

TEAM NO.: 2024 - 299

NUREMBERG MOOT COURT

2024

MEMORANDUM FOR PROSECUTION

TABLE OF CONTENTS

I. THE CASE AGAINST MRS. STELLA FOR THE CRIME AGAINST HUMANITY OF SEXUAL SLAVERY FALLS WITHIN THE JURISDICTION OF THE COURT.	3
I.A. THE ICC HAS JURISDICTION <i>RATIONE TEMPORIS</i> AND <i>RATIONE PERSONAE/LOCI</i> OVER THE CRIMES COMMITTED IN ESORIA.....	3
I.B. THE ICC HAS JURISDICTION <i>RATIONE MATERIAE</i> OVER CRIMES AGAINST HUMANITY OF SEXUAL SLAVERY.....	3
I.B.1. The contextual elements of crimes against humanity have been fulfilled.	3
I.B.2. The specific elements of the crime of sexual slavery have been fulfilled.	5
I.C. THE CASE IS ADMISSIBLE BEFORE THE ICC.....	7
II. MRS. STELLA IS CRIMINALLY RESPONSIBLE UNDER ART. 25(3)(C) FOR ABETTING THE CRIME.	8
II.A. THE OBJECTIVE ELEMENTS OF ABETTING HAVE BEEN FULFILLED.	8
II.A.1. Mrs. Stella substantially contributed to the commission of the crime.	8
II.A.2. Mrs. Stella’s actions lent moral support and encouragement to the facilitation of the crime.	9
II.B. THE SUBJECTIVE ELEMENTS OF AIDING AND ABETTING HAVE BEEN FULFILLED.	9
II.B.1. Mrs. Stella acted with the purpose of facilitating the crime.	9
II.B.2. Mrs. Stella had knowledge of the crime.	10
III. THE PRIOR RECORDED TESTIMONY OF MS. VALERIE IS ADMISSIBLE UNDER RULE 68(2)(D) OF RULES OF PROCEDURE AND EVIDENCE.	11
III.A. THE REQUIREMENTS UNDER RULE 68(2)(D)(I) HAVE BEEN MET.	11
III.A.1. Ms. Valerie’s attendance in court was materially influenced by improper interference.	11
III.A.2. The interests of justice are best served by the introduction of Ms. Valerie’s testimony.	11
III.A.3. Ms. Valerie’s testimony has sufficient indicia of reliability.	12
III.A.4. No reasonable efforts could have been made to secure Ms. Valerie’s attendance.	12
III.B. THE INTRODUCTION OF THE TESTIMONY IS NOT INCONSISTENT WITH THE RIGHTS OF THE ACCUSED.....	13
III.C. MS. VALERIE’S TESTIMONY DOES NOT GO TO PROOF OF THE ACTS AND CONDUCT OF THE ACCUSED.....	13
IV. PRAYER FOR RELIEF	14

ARGUMENTS

I. THE CASE AGAINST MRS. STELLA FOR THE CRIME AGAINST HUMANITY OF SEXUAL SLAVERY FALLS WITHIN THE JURISDICTION OF THE COURT.

1. Pursuant to Art. 19(1) of the Rome Statute (“**Statute**”), the Office of the Prosecutor (“**OTP**”) respectfully submits that *firstly*, [I.A.] the ICC has jurisdiction *ratione temporis and ratione personae/loci* over crimes committed in Esoria; *secondly*, [I.B.] the ICC has jurisdiction *ratione materiae* over crime against humanity of sexual slavery; and *lastly*, [I.C.] the case is admissible before the ICC.

I.A. The ICC has jurisdiction *ratione temporis and ratione personae/loci* over the crimes committed in Esoria.

2. The ICC can exercise jurisdiction *ratione temporis* over those crimes that are committed after the entry into force of the Statute in that State.¹ Additionally, the ICC has jurisdiction *ratione personae* over individuals who are nationals of a State, which is a party to the Statute.² *In the present case*, Allagash ratified the Statute on 17 July 2012.³ The accused, Mrs. Stella Swanson (“**Mrs. Stella**”), is a national of Allagash,⁴ who is charged for crimes in Markirat. Further, the situation that occurred in Markirat took place between 1 January 2020 and 31 March 2021.⁵ Therefore, the OTP submits that the court has jurisdiction *ratione temporis and ratione personae*.

I.B. The ICC has jurisdiction *ratione materiae* over crimes against humanity of sexual slavery.

3. The ICC has jurisdiction *ratione materiae* over acts of crimes against humanity of sexual slavery under Art. 7(1)(g)-2 of the Statute,⁶ on the grounds that the contextual and specific elements of crimes against humanity of sexual slavery have been fulfilled.

I.B.1. The contextual elements of crimes against humanity have been fulfilled.

4. The contextual elements of crimes against humanity under Art. 7 require the act to be committed as a part of a systematic attack pursuant to an organisational policy directed against a civilian population.⁷

I.B.1.a. The attack was directed against a civilian population.

¹ Rome Statute, Art. 11(2).

² Rome Statute, Art. 12 (2) (b); ICC, *Report on Preliminary Examination Activities 2014*, The Office of the Prosecutor, 2 December 2014, paras. 44 and 45.

³ Case Facts, para. 6.

⁴ Case Facts, para. 5.

⁵ Case Facts, para. 1.

⁶ Rome Statute, Art. 5; ICC, *prosecutor v. Katanga*, ICC-01/04-01/07-55, Decision on the evidence and information provided by the prosecution for the issuance of a warrant of arrest for Germain Katanga, 5 November 2007, para. 11.

⁷ ICC, *Elements of Crimes*, Art. 7 Introduction.

5. An attack encompasses any mistreatment of a civilian population,⁸ which can be proved even through a single act of violence.⁹ Further, ‘population’ does not necessarily indicate an entire geographical population,¹⁰ but any segment of the population that shares some distinguishing features.¹¹ *In the present case*, the Allagan Independence Force (“AIF”) attacked Esoria with the aim to make a unified Allagan State.¹² They took control of Esoria by killing members of civilian administration,¹³ and deployed soldiers throughout the town.¹⁴ After the AIF established control in Esoria, civilian women were raped and sexually assaulted by AIF soldiers.¹⁵ This indicates that AIF achieved its aim of taking over Esoria by attacking its civilian administration and population. Therefore, the OTP submits that this armed mistreatment constitutes an attack directed against the civilian population of Esoria.

I.B.1.b. The attack was systematic in nature and in furtherance of an organisational policy.

6. The systematic nature of an attack can be ascertained by its organised nature and the improbability of its random occurrence.¹⁶ Such an attack results in a continuous commission of acts.¹⁷ Further, a systematic attack can be a result of an organisational policy as the two are linked to each other.¹⁸ An organisational policy is made by a group of people that govern a territory and is followed in a regular pattern¹⁹ and hierarchical manner.²⁰ Further, the court in *Musema* held that there must exist a pre-conceived plan which may or may not be formalised.²¹

7. *In the present case*, AIF, a non-state armed group, took control of the town of Esoria by killing or detaining all members of their civilian administration, in furtherance of their plan to make a unified Allagan State.²² Further, they took over the governing duties of the town by establishing an administration headed by the commander of AIF, Mayor Dean.²³ This administration consisted of the mayor, a deputy mayor, a chief of police, a chief of security and a chief of education and

⁸ ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para. 182.

⁹ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgement pursuant to article 74 of the Statute, 7 March 2014, para. 1101.

¹⁰ ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23/1-A, Judgement, 12 June 2002, para. 90.

¹¹ ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, para. 209.

¹² Case Facts, paras. 7 and 8.

¹³ Case Facts, para. 8.

¹⁴ Case Facts, para. 14.

¹⁵ Case Facts, para. 9.

¹⁶ ICC, *Prosecutor v. Katanga and Chui*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 394; ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement, 17 December 2004, para. 94.

¹⁷ ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001, para. 179.

¹⁸ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgement pursuant to article 74 of the Statute, 7 March 2014, paras. 1111 and 1112.

¹⁹ ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-424, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the prosecutor against Jean-Pierre Bemba Gombo, 15 June 2009, para. 81.

²⁰ ICC, *Situation in the Republic of Cote d'Ivoire*, ICC-02/11-14, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, para. 46.

²¹ ICTR, *Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence, 27 January 2000, para. 204.

²² Case Facts, paras. 6 and 8.

²³ Case Facts, para. 8.

cultural integration, establishing a hierarchy.²⁴ Further, in order to establish control over Esoria, AIF repeatedly conducted armed raids and attacks against resistance fighters for several months,²⁵ and such a recurrent pattern of violence indicates a policy.²⁶ Therefore, the OTP submits that the attack was systematic and in furtherance of an organisational policy.

I.B.1.c. There was a nexus between the act of sexual slavery and the attack on Esoria.

8. A nexus must be established between the acts of the accused and the attack.²⁷ This nexus can be established by considering factors like nature, aim and consequence of such an attack.²⁸
9. *In the present case*, a plan was made by Mayor Dean to assign a woman to every AIF member.²⁹ This plan was implemented by his deputy, Mr. Peter Swanson (“**Mr. Peter**”) by repeatedly asking AIF soldiers their preferences of girls, and threatening families to submit their daughters.³⁰ When AIF took control of Esoria, this plan was implemented in order to integrate the soldiers into the society by formalising sexual relations between AIF soldiers and women,³¹ thereby fulfilling the aim of AIF. Further, the fact that both the attack and conduct took place in Esoria and AIF soldiers were the attackers as well as the perpetrators of the crime of sexual slavery, establishes a strong nexus between the attack and the conduct.³² Therefore, the OTP submits that there was sufficient nexus between the act of sexual slavery and the attack on Esoria.

I.B.2. The specific elements of the crime of sexual slavery have been fulfilled.

10. Specific elements of sexual slavery are enlisted under Art. 7(1)(g)-2 of the elements of crime.

I.B.2.a. The perpetrator exercised the right of ownership over the victims by causing deprivation of liberty.

11. Deprivation of liberty can be determined by factors such as psychologically controlling the victim, extracting forced labour, using threat, and reducing a person to a servile status.³³ It includes not only physical custody but also constructive custody wherein the victim cannot leave the

²⁴ Case Facts, para. 8.

²⁵ Case Facts, para. 14.

²⁶ ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-3343, Judgement pursuant to Article 74 of the Statute, 21 March 2016, para. 677.

²⁷ ICC, *Situation in the Republic of Kenya*, ICC-01/09-19-Corr, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 98.

²⁸ ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para 86.

²⁹ Case Facts, para. 9.

³⁰ Case Facts, paras. 11, 12, and 15.

³¹ Case Facts, para. 9.

³² ICC, *Situation in the Republic of Cote d'Ivoire*, ICC-02/11-14, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, para. 87.

³³ Elements of Crimes, Art. 7(1)(g)-2, para. 1; SCSL, *Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, para. 709; Kai Ambos, *Treaties on International Criminal Law* (1st ed., 2014), p. 99.

perpetrator's confinement as she has nowhere else to go and fears for her life.³⁴ This indicates that the perpetrator has power over the victim,³⁵ and she has no means to change her situation.³⁶

12. *In the present case*, there was assignment of women to each AIF soldier by Mr. Peter, and these women were forced to do household chores and live with the soldiers in their house.³⁷ Mr. Peter assigned Valerie to himself.³⁸ Although Ms. Valerie Porter (“**Ms. Valerie**”) was given a key to his house,³⁹ she ‘felt stuck’,⁴⁰ because AIF soldiers were deployed throughout the town.⁴¹ This shows that she could not have fled and had no option but to live with Mr. Peter and obey him. These terrifying circumstances of forcefully living with Mr. Peter and obeying his orders including doing household chores for him show deprivation of liberty, as held by ICC in a similar case of *Ntaganda*.⁴² Therefore, the OTP submits that Mr. Peter deprived Ms. Valerie of her liberty by the exercise of right of ownership.

I.B.2.b. The perpetrator engaged the victims in acts of sexual nature.

13. A victim is said to be engaged in acts of sexual nature when they do not have sexual autonomy and have to share existence with the person who engages them in such sexual acts.⁴³ Further, while being enslaved, the victim's consent to these sexual acts is immaterial.⁴⁴ *In the present case*, one woman were assigned to each AIF soldiers, to formalise sexual relations.⁴⁵ This was done with the sole purpose of engaging such women in sexual acts in a repeated manner.⁴⁶ Such a sexual relationship was also shared between Mr. Peter and Ms. Valerie,⁴⁷ and is confirmed from the birth of their child.⁴⁸ Therefore, the OTP submits that Mr. Peter has engaged victims in acts of sexual nature.

14. Additionally, the distinguishing factors between forced marriage and sexual slavery as laid by SCSL in *Brima et al.* have been fulfilled. Assigning one woman to every AIF soldier shows

³⁴ SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, 2 March 2009, para. 161; SCSL, *Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, para. 709.

³⁵ Valerie Oosterveld, “Sexual Slavery and the International Criminal Court: Advancing International Law”, *Michigan Journal of International Law*, 25 (2004), p. 650.

³⁶ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgement pursuant to article 74 of the Statute, 7 March 2014, para. 976.

³⁷ Case Facts, para. 9.

³⁸ Case Facts, para. 15.

³⁹ Case Facts, para. 15.

⁴⁰ Case Facts, Exhibit 1.

⁴¹ Case Facts, para. 14.

⁴² ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Judgement, 8 July 2019, para. 959.

⁴³ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, Judgement pursuant to article 74 of the Statute, 7 March 2014, para. 978.

⁴⁴ UN doc. E/CN.4/Sub.2/2000/21 (2000), p. 9 (United Nations Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights).

⁴⁵ Case Facts, para. 9.

⁴⁶ ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgement, 4 February 2021, para. 3047.

⁴⁷ Case Facts, para 21.

⁴⁸ Case Facts, para. 22.

exclusivity and constant military presence, creating a reasonable perception of fear in the victim.⁴⁹ The assigned women were also expected to do housework and sexual acts.⁵⁰ Therefore, the OTP submits that forced marriage was committed as a subset of sexual slavery.⁵¹

I.B.2.c. Mr. Peter had knowledge of the commission of the crime.

15. A perpetrator possesses knowledge when he is aware that his acts form a part of the attack.⁵² To establish such knowledge of the commission of crime, it is not essential for the perpetrator to have knowledge of all characteristics of the attack.⁵³ Rather, it is sufficient for the perpetrator to have mere knowledge of the happening of the attack.⁵⁴
16. *In the present case*, Mr. Peter was appointed to implement the plan of Mayor Dean.⁵⁵ Further, Mrs. Stella, who showed her wholehearted support to the plan, devised a strategy to optimally implement this plan with Mr. Peter.⁵⁶ He consulted the soldiers with higher ranks about their preference of girls, talked with the families of such girls about sending their daughters, and threatened the families who rejected his proposal.⁵⁷ He also assigned Ms. Valerie to himself and brought her to his house to live with him.⁵⁸ This establishes that Mr. Peter was well aware of the plan since he was executing the plan of assigning girls to AIF soldiers. Therefore, the OTP submits that the perpetrator had the requisite knowledge.

I.C. The case is admissible before the ICC.

17. In cases of inaction by states, the court need not look into the criteria of unwillingness and inability laid down under Art. 17 of the Statute.⁵⁹ Inaction by states is an appropriate ground for a case to be admissible before the ICC.⁶⁰ *In the present case*, according to the nationality principle,⁶¹ Allagash has jurisdiction over crimes committed by Mrs. Stella. However, no state action has been taken by Allagash to investigate the crimes committed by her. This establishes that the case is admissible before ICC due to inaction by Allagash.

⁴⁹ SCSL, *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgement, 22 February 2008, paras.195 and 196.

⁵⁰ ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-2022-Red, Judgement on the appeal of Mr. Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgement", 15 December 2022, para 15.

⁵¹ ICC, *Prosecutor v. Katanga and Chui*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 431.

⁵² ICTY, *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 March 2002, para. 59;

⁵³ SCSL, *Prosecutor v. Taylor*, SCSL-03-01-T, Judgement, 18 May 2012, para. 515.

⁵⁴ ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, para. 214.

⁵⁵ Case Facts, para. 9.

⁵⁶ Case Facts, para. 10.

⁵⁷ Case Facts, para. 11.

⁵⁸ Case Facts, para. 15.

⁵⁹ ICC, *Prosecutor v. Garada*, ICC-02/05-02/09-243-Red, Decision on the Confirmation of Charges, 8 February 2010, para. 29.

⁶⁰ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2, Decision on the Prosecutor's Application for a warrant of arrest, Article 58, 10 February 2006, para 29.

⁶¹ International Committee of the Red Cross, Legal Fact Sheet, *General principles of international criminal law*, 31 October 2013, p. 1.

18. Further, ‘investigation’ by the state under Art. 17 signifies taking steps to ascertain responsibility for a particular conduct, which includes interviewing witnesses, collecting evidence, and forensic analysis.⁶² *In the present case*, the vetting procedure by the multinational forces,⁶³ was neither conducted by a state nor have any of the aforesaid steps of investigation been taken. Therefore, the OTP submits that the case is admissible before the ICC.

II. MRS. STELLA IS CRIMINALLY RESPONSIBLE UNDER ART. 25(3)(C) FOR ABETTING THE CRIME.

19. Art. 25(3)(c) of the Statute establishes criminal responsibility for abetting crimes.⁶⁴ Mrs. Stella has abetted the crime of sexual slavery as *firstly*, [II.A] the objective elements of abetting have been fulfilled, and *secondly*, [II.B.] the subjective elements of abetting have been fulfilled.

II.A. The objective elements of abetting have been fulfilled.

20. The objective elements are fulfilled when abetment facilitates the commission of a crime.⁶⁵

II.A.1. Mrs. Stella substantially contributed to the commission of the crime.

21. While ad-hoc tribunals have held that abetting by the accused must ‘substantially’ contribute to the commission of the crime,⁶⁶ the ICC has held that the contribution of the abettor need not be ‘substantial’.⁶⁷ This indicates that fulfilling the higher threshold of ‘substantial’ contribution would automatically fulfil the lower threshold set out by the ICC.

22. Substantial contribution means that the acts of the abettor must facilitate the commission of the crime in some significant way,⁶⁸ which shall be analysed on a case-by-case basis.⁶⁹ Such contribution need not result in the commission of the crime by the principal perpetrator.⁷⁰

23. *In the present case*, Mr. Peter followed every instruction Mrs. Stella gave him to implement the plan,⁷¹ including her rejection of his proposal to offer cash incentives.⁷² Moreover, Mr. Peter persuaded the families of girls in the same way Mrs. Stella explained it to him,⁷³ emphasising that

⁶² ICC, *Prosecutor v. Muthaura et al.*, ICC-01/09-02/11-274, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, 30 August 2011, para. 1.

⁶³ Case Facts, para. 24.

⁶⁴ Rome Statute, Art. 25(3)(c).

⁶⁵ ICC, *Prosecutor v. Blé Goudé*, ICC-02/11-02/11-186, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, para. 167.

⁶⁶ ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 229; SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Judgment, 26 September 2013, paras. 385 and 390; ICTR, *Rukundo v. Prosecutor*, ICTR-2001-70-A, Judgment, 20 October 2010, para. 52.

⁶⁷ ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, para. 93; ICC, *Prosecutor v. Al Mahdi*, ICC-01/12-01/15-84-Red, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, 24 March 2016, para. 26.

⁶⁸ Kai Ambos, “Art. 25: Individual Criminal Responsibility” in Triffterer and Ambos, *Commentary on the Rome Statute of the International Criminal Court* (3rd ed., 2015), p. 1003.

⁶⁹ ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Judgement, 9 May 2007, para. 134.

⁷⁰ *Ibid.*, para. 127.

⁷¹ Case Facts, para. 10.

⁷² Case Facts, para. 12.

⁷³ Case Facts, para. 10.

this policy would serve the higher purpose of an independent Allagan State.⁷⁴ This indicates that his actions were a direct result of her instructions. This establishes that despite not being in a position of authority,⁷⁵ Mrs. Stella's influence over him substantially contributed to the crime.⁷⁶ Therefore, the OTP submits that Mrs. Stella's acts substantially contributed to the commission of the crime of sexual slavery.

II.A.2. Mrs. Stella's actions lent moral support and encouragement to the facilitation of the crime.

24. Abetting comprises of acts that encourage or lend moral support to the commission of a specific crime.⁷⁷ Such support may either be material or psychological.⁷⁸ In such cases, the geographical proximity of the accused from the crime scene is immaterial when determining her liability.⁷⁹

25. *In the present case*, Mrs. Stella's willingness and instructions to effectively implement the plan,⁸⁰ lent psychological support to Mr. Peter. These acts played an instrumental role in the commission of the crimes, irrespective of the fact that she was still in Allagash when the plan was being executed.⁸¹ This signifies that her geographical distance had no bearing on the influence she had on him. Further, even when she arrived in Esoria, she did not let Ms. Valerie free, but instead moved her to an adjacent bedroom so that Mr. Peter could have easy access to her,⁸² thereby materially supporting Mr. Peter's actions of sexually enslaving Ms. Valerie. This is similar to the *Bemba et al.* case, wherein the accused was held responsible for providing moral support by approving the perpetrator's plans and advising him through telephone calls.⁸³ Therefore, the OTP submits that Mrs. Stella morally supported and encouraged the commission of crimes.

II.B. The subjective elements of aiding and abetting have been fulfilled.

26. The subjective elements of abetting a crime are fulfilled when the accused has the 'purpose' to facilitate the crime under Art. 25(3)(c) of the Statute,⁸⁴ and the 'knowledge' of the crimes under Art. 30 of the Statute.⁸⁵

II.B.1. Mrs. Stella acted with the purpose of facilitating the crime.

⁷⁴ Case Facts, paras. 10 and 11.

⁷⁵ Case Facts, paras. 5 and 25.

⁷⁶ ICTR, *Muhimana v. Prosecutor*, ICTR-95-1B-A, Judgement, 21 May 2007, para. 189.

⁷⁷ ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, para. 81; ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 229.

⁷⁸ ICTY, *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 282.

⁷⁹ ICTY, *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2004, para. 48.

⁸⁰ Case Facts, paras. 10 and 11.

⁸¹ Case Facts, para. 10.

⁸² Case Facts, para. 21.

⁸³ ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, para. 868.

⁸⁴ Rome Statute, Art. 25(3)(c); ICC, *Prosecutor v. Mbarushimana*, ICC-01/04-01/10-465-Red, Decision on the confirmation of charges, 16 December 2011, paras. 274 and 281.

⁸⁵ Rome Statute, Art. 30(2)(b); ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, para. 97.

27. Under Art. 25(3)(c), the abettor must act with the purpose of facilitating the commission of the crime.⁸⁶ This means that the abettor must intend,⁸⁷ or wish,⁸⁸ her actions to facilitate the crime. This threshold is only concerned with the conduct of the abettor, not its consequences.⁸⁹
28. *In the present case*, Mrs. Stella wished for an independent Allagan State by integrating AIF with the local population of Esoria.⁹⁰ To achieve this objective, she supported the plan of assigning girls to AIF soldiers and ensured effective implementation of the plan by giving approval and feedback to Mr. Peter.⁹¹ Such acts of providing approval and feedback to plans and playing a role in the effective implementation of the plan,⁹² shows Mrs. Stella's intention to facilitate the crime. This establishes that in order to achieve her objective, Mrs. Stella facilitated the implementation of the plan, which caused the commission of the crime. Therefore, the OTP submits that Mrs. Stella acted with the purpose of facilitating the crime.

II.B.2. Mrs. Stella had knowledge of the crime.

29. Knowledge of the abettor is essential to establish criminal liability,⁹³ and can be inferred from relevant circumstances.⁹⁴ Under Art. 30, 'knowledge' can be proved through *dolus directus* of second degree,⁹⁵ and *dolus indirectus*.⁹⁶ This means that the abettor must be aware that the material elements of crime will inevitably occur as a result of her acts, i.e. the crime will occur in the ordinary course of events.⁹⁷
30. *In the present case*, Mrs. Stella strongly supported the plan of sending girls to live with AIF soldiers and establish sexual relations with them.⁹⁸ This establishes that she was aware that in the ordinary course of executing the plan, women would be enslaved and sexually violated by AIF soldiers. Further, when she came to live with Mr. Peter, she forced Ms. Valerie to do domestic labour and supported the sexual relationship between Ms. Valerie and him.⁹⁹ This is conclusive

⁸⁶ Rome Statute, Art. 25(3)(c).

⁸⁷ ICC, *Prosecutor v. Blé Goudé*, ICC-02/11-02/11-186, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, para. 167.

⁸⁸ Albin Eser, "Individual Criminal Responsibility" in Cassese *et al.*, *The Rome Statute of the International Criminal Court* (1st ed., 2002), p. 801.

⁸⁹ Manuel J. Ventura, "Aiding and Abetting" in Hemptinne *et al.*, *Modes of Liability in International Criminal Law* (1st ed. 2019), p. 214.

⁹⁰ Case Facts, para. 10.

⁹¹ Case Facts, paras. 10 and 12.

⁹² ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, para. 816, 817 and 866.

⁹³ *Ibid.*, para. 98.

⁹⁴ Kai Ambos, "Art. 25: Individual Criminal Responsibility" in Triffterer and Ambos, *Commentary on the Rome Statute of the International Criminal Court* (3rd ed., 2015), p. 1009.

⁹⁵ ICC, *Prosecutor v. Katanga and Chui*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 529.

⁹⁶ Johan D. Van der Vyver, "The International Criminal Court And The Concept Of Mens Rea In International Criminal Law", *University of Miami International and Comparative Law Review*, 12 (2004) p. 66.

⁹⁷ ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 359.

⁹⁸ Case Facts, para. 10.

⁹⁹ Case Facts, paras. 21 and 23.

proof that Mrs. Stella was aware of the plan of mistreatment of girls after they were assigned to soldiers. Therefore, the OTP submits that Mrs. Stella had knowledge of the crime.

III. THE PRIOR RECORDED TESTIMONY OF MS. VALERIE IS ADMISSIBLE UNDER RULE 68(2)(D) OF RULES OF PROCEDURE AND EVIDENCE.

31. A prior recorded testimony (“**testimony**”) can be admitted under Rule 68(2)(d) of ICC’s Rules of Procedure and Evidence (“**RoPE**”) in cases of witness interference. The OTP submits that the testimony is admissible because *firstly*, [III.A.] the requirements under Rule 68(2)(d)(i) have been met, *secondly*, [III.B.] the introduction of the testimony is not inconsistent with Mrs. Stella’s rights, *and lastly*, [III.C.] the testimony does not go to proof of the acts and conduct of Mrs. Stella.

III.A. The requirements under Rule 68(2)(d)(i) have been met.

32. A Testimony can be introduced when the requirements under Rule 68(2)(d)(i) of RoPE have been fulfilled.¹⁰⁰

III.A.1. Ms. Valerie’s attendance in court was materially influenced by improper interference.

33. A Testimony can be introduced when a witness fails to attend the court.¹⁰¹ This failure must be caused by improper interference, such as any threat which materially influences the witness.¹⁰² The court in *Yekatom* interpreted the term ‘materially’ to mean that the witness must be so significantly influenced that if not for the interference, the witness would have attended the court.¹⁰³ Further, this interference must directly affect the interests of the witness.¹⁰⁴

34. *In the present case*, Mrs. Stella threatened to kill Ms. Valerie’s 3-year-old son if Ms. Valerie testified in court, by sending her an email on 3 March 2024.¹⁰⁵ As a result, Ms. Valerie refused to appear only one month before she was due to testify, citing concerns for her family’s safety.¹⁰⁶ This establishes that Ms. Valerie was willing to appear before the court until she was threatened by Mrs. Stella. Therefore, the OTP submits that Ms. Valerie’s attendance in court was materially influenced by improper interference through the threat given by Mrs. Stella.

III.A.2. The interests of justice are best served by the introduction of Ms. Valerie’s testimony.

¹⁰⁰ ICC, Rules of Procedure and Evidence (“**RoPE**”), Rule 68(2)(d)(i).

¹⁰¹ RoPE, Rule 68(2)(d)(i).

¹⁰² RoPE, Rule 68(2)(d)(i); ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2126-Red, Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, 6 October 2023, para. 9.

¹⁰³ ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2126-Red, Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, 6 October 2023, para. 18.

¹⁰⁴ RoPE, Rule 68(2)(d)(ii); ICC, ICC-ASP/12/37/Add.1 Annex II.A., Working Group on Lessons Learnt, *Recommendation on a proposal to amend rule 68 of the Rules of Procedure and Evidence (Prior Recorded Testimony)*, 31 October 2013, para. 36.

¹⁰⁵ Case Facts, para. 18.

¹⁰⁶ Case Facts, para. 18.

35. The phrase ‘interests of justice’ has not been defined but can be determined from the objectives of the Statute, which includes punishing the perpetrators of crime.¹⁰⁷ The court can take into account all relevant evidence to determine the truth.¹⁰⁸ Further, the court in *Ruto and Sang* held that interests of justice are undermined when a court has been deprived of a witness’s cooperation due to the accused committing an offense against the administration of justice under Art. 70.¹⁰⁹ *In the present case*, Ms. Valerie was a victim of sexual slavery,¹¹⁰ and her testimony will assist the court in determining the truth. Further, she refused to attend the court solely due to the threat from Mrs. Stella.¹¹¹ Such a threat constitutes an offense against the administration of justice.¹¹² This establishes that if the testimony is not admitted the perpetrators of crimes would go unpunished. Therefore, the OTP submits that the introduction of the testimony serves the interests of justice.

III.A.3. Ms. Valerie’s testimony has sufficient indicia of reliability.

36. Sufficient indicia of reliability can be determined from various factors, and although no single indicator is conclusive, the presence of multiple factors strengthens the standard of reliability.¹¹³ These factors include, *inter alia*, that the testimony was obtained in the ordinary course of the investigation, the witness had been explained the procedure and had been informed of the significance of providing the statement to the OTP.¹¹⁴

37. *In the present case*, the OTP’s investigation began on 21 May 2021,¹¹⁵ and the interview was conducted on 23 June 2022, during the course of the investigation.¹¹⁶ The OTP had made Ms. Valerie aware of her rights, and she knew that she was a potential participating victim in a forthcoming trial.¹¹⁷ This establishes that she was aware of the significance of her statements. Therefore, the OTP submits that the testimony of Ms. Valerie has sufficient indicia of reliability.

III.A.4. No reasonable efforts could have been made to secure Ms. Valerie’s attendance.

38. Reasonable efforts should be made to secure the attendance of a witness who refuses to appear before the court.¹¹⁸ However, the OTP must also respect the personal circumstances of victims,

¹⁰⁷ Rome Statute, Preamble, para. 5; ICC, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17-33, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, paras. 88 and 89.

¹⁰⁸ Rome Statute, Art. 69(3).

¹⁰⁹ ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, para. 60.

¹¹⁰ Case Facts, Exhibit-1.

¹¹¹ Case Facts, para. 18.

¹¹² Rome Statute, Art. 70(1)(c).

¹¹³ ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2126-Red, Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, 6 October 2023, para. 29.

¹¹⁴ *Ibid.*

¹¹⁵ Case Facts, para. 1.

¹¹⁶ Case Facts, Exhibit 1.

¹¹⁷ *Ibid.*

¹¹⁸ RoPE, Rule 68(2)(d)(i).

especially those of sexual violence.¹¹⁹ Further, a testimony is admissible when a witness refuses to attend the court due to a threat and her identity is known to the person she fears,¹²⁰ because any attempts to secure her attendance would result in little to no success.¹²¹

39. *In the present case*, Ms. Valerie had been subjected to sexual violence at a young age.¹²² She was not in a position to talk about the incidents,¹²³ given the trauma associated with it. In this case, her vulnerable circumstances must be considered.¹²⁴ If Ms. Valerie attended the court and testified, she would be at risk of re-traumatisation.¹²⁵ Further, Mrs. Stella was aware that Ms. Valerie was going to testify in court, as she specifically sent her the email.¹²⁶ This establishes that Ms. Valerie's identity was known to the person she feared, and any attempts to secure her attendance now would be unsuccessful. Therefore, the OTP submits that no reasonable efforts could have been taken to secure Ms. Valerie's attendance in the court.

III.B. The introduction of the testimony is not inconsistent with the rights of the accused.

40. A testimony can be admitted when it is not prejudicial to the accused's right to cross-examine under Art. 67(1)(e).¹²⁷ However, this right is not absolute,¹²⁸ and can be curtailed in cases where the fear of a witness refusing to appear before the court is attributable to the accused.¹²⁹ This is because it would be incompatible with the rights of witnesses to allow the accused to benefit from the fear she has instilled in her.¹³⁰

41. *In the present case*, Mrs. Stella instilled fear in Ms. Valerie through her email threatening to kill Ms. Valerie's child.¹³¹ In such a case, admission of the testimony will not go against the accused's right to cross-examine, as she was the reason Ms. Valerie refused to testify. Further, not allowing the testimony on this ground will allow Mrs. Stella to derive an undue advantage from the fear she herself instilled. Therefore, the OTP submits that the admission of the testimony is not inconsistent with the rights of Mrs. Stella.

III.C. Ms. Valerie's testimony does not go to proof of the acts and conduct of the accused.

¹¹⁹ Rome Statute, Art. 54(1)(b); ECtHR, *Schatschaschwili v. Germany*, 9154/10, Judgment, 15 December 2015, paras. 121 and 122.

¹²⁰ ECtHR, *Briejer v. Netherlands*, 41596/13, Decision, 30 August 2018, paras. 23 and 33.

¹²¹ *Ibid.*

¹²² Case Facts, Exhibit 1.

¹²³ Case Facts, Exhibit 1.

¹²⁴ ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/181833-Red, Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 19 April 2021, para. 64.

¹²⁵ ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18, First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, 6 April 2023, para 356 and 357.

¹²⁶ Case Facts, para. 18.

¹²⁷ ICC, *Prosecutor v. Gicheru*, ICC-01/09-01/20-247-Red, Decision on the Prosecution's Request to Admit Prior Recorded Testimony under Rule 68(2)(d), 14 December 2021, para. 20.

¹²⁸ ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2222-Anx, Dissenting opinion of Judge Luz Del Carmen Ibáñez Carranza, 13 May 2022, para. 40; MICT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, para. 162.

¹²⁹ ECtHR, *Al-Khawaja and Tahery v. The United Kingdom*, 26766/05, Judgment, 15 December 2011, para. 123.

¹³⁰ *Ibid.*; ECtHR, *Snijders v. The Netherlands*, 56440/15, Judgment, 6 February 2024, para. 59.

¹³¹ Case Facts, para. 18.

42. ‘Acts and conduct of the accused’ refer only to those actions that are described in the charges brought against the accused.¹³² In *Al Hassan*, the court held that statements that refer to the general impression of the accused do not go to proof of the ‘acts and conduct of the accused’.¹³³ Further, the testimony is allowed if the reference to the conduct of the accused does not form its core.¹³⁴ In the present case, Ms. Valerie’s testimony describes her living conditions with Mr. Peter,¹³⁵ and the way Mrs. Stella treated her when she arrived in Esoria.¹³⁶ This does not relate to the charges brought upon Mrs. Stella of abetting the crime of sexual slavery and is only related to Ms. Valerie’s impression of her. Therefore, the OTP submits that the testimony does not go to proof of the acts and conduct of Mrs. Stella.
43. In *arguendo*, in cases where a part of the testimony goes to proof of the acts and conduct of the accused, the remaining parts of the testimony can still be admitted, especially when the OTP does not intend to rely on those parts and they can be detached from the testimony.¹³⁷ In the present case, Ms. Valerie mentions Mrs. Stella only once in her entire testimony,¹³⁸ and this part can be detached as the OTP does not intend to rely on it. Therefore, the OTP submits that the relevant parts of the testimony against Mr. Peter must be admitted.

IV. PRAYER FOR RELIEF

44. On the basis of the aforementioned legal authorities and arguments, the OTP respectfully requests the ICC to find that:
- A. The case against Mrs. Stella for the crime against humanity of sexual slavery falls within the jurisdiction of the ICC,
 - B. Mrs. Stella is criminally responsible under Art. 25(3)(c) of the Statute and,
 - C. The transcript of Ms. Valerie’s prior interview with OTP is admissible as evidence under Rule 68 of the ICC’s Rules of Procedure and Evidence.

Respectfully Submitted,
Office of the Prosecutor

¹³² ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1715-Red, Decision on Prosecution Application of Prior Recorded Testimony of Witness P-0039 under Rule 68(2)(b), 12 January 2017, para. 10.

¹³³ ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2241, Decision on the Introduction into Evidence of D-0511, D-0539, and D-0553’s Prior Recorded Testimony pursuant to Rule 68(2)(b) of the Rules, 9 June 2022, para. 9.

¹³⁴ ICC, *Prosecutor v. Ongwen*, ICC-01/04-02/06-596-Red, Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, para. 13.

¹³⁵ Case Facts, Exhibit 1.

¹³⁶ Case Facts, Exhibit 1.

¹³⁷ ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-1924, Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules, 15 November 2021, paras. 12 and 14.

¹³⁸ Case Facts, Exhibit 1.