained to Tamar his plan to carry out a multifaceted offensive in Westeros, culminating in an attack on the capital. Tamar said that it was a good plan and that Saffro should use all means necessary to achieve their objective.

The Trial Chamber also finds that during 2008 and continuing into 2009, Tamar provided medical assistance to wounded FFW fighters in Essos. In particular, the Trial Chamber relies on the evidence of TF1-099 that several FFW fighters received treatment in Silverhill military hospital after the late 1998 military offensive.

Finally, the Trial Chamber also recalls that Tamar in his testimony stated that ‘everyone in the world was aware of the crimes committed by the FFW’. Tamar also explained that he followed the international media on a daily basis and was aware of the public apology made by the leadership of the FFW for the crimes committed against the civilians of Westeros during the peace negotiations in 2007.

X. Legal conclusions regarding responsibility

A. Co-Perpetration

47. The Trial Chamber concludes that, based on the above factual findings, the prosecution has failed to prove that the accused was a co-perpetrator to the Charged Crimes. The Trial Chamber finds that the prosecution has failed to prove beyond a reasonable doubt that there was an agreement or common plan between the accused and Saffro or other members of the FFW that would result in the commission of the Charged Crimes in the ordinary course of events. While the facts establish that the accused had traded money and arms with the FFW in exchange for diamonds, they fail to establish beyond a reasonable doubt that these transactions amount to a common plan or agreement between the accused and the FFW that would likely lead to the commission of the Charged Crimes under ordinarily foreseeable future events or that the accused’s actions were an essential contribution to a common plan of the FFW. Accordingly, the Accused is not guilty as a co-perpetrator of the Charged Crimes.

B. Aiding and Abetting

48. The Trial Chamber concludes that the above factual findings prove beyond a reasonable doubt that the Accused aided and abetted the commission of the Charged Crimes committed by the FFW forces. The Accused’s action in purchasing the FFW’s diamonds, both with money and arms shipments, provided practical assistance to the FFW’s forces in carrying out the Charged Crimes. Additionally, the Accused’s statements to Saffro in 2007 and 2008 provided the FFW with encouragement and moral support to carry out the Indictment Crimes. Moreover, these instances of support had a substantial effect on the commission of these crimes because they provided the FFW forces with the necessary resources and incentive to continue with their perpetration of the Charged Crimes. Additionally, based on the Accused’s knowledge of the FFW’s earlier criminal actions in Westeros, the Trial Chamber finds beyond a reasonable doubt that the accused knew or was aware that there was a substantial likelihood

that the crimes would be committed. Accordingly, the accused is guilty of the Charged Crimes on the basis of aiding and abetting in the FFW's commission of them.

Annex 2

Excerpt from Directions of Appeal Chamber for Oral Argument and the Admission of Fresh Evidence International Criminal Court

Original: English

Case No: ICC-06/07-08/09

Date:

10 March 2013

Appeals Chamber

Situation in the Democratic Republic of Westeros in the Case of The Prosecutor v Alphonse Tamar

Decision concerning oral argument on appeal from conviction pursuant to Article 81 and directions for the admission of fresh evidence on appeal

The prosecution appeal

In summary, Ground 1 of the Prosecution appeal alleges that the Trial Chamber erred in law in its consideration of co-perpetration under Article 25(3)(a) of the Rome Statute. The prosecution alleges that the approach adopted by the Trial Chamber, who followed the majority approach of Trial Chamber I in *Lubanga*, is wrong in law.

The prosecution further alleges that the Trial Chamber erred in its application of the law, even under the standard adopted by the Chamber. The prosecution submits that Tamar was a co-perpetrator in a common plan to conscript or enlist children into an armed force or to use them in hostilities, or to engage in rape and sexual slavery, or to kill civilians. The prosecution further asserts that Tamar's actions constituted an essential contribution to that common plan and that all other elements of co-perpetration were satisfied.

The defence appeal

In summary, Ground 1 of the Defence appeal alleges that the Trial Chamber erred in law and application of aiding and abetting under Article 25(3)(c) of the Rome Statute. The defence alleges that the Trial Chamber erred in failing to include 'specific direction of the assistance towards the alleged crime' as a necessary element of aiding and abetting liability. The defence further alleges that, if the proper legal standard had been applied, no reasonable trier of fact could have found that Tamar's actions were specifically directed towards the crimes.

The defence alleges a second legal error in requiring only knowledge and not intent as the *mens rea* for the crime. Here, too, the defence alleges that, if the proper legal standard were used, no reasonable trier of fact could have found that Tamar had intent to commit the crimes.

Moreover, even under the legal standard used by the Trial Chamber, the defence alleges that the court erred in finding sufficient evidence that Tamar had knowledge of the Charged Crimes or that his actions had a substantial effect on the commission of those crimes.

In summary, Ground 2 alleges that, in light of fresh evidence obtained after the close of the trial proceedings, namely the statement from Mr Ammah, the Trial Chamber erred in finding that Tamar had conscripted or enlisted persons under the age of 15 into the FFW armed group or used them to participate actively in hostilities in violation of Article 8(e) (vii) of the Statute.

In summary, Ground 3 alleges that, as a matter of law, allowing orphans to remain within the FFW camp does not constitute conscripting or enlisting persons under the age of 15 into an armed group and therefore is not a war crime under Article 8(e) (vii) of the Statute. The defence further submits that, in light of fresh evidence obtained after the close of the trial proceedings, namely the statement from Mr Bocha, the Trial Chamber erred in finding that Tamar had conscripted or enlisted persons under the age of 15 into an armed group.

Directions

Having considered at length the written pleadings filed by all parties to the case and for the reasons set out in full in this Decision, the Appeals Chamber directs as follows:

1. oral argument on the appeal grounds of the Prosecution and Defence will be scheduled immediately;
2. victims are hereby granted the right to participate in the argument of this appeal;
3. having considered the pleadings submitted by the defence and prosecution regarding the introduction of fresh evidence at the appeal stage, pursuant to Article 83(2) the Appeals Chamber grants the defence permission to call the following witnesses on the basis that their evidence may assist the Appeals Chamber in its determination of Defence Grounds 2 and 3 and having found that this evidence could not reasonably have been obtained prior to the close of the trial proceedings:
 - Mr Ammah;
 - Mr Bocha.
4. The Appeals Chamber also grants the Prosecution permission to recall witness X.

Annex 3

Statement of Mr Ammah International Criminal Court

Statement of Mr Ammah

I, Mr Ammah, declare:

1. I am X's biological father. My entire family and I, including X, have spent our entire lives in the country of Westeros. Our family currently lives in a small village near a large diamond mine controlled by the FFW.
2. I have raised X for most of his life and although our family never received a birth certificate for him I know that he was at least 16 years of age when he was with the FFW. X looks a bit young for his age – I would say a couple of years younger than he actually is when compared with others in our country who are his age. This is because he is a bit shorter and more underdeveloped than other persons his age, likely due to the fact that he grew up especially malnourished. My family is poor and, when he was growing up, I was unable to provide X with much food or a proper level of nutrition.
3. I was not present during X's birth. I had left our village in search of work roughly seven or eight months before X was born. I did not return to the village until another eight months after X's birth.
4. Our family is still very poor. X is my oldest child and there are five other children in our family. X has always been concerned about the wellbeing of his younger siblings and has always done what he can to help provide for them.
5. The FFW have been recruiting those within the local villages to work in and around its diamond mine. However, if a person refused to sign up when approached by FFW soldiers, they forced the person to work in the mines with threats of physical violence. X voluntarily signed up with the FFW right around the time of his 16th birthday. The rebel group put him to work guarding the local mine and began providing him with small amounts of rations and other supplies. X signed up in order to provide for our family and, in particular, his siblings. I know this because I had seen X giving some of the rations he had received as a guard to his siblings.
6. I had some contact with the FFW prior to the time X began working for the group at the local mine. Around 2006, I briefly joined the group and took part in its efforts to protest the national elections as an enforcer in my village. As a local enforcer, I would attempt to prevent the people in my village from voting in the election; the FFW leadership required us enforcers to use any means necessary to prevent citizens from voting, even if it meant that we had to use violent force to stop them from doing so. In return for my service, I received food

and other necessities. Although I am no longer actively working for the FFW, I am grateful for the supplies they gave my family during the war.

7. X had expressed disapproval of my work as an enforcer at the time I was in that position. This is why I was a bit surprised when I found out that he had signed up as a guard at the mine. However, as I stated above, the provisions I had been able to obtain for our family at the time had been far from adequate to live off. Until X started working at the mine, it was rare that my children would be able to have regular meals. This is how I know that X's primary motivation for signing on with the FFW was to provide a better life for his siblings.
8. I know that there was a foreign aid organisation that set up 'demobilisation posts' around Westeros in order to persuade those who had taken up arms for the FFW to lay down their arms and denounce their support for the group. I know this because the organisation had set up such a post in my village.
9. The local demobilisation post gave supplies, protection and other benefits to those affiliated with the FFW's military and security forces supplies in return for an agreement to lay down arms and denounce any affiliation with the FFW. I saw several persons within our village do this, including X.
10. I have seen signs posted by the aid organisation posted around our village stating that it will give benefits greater than those normally rewarded to any FFW soldiers or guards who were 15 years of age or younger and who agreed to demobilise.
11. I have seen the normal benefits packages being distributed to other adults within my village who agreed to demobilise. These aid packages were much larger than any provisions given to any of the locals who have been working at the mine. The package X received for his agreement to quit his position as a guard was much larger than those of anyone else I had seen. This has led me to believe that X must have lied to the aid organisation about being under 15 years of age in order to receive the greater benefits. After he received this package, X shared the provisions within with his siblings.

Statement of Mr Bocha

International Criminal Court

Declaration of Mr Bocha

I, Mr Bocha, declare:

1. I was a member of the FFW and worked for the group as a guard of the Ferrero diamond mine in Westeros.
2. I know Y, although I have never personally talked to or interacted with her. She lived in the FFW encampment at the mine since at least mid-2008. I was on guard duty at the north entrance to the mine the day a patrol group brought her into the camp along with a larger group of local orphaned children that had been living nearby.
3. It was common for the FFW members stationed at the mine to take in local children who had been orphaned as a result of the conflict. Y was one of those orphans. The purpose for taking in local orphans was to provide them with housing, food and protection from the conflict.
4. The civil war in Westeros displaced a significant part of the civilian population. As a consequence, civilians were present within the mining area but were unconnected to the FFW armed force. The civilians sought protection with the FFW and we provided as much protection as we could to the civilians. Although we would have preferred to place orphans, such as Y, within a civilian village, that was not always possible because of the displacement and constant fighting.
5. Those in charge of the mine would sometimes use some of the orphans to help out around the mine; some of the older orphans were tasked with guarding the mine from intruders. However, only those children who we knew were 16 or 17 were allowed to act as guards. It was my understanding that it was the policy of those in charge of the mine, and of the leadership of the larger FFW forces, that anyone who was younger than 16, or even thought to possibly be under the age of 16, was not to be used as a guard and was not allowed to use or have weaponry of any kind. I, along with a large number of the other FFW members at the mine, was instructed of this policy by the FFW leadership.
6. We were instructed by the FFW leadership to look for certain defining characteristics to determine whether a potential guard was 16 years or older. These included physiological characteristics such as whether young men's voices had broken, height or, in the case of young women, their physical development. We were also told to assess mental characteristics in the sense of the maturity of the individual.

7. Those under 15 were allowed to remain in the camp for their own protection only. They were not part of the FFW armed force, did not wear uniforms, were not armed and did not assist the FFW's fighting efforts.
8. I am unsure of Y's exact age, but she looked like she was 12 or 13 years old at the time she was living at the mine. I never had any personal interaction with her but I saw her around the mine numerous times while I was on and off duty.
9. Each time that I saw Y, she was either playing with other young children or doing some of the cooking and cleaning. I never once saw her being used to guard the mine.
10. There were three entrances to the mine: one on the northern side; another on the southern side; and a third one on the western side. In a typical week, I was posted to guard the north entrance to the mine for the first three days, the south entrance for the next three days and got one day of rest at the end of the week. I was never posted as a guard at the west entrance. I would only see Y when I would guard the north entrance. I presume that the FFW leadership at the mine had Y stay primarily around that particular entrance as it was common practice to keep the young orphans near the north entrance because it was the most heavily guarded.
11. I remember seeing Y on several occasions spending time around some of the older orphans while those orphans were on duty guarding the mine. I remember that the orphan guards with whom she talked on these occasions did carry weapons. I was unsure what she was doing there but I did not see her carrying a weapon, which all guards do when on duty. In fact, I never saw Y even touch a weapon at any time during the time she was residing at the mine. I further never saw Y in a uniform or engaging in any of the military drills.

Annex 4

Declaration of Witness X International Criminal Court

Declaration of Witness X

I, Witness X, declare:

1. It is true that Mr Ammah is my father.
2. It is also true that our family lives in a small village near the large diamond mine that was controlled by the FFW and that our family were and remain very poor.
3. When the war broke out in Westeros in 2005, I was only 11 years old and had just started the local secondary school.
4. When the FFW came to our village in 2006, my father, who was poor, immediately decided to join them.
5. My father may have been a 'local enforcer' in 2006 but I am not sure of his exact role as I was only young at this time. However, I know that my father was a member of the FFW. I understand that my father committed many crimes against people from our village. One example is that I learnt that he amputated the hand of my school teacher, who died as a result of this injury.
6. My father left our village with the FFW soon after the elections. I did not see him again until after the end of the conflict. I was happy about that because I felt a great sense of shame that my father had committed crimes against the people of my village, including my school teacher.
7. In my father's absence I was the man of the family and I sought to take care of my mother and siblings the best I could.
8. When in 2008 the FFW asked me to join them and assist with guarding the mines, I decided to do so because they said that if I did my mother and younger siblings would receive food. I also thought that if I refused to join them, they would just force me to do so. They did not ask how old I was when they asked me to join them but I was only fourteen at this time. I would still have had more years of school to go but for the war.
9. My father is wrong when he says that I was around sixteen when I joined the FFW.
10. My father was not in our village at the time I signed up to the FFW.
11. Moreover, I do not believe that my father is telling the truth. I believe that he is still loyal to the FFW because he was a member of the FFW for many years. Perhaps my father does not want to acknowledge that the FFW committed crimes against children.

12. It is true that FFW soldiers or guards who were 15 years or under and agreed to demobilise received larger benefits packages than the adults. However, I did not lie about my age to receive a larger package. This is what I was entitled to according to the demobilisation package.
13. I have not had a good relationship with my father since he has returned to our village. We do not speak. I think he resents the fact that the family had to rely on me during those years that he was away fighting with the FFW.

Annex 5

Save the Child Soldiers news article

(For the purposes of the moot, Save the Child Soldiers is a well-known and respected international NGO.)

Save the Child Soldiers

www.savethechildsoldiers.org

FFW Targets Children for Fighting, Forced Labour and Sexual Exploitation

1 FEB 2009

(Westeros) – The rebel Freedom Fighters of Westeros (FFW) is forcing children to join its ranks and engage in combat, Save the Child Soldiers said today. The rights group has documented abductions of children as recently as January.

‘The FFW has forced many children to join its ranks in recent weeks, placing them on the front lines of combat,’ said the Executive Director of Save the Child Soldiers. ‘For child soldiers, the crisis in Westeros is far from over.’ He called on all parties to the conflict in Westeros to immediately stop the use of child soldiers and to release all abducted children and people under the age of 18.

Since mid-2008, the FFW has forced many children to join its ranks. Over recent months, Save the Child Soldiers has observed and documented the practice of the FFW of targeting orphanages and abducting orphans. Many children have been abducted by the FFW in the recent weeks to carry military equipment and looted goods. In the south of Westeros the FFW use children as young as eight and nine to patrol diamond mines under their control. The FFW has a long history of using child soldiers.

Seventeen-year-old ‘Abubakar’ (not his real name) told Save the Child Soldiers that he had gone to an orphanage in May 2007. He described how the FFW regularly came to the orphanage to pressure children to join or return to the FFW, telling the children that they would be sold when they left the orphanage, or stating that the FFW had located their families and would help them reunite. On at least one occasion, FFW fighters came to the orphanage and told the children that the FFW would kill everyone in the orphanage if they did not rejoin the rebel army. Abubakar estimated that the FFW took at least 50 children out of the orphanage through the use of threats, false promises and false rumours.

When fighting broke out again in early May, Abubakar was forced to join the FFW when he was abducted while walking near the orphanage. ‘It was not my wish to go fight, it was because they captured me and forced me,’ he told Save the Child Soldiers. ‘There was no use in arguing with them because in the FFW if you argue with any commander they will kill you.’ Abubakar took

part in recent and notorious offensives on the capitol of Westeros. He and others were often forced to commit abuses. In the Barrowlands Junction area of the city, their commander ordered them to burn down the entire area after a counter-attack on the FFW by government helicopters. Abubakar finally managed to sneak away from the FFW and return to the orphanage.

Fifteen-year-old 'Foday' (not his real name) was abducted by the FFW when he was eight years old and had gone to the Vale of Arryn orphanage during peace negotiations in 2007. He described to Save the Child Soldiers the details of the evacuation of the Vale of Arryn orphanage on 23 May 2008. He said that FFW commanders regularly came to the orphanage to threaten and scare former child combatants into rejoining the FFW and explained that the orphanage was evacuated early in the morning of 23 May because of fear that the FFW would attempt a mass abduction. On their way to Dorne, a town in the south of Westeros, the 86 orphans (many of whom were former child soldiers) who left the orphanage were stopped by FFW and stripped of their possessions: Foday lost a new watch, his clothes, a radio and some money. The FFW then forced Foday to join them to carry looted goods back to an FFW camp located 27 miles away.

Foday was later required to act as a guard for the FFW at a large diamond mine in the south of Westeros. He explained that he was given a gun and was told to guard the south entrance to the mine alongside other children and commanders. He was instructed to shoot at any civilian miners who were slow or who refused to hand over or stole diamonds. He did this every day for some until two weeks ago when he managed to escape from the FFW in the night. Foday said that other children as young as him and also a few years older were also forced by the FFW to guard the entrances to the mine.

FFW forces have also abducted children to carry loads of looted goods and military equipment for them and have abducted girls for the purpose of rape. Fifteen-year-old 'Musa' (not his real name) was abducted from the capital during the FFW's retreat in January and forced to carry a heavy bag of salt for four days. He told Save the Child Soldiers that the rebels shot and killed his brother, 20-year-old Lamina K, after Lamina complained that his load was too heavy. Musa showed Save the Child Soldiers a large bump on his head which he had sustained when he was beaten by the FFW with rifle butts.

Rape of captured women and girls is routine. Twenty-year-old 'Aminata' (not her real name), still nursing her five-month-old baby, was raped in front of her husband almost as soon as they were captured near Salt pans in December. She told Save the Child Soldiers that she was raped almost continuously by seven FFW fighters, including some as young as fourteen, over the next three days. Some of the girls raped after capture are very young. 'Amy', who told Save the Child Soldiers that she was ten but looked much younger, told Save the Child Soldiers that she was raped by an FFW rebel after being captured and watched her 21-year-old sister die at the hands of FFW.

'Children face some of the gravest abuses in this war at the hands of the FFW,' said Save the Child Soldiers Executive Director. 'The FFW specifically targets children including vulnerable orphans for recruitment as child soldiers, forced labour and sexual exploitation.'

Annex 6

Relevant Extracts from the Rome Statute Rome Statute of the International Criminal Court

Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time;

Mindful that, during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity;

Recognising that such grave crimes threaten the peace, security and well-being of the world;

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation;

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes;

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

Reaffirming the Purposes and Principles of the Charter of the United Nations and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations;

Emphasising in this connection that nothing in this Statute shall be taken as authorising any State Party to intervene in an armed conflict or in the internal affairs of any State;

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole;

Emphasising that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions;

Resolved to guarantee lasting respect for and the enforcement of international justice;

Have agreed as follows:

Part I Establishment of the Court

Article 1

THE COURT

An International Criminal Court (the ‘Court’) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

* * *

Article 7

CRIMES AGAINST HUMANITY

1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) murder;

* * *

(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

Article 8

WAR CRIMES

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, ‘war crimes’ means:

* * *

(e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

* * *

- (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
- (vii) conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

* * *

Article 9

ELEMENTS OF CRIMES

1. Elements of Crimes shall assist the Court in the interpretation and application of Articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) any State Party;
 - (b) the judges acting by an absolute majority;
 - (c) the Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

JURISDICTION RATIONE TEMPORIS

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under Article 12, paragraph 3.

* * *

Article 21

APPLICABLE LAW

1. The Court shall apply:
 - (a) in the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - (b) in the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - (c) failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognised norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognised human rights, and be without any adverse distinction founded on grounds such as gender as defined in Article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

* * *

Part III General Principles of Criminal Law

Article 25

INDIVIDUAL CRIMINAL RESPONSIBILITY

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - a) commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - c) for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

- (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - be made in the knowledge of the intention of the group to commit the crime;
 - (e) in respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

* * *

Article 27

IRRELEVANCE OF OFFICIAL CAPACITY

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the court from exercising its jurisdiction over such a person.

* * *

Article 68

PROTECTION OF THE VICTIMS AND WITNESSES AND THEIR PARTICIPATION IN THE PROCEEDINGS

1. The court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard to all relevant factors, including age, gender as defined in Article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime

involves sexual or gender violence or violence against children. The prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in Article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the prosecutor and the court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A state may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Part VIII Appeal and Revision

Article 81

APPEAL AGAINST DECISION OF ACQUITTAL OR CONVICTION OR AGAINST SENTENCE

1. A decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
 - (a) The Prosecutor may make an appeal on any of the following grounds:
 - procedural error;
 - error of fact; or
 - error of law.

- (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
 - procedural error;
 - error of fact;
 - error of law; or
 - any other ground that affects the fairness or reliability of the proceedings or decision.
2.
 - (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
 - (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under Article 81, paragraph 1(a) or (b), and may render a decision on conviction in accordance with Article 83;
 - (c) The same procedure applies when the court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2(a).
3.
 - (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;
 - (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the prosecutor is also appealing, the release may be subject to the conditions under sub-paragraph (c) below;
 - (c) In case of an acquittal, the accused shall be released immediately, subject to the following:
 - under exceptional circumstances, and having regard, inter alia, to
 - the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
 - a decision by the Trial Chamber under sub-paragraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.
4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 83

PROCEEDINGS ON APPEAL

1. For the purposes of proceedings under Article 81 and this Article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
 - (a) reverse or amend the decision or sentence; or
 - (b) order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgment of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgment shall state the reasons on which it is based. When there is no unanimity, the judgment of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.
5. The Appeals Chamber may deliver its judgment in the absence of the person acquitted or convicted.



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The International Criminal Court

A Moot Court Exercise for Students

The Prosecutor v Kevin Ochoa

Drafted by Cynthia Cline and Tom Moran
Edited by Professor Göran Sluiter

Produced by the
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Introduction

This exercise is intended to introduce you to the work of the International Criminal Court (ICC). In this exercise, you are given documents relating to a case before the ICC involving events which happened during a period of conflict on a fictional island, Oceania. During the conflict, a large number of crimes against humanity were committed which were so serious that the ICC wants to put people on trial for them. The ICC has responsibility for dealing with the very serious crimes of genocide, crimes against humanity and war crimes; you can find descriptions of these crimes below (Extracts from the Rome Statute, Articles 5 and 8).

The fictional man whose trial concerns you in this exercise is Kevin Ochoa. He was the defendant (person accused of crimes) arrested by the ICC in July 2011, pursuant to an arrest warrant issued by the ICC's Pre-Trial Chamber. The accusations against him are made by the prosecutor and his team of lawyers. The prosecutor wants Kevin Ochoa to be tried on three counts of crimes against humanity. The prosecutor has made an application to the Pre-Trial Chamber to confirm three charges against Kevin Ochoa. This is a process by which the Pre-Trial Chamber decides whether there is sufficient evidence on which the accused can be sent for full trial by a Trial Chamber. Under the Rome Statute the Pre-Trial Chamber has to 'determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged'. In order to do this the prosecutor can call evidence and present an outline of his case. Kevin Ochoa is asking the Pre-Trial Chamber to refuse the confirmation of charges. The prosecutor has decided to call two witnesses to the court to give evidence to support the charges.

You will be conducting a part of this case. You will need people to act the following roles:

- the Pre-Trial Chamber judges – three;
- Kevin Ochoa's defence lawyers – at least two but can be a team of up to six;
- the prosecutor and his lawyers – at least two but can be a team of up to six; and
- two witnesses.

Although the ICC has the possibility of victims' participation, in this case no victims applied to participate in the trial.

The judges, the defence lawyers and the prosecution lawyers will each need to choose one of themselves as their leader.

The leader of the judges is the presiding judge. He has control of the court and takes the main speaking role for the judges.

The leader of the prosecution lawyers is the prosecutor. The leader of the defence lawyers is lead counsel for the defence. These two leaders must be in charge of their teams, must answer questions from the judges when they are asked and must decide which lawyers on their teams will present each argument or question each witness.

The prosecution and defence teams all work together to prepare the arguments for the hearing. It is best to have only one member of each team speaking at each stage, whether it is questioning of the witness or presenting an argument. The other members of the team help prepare the arguments before the hearing, as well as following the argument and making suggestions to answer questions in the hearing.

You can also choose someone to act as the defendant Kevin Ochoa but you should note that he will not be saying anything in court during his case. His lawyers will say anything that needs to be said on his behalf.

Preparation in teams

When all the roles have been decided, the teams of lawyers for the defence and prosecution will each need to decide their tactics. They should discuss what they are trying to achieve, what arguments will be the most effective and decide who should present each argument and question each witness. There are at least four different roles which need to be played: questioning witness 1; questioning witness 2; presenting argument 1; and presenting argument 2.

The judges can also discuss among themselves what the likely arguments for both sides will be, what questions they may have for the lawyers and what is likely to influence them in coming to a decision but they should be careful not to come to any decisions at this stage before they have heard the arguments and the evidence.

For the purposes of these discussions, you may want the person you have chosen to play the defendant to join the team of defence lawyers and the two witnesses to join the team of prosecution lawyers.

The court hearing

The judges will sit at the front of your courtroom. The defence lawyers will sit on their right and the prosecution lawyers on their left. The defendant will sit behind his lawyers. Although the participants are playing the part of international judges or lawyers, there is no need for them put on voices or accents. Also the people playing the part of witnesses should keep to the information provided in the statement of those witnesses; they should not start telling a story different from the one in the statement or make up information which they have not been given.

The hearing will take place as follows:

The presiding judge will declare the proceedings open in the prosecution application to confirm the charges against Kevin Ochoa. He will ask the prosecutor to introduce his team of lawyers. The prosecutor will name himself and the lawyers on his team. The presiding judge will then ask lead counsel for the defence to introduce his team of lawyers.

The lawyers in the court will all call the judges ‘Your Honour’ or ‘Your Honours’ at all times. They must remember that all the things they say must be addressed to the judges and not to each other or to the lawyers on the other side.

The opening stage may sound like this:

PRESIDING JUDGE: *This is pre-trial hearing in the case of Kevin Ochoa. Both parties have prepared written submissions to the court. I call upon the Prosecutor to introduce his team.*

LEAD PROSECUTOR: *Your Honours, I am Victor Black. I am the lead counsel for the prosecution. I am assisted by the following lawyers [...].*

LEAD DEFENCE COUNSEL: *Your Honours, I am Maria White. I am the lead counsel for the defence. I am assisted by the following lawyers [...].*

PRESIDING JUDGE: *Thank you. I understand this is an application by the prosecutor asking the court to confirm the charges in this case. I therefore invite the prosecutor to begin and to present the charges.*

The presiding judge is responsible for maintaining order in the court. He should make sure that only one person is speaking at a time and that the person speaking is not interrupted by the other side. He should also make sure that the lawyers do not speak for too long or repeat the same arguments, thereby wasting time.

Presenting the charges

The presiding judge will then ask the prosecutor to present the charges. A prosecutor will read the charges to the court and will briefly outline the case against the defendant. He will tell the court that he intends to call two witnesses in support of the charges. The presiding judge will then give the prosecution permission to call the witnesses.

Witness 1

A prosecution lawyer will call the first witness, Walter Boyd. The presiding judge will ask him to repeat after him:

I solemnly declare that I will speak the truth, the whole truth, and nothing but the truth.

A prosecution lawyer will then stand up and ask the witness questions. He would normally start by asking him to state his name and age and where he lives. He may then ask whether and how the witness knows the defendant. Then he will ask the witness questions which will allow the witness to tell the court his story. These questions, asked of the party's own witness, are called examination-in-chief. When asking these questions, the lawyer is not allowed to suggest answers to the witness (known as 'leading'). The witness must give their own evidence in their own words.

When the prosecution lawyer has finished, he will say to the presiding judge that he has no further questions. The presiding judge will then ask the defence whether they have any questions. A defence lawyer will stand up and will ask the witness some questions. He will be trying to show that the witness cannot be sure of what he has said. He may try to show that the witness is lying, or that he was mistaken or that he does not know as much as he thinks he knows. These questions, asked of the other party's witness, are called cross-examination. When asking these questions, the lawyer is allowed to suggest answers to the witness. Getting angry or harassing a witness is not allowed and the presiding judge must intervene to stop this happening where necessary.

When the defence lawyer has finished, he will say to the presiding judge that he has no more questions. The presiding judge will ask the prosecution if there is anything else they want to ask. The prosecution may have no further questions or they may wish to ask another question or two to clear up any uncertainties in the answers the witness gave to the defence. The prosecution should not start a new line of questioning or repeat questions they have already asked.

If the defence has no more questions, the presiding judge may have some questions for the witness. Any of the other judges may also ask a question if the presiding judge allows them to. The judges do not have to ask any questions but they may wish to clear up any points they think the defence and prosecution have left out.

The presiding judge should remember throughout this procedure that he is in charge. If he thinks that the lawyers are taking too long or repeating themselves he can tell them to hurry up. If he thinks they are bullying the witness he can tell them to stop. After the witness has finished being questioned, the presiding judge will thank him for coming and tell him he may now leave the court.

Witness 2

The same procedure is then followed with the second witness.

Prosecution conclusion

The prosecution will then ask the judges to confirm the charges based on the evidence they have heard. The presiding judge will thank him and ask the defence if they have any objection to the confirmation of the charges. A defence lawyer will say that the defence has two arguments.

Legal argument

The presiding judge will ask the defence to present their argument. This is the argument that there is not sufficient evidence that the crimes occurred. It is outlined in the defence documents.

When the defence lawyer has finished presenting the argument, a prosecution lawyer will present the prosecution arguments on the same issue. It may be useful to decide in advance that each side has a certain amount of time – for example, ten minutes – to present their argument. If either side continues for too long the presiding judge may ask them to hurry up.

After these presentations the presiding judge may have some questions for the lawyers about their arguments. Any of the other judges may also ask a question if the presiding judge allows them to.

No decision is made by the judges at this stage – they will make all their decisions at the end of the hearing.

The second argument

The presiding judge will then ask the defence to present their second argument. This is the argument that Kevin Ochoa was not responsible as a superior.

Argument 2 is only relevant if argument 1 has failed; if Argument 1 is won by the defence, there would be no need to consider the second argument. However, the judges will not consider their judgment until after both arguments have been heard so it is necessary for the lawyers to present both arguments in full.

After the arguments have been heard, the presiding judge will tell the court that the session is closed and the judges will now retire to consider their judgment.

The judges' decision

The judges will then discuss among themselves what decision they will reach on Arguments 1 and 2. They must decide with regard to each argument whether they think that the defence should win or not. They can decide to confirm only some of the charges or only some parts of them.

ARGUMENT 1

If they decide the defence should win, they will find that there is not sufficient evidence to establish substantial grounds to believe that the court has jurisdiction over Ochoa. They should therefore refuse to confirm the charges against the defendant.

If they decide that the defendant should not win Argument 1, they should go on to consider Argument 2. If they decide the defence should win Argument 2, they should declare that there is not sufficient evidence to establish that Kevin Ochoa was responsible as a superior for the crimes charged.

If they decide the defence should not win Argument 2, the Pre-Trial Chamber should confirm the charges and send Kevin Ochoa for trial. For the purposes of the exercise it would be helpful if the judges gave an opinion on Argument 2, whatever their decision on Argument 1.

If the judges cannot agree they should take a vote. The decision of the majority should prevail. The judges will then return to court and read out their judgement. If any judge disagrees with the judgement of the majority, he may briefly tell the court why. The presiding judge then closes the session.

The competition

The Moot Court is a competition. The assessors of the competition will have to decide which team wins. This is not based upon who wins the argument with the judges. The assessors will be looking for:

- good structure to questions and submissions
- clarity in argument:

- quick thinking in response to arguments from the opposition; and
- clear understanding of the issues when answering questions from judges.
- good use of language:
 - clear and confident speech.

Remember, a team may lose the judges' decision on the facts and law but win the competition. At the end of the Moot Court the assessors will summarise what they liked and didn't like about each team's performance. They will then announce the winner.

Do

JUDGES

- Do keep order in the courtroom;
- listen carefully to what the witnesses are saying; and
- ask questions of the witnesses in principle only once the prosecution and defence have finished their questions.

PROSECUTORS

- Do speak slowly and clearly;
- give your questions or speech a structure which can be followed by you, and
- write down your questions for witnesses.

DEFENCE COUNSEL

- Do speak slowly and clearly;
- concentrate on your best points; and
- remember that time will probably go more quickly than you plan for.

WITNESSES

- Do learn what the statement says, so you don't have to keep checking it before answering each question;
- stick to what is said in the statements; and
- speak slowly; remember people may be writing down what you say.

Don't

JUDGES

- Don't let the lawyers harass the witnesses;
- let the lawyers run over the time allowed; or
- interrupt the lawyers too often.

PROSECUTORS

- Don't use emotional language; stick to the facts and the law;
- ask the witnesses for opinions; just ask about the facts;
- try to make the witness look stupid or small; or
- interrupt or argue with the judges.

DEFENCE

- Don't use personal insults about the prosecution case; stick to the facts and the law;
- repeat points made by other members of your team;
- ask leading questions of your witnesses (ones that suggest to the witness the answer you want to hear); or
- interrupt or argue with the judges.

WITNESSES

- Don't make jokes or try to be smart;
- refer to things you've heard from other people: or
- make arguments about the law; that is for the lawyers.

The International Criminal Court – Qs and As

What is the International Criminal Court?

The ICC is a criminal court which tries people from countries all over the world who are accused of committing serious international crimes.

When was an international criminal court first suggested?

An international criminal court was first suggested at the end of the 19th century but it was not possible for the countries of the world to reach agreement about what the court's powers should have been. During the last decade of the 20th century pressure for such a court grew. The emerging consensus led to a conference in Rome in July 1998, at which all the countries of the world were represented.

How was the ICC established?

The International Criminal Court (ICC) was established by a treaty called the Rome Statute. This was signed by 120 countries in July 1998.

When did the ICC start to operate?

Under the provisions of the Rome Statute, in order for it to come into force, at least 60 countries had to ratify (confirm their signatures) to join the treaty. This is a process that took some time since different countries have different rules as to what is required for a new treaty to be ratified. By early 2002 the necessary 60 countries had joined and the Rome Statute came into force on 1 July 2002.

Where is the ICC based?

It was agreed in the Rome Statute that the ICC would be based in The Hague, where many other international courts are based.

How does the ICC differ from other international courts in The Hague, like the ICJ and ICTY, or the ICTR in Tanzania?

The ICC differs from the International Court of Justice (ICJ) since it tries people, not states. Unlike the ad hoc international criminal courts, it's a permanent venue for prosecution of serious international crimes. In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY) only deals with crimes committed in the countries which used to make up Yugoslavia; Bosnia Herzegovina, Croatia, Macedonia, Serbia. The International Criminal Tribunal for Rwanda (ICTR) only deals with crimes committed in Rwanda during the genocide of 1994.

What crimes are tried by the ICC?

The ICC tries people accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. Crimes against humanity and war crimes include a large number of different crimes such as extermination, murder, rape and deportation.

Can anyone in the world be tried by the ICC?

Usually, no. The ICC can usually only try people who are nationals of states which have signed and ratified the Rome Statute or who have committed crimes on the territory of states which have joined. The only other situation when people can be tried by the ICC is following the intervention of the United Nations Security Council. If the UN Security Council decides that there is a threat to international peace and security, it can refer a situation to the International Criminal Court.

Are there any other limits to who can be tried?

Yes. Only people who are charged with committing crimes after 1 July 2002 when the Statute came into force (or later, if a country joined later) can be tried by the ICC. Additionally, under the principle of complementarity, people can only be tried by the ICC if for some reason it is not possible for them to be tried in their home courts or the courts of the country where the crime was committed. This might be because the country in question did not have the resources to have a big trial of this kind or it might be because their home country refuses to try them because it is trying to shield them from prosecution for their crimes.

Can children be tried for crimes by the ICC?

No. The ICC can only try people over the age of 18.

Why isn't Radovan Karadžić being tried by the ICC?

Karadžić is not being tried by the ICC as his alleged crimes were committed before 1 July 2002, when the ICC Statute came into force. The same applied to Saddam Hussein and, in addition, Iraq has not joined the ICC.

Who are the judges of the ICC?

There are currently 18 judges from different countries. These judges are elected by the representatives of the countries which have joined. They will decide whether a person being tried before the court is guilty or not guilty of the crimes with which they are charged. Unlike in many countries, juries are not used to make this decision.

How many judges are there in a trial?

The judges are divided into Trial Chambers. Each Trial Chamber has three judges. These three judges decide whether a person is guilty or innocent.

What if the judges can't agree?

If the judges can't agree, the decision of the majority prevails.

Who prosecutes cases at the ICC?

Fatou Bensouda is the chief prosecutor at the ICC. She was elected by the representatives of the countries which have joined the Rome Statute system. She is the Head of the Office of the Prosecutor, which decides who will be charged with crimes under the Rome Statute.

Do the people accused of crimes have lawyers?

People who are charged with crimes (defendants) have lawyers to help them and to defend them in their trials. They are able to choose these lawyers from a list of lawyers from all over the world who have experience in defending serious criminal cases.

How do the judges decide whether someone is guilty or not guilty of a crime?

The judges listen to the evidence. The evidence is presented by the prosecution. They bring witnesses to the court to tell the judges what happened. These witnesses are often the victims of crimes. They also show the court any documents or other evidence which they think will help the court to decide whether the defendant has committed a crime.

Can the defendant bring his own witnesses and evidence to court?

Yes. After the prosecution has presented all its evidence (which can take many months in serious cases) the defence gets a chance to bring its own witnesses to give evidence.

What are the options available to the court after the judges review all the evidence?

If the Trial Chamber finds the defendant is proved to be guilty it will convict him (declare him to be guilty). If not, it will acquit him (declare him to be innocent). A defendant is often charged with a number of crimes and the Trial Chamber can convict him of some crimes and acquit him of others.

What happens after the Trial Chamber makes its decision?

If a defendant is acquitted of all charges he will be free to go and may be entitled to compensation if he has served time in prison waiting for his trial. If a defendant is convicted of any charges he will be sentenced by the Trial Chamber.

What sentences can the Trial Chamber give to defendants?

The Trial Chamber has the power to sentence defendants to up to 30 years imprisonment or, in particularly serious cases, to life imprisonment. It can also fine defendants or require them to pay compensation to their victims.

Can defendants be sentenced to death?

No. There is no death penalty at the ICC.

What if the defendant doesn't agree with the Trial Chamber's decision?

The defendant or the prosecutor has a chance to appeal to the Appeals Chamber if they think that the Trial Chamber was wrong in its decision.

What is the Appeals Chamber?

The Appeals Chamber is a court of five judges which has the power to decide whether a Trial Chamber came to the correct decision. It has the power to change any decision made by a Trial Chamber. Like the Trial Chamber, if the Appeals Chamber can't agree, the majority prevails.

If the defendant loses his appeal, what then?

There is no higher court than the Appeals Chamber. If the defendant loses his appeal, he must serve his sentence but he can come back to the Appeals Chamber at any time if he has new evidence which he could not reasonably have brought to the court before – for example, if new witnesses have come forward.

Where does the defendant serve his prison sentence?

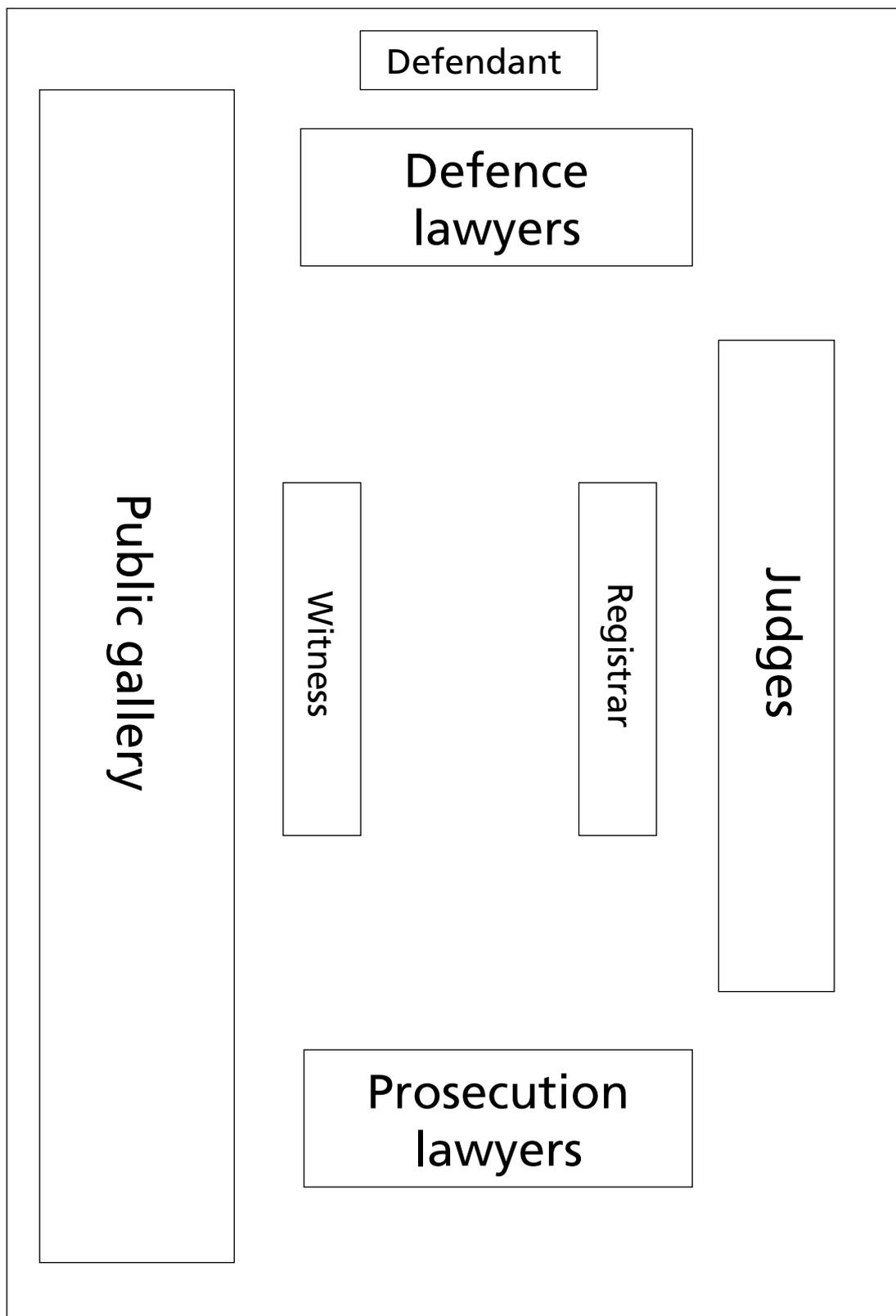
Several of the countries which have joined the ICC have agreed to allow their prisons to be used for prisoners who have been convicted by the court.

Where can I find out more about the work of the International Criminal Court?

The ICC has an excellent website. There you will find lots of information about how the court operates and news about what is happening in the current cases.

The website address is: www.icc-cpi.int.

Courtroom Layout



Historical Background

Mexia and Refugio are two countries in central and west Oceania which share a long common border. Both were ruled for about 100 years by the same colonial power and both received their independence in the early 1960s. Mexia is a state party to the ICC, Refugio is not.

Mexia is a geographically large country with numerous tribes. Most of the population has a greater allegiance to their tribe than the country. Mexia is rich in natural resources including precious metals, copper, diamonds and other important and valuable minerals. It has not been able to develop its mineral riches for many reasons, including chronic instability and its weak central government. The country has been plagued by revolts, especially in its mineral-rich eastern provinces, almost since the country became independent.

Mexia's army is large but poorly trained, equipped and led. Transportation in the country is limited to waterborne traffic along its major river systems. The road system in most of the country is either poor or non-existent.

Refugio, on the other hand, is a relatively small country with only two major ethnic groups with the majority, the Lykins, being about 85 per cent of the population, and the minority Crackens about 15 per cent. Both speak the same language. Refugio is a poor country but it has been relatively well governed since independence in the sense that the government is relatively free of corruption and, within limits of available funds, does a good job of providing necessary services to its citizens.

For more than 40 years, it had been ruled by a Lykin military dictator. He overthrew the first elected president in a coup d'état. Lykins controlled the government and the military but Crackens were allowed to own and run businesses. Many Crackens prospered.

Shortly after independence many Lykins attacked Crackens, killing many; some Crackens fled the country to escape the ethnic violence. The majority of Crackens remained in Refugio. Many Crackens emigrated to Europe but large numbers also ended up residing in refugee camps in neighbouring countries including Mexia.

From the early 1980s through the early 2000s, government benefits such as university education were strictly divided between Lykins and Crackens based on their estimated percentage of the population.

During the 1990s, Crackens organised a rebel army to invade Refugio and gain control of the country. The Cracken rebel army was trained and equipped by states neighbouring Refugio in the hope that it would succeed and the Cracken refugees in their countries would return home. The neighbouring states wanted to rid themselves of the expense of caring for refugees and they were afraid to integrate them into their societies for fear that the Crackens would become a political force. The answer was to return them to their home country. However, Refugio was relatively overpopulated and the government was afraid that if the refugees returned, they would attempt to reclaim property they abandoned when they fled. The government also opposed the proposed return for fear that it would be unable to care for or find jobs for the returning refugees.

Following a bloody civil war in the early 2000s, the Lykin-controlled government army was defeated. Top government leaders and thousands of ordinary Lykins fled across the border into Mexia. The Cracken rebels formed a government which they control to this day.

The Lykins established a government-in-exile in the far eastern part of Mexia. The central government of Mexia had little control over its far eastern provinces. The Lykin government-in-exile quickly organised Lykin refugees and began rebuilding a Lykin army. They eventually began raids across the border into Refugio. The aim was to destabilise and eventually overthrow the Cracken-led government and re-establish Lykin rule.

The Refugio – Cracken-lead – government’s army is the best trained and equipped army in Oceania. The government sent troops into Mexia to raid and destroy the Lykin refugee camps, destroy the government-in-exile and defeat the government-in-exile’s growing army. Mexia, which had been tolerating the Lykin refugees, took the invasions to the United Nations Security Council to complain. Although the Security Council took no action, the Refugio government withdrew its troops.

In 2005, Kevin Ochoa, the Refugio Minister of Defence at the time, ordered special operations forces to organise guerrilla operations in eastern Mexia. The object of these operations was, firstly, to disrupt the Lykin government-in-exile and prevent raids into Refugio; and secondly, split off Mexia’s mineral-rich eastern provinces so that they could be controlled directly or indirectly by Refugio. To accomplish these goals, members of the Refugio army officers ‘resigned’ their commissions in the military. These ‘ex-army volunteers’ then entered eastern Mexia along with large amounts of weapons, munitions and other supplies provided by the Refugio government. Those ‘volunteers’ who infiltrated eastern Mexia continued to be paid their salaries by the Refugio government and to receive retirement credit in that government’s retirement system.

The infiltrators began organising guerrilla units from among the tribes in eastern Mexia. They were equipped with arms provided by the Refugio government. Within a few months, they began attacking Lykin refugee camps. In many of those attacks, the guerrillas killed civilians and committed many rapes and murders. They tortured captured Lykins to learn where the Lykin military forces were based.

Ochoa, as Minister of Defence of Refugio, received regular reports from the special operations soldiers dispatched to raise the guerrilla forces. He continued authorising supplies for the guerrillas. The Refugio defence ministry provided other support to the guerrillas, including military supplies, planning assistance and medical care for their sick and wounded. On at least one occasion, a Refugio military helicopter evacuated one of the ‘volunteer’ special operations troops after he had been wounded inside Mexia. The Refugio government claims that the ‘volunteers’ are private citizens who want to stop the Lykin attacks on Refugio. The government-in-exile and some neutral observers say they are members of the Refugio regular army posing as ‘volunteers’.

The Mexia Army sent troops to stop the guerrilla attacks. They were defeated by the guerrillas in several battles. Soon, the guerrillas began taking and holding villages and even one large town. In every village and the town, the guerrillas committed numerous rapes and looted. The men either joined the guerrilla army or were murdered.

Ochoa was promoted to Foreign Minister in Refugio's government. The government kept supplying the guerrillas in Mexia. The Mexia government continued lodging complaints with the Security Council. The government complained that it lacked the power to fight the guerrillas and asked for peacekeepers. The only action taken by the Security Council was to appoint a group of experts who investigated and determined that the guerrillas were violating the laws and customs of war and were committing crimes against humanity.

Included in the experts' report were findings that the guerrillas were controlled by the Refugio government. The experts also documented numerous incidents of war crimes and crimes against humanity by the guerrillas.

In 2010, the Prosecutor of the ICC began an investigation into the violence in eastern Mexia. The evidence showed wide-scale fighting between the guerrilla forces and the Mexian government forces. Evidence and intelligence received by the prosecutor from a third country, which is not a party to the Rome Treaty, showed considerable communications between the Refugio ministry of defence and leaders of the guerrillas. Like all communications from the Refugio ministry of defence, they were signed by Ochoa as minister. The communications included:

1. requests for re-supply by the government of Refugio, including weapons and ammunition;
2. reports to the Refugio government concerning the fighting and massacres and rapes by the guerrillas;
3. messages with Ochoa's signature congratulating the guerrillas on their success and suggesting plans for future operations. Some of those operations were carried out; and
4. messages indicating that the Refugio special operations troops who supposedly had resigned from the military were in fact being paid by the Refugio government and considered for military promotions.

Annex 1

Application for Confirmation of Charges International Criminal Court

Original: English

Case No: ICC/12-001/35

15 May 2013

Trial Chamber Situation in Mexia The Prosecutor v Kevin Ochoa

Judges:

Registrar:

Prosecutor's Application for Confirmation of Charges against Kevin Ochoa

Prosecutor:

Defence:

Background

Mexia and Refugio are neighbouring countries on Oceania and share a common border. Mexia is a large country with both a coastline and significant natural resources. Refugio is landlocked with few natural resources. Its economy is based generally on agriculture.

Both Mexia and Refugio were granted independence in 1961 from the colonial power. Mexia has lacked a stable and effective government almost since independence. It has a history of coups, revolutions, attempted secession of provinces and military dictatorships. The central government has always had limited control over its easternmost provinces, especially those bordering on Refugio.

Those eastern provinces are rich in minerals including copper, diamonds, uranium and iron ore. The country has a large number of tribal and ethnic groups. Many Mexians are more loyal to their tribe or ethnic group than to the central government. This complicates the government's ability to exercise control over much of the country.

Refugio has two major ethnic groups, Lykins composing about 85 per cent of the population and Crackens composing about 15 per cent. Following ethnic violence after independence, many Crackens fled Refugio to neighbouring countries, including Mexia. The Refugio government refused to allow the refugees to return for several reasons, including overpopulation, lack of

resources to support them, already high unemployment and fear the Crackens would try to reclaim property they had abandoned when they fled the country.

In the late 1990s, Cracken refugees organised a group called the Patriotic United Front (PUF) to force the Refugio government to democratise and to allow them to return to their homeland. The PUF demands included return of land they had abandoned when they left the country. The government initially resisted these efforts and there were military clashes between the government army and the PUF for several years.

In the early 2000s, the PUF launched a military attack to overthrow the Lykin-controlled Refugio government. Following a long civil war, in which many civilians were killed by mobs and groups of undisciplined soldiers from both sides, the PUF was successful in defeating the government forces. After their defeat, remnants of the Lykin army, as well as many Lykin civilians, fled to eastern Mexia, where they lived in refugee camps set up by the United Nations and NGOs.

After fleeing to Mexia, the leaders of the former Refugio government set up a government-in-exile, including armed forces. The government-in-exile ordered attacks into border areas of Refugio. There were numerous clashes with the PUF military and considerable sabotage within Refugio. In order to stop those incursions, the PUF military invaded eastern Mexia and attacked several Lykin refugee camps believed to house Lykin military forces. The Mexian government complained to the United Nations Security Council. Although the Security Council took no action, the PUF came under significant pressure from the international community to withdraw. It did so and publicly promised not to invade Mexia again.

The creation of guerrilla groups

After withdrawing its regular military forces, the PUF began infiltrating special operations forces into eastern Mexia. Officially, those troops were not members of the Refugio military and the officers 'resigned' their commissions in the Refugio army. The prosecutor submits the evidence will show that they were under the control of the Refugio PUF government, including the Ministry of Defence. The prosecutor submits that the 'resignations' of those members of the military were bogus and they were still being paid, promoted and given retirement credit by the Mexian government

Those special operations forces began organising guerrilla bands. Initially their function was to harass the government-in-exile and its military forces to prevent further attacks into Refugio. However, as the guerrilla bands grew in size and military effectiveness, the Refugio government decided to foster a rebellion with the aim of secession from Mexia so that Refugio could gain control of the mineral resources in eastern Mexia.

In the fighting, the guerrillas took control over numerous villages and small towns in Mexia. The guerrillas used terror tactics to control the areas they held. This included torturing or murdering opponents and Mexian government officials, as well as widespread rapes.

In addition, many guerrillas were poorly trained and disciplined. On numerous occasions, they committed rapes and looted villages and towns they controlled. They forced young men to join the guerrilla army and murdered those who refused.

General allegations

At all times, the guerrilla forces operating in eastern Mexia were under the effective control of the government in Refugio. The government in Refugio paid the guerrilla leaders and supplied the forces with arms, ammunition and other supplies.

At all times, the PUF and the Refugio government was aware of the actions of the guerrillas and issued 'suggested' operations orders to the guerrilla forces. At all times relevant to these charges, Kevin Ochoa was the Minister of Defence in the Refugio government. He had *de jure* and *de facto* control over all organs of the PUF military forces.

In 2011, Kevin Ochoa was appointed Foreign Minister of Refugio and ceased to be the minister of defence.

Jurisdictional allegations

Mexia is a state party to the ICC and referred the situation to the prosecutor of the ICC. The ICC therefore has jurisdiction over crimes committed in Mexia in violation of the ICC Statute.

Refugio is not a state party to the Statute of Rome creating the ICC. It has refused to sign the treaty and does not recognise the jurisdiction of the court.

All crimes alleged to have been committed occurred in Mexia.

The arrest of Kevin Ochoa

In 2011, the prosecutor obtained from the Pre-Trial Chamber a sealed warrant for Ochoa's arrest. In 2012, while en route from Refugio to the United States of America to attend a session of the United Nations General Assembly, Ochoa changed planes in East Oceania, a state party to the Rome Statute. The East Oceania government detained him pursuant to the arrest warrant.

Although Ochoa was provisionally released by the government, he could not leave that country pending resolution of the charges against him. His movements within East Oceania were severely limited.

The prosecutor requested the East Oceania government to transport Ochoa to the seat of the ICC. In late 2012, the government agreed and Ochoa was sent to The Hague. The prosecutor asserts that pursuant to Article 12(2)(a) of the Rome Statute, the ICC has *in personam* jurisdiction over Ochoa.

The proposed charges

COUNT 1: Crimes against humanity in violation of Article 7(1)(g) of the Rome Statute in respect to rapes committed in diverse places and times by guerrilla forces raised and controlled by Refugio within Mexia.

COUNT 2: War Crimes in violation of Article 8(2)(a) of the Rome Statute in respect to the willful killing of civilians, torture and compelling a protected person to serve in the guerrilla forces.

COUNT 3: War Crimes in violation of Article 8(2)(b)(1) in respect to directing attacks against the civilian population as such.

Evidence in support of the proposed charges

The evidence against Kevin Ochoa relates to activities of the guerrillas operating in eastern Mexia.

The charges of rape relate to attacks on numerous villages in eastern Mexia. It was standard operating procedure for the guerrillas to rape females of all ages upon taking control of villages in order to terrorise and gain control over the population of those villages.

The charges of wilful killing of civilians, torture and forcing protected persons to join the guerrilla forces relates to routine procedures in which they:

- would routinely target villages with large amounts of automatic weapons fire and mortars during attacks on the villages;
- would, when villages were taken, rape many of the women. This is an attempt to terrorise the population and show the guerrillas' power over the villagers. They would also loot the villages; and
- while in villages, guerrilla political officers would make speeches to recruit soldiers. The guerrillas scoured the villages looking for young men and forced them to listen to the speeches. If one of the young men, some as young as 13 years of age, showed reluctance to join the guerrillas, he would be executed in front of the other young men. As the guerrillas left the villages, they would take the young men with them under armed guard.

Investigators for the prosecutor attempted to interview Kevin Ochoa in East Oceania. He refused to talk to the investigators and demanded his immediate release.

Evidence available to the court

There is evidence available to the court from two sources:

1. Walter Boyd was a staff officer in the guerrilla army created by the Refugio government in Mexia. He was captured by the Mexia Army and gave his statement while in custody of the Mexia Army. Boyd was privy to communications between the guerrilla leaders and the PUF government in Refugio. He read messages between the guerrilla leaders and Ochoa in which the leaders reported using the terror tactics taught to them before they left Refugio. He read other messages in which the PUF government warned the guerrillas that public knowledge of the tactics used by the guerrillas would force the government to stop aiding the guerrillas. Boyd has been extradited to The Hague and has reached an agreement with prosecutors in return for his truthful testimony in the trials of PUF and guerrilla leaders.
2. Prudence Hamilton is a Mexia national who was taken captive by the guerrillas and forced to accompany them. She saw several instances in which guerrillas attacked villages and committed atrocities including rape, targeting civilians and forcing young men to join the guerrilla forces. She herself was raped several times by the rebel commander holding her

captive. She eventually escaped and was rescued by units of the Mexia Army. She is currently in treatment in Europe for post-traumatic stress disorder caused by her captivity.

Basis of responsibility

Ochoa is charged pursuant to Article 28(a) of the Rome Statute in that he had effective control over the guerrillas, had actual knowledge of their actions and did nothing to prevent or punish crimes.

In his of role as Minister of Defence of Refugio, Ochoa was in the position of a military commander. He was responsible for creating and training the Refugio special operations forces before they entered Mexia and he had actual knowledge of their crimes after they entered Mexia.

Ochoa exercised effective control through his actions in supplying the guerrillas and ‘advising’ them as to tactics. He also had a superior-subordinate relationship with the Refugio special operations forces in that they were still effectively members of the PUF army, were still receiving pay from the Refugio government and were eligible for promotion within the Refugio PUF army.

Prosecutor:

Date:

Annex 2

Submission of Kevin Ochoa International Criminal Court

Original: English

Case No. ICC/12-001/35

15 May 2013

Trial Chamber Situation in Mexia The Prosecutor v Kevin Ochoa

Judges:

Registrar:

Kevin Ochoa's Submission on Prosecutor's Request for Confirmation of Charges against Kevin Ochoa

Kevin Ochoa makes the following submissions to the Court:

Submission 1

The ICC lacks jurisdiction over Kevin Ochoa

Refugio is not a state party to the Rome Statute and the Security Council has not referred the matter to the court. There is no evidence that Ochoa was in Mexia or the territory of any state party to the Rome Statute at any time the alleged crimes occurred. Ochoa is the foreign minister of Refugio. It therefore violates international law to charge or detain a foreign minister of a State that is not a party to the Rome Statute. Additionally, the ICC lacks *in personam* jurisdiction over Ochoa both due to his status as a foreign minister of a non-state party to the Rome Statute and the fact that he was not in Mexia at any relevant time.

Since Ochoa's arrest and ensuing detention are in violation of international law and since Refugio has never ratified the ICC – nor accepted the court's jurisdiction on an ad hoc basis – the court lacks personal jurisdiction over Ochoa due to the illegality of his detention.

Submission 2

There is no sufficient evidence that crimes within the jurisdiction of the ICC were committed.

Submission 3

Ochoa lacked effective control over the guerrillas

There is insufficient evidence that Ochoa exercised effective control over the guerrillas or that there was a superior-subordinate relationship for purposes of Article 28(a) of the Statute of Rome.

Defence Counsel:

Date:

Annex 3

Statement of Walter Boyd International Criminal Court

Original: English

Case No: ICC/12-001/35

15 May 2011

Statement of Walter Boyd

My name is Walter Boyd. I am giving this statement to the Mexia Army of my own free will. All statements are true and correct to my personal knowledge.

I am a citizen of Mexia and I previously served in the Mexia army where I attained the rank of major. I was dismissed from the army following a court martial in which I was convicted of abusing civilians.

In late 2005, I was residing in eastern Mexia. I was approached by Col Jesse Jones, who identified himself to me as a member of the Refugio Army. Col Jones told me that he had been sent by the Refugio government to organise guerrillas to clean out Lykin government-in-exile camps located in Mexia. Col Jones told me his mission was to disrupt the Lykins so they could no longer raid Refugio territory.

Col Jones offered me a post within the guerrilla forces. He told me that the Refugio government wanted it to appear that the guerrillas were Mexia nationals who organised to overthrow the corrupt Mexia government and establish control over the eastern provinces. He told me the Refugio government was sick and tired of the lawlessness in eastern Mexia and was determined to establish a government there which could control the provinces.

I accepted his offer. I was made a major in the guerrillas and was assigned as an operations officer in headquarters. My first task was to organise a small guerrilla force. I was given arms and equipment for them, all in crates bearing markings showing they were from the Refugio defence ministry. Over the next few weeks, I located about 50 former members of the Mexia Army who agreed to become guerrillas.

Soldiers came from Refugio to train us as guerrillas. Included in our training were instructions to make the population fear us so that they would not betray us to the government or the Lykin government-in-exile. They told us other successful guerrilla armies had used such tactics. We were trained to fire on villages at the start of attacks. Our training included instructions to terrorise the local populations so they would not oppose us. Ways to terrorise villagers included raping the women to show our power over the men in the villages, killing anyone who opposed us and taking things of value as well as supplies. We also were taught to force young men to join the guerrilla bands. We often kidnapped young women to use them as servants and for other obvious reasons.

In our headquarters, I often saw messages to and from the Refugio defence ministry. The messages included 'suggested' operations and after action reports filed by our commanders. I often drafted those reports and they were completely truthful about the crimes we had committed. As more and more villages came under our control, we received congratulations from the Refugio government for our efforts.

We received regular shipments of supplies and money from Refugio. Sometimes bundles of Mexia money had bands showing they had come from the Refugio state central bank.

Walter Boyd:

Date:

Annex 4

Statement of Prudence Hamilton

My name is Prudence Hamilton. I am 20 years of age. I am giving this statement to the prosecutor of the ICC of my free will. All statements are true and correct.

I was born in a small village in eastern Mexia and lived there all of my life except for two years when I went to the capital for training as a nurse's assistant.

For months, in my village we were afraid of being attacked by guerrillas. We had heard horrible stories of attacks on villages and kidnappings by the guerrillas. Then one night, my village was attacked.

We first heard machine gun fire and people began falling. Next, hand grenades were thrown into our village. I estimate 35 people were killed and about that many wounded from the first attack. We had no weapons in our village and we could not resist the attackers.

When the armed group entered the village, the first thing the men did was separate adult men, young men and women with their children into different groups. Each group was guarded by several armed men. The first thing the guerrilla leader did was identify the village elders. They were taken in a group. The guerrillas asked them if they supported the government or the people's uprising. Two of the elders said all they wanted was to be left alone. Those men were forced to kneel in the dirt and they were shot in the back of the heads. The rest of the elders said they supported the guerrillas.

While this was going on, groups of soldiers were going through our homes and storehouses. They took food, money and just about everything of value. They told us they needed it more than we did.

The armed men found some liquor and they began drinking. The more they drank, the noisier they became. They began making lewd comments to the women. Without warning, one of the men grabbed my 16-year-old sister and dragged her away. I saw him rip off her clothes and saw him rape her. This seemed to set off the whole group of soldiers. Almost instantly, they descended on us and began raping all of the young women. When they dragged my aunt away, my uncle tried to stop them. He was shot several times.

The young men, those from about 13–17 years of age, were lined up and told they owed it to the people to enlist. When one refused, he was shot and everyone was told he was a traitor to the downtrodden villagers who were fighting bravely to improve everyone's life. The rest of the young men were herded off into the bush.

The remaining soldiers picked about five of us young women and we were told to follow them. We marched all night and the following morning, we were led into a camp. There were about 25 other young women there and when we talked, we saw our experiences were almost identical. We were put to work cooking and cleaning. At night, the guerrillas would often come into our tents and take some of us away. I was taken away several times and raped. I was then allowed back into the tent.

My situation became much better when the guerrillas learned I was a trained nurse. I was put to work caring for sick and wounded guerrillas. Sometimes I would see one of the young men taken from my village. They told me they were being trained as soldiers and it was fun. They talked about being taken on attacks and how much they enjoyed it. They had turned mean.

Eventually, the guerrillas started taking me on attacks in case someone was wounded. This was about five months after I was captured. I went on about three or four missions a month. I was kept at the rear but I could see the attacks. What happened in each attack was almost identical to the attack on my village.

On one of the attacks, I hit the man guarding me with a rock. He fell and became unconscious. I ran into the bush. I could hear them looking for me but I managed to escape. About three days later, a government army patrol found me. I was flown to the capital for medical treatment.

Prudence Hamilton

Date:

Annex 5

Statement of Kevin Ochoa

My name is Kevin Ochoa. I am the foreign minister of Refugio and have been so for about two years. Before that for several years, I was the Minister of Defence.

As Minister of Defence, my duties were to follow the orders of the president, who was commander-in-chief of the military, and to recruit, train and organise the military. I had no right to issues combat orders on my own accord. All I could do was advise the president and pass his orders to the military commanders.

In early 2005, the president told a cabinet meeting that the country was suffering greatly from attacks by Lykins who were in refugee camps located in Mexia, usually close to our borders. Many citizens of Refugio were being killed and important parts of the nation's infrastructure such as electric transmission lines were being destroyed. We had attacked several of the camps to stop the attacks. However, pressure from several countries which gave us financial aid convinced the president to order the attacks to stop. The president ordered us all to think about a solution and to report to him privately.

About a month later, I was summoned to the president's office. He told me he wanted to start a guerrilla war in Mexia to destroy the Lykin refugee camps and to start a revolution in the eastern provinces. He said we could eventually take over those provinces. The mineral wealth could be used to develop Refugio.

In response to the president's directive, I met with a number of army officers who had been trained as special operations troops. I told them they would be discharged from the army and would go to work for the Department of Military Intelligence (DMI). Their mission was to infiltrate Mexia, start a guerrilla war against the government of Mexia, destroy the Lykin ability to attack us and eventually to have the eastern provinces of Mexia secede and become part of Refugio.

The president gave control of the operation to the director of military intelligence. The Defence Ministry provided supplies and communications support to the DMI and the guerrillas but had no operational control over the guerrillas or their operations. I monitored communications between DMI and the guerrillas and many of the messages were signed with my name but I had no authority over them. I simply provided supplies and communications.

About two years ago, I could no longer stand the stories I heard about the guerrillas. I had protested to the president about crimes but he told me that they were being successful. Attacks by Lykins against us had almost stopped and we were gaining control over the rich eastern provinces of Mexia. Finally, I asked the president to relieve me of my duties as Minister of Defence.

He made me foreign minister and ordered me to defend the republic before the United Nations and in other international forums. He told me to deny involvement with the guerrillas in Mexia

and to say that they were simply people trying to win their freedom from a corrupt regime. He told me that if I refused, I would be considered a traitor to Refugio and thrown into prison. I agreed to do the president's bidding.

At no time during the war did I enter Mexia. I was mostly in our capital but, on occasion, I would fly to various countries to deny our involvement. In 2012, I was flying to New York for a session of the United Nations General Assembly. During a stop in East Oceania, I was taken off the plane and detained. I was travelling on a diplomatic passport and protested the actions. I was kept in detention for a few days, then provisionally released. In October 2012, I was turned over to investigators from the ICC and transported in handcuffs to The Hague. I am currently in the ICC Detention Centre.

Kevin Ochoa

Date:

Annex 6

Statement of Charles LeBlanc

My name is Charles LeBlanc. I am a professor at Underwood University specialising in Oceania politics. I have a doctorate in Oceania history and politics and I have written several books and peer reviewed articles about Oceania and its various states.

One area of my interest is Refugio. Over the years, I have made numerous trips to that country and I have many contacts within the government and among leading citizens.

I am researching a book on the Refugio civil war and its aftermath. An important part of that book is the Lykin government-in-exile and how it plans to retake control of Refugio. Among my confidential sources for that book are several European and North American intelligence analysts. Under no circumstances will I identify my confidential sources.

Based on this research, I have come to the following conclusions: the president of Refugio has complete control of the government; he is a dictator; officials who oppose him are removed from office and often arrested. Ministers in the Refugio cabinet have little control over their departments. They are limited to receiving orders from the president and ensuring that their ministries carry out those orders.

Specifically, the minister of defence has no command authority over units in that nation's military. His power is limited to recruiting soldiers, training them and units of the military and assigning members of the military to various units. Even then, he must follow the president's 'suggestions' as to who should command units.

The Refugio military is the best trained, disciplined and equipped military in Oceania. Many of its officers have been sent overseas for specialised training including commando training. Uniformly, the officers are loyal to the president and follow his orders faithfully.

Members of the Refugio government face retribution from the president if they refuse to follow his orders or if they attempt to resign without his permission. Several have been thrown into prison for displeasing the president.

The president put the Director of Military Intelligence in day-to-day command of the guerrilla forces in Mexia. While the DMI had some leeway in the orders he gave, he always followed the president's policies.

The minister of defence was ordered to support the DMI in its operations in Mexia and to act as a conduit for communications and supply. While the minister of defence was informed of the guerrillas' activities in Mexia, he had limited authority to control them. This is due to both the president's orders and the fact that the Refugio soldiers who were assigned to the mission had been officially 'discharged' from the military and were not under the minister's control.

Charles LeBlanc

Date:

