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International Criminal Law
Research Unit of the FAU

Nuremberg Moot Court 2024

Case



Introduction

This is a fictional case before the International Criminal Court (ICC). Pursuant to the Rules of the Nuremberg Moot Court 2024, participating teams will represent both (1) the Office of the Prosecutor (OTP) and (2) the Defence.

Participating teams shall prepare two written memoranda and plead before ICC Pre-Trial Chamber I (PTC I). The written submissions and respective pleadings shall follow the agenda for the PTC I hearing and address all the issues relevant to the case below.

Written memoranda must be submitted by 8 April 2024, 11.59 pm CEST. The oral rounds will be held on site in Nuremberg, Germany between 24 and 27 July 2024.

The Prosecutor v. Mrs Stella Swanson

- Procedural History**
1. On 23 April 2021, 14 ICC State Parties referred the situation on the territory of Markirat to the ICC. Although Markirat is not a State Party to the ICC, the referral included reference to the fact that certain potential suspects were nationals of State Parties. The States referred the situation on Markirat's territory between 1 January 2020 and 31 March 2021 to the ICC. On 21 May 2021, the OTP of the ICC opened an investigation into the Situation in the State of Markirat.
 2. On 23 September 2023, Pre-Trial Chamber I issued a warrant of arrest and subsequent surrender against Stella Swanson for the crime against humanity of sexual slavery allegedly committed between January 2020 and March 2021.
 3. On 12 February 2024, Mrs Swanson was transferred to the Court and appeared before Pre-Trial Chamber I on 19 February 2024.
 4. On 27 May 2024, the Defence submitted its application challenging the jurisdiction of the case, pursuant to Article 17 of the Rome Statute. The Defence also specifically challenged the admissibility of the prior recorded testimony of Valerie Porter (see Exhibit 1).
- Facts**
5. Stella Swanson was the wife of Peter Swanson, a now-deceased member of the Allagan Independence Force (AIF) non-State armed group. Both Swansons are or were nationals of Allagash.
 6. The Republic of Markirat is a low-income country located in a region with frequent cross-border conflicts and border disputes. It is bordered by Allagash to the north, Janti to the west, Naras to the south and the ocean to the east. Allagash, Janti and Naras ratified the Rome Statute as a group on 17 July 2012. Markirat is not a party to the Rome Statute. Nationals of these States speak English as a native language.
 7. The north of Markirat has seen many border incursions from the AIF based in neighbouring Allagash which aims to combine northern Markirat with southern Allagash to create a new State. The goal of this new State is to unify members of the Allagan ethnic group, who are predominant in those regions. The Allagan ethnic group makes up 20% of the population in Allagash and 10% of the population in Markirat. The rest of the population of Allagash is made up of 45% Markins, 15% Jantins and 20% other smaller ethnic groups. The rest of the population of Markirat is made up of 65% Markins and 25% other smaller ethnic groups.
 8. On 20 January 2020, the AIF took control of the town of Esoria in the north of Markirat on the border with Allagash. Upon taking control of the town, they killed or detained all members of the previous civilian administration and took over the town's governing duties. They established a governing administration that consisted of a mayor, a deputy mayor, a chief of police, a chief of security and a chief of "education and cultural integration". Walter Dean, commander of the AIF brigade that led the charge into Esoria was named mayor and had the ultimate decision-making power.
 9. Shortly after establishing control over the town, Mayor Dean began receiving numerous complaints from civilians in Esoria that women and girls in the town were being subjected to rape and other forms of sexual assault by AIF members. To prevent these rapes and establish order over militia members in the town, Mayor Dean decided to assign every member of the



AIF a civilian woman or girl. These women and girls would also live with the AIF member and perform household chores for him. This plan also served to better integrate AIF members into society by formalising the sexual relationships between AIF members and local women and girls. This allowed for any children produced from the relationships to be seen as legitimate.

10. On 3 February 2020, Mayor Dean placed his deputy mayor, Peter Swanson, in charge of implementing this plan. Deputy Mayor Swanson was uncertain about how best to implement this plan without isolating the local population. He reached out to his wife, Stella (who was still in Allagash), by phone to ask for her advice. He explained to her that AIF members had been causing havoc amongst the local population by raping and sexually assaulting local women and girls and that Mayor Dean had come up with this plan specifically to prevent that. She expressed wholehearted agreement with the plan and stated that it was also an important way to integrate with the local population and serve the goal of a united, independent Allagan State. In Stella's view, legitimate sexual relationships between AIF fighters and the local population were a particularly effective way to ensure this integration. However, Stella also cautioned Peter that he should be careful to get the agreement of the family members of the women and girls to ensure that these actions were, in her view, fully consensual and to ensure that this plan did not cause a further rift with the people of Esoria.
11. Deputy Mayor Swanson followed his wife's advice and first consulted with the higher-ups within the AIF as to their preferences for which woman or girl to be assigned to them. He then approached the families of the selected women and girls to inform them that their daughter or other family member was needed by the AIF administration and would serve a "higher purpose" for the cause of an independent Allagan State. Witness P-013 described one of these conversations like this:

The conversation started off friendly. It was clear that Swanson wanted a good relationship with the people of Esoria and that he wanted this process to be as voluntary as possible. However, when the parents made clear that they would not be sending their daughter to live with an AIF fighter, Swanson made equally clear that he was not happy with that answer. He stated that the family would lose government benefits like unemployment benefits and healthcare if they did not 'contribute to the cause' by sending their daughter to live with an AIF fighter.
12. The process was repeated with Swanson inquiring about the preferences of AIF members throughout the ranks. He personally approached certain families by himself, while sometimes he delegated the task to his trusted allies. At this stage, some families began to actively resist the "assignment" of their female relatives to AIF members. At this point, Peter once again reached out to Stella for advice. He suggested to her that the AIF should provide cash incentives to the families for their family members' "service" to the cause of an independent Allagan State. Stella rejected this proposal out of concern that it would negate the "consent" given by the families. Peter followed her advice and did not offer cash incentives.
13. Three families in particular continued to resist. These families had held high status in Esoria before the AIF's takeover and maintained influence over its residents. They were the Palmers, Richardsons and Constantines. After several visits to their homes in an attempt to persuade them, Swanson decided to send different female residents to live with the AIF members and to allow these women and girls to remain with their families.
14. The process of selecting women and girls took place while the AIF was solidifying its hold on Esoria through armed raids on suspected resistance fighters and the continuous presence of armed fighters throughout the town. Armed AIF fighters occupied the town's hospital, town hall, courthouse and other strategic locations. Additionally, the AIF was fighting off what remained of the Markirat government troops who had attempted to prevent them from taking over the town. The entire process lasted from 3 February 2020 through 6 May 2020.



- Valerie Porter**
15. Deputy Mayor Swanson selected a woman named Valerie Porter for himself during this process. On 7 February 2020, Mr Swanson approached Ms Porter's mother and asked for her daughter to live with him. Her mother agreed and Valerie Porter was moved into Mr Swanson's house. According to Valerie Porter, she was not allowed any choice in this matter and was escorted to Mr Swanson's home by armed guards. Upon entering the home, she shared Mr Swanson's bed and attended to his every need. After a few months, she was given a key to the home so that she could do the shopping for the home. She never attempted to flee the home and remained there until Mr Swanson's death in March 2021.
 16. Accounts of this relationship vary. Mr Swanson consistently maintained that the relationship was consensual and that they had fallen in love when they saw each other on the street as he was leading a group of troops.
 17. In contrast, in an interview with the ICC OTP in June 2022 (see Exhibit 1), Ms Porter herself testified that she was at Mr Swanson's beck and call for all his household needs and that she did not consent to their sexual activity.
 18. However, one month before she was due to testify at the hearing, she refused to take the stand, citing concerns for her safety and that of her family. In particular, she alleged that Mrs Swanson had threatened to harm the young son that Ms Porter had with Mr Swanson. As evidence of this threat, the OTP produced an email sent by Mrs Swanson to Ms Porter on 3 March 2024 in which she wrote: "I will not let you tell lies about me and my husband in court! If you testify, you will lose the only thing that matters to you in this world – that abomination of a child that you had with my husband!"
 19. The OTP has attempted to admit the initial interview transcript with Ms Porter as evidence in lieu of her in-court testimony under Rule 68 of the ICC's Rules of Procedure and Evidence.
 20. News and NGO reports interviewing other women and girls who were allocated to AIF men in Esoria demonstrate that these women and girls were repeatedly subjected to rape and other forms of sexual assault.
- Stella Swanson**
21. When the security situation in Esoria stabilised, many of the AIF fighters were joined by their wives and children who resided in and were nationals of Allagash. Mr Swanson's wife Stella Swanson joined him in June 2020. She arrived to find that her husband was living with Ms Porter and maintaining a sexual relationship with her. Mr Swanson made no secret of his continued sexual relationship with Ms Porter throughout the time that Mrs Swanson lived with him in Esoria. Rather than putting a stop to this relationship, she moved Ms Porter to another bedroom in the house and continued to use her for domestic labour. Mrs Swanson was aware of the continued sexual relationship.
 22. Further evidence of this continued sexual relationship comes from the birth of Ms Porter's son in May 2021. DNA tests conducted by an ICC OTP forensic expert show that Mr Swanson was the father of the child. The Defence does not contest Mr Swanson's paternity of the child.
 23. As Peter Swanson was busy with his duties as Deputy Mayor, Stella Swanson took over the day-to-day running of their household. This included maintaining a daily list of the chores that must be done by Ms Porter and monitoring whether she had performed them.
 24. On 24 March 2021, a multinational force regained control of Esoria. Peter Swanson was killed in the fighting and Stella Swanson was captured by the multinational force. After a vetting procedure designed to ensure that perpetrators of international crimes did not escape justice, Mrs Swanson was allowed to return to her home State of Allagash.
 25. After the ICC issued its arrest warrant against Stella Swanson, a domestic court case ensued in the courts of Allagash. The domestic case concerned whether transfer of Mrs Swanson to the ICC would violate an amnesty that she allegedly enjoyed under a peace agreement between the AIF and the government of Allagash signed in January 2022. The domestic court ultimately found that Mrs Swanson did not benefit from the amnesty as she was not a "member of the AIF's armed wing". The government of Allagash therefore transferred her to the ICC on 19 February 2024.



Agenda for Pre-Trial Chamber I

26. As a result of the current challenge, the established agenda for Pre-Trial Chamber I's hearing on the Defence motion challenging the Court's jurisdiction to hear the case against Mrs Stella Swanson is as follows:
- i. Whether there are reasonable grounds to believe that the case against Mrs Stella Swanson for the crime against humanity of sexual slavery falls within the jurisdiction of the Court pursuant to Article 19 of the Rome Statute.
 - ii. Whether there are reasonable grounds to believe that Mrs Stella Swanson is criminally responsible for the crime against humanity of sexual slavery under Article 25(3)(c) of the Rome Statute.
 - iii. Whether the transcript of Ms Valerie Porter's prior interview with the OTP is admissible as evidence under Rule 68 of the ICC's Rules of Procedure and Evidence.

Exhibit 1:

**Prior Recorded Testimony
of Ms Valerie Porter**

Evidence Exhibit

Ms Valerie Porter was interviewed by an ICC OTP Trial Lawyer and an ICC OTP Investigator on 23 June 2022. Present also at the interview was a victim's advocate representing the interests of Ms Porter as a potential participating victim in a potential forthcoming trial. The interview was conducted at a police station in the city of Wendell in the State of Janti, where the witness resided at the time. The witness had been called by the local police acting on behalf of the ICC OTP to be interviewed. The interview was video recorded. Ms Porter was informed of her rights before making the statement.

ICC Trial Lawyer: Good morning, Ms Porter. Thank you for taking the time to speak with (ITL) us today. We understand that this interview is likely to touch on subjects that are very sensitive and have the potential to re-traumatise you. For this reason, feel free to tell us at any time if you need to stop or take a break. Please ask us any questions that you have about the process at any point during the interview.

Valerie Porter: Thank you. I understand. I want to tell my story and get these evil people (VP) behind bars!

ITL: And we want to hear your story. Shall we start with the 2020 takeover of Esoria? Where were you living on 20 January 2020?

VP: I was living at my parents' house in Esoria.

ITL: How old were you at the time?

VP: Probably around 18 or 19. I finished secondary school the year before.

ITL: Ok. Thank you. Let's move on to a different topic then. Did you know a man named Peter Swanson in Esoria?

VP: Unfortunately, yes.

ITL: When did you first encounter him?

VP: When he came to my parents' house to ask them to give me away to him to do as he pleased. I had never seen him before then. I will never forgive my parents for what they did.

ITL: Just to clarify, you are saying that your parents agreed that you would live with Peter Swanson? Our research indicates that your father passed away in the fighting on 20 January 2020.

VP: Is that true? It must have just been my mom, then. The whole thing is a little hazy given everything that happened after it.

ITL: Of course. Completely understandable. Let's move on to what happened after Mr Swanson's request. I know this might be hard for you to talk about, what happened after your mother agreed to have you live with Peter Swanson?



VP: Peter came into the kitchen where I was hiding and approached me with two armed guards at his side. He spoke to me very kindly though. He told me that we were going to be a couple and that he was going to take me to our home. I had no choice but to follow him after I saw the guns held by his guards. I remember that he tried to hug me at some point, and I stood stock still until it was over. I was terrified. I didn't know this man and now I was going to live with him?

[VP begins to cry.]

I'm sorry for getting emotional. It was just so awful.

ITL: No, no. Of course. If you're up for it, can you tell us what happened next?

VP: I don't really know what happened next. Somehow, we ended up at the house where I lived with Peter. We must have walked. I don't remember. When we got to the house though, I remember he took me immediately to the bedroom and told me to change into some clothes he'd picked out for me. They were hideous! Nothing a self-respecting woman like me would ever wear! He wanted to stay and watch while I changed but I wasn't having that. He eventually walked out of the room and let me change in private. After I changed, the way he leered at me was just too much for me and I ran back into the bedroom. He tried to coax me out, but I pretended to be asleep, and he eventually gave up.

ITL: So, this was your first night in the house with Peter Swanson. Just to confirm, and I know this is difficult, there was no sexual activity that night?

VP: Not unless you count him leering at me. The real sexual stuff came later. He wanted to make sure I was really stuck with him before he tried that stuff.

ITL: What happened before the "sexual stuff", as you say?

VP: He let me rest the first morning but that night he made very clear that he expected me to cook and clean for him. He laid out a bunch of groceries and told me to cook them. Then he told me that I had to clear up the dishes afterwards. It continued like that for several days. He would have me cook every meal for him and point out spots in the house that needed to be cleaned.

ITL: Before we get into a more sensitive area, I wanted to ask you about Mr Swanson's wife, Stella. When did she arrive in Esoria?

VP: That woman is evil! She came to town a few months after I was forced into Peter's house. Maybe 4 or 5? I thought she would understand how horrible the situation was for me and at least prevent her husband from, you know, cheating on her with me. But she did not care about that. Sure, she moved me out of her husband's bed and took her place in it. But all she did was put me into the bedroom next door so that Peter would have easy access to me. I have no question that she knew exactly what was happening. Along with letting her husband continue to have his way with me she forced me to do all the household chores. Nothing was ever good enough for her and she would force me to clean the same spot over and over again.

ITL: How do you know that she knew about your continued sexual relationship with Mr Swanson?

VP: I mean, he certainly didn't make a secret of it. He would do it while she was in the house. Even while she was in the room next door. And then I got pregnant. She knew the child couldn't be anyone else's and Peter never denied it was his.



ITL: I did want to ask about your son as well. When was he born?

VP: 23 May 2021.

ITL: Now I want to move on to the more sensitive areas. How did the sexual relationship with Mr Swanson start?

VP: He decided he couldn't wait any longer. One night, he came into the bedroom and...um...had his way with me.

[VP begins to sob uncontrollably.]

I'm sorry. I can't do this.

Victim's Advocate: We need to end this interview here. She clearly cannot talk
(VA) about this.

ITL: Ok. Understood. Let's take a half an hour break and come back to this fresh.

VA: Ok. I can't promise she'll be able to talk about it then though.

[Interview resumes after a 30-minute break]

ITL: How are you feeling now, Ms Porter?

VP: I'm sorry. I can't do it. I thought I was ready, but I can't. I spoke with my therapist during the break, and he advised me not to continue with this interview.

ITL: I'm really sorry to hear that. Would you be able to talk about other aspects of the events that don't involve sexual matters?

VP: I can't. I can't do any of this.

[VP runs out of the room sobbing.]

ITL: Interview terminated at 10.39 am, I suppose.

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