

TEAM 57
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1. The Prosecution requests the Court, pursuant to Art. 58(1)(a) of the Rome Statute, to find that the Court properly exercised jurisdiction over Mr. Vega, the case is admissible pursuant to Article 17, and there is sufficient evidence to establish reasonable grounds to believe Mr. Vega is criminally responsible for crimes against humanity, enforced disappearances.

I. THE CASE AGAINST MR. VEGA FALLS WITHIN THE JURISDICTION OF THE COURT PURSUANT TO ARTICLE 19(1) OF THE STATUTE.

2. Pursuant to Rule 58(4) of the Rules of Procedure and Evidence, the Court must first address jurisdiction and then admissibility. “To fall under the jurisdiction of the Court, a crime must fulfill the jurisdictional parameters *ratione materiae*, *ratione temporis* and - in the alternative - *ratione personae* or *ratione loci*.”¹ The Court must be satisfied it has jurisdiction over the crime (*ratione materiae*), the crime was committed while the Rome Statute (“the Statute”) was in effect (*ratione temporis*), and either over the person who they seek to hold criminally responsible (*ratione personae*) or the crime occurred within the territory where the Statute was in effect (*ratione loci*).

3. The Office of the Prosecutor (“OTP”) maintains there are reasonable grounds to believe a crime against humanity was committed, satisfying subject matter jurisdiction (*ratione materiae*) under Article 5. The crime committed falls within the Court’s temporal jurisdiction pursuant to Art. 11 of the Statute because Schwarzwald became a State Party to the Rome Statute in 2002.² *Ratione loci* is satisfied because all 70 arrests and trials occurred in the territory of Schwarzwald.³ *Ratione personae* is also satisfied because Mr. Vega is a national of Schwarzwald.

II. THE CASE AGAINST MR. VEGA IS ADMISSIBLE.

4. For a case to be admissible, the principles of complementarity and gravity must be satisfied. Paragraph 10 of the Rome Statute’s Preamble dictates the International Criminal Court (ICC) be a court of complementarity. The ICC does not seek to replace or supersede a State’s judicial functions, and only acts when the State Party has not, will not, or cannot exercise its judicial authority. The second component of admissibility is gravity, meaning a crime must meet a certain threshold to be considered by the Court. In assessing the gravity, the Court must look at the “number of the victims harmed” or require “a certain leadership rank for perpetrators,” but certainly should not be used as the only grounds to exclude crimes against humanity.⁴ The Court should assess all relevant factors in the context they arise and if they involve the most serious crimes of concern to the international community.⁵

¹ ICC, *Situation in the Republic of Kenya*, ICC-01/09, Judicial document, 31 March 2010, para. 71. (Kenya, 2010).

² Case Facts, para. 5.

³ Case Facts, para 15-16, Clarification 2.

⁴ Margaret M. deGuzman, “Gravity and the Legitimacy of the International Criminal Court”, *Fordham International Law Journal*, 32 (2008), p. 1457, 1458. (deGuzman, 2008).

⁵ deGuzman, 2008, p. 1457.

II.A. PURSUANT TO ART. 17(1)(a)-(c), COMPLEMENTARITY DOES NOT PRECLUDE ADMISSIBILITY.

5. Complementarity is a balancing act between the ICC and the State Party's jurisdiction, with a rebuttable presumption of inadmissibility when a state is investigating.⁶ In this case, there is an investigation by the government of Schwarzwald,⁷ and to rebut the presumption of inadmissibility, the OTP must show "the State is unwilling or unable genuinely to carry out the investigation or prosecution."⁸ In the case at bar, complementarity is not violated because the Schwarzwald government is unwilling and unable to genuinely investigate or prosecute Mr. Vega.

II.A.1. Schwarzwald is unwilling to genuinely carry out an investigation.

6. Article 17(2) of the Statute lays out the three factors, any of which the Court should consider as genuine unwillingness if present. First, the proceedings were undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court.⁹ Second, an unjustified delay in the proceedings which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.¹⁰ Third, the proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.¹¹ While not *de facto* unwillingness like the first three factors, an additional factor to consider is when a State accepts an obligation to cooperate.¹²

7. First, Schwarzwald broadly investigating the NIO, rather than Mr. Vega individually, suggests an attempt to shield him from prosecution.¹³ Since the investigation is not a judicial body, it may not be able to prosecute at all.¹⁴ Second, Schwarzwald authorities possessed two reports on the violence against refugees, knew of the NIO's conduct, knew of the disappeared refugees, and yet did nothing until the OTP took action.¹⁵ Such a delay to launch an investigation or to prosecute demonstrates the government's unwillingness to execute its judicial authority. Third, the NIO investigation was launched in response to public outcry, not due to a genuine interest in pursuing justice for the victims.¹⁶ Finally, the act of launching an investigation after a commitment by the president to cooperate indicates there are intra-state divergences in willingness to prosecute. These factors, when

⁶ ICC-OTP, *Informal Expert Paper: The principle of complementarity in practice*, 2003, p. 16. (ICC-OTP, 2003).

⁷ Case Facts, para. 23.

⁸ Art. 17(1)(a) of the Rome Statute.

⁹ Art. 17(2)(a) of the Rome Statute.

¹⁰ Art. 17(2)(b) of the Rome Statute.

¹¹ Art. 17(2)(c) of the Rome Statute.

¹² ICC-OTP, 2003, pp. 30 and 31.

¹³ Case Facts, para. 23.

¹⁴ Case Facts, para. 23, Clarification 5.

¹⁵ Case Facts, paras 8, 9, 17, and 21.

¹⁶ Case Facts, para. 23.

taken together, demonstrate an unwillingness to genuinely investigate or prosecute Mr. Vega.

II.A.2. Schwarzwald is unable to genuinely carry out an investigation.

8. An analysis into a state's inability to genuinely carry out an investigation is more objective than analyzing a state's unwillingness, as the former does not require the inference of bad motives on the part of the state.¹⁷ Under Art. 17(3) the OTP must show the State "whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings." In this case, there are three factors that make Schwarzwald unable to genuinely carry out an investigation or prosecution of Mr. Vega.

9. First, If the Pre-Trial Chamber is unconvinced Schwarzwald is unwilling, the evidence of divergent degrees of willingness should create an "inability" to investigate or prosecute. The OTP should be aware of different branches of a government differing in their cooperation with an investigation. "Unwillingness in one branch of government may create 'inability' in another branch sincerely attempting to investigate or prosecute."¹⁸ In this case, there is intra-state divergences in willingness to prosecute Mr. Vega. Schwarzwald's President has publicly declared the government will cooperate with the OTP, yet another part of the government has separately launched an investigation into the NIO.

10. Second, Schwarzwald's economy is based on financial services and is supported by the State.¹⁹ The government fears an outbreak of civil war would disrupt their economic relationships and could lead to a collapse of the country's judicial system. This fear is part of why the President agreed to cooperate with the ICC, as well as to reestablish social stability.²⁰

11. Third, an element in Art. 17(3) shows a state is able to prosecute if the State is able to obtain the accused.²¹ In regard to the State's ability to obtain the accused, the apprehension of Mr. Vega does not constitute a genuine ability to investigate or prosecute.²² Mr. Vega was not suspended until after the President had committed to cooperate with the ICC. Mr. Vega was then apprehended by the very department he was the head of and released 72 hours later.²³ He was then apprehended again at the behest of the Arrest Warrant issued by the Pre-Trial Chamber and subsequently transferred to The Hague.²⁴

¹⁷ ICC-OTP, 2003, p. 14.

¹⁸ *Ibid.*

¹⁹ Case Facts, para. 2.

²⁰ Case Facts, para. 21.

²¹ Art. 17(3) of the Rome Statute.

²² Case Facts, para. 22.

²³ Case Facts, para. 22, Clarification 4.

²⁴ Case Facts, para. 26.

II.B. THE GRAVITY THRESHOLD FOR ADMISSIBILITY HAS BEEN MET.

12. Art. 17(1)(d) of the Statute requires the gravity of the alleged crime to be sufficient for the Court to approve further action. In order to assess the gravity of the crime allegedly committed the OTP shall consider various factors including their scale, nature, manner of commission, and impact.²⁵ However, the word “including” suggests this list is not exhaustive. The PTC recognized three methods for evaluating gravity in *Lubanga*. First, an objective quantitative test evaluating the crime, second, a subjective qualitative test to ensure the most senior officials are prosecuted, and third, “[D]ue consideration must be given to the social alarm such conduct may have caused in the international community.”²⁶

II.B.1. The crime has the objective character to meet sufficient gravity.

13. Art. 7 crimes against humanity identifies eleven acts that are considered grave breaches in violation of Art. 7. However, for a crime to be of sufficient gravity as required by Art. 17(1)(d), “the relevant conduct must present particular features which render it especially grave.”²⁷ In the case at bar, scale may be difficult to prove. However, the manner, nature, and impact are all of an “especially grave” character. The efficiency and coordination required to arrest 70 people in one day, secretly try, and then detain them without any knowledge of their whereabouts speaks to the manner and nature of the crime. The impact on the victims’ families has been amplified by the potentially fake social media posts, not knowing if their loved ones are in good health. While there are only 70 people currently detained, there is no guarantee the Schwarzwald government would not repeat this process to quell the next political clash with refugees.

II.B.2. Mr. Vega’s status of senior officer contributes to the gravity of the crime.

14. The second *Lubanga* test is a subjective qualitative test to assure the most senior officials are prosecuted. Crimes committed on behalf of a state by state actors fulfill the gravity threshold because of the higher probability that their conduct will not be punished.²⁸ “Pre-Trial Chamber I, in its discussion of gravity in the *Lubanga* case, did not dwell upon the number of victims. Rather, it took a more qualitative approach, in which it considered the position and leadership role of the accused and the organisational involvement, including participation of the State.”²⁹ Mr. Vega was working for the State as Head of the NIO. He requested a solution, received a plan from a subordinate, and that plan was executed pursuant to his order.

²⁵ Regulations of the Office of the Prosecutor, Regulation 29(2).

²⁶ ICC, *Prosecutor v. Lubanga*, PTC, ICC-01/04-01/06-2, 24 February 2006, Decision on the Prosecutor’s Application for a warrant of arrest, Article 58. (1) and (3) para. 46, (2) para 50. (*Lubanga*, 2006).

²⁷ *Lubanga*, 2006, para 45.

²⁸ W. Schabas, *Complementarity in Practice: Some Uncomplimentary Thoughts*, 23 June 2007, p. 31.

²⁹ *Ibid.*

15. There are reasonable grounds to believe that Mr. Vega authorized and supported the plan that was carried out by the NIO. He was briefed on it, had the power to stop or alter the plan, did nothing to prevent it, and then denied knowledge of the whereabouts of the disappeared persons.³⁰ Mr. Vega continued to do nothing as international human rights organizations lodged complaints with his office regarding the disappeared persons.³¹ He was not suspended from office until after the president of Schwarzwald publicly declared cooperation with the Court's investigation.³²

16. Mr. Vega was a senior official, crimes were committed were on behalf of the State, adhering to a State-sponsored plan. For the foregoing reasons, prosecuting Mr. Vega contributes to the gravity of the crime.

II.B.3. The Court has a unique opportunity to prevent civil-war, thus mitigating international “social alarm.”

17. This case bears a striking resemblance to the Sudan and the Central African Republic (CAR) situations, both of which have produced crimes against humanity charges in the ICC. Sudan is a country of 40.53 million people and CAR has 4.65 million people.³³ Sudan borders CAR, and refugees from Sudan, South Sudan, and Chad fled to CAR which contributed to the human rights issues now plaguing the much smaller country.

18. The previous UN High Commissioner for Refugees, António Guterres, said “The Central African Republic is falling through the cracks of international attention, a humanitarian catastrophe of unspeakable proportion.”³⁴ The effects of “falling through the cracks of international attention have been devastating on the civilian population.” “Displacement and insecurity have disrupted agricultural cultivation and trade in the CAR. . . . Agricultural output plunged 37 percent in 2013, according to a recent special report from the UN Food and Agriculture Organization (FAO) and the WFP, which estimates that 1.6 million people are in need of urgent food assistance.”³⁵

19. Odenwald is approximately the same size as Sudan, and Schwarzwald is approximately the same size as the CAR.³⁶ Like the Sudan-CAR situation, the much larger country is embroiled in a civil war, sending refugees into the smaller country.³⁷ However, there is an opportunity, in this case,

³⁰ Case Facts, para. 18.

³¹ Case Facts, para. 19.

³² Case Facts, para. 21.

³³ Sudan Population, 2017. Retrieved 2019-04-20, from <http://worldpopulationreview.com/countries/sudan/>; Central African Republic Population, 2017. Retrieved 2019-04-20, from <http://worldpopulationreview.com/countries/central-african-republic/>.

³⁴ Hannes M. Einsporn, *A Forgotten Crisis: Displacement in the Central African Republic*, Migration Policy Institute Online Journal, 19 June 2014. <https://www.migrationpolicy.org/article/forgotten-crisis-displacement-central-african-republic>. (Einsporn, 2014).

³⁵ Einsporn, 2014.

³⁶ Case Facts, paras 2 and 3.

³⁷ Case Facts, paras 6 and 7.

to intervene and prevent the smaller country from erupting into civil war. The international community let a similar situation “fall through the cracks” and millions of people have suffered. The level of alarm in the international community must be taken into account due to the substantial similarity with Darfur and CAR, as well as the priority of not letting history repeat itself.

20. The third prong of the *Lubanga* test calls for the consideration of “social alarm” in the international community. Unfortunately, the PTC did not define “social alarm” in *Lubanga*.³⁸ It did, however, reference the deterrent mission.³⁹ The ICC was founded to prevent war and deter large scale violence. The “social alarm” in the international community caused by the possibility of another Sudan-CAR situation and the opportunity to prevent civil war elevates this case to a level of sufficient gravity.

III. THERE ARE REASONABLE GROUNDS TO BELIEVE THAT MR. VEGA IS CRIMINALLY RESPONSIBLE UNDER ARTICLE 25(3)(B) OF THE ROME STATUTE FOR CRIMES AGAINST HUMANITY, ENFORCED DISAPPEARANCE.

21. It is important to note that the prosecution, in this pre-trial phase, is not concerned with proving guilt beyond a reasonable doubt; indeed, when the Prosecution uses its *proprio motu* powers, the investigation must stay neutral.⁴⁰ As such, the Prosecution, at this stage, only deals with proving there are reasonable grounds to believe that Mr. Vega committed the crime against humanity of enforced disappearance. Bringing the accused to trial in this nature ensures the proper balance between the victim’s rights, the rights of the accused, and the fairness, integrity, and good-will of this court, as well as its standing in international affairs. The Prosecution thus argues that enforced disappearance have occurred, that a Crime against Humanity has occurred, and that Mr. Vega is individually criminally responsible for the aforementioned crimes.

III. A. THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CONTEXTUAL ELEMENTS OF A CRIME AGAINST HUMANITY HAVE BEEN MET.

22. There are reasonable grounds to believe that Mr. Vega’s conduct meets the contextual elements of a crime against humanity. The Statute provides in Art. 7(1) that the conduct must be committed “as part of a widespread or systematic attack directed against any civilian population.”

23. Article 7(2)(a) defines an “attack” as a course of conduct that involving the multiple commission of acts pursuant to or in furtherance of a State or organisational policy. The *Katanga and Ngudjolo* Court held that a policy “must be thoroughly organised and follow a regular pattern.”⁴¹ The policy must also be made by groups of persons who govern a territory or have sufficient power to carry out

³⁸ De Guzman, 2008, p. 1426.

³⁹ *Ibid.*

⁴⁰ C. Safferling, *Towards an International Criminal Procedure* (OUP 2003) 75.

⁴¹ ICC, Situation in the Democratic Republic of the Congo, *Prosecuter v. Katanga and Ngudjolo*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 396. (*Katanga and Ngudjolo*, 2008).

the policy. Furthermore, isolated attacks will not satisfy this criterion; instead, it must be planned, directed, or organized.⁴² The attack, in this case, refers to the execution of Ms. Jorg's plan. The NIO arrested all 40 members of the National Front and 30 Odenwald refugees, blocked their social media accounts, assumed the identity of the rightful owners of those accounts, conducted secret trials, and imprisoned them indefinitely.⁴³ This conduct clearly meets each of the requirements for a policy that is thoroughly organized and followed a regular pattern.

24. In *Tadić*, the Court held that "any civilian population" applies to crimes committed against civilians of the same nationality as the perpetrator, those who are stateless, or those of a different nationality.⁴⁴ For the purposes of this case, both the Odenwald refugees and the members of the National Front that were arrested and detained clearly qualify as a civilian population.

25. There are reasonable grounds to believe that Mr. Vega's attack was widespread. "Widespread" refers to the large-scale nature of an attack and the number of targeted persons.⁴⁵ A single act is sufficient to meet the criterion of widespread if it is committed on a large scale by the "cumulative effect of a series of inhumane acts or the singular acts or the singular effect of an inhumane act of extraordinary magnitude."⁴⁶ Mr. Vega's attack in this instance qualifies as widespread given that the entire National Front was detained and subjected to a series of inhumane acts and deprivation of liberties as outlined in the five-stage plan.

26. "Systematic" refers to the "organized nature of the acts of violence" and the improbability of their random occurrence.⁴⁷ In the *Gbagbo* case, the Court found that evidence demonstrating preparations for the attack were taken in advance, and that the attack followed a pattern that was planned and coordinated. constituted substantial grounds to believe that an attack was systematic in nature.⁴⁸ There are reasonable grounds to believe that the arrest of 70 people on 17 September 2018, convicting all of them for "endangering national security" on 30 September 2018, and then jailing them constitutes a "systematic" attack. These arrests were planned in advance by Ms. Jorg, carried out with brutal efficiency, and utilized the power of the State police, State judiciary, and State correctional facilities.

27. The mental element of crimes against humanity requires that the perpetrator know that the conduct was part of or intended the conduct to be part of a widespread or systemic attack against a civilian population. "It is not necessary that the perpetrator be informed of the details of the attack,

⁴² *Ibid.*

⁴³ Case Facts, paras 13 - 16.

⁴⁴ *Tadić*, 1996, para. 635.

⁴⁵ ICTY, *Prosecutor v. Kordić and Cerkez*, "Judgement", IT-95-14/2-T, 26 February 2001, para. 94. (*Kordić and Cerkez*, 2001).

⁴⁶ *Kordić and Cerkez*, 2001, para. 179.

⁴⁷ ICTY, *Prosecutor v. Kunarac et. al*, Judgment, IT-96-23 & IT-96-23/1-A, 12 June 2002, para. 57. (*Kunarac et. al*, 2002).

⁴⁸ ICC, *Situation in the Republic of Cote' D'Ivoire Decision on the confirmation of charges against Laurent Gbagbo*, ICC-02/11-01/11, 12 June 2014, para. 225 (*Gbagbo*, 2014).

or that he approve its purpose or the goal behind it.”⁴⁹ Moreover, it is sufficient to satisfy this element so long as the perpetrator had: 1) intent to commit the offense, 2) know that there is an attack on a civilian population, and 3) know that his acts comprise part of that attack or risk being part of the attack.⁵⁰ There are reasonable grounds to believe that Mr. Vega meets the requisite *mens rea* because he implemented the policy secretly and had full knowledge that it was intended to silence the Odenwald refugee population and the National Front, bringing outrage among the civilian population that they are a part of. As a result, there are reasonable grounds to believe that all four contextual elements of crimes against humanity have been met.

III.B. THERE ARE REASONABLE GROUNDS TO BELIEVE THE CRIME AGAINST HUMANITY, ENFORCED DISAPPEARANCE OCCURRED.

28. Pursuant to Article 7(2)(i) of the Rome Statute, enforced disappearance has five elements: (1) “the arrest, detention or abduction of persons,” (2) “by, or with the authorization, support of, or acquiescence of a State or a political organization,” (3) “followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons,” (4) “with the intent of removing them from the protection of the law,” (5) “for a prolonged period of time.”⁵¹ Mr. Vega, by or through his own or others’ actions, has met and fulfilled each of these elements.

29. First, an “arrest, detention, or abduction of persons,” is satisfied by the unjust arrest of 70 persons on 17 September 2018.⁵² Furthermore, these people remained imprisoned today.⁵³ This suffices to prove the element of arrest, detention, or abduction.

30. Second, “by, or with the authorization, support of, or acquiescence of a State or a political organization,” is presently satisfied because the NIO is a political organization of the State.⁵⁴ It was the NIO that planned and executed the arrest of those 70 persons.⁵⁵ Said persons remain deprived of their liberty⁵⁶ as well as their political and human rights.

31. The third element can be met by three different means. There may be a refusal to (1) acknowledge that deprivation of freedom or (2) to give information on the fate or (3) the whereabouts of those persons.⁵⁷ The arrests by the NIO were followed by a refusal to acknowledge that the arrested persons had been deprived of their freedom and a refusal to grant information on the fate or whereabouts of said persons.⁵⁸ These refusals were outlined in Ms. Jorg’s plan that was presented to

⁴⁹ ICTY, *The Prosecutor v. Prlic et al.*, IT-04-74, Decision of acquittal or conviction (article 74), 29 May 2013, para. 45.

⁵⁰ *Tadić*, 1996, para. 248.

⁵¹ Rome Statute Article 7(2)(i).

⁵² Case Facts, para. 15.

⁵³ Case Clarification, Clarification 2: paras 15 and 16.

⁵⁴ Case Clarification, Clarification 1: para. 1.

⁵⁵ Case Facts, paras 14 and 15.

⁵⁶ Case Clarification, Clarification 1: para. 1.

⁵⁷ Rome Statute Article 7(2)(i).

⁵⁸ Case Facts, para. 16; See also Case Clarifications, clarification 2.

Mr. Vega and precisely followed.⁵⁹ Even though Mr. Vega had actual knowledge about his subordinate's plan and, in the due course of events, such events would normally be known to a superior, Mr. Vega denied "any knowledge or connection to the disappeared persons."⁶⁰ Based on these facts there are reasonable grounds to believe that the third element has been met.

32. Fourth, the NIO's conduct was "with the intent of removing the disappeared persons from the protection of the law." Here, the totality of the circumstances establishes reasonable grounds for this belief. First, Mr. Vega, head of the NIO, was aware that the government was fearful of a civil war breaking out.⁶¹ Second, Mr. Vega had commissioned experts that mentioned any direct action taken against the National Front would further destabilize Schwartzwald.⁶² Third, Ms. Jorg's plan called for the secret removal and incarceration of these individuals, along with secret trials, to ensure that the country was not further destabilized.⁶³ The intent was to remove these persons from the public to keep the nation from destabilizing. However, the intent to protect the nation from destabilization is not a valid excuse for keeping people from the protection of the law.⁶⁴

33. According to recognized jus cogens,⁶⁵ states have a legal obligation to provide due process of law. A "fair and public hearing by a competent, independent and impartial tribunal established by law" are necessary components of due process.⁶⁶

34. While an exception exists for national security, compelling law states that "any judgment made in a criminal case or in a suit of law [civil-suit] shall be made public except where the interest of juvenile persons... or... matrimonial disputes or the guardianship of children" is concerned.⁶⁷ Given that none of the exceptions apply, there could not have been secret trials and *a withheld final verdict from the public* without keeping the detained persons outside "the protection of the law." By intending to keep secret the resulting criminal charges, and actually having done so, the NIO intended to remove the disappeared persons from the protection of the law. This provides reasonable grounds to believe that the NIO intended the removal of said persons from the law's protection.

35. Finally, the fifth element expands upon element four by adding the caveat "for a prolonged period of time." There are reasonable grounds to believe that the NIO and Mr. Vega intended to

⁵⁹ Case Facts, para. 14(e).

⁶⁰ Case Facts, para. 18.

⁶¹ Case Facts, para. 11.

⁶² Case Facts, para. 12(d).

⁶³ Case Facts para. 14.

⁶⁴ International Convention for the Protection of All Persons from Enforced Disappearance Article 1(2).

⁶⁵ Human Rights Committee, *Espriella v. Colombia*, Communication No. 1623/2007, UN Doc CCPR/C/98/D/1623/2007 (2010), para. 9.3. See also the Report of the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.2), paras. 32 and 73. See also Inter-American Court of Human Rights, *Castillo Petruzzi et al.*, Series C No. 52 (1999), para. 172.

⁶⁶ Article 14(1) of the International Covenant on Civil and Political Rights.

⁶⁷ Counter-Terrorism Implementation Task Force, "Right to a Fair Trial and Due Process in the Context of Countering Terrorism", *Basic Human Rights Reference Guide*, para 43 pg. 19.

remove the disappeared persons from the protection of the law for a “prolonged period of time.” Schwarzwald's instability, Schwarzwald's inaction to find and release the disappeared, and the continuing deprivation of liberty of the disappeared, even after five months of secret captivity, all contribute to reasonable grounds that the NIO intended to remove the disappeared from the protection of the law for a prolonged period of time which thus fulfills element five.

36. Mr. Vega, by and through the NIO, arrested and detained over 70 individuals, refused to acknowledge these arrests or give any information about the whereabouts of those arrested, was aware of the aforementioned, and intended to remove those arrested from the protection of the law for a prolonged period of time. Thus, there are reasonable grounds to believe, pursuant to Art. 7(2)(i), the crime against humanity of enforced disappearance has indeed occurred.

III.C. MR. VEGA IS CRIMINALLY RESPONSIBLE FOR THE ENFORCED DISAPPEARANCES UNDER ARTICLE 25(3)(b).

37. For an individual to be held criminally liable under Article 25(3)(b), an individual must use his or her authority to “order, solicit, or induce” another to commit a crime which is within the court’s jurisdiction (met supra) and that crime must be attempted or actually happen.⁶⁸ In *Gbagbo*, the Court held that ordering, soliciting, and inducing all “fall into a broader category of ‘instigating’ or ‘prompting another person to commit a crime’” especially when that “person is influenced by another to commit a crime.”⁶⁹ Furthermore, an individual must also have intent or knowledge with a substantial likelihood that his order will result in the commission of the crime.⁷⁰

38. Mr. Vega is the head of the NIO and, as such, has ultimate authority and responsibility for the NIO’s conduct. As such, he wields considerable influence over his subordinates. Although Mr. Vega was told only to monitor and assess the situation, he gave his direct subordinate,⁷¹ Ms. Jorg, an instruction “to take all necessary measures to prevent further instability in the country by taking action against all the members of the National front and disruptive refugees without attracting public attention.”⁷² Due to Mr. Vega’s position, his “instruction” qualifies as an order for purposes of Article 25(3)(b).

39. Therefore, but for Mr. Vega’s conduct of overstepping his authority and his refusal to halt the 5-step plan, of which he had actual knowledge, there is reasonable grounds to conclude that Mr. Vega had knowledge that the crime of enforced disappearance was to take place as a consequence of his explicit orders.

⁶⁸ ICC, *The Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the confirmation of charges, 12 June 2014, paras 242-243.

⁶⁹ *Gbagbo*, 2014, para. 243.

⁷⁰ ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Trial Judgement, 31 July 2003, para. 445.

⁷¹ Case Facts, para. 11.

⁷² Case Facts, para. 13.

IV. PRAYER FOR RELIEF.

40. On the basis of the evidence provided, the Prosecution requests the Court finds 1) the case falls within its jurisdiction, 2) the case is admissible, and 3) the evidence is sufficient to find reasonable grounds to believe crimes against humanity of enforced disappearance occurred and that Mr. Vega is individually criminally responsible.

Respectfully submitted,

The Prosecution