

NUREMBERG MOOT COURT 2024

TEAM NO. 2024-340

PROSECUTION

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I. THE CASE AGAINST MRS SWANSON FOR THE CRIME AGAINST HUMANITY OF SEXUAL SLAVERY FALLS WITHIN THE JURISDICTION OF THE COURT PURSUANT TO ARTICLE 19 OF THE ROME STATUTE

I. A. The Court has jurisdiction *ratione temporis* and/or *ratione loci* and *ratione personae*

[1] The crimes were committed between the 3rd of February and the 6th of May 2020, with continuous effects until the multinational force regained control of Esoria in March 2021. Thus, since the date of the crime is subsequent to the ratification of the Rome Statute by Allagash on the 17th of July 2012¹, this case falls within the jurisdiction *ratione temporis* pursuant to Art 11 (2).

[2] Despite the crimes being committed on the territory of a non-state party to the Rome Statute, the case nevertheless falls under jurisdiction *ratione personae* pursuant to Art. 12 (2) (b) of the Rome Statute, due to the nationality of the accused. Mrs Stella Swanson is a national of the State of Allagash², which is a State Party to the Rome Statute.

I. B. The Court has jurisdiction *ratione materiae*

[3] The Court has *ratione materiae* under Art. 5 of the Rome Statute, for the reason that both the **contextual elements** of Crimes against humanity under Art. 7 (1), and the **specific elements** of the crime of sexual slavery under Art 7 (1) (g) are fulfilled. For the purpose of this Submission, the principal perpetrator, of whose commission of sexual slavery Mrs Stella Swanson aided and abetted, shall be considered Mr Peter Swanson.

I.B.1. The Contextual Elements of Crimes against humanity are met

[4] The contextual elements for Crimes against humanity require (i) acts that were committed as part of a widespread or systematic attack directed against a civilian population, (ii) with knowledge that the conduct is part of the attack.

There was an attack directed against a civilian population

[5] An “**attack**” refers to any series of acts of violence or any mistreatment directed against a civilian population³. The OTP urges the Court to acknowledge that there has been an attack in Esoria from the 3rd of February 2020 until the 6th of May 2020⁴, carried out in pursuance of a plan implemented by Peter Swanson, with the aiding and abetting of the Defendant, Stella Swanson. This mistreatment consists in the assignment of women or girls to AIF members against their will.

[6] The aforementioned attack was directed against a civilian population, since the women and girls that were assigned to the AIF fighters constituted the primary target of the attack, and cannot be regarded merely incidental victims⁵.

¹ Facts of the case para. 6

² Facts of the case para. 5

³ ICTR, *Prosecutor v Ndindiliyimana et al.*, ICTR-00-56-T, Trial Chamber Judgment, 17 May 2011, para. 2087

⁴ Facts of the case para 14

⁵ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Appeals Chamber Judgment, 30 March 2021, para. 417

The attack pursued an organisational policy

[7] The acts of selecting women and girls to serve as sexual slaves pursued an organisational policy. The AIF is an organised armed group as defined by the Court⁶, since it is a non-state organisation that has the military operational capacity⁷ and a set of structures that are sufficiently efficient to ensure the coordination necessary to carry out an attack.

[8] Furthermore, the AIF actively promoted a policy consisting of a pre-established plan to formalise sexual violence perpetrated by the AIF fighters against the local women and girls⁸.

The attack was widespread and systematic in nature

[9] The Court requires that enough individuals were targeted during the attack to determine that this was a **widespread** attack instead of an attack affecting a limited or incidental number of individuals⁹. The requirement is neither exclusively quantitative nor geographical and solicits an assessment on a case-by-case basis¹⁰. It can be concluded from Paragraph 9 of the Fact Sheet that *every* AIF fighter was assigned a woman or girl from Esoria. While the Facts provide us with no concrete number of fighters, and thus no concrete number of victims, the interviews conducted in news and NGO reports, corroborated with the testimonies of witness P-013 and Valerie Porter prove that the attack did not affect a limited or randomly selected number of victims.

[10] Despite the fact that ‘widespread’ and ‘systematic’ serve as alternative qualifying prerequisites¹¹, the OTP nevertheless submits that the attack was also **systematic** in nature. A systematic attack requires a series of repeated actions seeking to always produce the same effects on a civilian population¹². The AIF engaged in repeated actions towards the female civilians of Esoria, seeking to produce the effect of establishing control over the town. The conduct followed a pattern (was solely aimed at civilian women and girls) and was not a random or incidental occurrence¹³ - being aimed at the purpose of establishing an independent Allagan state¹⁴.

There is a nexus between the accused’s actions and the attack

[11] The accused was aware that there is an attack on a civilian population and acknowledged that her acts are part of the attack¹⁵. Mrs Swanson knew about the attack in Esoria involving the assignment of women and girls to AIF fighters, and also knew that her conduct assisted this attack.

⁶ ICC, Prosecutor v. Germain Katanga, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 1119

⁷ ICC, Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2685

⁸ Elements of Crimes, Article 7, para. 3, footnote 6.

⁹ ICTY, Kunarac et al., IT-96-23-A, Appeals Chamber Judgment, 12 June 2002, para. 92

¹⁰ ICC, Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2681

¹¹ ICC, Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2680

¹² ICC, Ntaganda, ICC--01/04-02/06-2359, para. 693

¹³ ICC, Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2682

¹⁴ Facts of the case, para. 10

¹⁵ ICTR, Kajelijeli, ICTR-98-44A-T, para. 880, see also ICC, Katanga, ICC-01/04-01/07-3436, paras. 782, 971, 983

I.B.2. The specific elements of the Crime against humanity of sexual slavery are met

The actus reus of the crime of sexual slavery is fulfilled

[12] The *actus reus* element of the Crime of Sexual Slavery entails that (a) a perpetrator exercises any or all the powers attaching to the right of ownership over one or more persons, whereas also (b) causing such person(s) to “engage in one or more acts of a sexual nature”¹⁶.

The perpetrator exercised powers attaching to the right of ownership over the victims

[13] Such **powers attaching to the right of ownership** may consist in “purchasing, selling, lending or bartering such a person or persons”¹⁷. However, in *inter alia* the case of Katanga, the Court clarified that the crime of Sexual Slavery can also be perpetrated devoid of any commercial transaction¹⁸. Despite it not being a prerequisite for the crime, but rather a potential manifestation of ownership, a **commercial transaction** is present in the instant case as well. The ‘assignment’ of the women and girls of Esoria to AIF soldiers can be understood as either being traded as goods (chattel) or services (for their labour) to the soldiers in exchange for government benefits in the areas of healthcare and unemployment¹⁹.

[14] The essential aspect to be considered by the Court is the element of **consent** (as in, a meeting of minds) that transformed the ‘assignment’ into a commercial juridical act akin to a contract for the exchange of goods/services. In light of this argument, it is to be emphasised that the consent which Stella Swanson was urging Peter Swanson to obtain was *not* consent given by the women and girls to perform labour for the AIF soldiers, or consent to engage in sexual acts with them. Instead, it was the consent “of the *family members* of the women and girls”, as the basis of a contractual agreement between the families and the AIF. Consent, whether for sexual intercourse or labour, is personal - it can only be granted by the ones performing the said acts, never *on behalf of* the person performing the acts. The women and girls themselves have never given their consent - they were taken under the threat of force (armed bodyguards)²⁰. The ‘assignment’ was a choice which belonged to the AIF members that “*selected*”²¹ them, upon being consulted as to their “*preferences*”²², and also to the families that agreed to give them away as for the higher purpose of an independent Allagan state²³.

[15] As previously argued, the scope of the powers attaching to the right of ownership extends beyond the aspect of commercial transactions. The Court has confirmed that such powers may take many shapes and forms, and, thus, “*must be construed as the use, enjoyment and disposal of a*

¹⁶ Elements of Crimes, Article 7(1)(g)-2, para. 1

¹⁷ Elements of Crimes, Article 7(1)(g)-2, paras. 1&2.

¹⁸ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 976; ICC *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2713

¹⁹ Facts of the case, para. 11

²⁰ Facts of the case, para. 15

²¹ Facts of the case, para. 11

²² Facts of the case, para. 11

²³ Facts of the case, para. 11

person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”²⁴. Pertaining to this aspect, multiple distinctive marks of enslavement were present in this case.

[16] The women and girls were subjected to a **servile status**²⁵ by being forced into performing labour in the form of household chores. They were compelled into a situation of dependence on the AIF soldiers they were assigned to and deprived of their control over their physical environment²⁶ by being forced to reside in the same house as the soldiers. Not only were they *forced into the house*, escorted by armed guards, but they were also *unable to leave* the house at their convenience. This was the case of Valerie Porter, a victim that was confined in the home of her abductor for almost a year, being **deprived of her freedom of choice and movement**²⁷. Even when after a few months of confinement she was ultimately given a key, it was for the sole purpose of performing forced labour: doing the shopping for the home²⁸ (implying a compulsory return to the household).

[17] Highly pertinent in this case is also the **subjective perception of the victims’ ability to leave**, which must be understood in the context of the victims’ vulnerability and in light of the socio-economic conditions in which the power over them was exerted²⁹. The Prosecution urges the Court to be mindful that these women and girls were ‘sent off’ by their own families. What they once perceived as home, was no longer a haven they could return to. Important to highlight is also the fact that there was an ongoing armed conflict in Esoria, a town that was now under the control of the very organisation that contemplated their enslavement to the soldiers. These circumstances explain the psychological perception of the women and girls’ **impossibility of changing their condition**³⁰, and are reflected in Valerie Porter’s lack of attempt to escape. The victim’s resignation to her status, her fear of trying to flee, are indicative of the **use of mental coercion and the exertion of psychological pressure** as distinctive marks of enslavement³¹.

[18] Adding another layer to the thread of arguments already presented, and reinforcing the fulfillment of the element of enslavement, the Prosecution highlights that “*slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment..., but the admitted fact of slavery - compulsory uncompensated*

²⁴ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014

²⁵ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014

²⁶ ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021

²⁷ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 976

²⁸ Facts of the case, para. 15

²⁹ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 976

³⁰ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 976

³¹ ICC, *Prosecutor v. Katanga*; SCSL, *SCSL Taylor Trial Judgment*, SCSL-03-01-T, 18 May 2012, para 420

*labour - would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery*³².

The victims were caused to engage in one or more acts of a sexual nature

[19] For the elements crime of sexual slavery to be met, the victims must have been **caused to engage in one or more acts of a sexual nature**³³. Such acts include, *but are not limited to* rape³⁴. In the case at hand, the very purpose of forcing women into concubinage with the AIF soldiers, was to legitimise the acts of rape and sexual assault committed by these soldiers ever since the armed group has gained control over the town³⁵. Following their enslavement, “news and NGO reports interviewing 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”³⁶. One of these victims, Valerie Porter, testified that she did not consent to the sexual intercourse with Mr Swanson³⁷. Following the repeated sexual contact with Mr Swanson, Ms Porter gave birth to his child. The paternity, which lies undisputed by the Defence, serves as proof that the non-consensual relationship between the enslaved victim and the perpetrator has been consummated.

[20] The Prosecution thus contends that **the women and girls’ sexual autonomy was restricted**³⁸. That is, their ability to decide the conditions in which they engaged in sexual activity was constrained by the AIF soldiers they were ‘assigned’ to. The status in which these females were subjected clearly fits the scope of the crime since the Court previously acknowledged that “*sexual slavery may encompass situations where women and girls are forced to share the existence of a person with whom they have to engage in acts of a sexual nature*”³⁹.

[21] Drawing on the jurisprudence of the SCSL, specifically the Taylor case, it could be argued in this sense that the women and girls of Esoria were compelled to perform a variety of conjugal-like duties, including regular sexual intercourse and forced into performing gender-specific forms of labour, such as cooking and cleaning⁴⁰. As established in Taylor, **conjugal slavery**, as a distinctive form of sexual slavery⁴¹, is a recognised system of ownership which acknowledges the **gendered dimension of the crime of sexual slavery** and conceptualises under its scope situations that do *not* encompass the nomenclature of marriage⁴². Thus, the crime of sexual slavery is understood to include scenarios where women and girls are forced into situations of **concubinage** that cannot be

³² Pohl et al., US Military Tribunal Nuremberg, Judgment of 3 November 1947, para 969

³³ ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2715

³⁴ ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2716

³⁵ Facts of the case, para. 9

³⁶ Facts of the case, para. 20

³⁷ Facts of the case, para. 17

³⁸ ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Chamber IX, 4 February 2021, para 2715

³⁹ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Chamber II Judgment, 7 March 2014, para 978

⁴⁰ SCSL, *Taylor Trial Judgment*, SCSL-03-01-T, Trial Chamber II, 18 May 2012, para 424

⁴¹ SCSL, *Taylor Trial Judgment*, SCSL-03-01-T, Trial Chamber II, 18 May 2012, para 429

⁴² SCSL, *Taylor Trial Judgment*, SCSL-03-01-T, Trial Chamber II, 18 May 2012, para 426

seen as marriages in the universally understood sense⁴³, whereby they are subjected to a **servile status** and are **deprived of their sexual autonomy**. Within this paradigm, the Prosecution argues that the ‘assignment’ of the women and girls of Esoria to “live with the AIF member and perform household chores for him”⁴⁴ while also engaging in sexual acts with them, cumulatively accounts for a widespread system of (sexual) ownership instituted with a view to tightening the control over the population of Esoria.

The *mens rea* in relation to the principal offence of sexual slavery is fulfilled

[22] In *Bemba et al*, the Court established that the **intent** of the aider and abettor is **twofold**: *on the one hand*, the accessory must have a *mens rea* in relation to the principal offence, and, *on the other hand*, the accessory must have a *purposive mens rea* in relation to their own conduct of facilitating the crime⁴⁵. For the goal of establishing jurisdiction, the Prosecution will resume itself to addressing the *mens rea in relation to the principal offence*. The element of *purposive mens rea* will be further addressed in Section II. Following this line of argumentation, the OTP argues that aforementioned acts, amounting to the Crime against humanity of sexual slavery have been perpetrated with the knowledge and intent of Stella Swanson in her position as an aider and abettor.

Stella Swanson acted with intent and knowledge of the crime and its essential elements

[23] The threshold for intent laid down in Art. 30 of the Rome Statute requires that the aider and abettor ‘mean[t] to engage in a conduct’, ‘mean[t] to cause [a] consequence’ or was ‘aware that it w[ould] occur in the ordinary course of events’. In *Bemba et al* the Court interpreted the element of knowledge in line with the customary standard of cognisance for aiding and abetting⁴⁶. Specifically, the Chamber stipulated that “it is not necessary for the accessory to know the precise offence which was intended and which...was committed, but he or she must be aware of its essential elements”⁴⁷. In practice, this is a test of recklessness⁴⁸. As such, for Mrs Swanson to be criminally liable, she must have recognised that there is substantial likelihood that the crime will be committed⁴⁹.

[24] From the very beginning of her participation in implementing the criminal plan, Stella Swanson was made aware by her husband in their phone calls that AIF soldiers were raping and sexually assaulting the women and girls of Esoria⁵⁰. She had also been made aware that the purpose of the plan was to legitimise the aforementioned forms of sexual violence. In this context, it is only

⁴³ SCSL, *Taylor Trial Judgment*, SCSL-03-01-T, Trial Chamber II, 18 May 2012, para 427

⁴⁴ Facts of the case, para. 9

⁴⁵ ICC, *Bemba et al.*, ICC-01/05-01/13-1989-Red, Judgment Pursuant to Article 74 of the Statute, 19 Oct. 2016, para 98

⁴⁶ ICTY, *Blaskic, IT-95-14-A, Appeal Judgment*, 29 July 2004, para 48; ICTY, *Oric*, IT-03-68-A, Appeal Judgment, 3 July 2008, para 43

⁴⁷ ICC, *Prosecutor v Bemba et al.*, ICC-01/05-01/13-1989-Red, Judgment Pursuant to Article 74 of the Statute, 19 October 2016, para 98

⁴⁸ SCSL, *Brima et al*, Trial Judgment, para 776; ICTY, *Haradinaj et al.*, Appeal Judgment, para 58; ICTY, *Simic*, Appeal Judgment para 86

⁴⁹ ICTY, *Haradinaj et al.*, IT-04-84-A, Appeal Judgment, 19 July 2010, ICTY, *Mrskic et al*, IT-95-13/1, Appeal Judgment para 159

⁵⁰ Facts of the case, para. 9

sensible to acknowledge the substantial likelihood that assigning these women and girls to live with their rapists and assaulters would result in the further restriction of these females' sexual autonomy. It is rather counterintuitive to believe that the AIF's plan would serve to 'prevent' rape and assault by 'formalising' it. Any sound person could acknowledge not only that this plan would fail to 'prevent' sexual violence, but that it would, instead, facilitate and encourage it.

[25] Moreover, "Mrs Swanson was aware of the continued sexual relationship" that was going on between Ms Porter and her husband under her roof⁵¹. Therefore, she was not only aware of a *substantial likelihood*, but rather, she was indisputably cognisant of the palpable reality that "the perpetrator caused [the victim] to engage in one or more acts of a sexual nature"⁵².

[26] Mrs Swanson also knew that the women and girls of Esoria would perform household chores for the AIF member they are assigned to⁵³. It is crucial to underline in this sense that Mrs Swanson also cautioned her husband in regards to gaining the consent of the females' family members. Subsequently, she was not only aware, but also supportive of the 'exchange' between the families and AIF, which in turn proves that she was aware of the soldiers' exercise of powers attaching to the right of ownership over the women and girls they selected for themselves.

[27] As a result, Mrs Swanson was **aware of the essential elements** of the impugned conduct carried out by Mr Swanson and the AIF, and hence was aware of the significant probability that the crime of sexual slavery will be committed.

II. STELLA SWANSON IS CRIMINALLY RESPONSIBLE FOR AIDING AND ABETTING IN THE PERPETRATION OF THE CRIME AGAINST HUMANITY OF SEXUAL SLAVERY PURSUANT TO ARTICLE 25(3)(C) OF THE ROME STATUTE

[28] In accordance with Art. 25(3)(c) of the Rome Statute, a person shall be criminally responsible for a crime under the jurisdiction of the Court if, for the purpose of facilitating the commission of such a crime, aids, abets, or otherwise assists in the commission or its attempted commission, including providing the means for its commission⁵⁴.

[29] The test for establishing liability for aiding and abetting under the jurisdiction of the ICC is threefold. **First**, the individual must grant practical assistance, encouragement or moral support - this constitutes the conduct element. **Second**, the aforementioned conduct must have substantial effect on the perpetration of the crime⁵⁵ - this comprises the nexus element. **Third**, the individual must have acted with knowledge and with the purpose of facilitating the crime - this constitutes the *mens rea*, or the fault element of aiding and abetting.

II.A. The conduct element is satisfied

⁵¹ Facts of the case, para 21; Facts of the case, Evidence exhibit

⁵² Elements of Crimes, Article 7(1)(g)-2, para. 2

⁵³ Facts of the case, para. 9 read in conjunction with para. 10

⁵⁴ Art. 25(3)(c) of the Rome Statute.

⁵⁵ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06, *Trial Judgment*, 14 March 2012, para 997; *Krstic*, Appeal J. 135-138

[30] Throughout the implementation of the criminal plan, Mrs Swanson’s aiding and abetting manifested itself in various forms at different stages of the plan. Not only did Mrs Swanson participate by means of providing practical assistance in the implementation of the crime, but she also provided her encouragement and moral support for the commission of the principal crime.

II.A.1. Stella Swanson aided by providing practical assistance

[31] While Mrs Swanson was physically present in Esoria, in the house where Ms Valerie Porter was sexually enslaved, she helped her husband by **monitoring the victim** in his absence, maintaining a daily list of the chores she had to perform⁵⁶. In this context, Stella Swanson’s role can be assimilated to that of guards watching over the enslaved women.

[32] Additionally, Mrs Swanson put Ms Porter in the bedroom next door “so that Peter would have easy access”⁵⁷ to her. Thus, she facilitated the crime by **facilitating access** to the victim.

II.A.2. Stella Swanson abetted by providing encouragement and moral support

[33] At the incipient stages of the plan, Mr Swanson reached out to Mrs Swanson by phone, multiple times, to ask for advice⁵⁸. By means of these conversations, Mrs Swanson **provided moral support** in the form of consulting her husband on how to best implement the criminal plan. Moreover, she **provided encouragement** by explicitly expressing her “wholehearted agreement”⁵⁹ with the impugned plan, emphasising its role in strengthening AIF’s control over Esoria.

[34] In this context, the OTP reminds the Court that liability for aiding and abetting can arise for acts, including phone calls⁶⁰, that happened in any place removed from the commission of the crime as long as the conduct is “found to have contributed to, or have had an effect on its commission”⁶¹. In this sense, it bears no consequence that the advice was given via a long-distance way of communication.

II.B. The nexus element is satisfied

II.B.1. Stella Swanson’s conduct had a significant effect on the commission of the crime

[35] The conduct described previously had a substantial effect on the commission of the Crime against humanity of sexual slavery, and should, as such, attract criminal liability for aiding and abetting. The Court has repeatedly emphasised that the substantial effect element does *not* mandate a sine qua non link of causality, nor does it mandate a condition precedent relationship between the acts of the aider and abettor and the perpetration of the crime⁶².

⁵⁶ Facts of the case, para. 23

⁵⁷ Facts of the case, Evidence Exhibit

⁵⁸ Facts of the case, para. 10; para. 12

⁵⁹ Facts of the case, para. 10

⁶⁰ ICC, *Prosecutor v Bemba et al*, ICC-01/05-01/13, Trial Chamber VII Judgment, 19 October 2016

⁶¹ ICC, *Prosecutor v Bemba et al*, ICC-01/05-01/13, Trial Chamber VII Judgment, 19 October 2016, para 97; ICTY Celebici IT-96-21-A, 20 February 2001, para. 352

⁶² ICTY, *Blaskic, IT-95-14-A, Appeal Judgment, 29 July 2004, para 48;* *Blagojevic & Jokic*, IT-02-60-A, para 132;

[36] In terms of providing practical assistance to the crime, it can be corroborated from the cases of Krstic, and Blagojevic & Jokic that actions which can be assimilated to guarding detainees and/or controlling access to them reach the threshold of having a substantial effect⁶³.

[37] For encouragement and support to have a substantial effect on the perpetration of the crime, it must be proven on a case-by-case basis that the verbal communication had an influence on the perpetrator, and that the perpetrator was aware of it⁶⁴. As showcased in the facts, Deputy Mayor Swanson was invariably aware of his wife's advice, which he followed strictly, whenever she offered it. The dynamic between the two is the following: Mr Swanson reaches out to Mrs Swanson for advice, and she *cautions him* of potential problems that might arise; *he suggests* a course of action, whereas *she rejects* the proposals and he complies.

[38] In addition, Mrs Swanson's **physical presence** in the house where Valerie Porter was sexually enslaved had a "significant legitimising or encouraging effect on the principal"⁶⁵, and thus may warrant the attribution of criminal responsibility⁶⁶. For responsibility to arise for physical presence at the crime scene, the accused must hold a position of authority, so that their non-intervention could be construed as tacit approval and encouragement⁶⁷. The position of authority need not be construed in the sense of exerting effective control in a chain of command⁶⁸. Rather, it is enough for the accused to be held in high regard or respect by the principal perpetrator⁶⁹. Undoubtedly, Mr Swanson held his wife in high regard. This can be inferred from Mrs Swanson's status⁷⁰ as his spouse; also from the fact he entrusted her with monitoring Ms Porter's performance of the household chores; but most importantly, from the fact that she was the *only* one he looked up to for advice - advice which he followed rigorously. In this sense, it is clear that her physical presence in the house where Valerie Porter was held "sent a clear message of tolerance for sexual violence"⁷¹.

II.C. The fault element is satisfied

II.C.1. Mrs Swanson acted with the purpose of facilitating the crime

[39] In *Bemba et al* the Court confirmed that for the *mens rea* of aiding and abetting to be fulfilled, "the accessory must have lent his or her assistance with the aim of facilitating the offence"⁷². For purposive *mens rea* to be established in cases of encouragement and provision of mental support, the accomplice's purpose is naturally inferred from the very nature of the speech⁷³. Mrs Swanson

⁶³ ICTY, *Blagojevic & Jokic*, IT-02-60-A, Appeal Judgment, para 132; *Krstic*, IT-98-33-A, Appeal Judgment, para 81

⁶⁴ ICC, *Bemba et al* confirming *Brdanin*, IT-99-36-A, Appeal Chamber Judgment, 3 April 2007, para 277

⁶⁵ ICTY, *Furundzija*, IT-95-17/1-T, Trial Chamber Judgment, 10 December 1998, para 232

⁶⁶ ICC, *Prosecutor v Bemba et al*, ICC-01/05-01/13, Trial Chamber VII Judgment, 19 October 2016, para

⁶⁷ ICTY, *Brdanin*, IT-99-36-A, Appeal Chamber Judgment, 3 April 2007

⁶⁸ SCSL, *Prosecutor v Sesay et al*, SCSL-04-15-A, Appeal Judgment, para 541; *Furundzija*, Trial Judgment 207&232

⁶⁹ SCSL, *Sesay et al* Appeal Judgment, para 541; *Taylor* Appeal Judgment, para 370;

⁷⁰ ICTR, *Akayesu*, ICTR-96-4-T, Trial Judgment, 2 Sep. 1998, para 693; ICTY, *Brdanin*, Trial Judgment para 271

⁷¹ ICTR, *Akayesu*, ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para 693

⁷² ICC, *Prosecutor v Bemba et al*, ICC-01/05-01/13, Trial Chamber VII Judgment, 19 October 2016

⁷³ Schabas, A Commentary on the Rome Statute 435; Jackson, Complicity in International Criminal law 76

had the purpose of helping her husband perpetrate the crime, when she consulted him on how to implement the plan. Her ‘wholehearted agreement’ with the underlying goal of the plan - legitimising sexual violence with a view to strengthening control over Esoria - also demonstrates her purpose. Moreover, the actions of moving Ms Porter in the bedroom next door to ensure easy access for her husband, and overseeing Ms Porter’s performance of forced labour and clearly deliberate and purposive.

[40] The OTP subsequently lodges that there are reasonable grounds to believe that Mrs Swanson is criminally liable for aiding and abetting in the perpetration of the crime of sexual slavery.

III. THE TRANSCRIPT OF MS VALERIE PORTER’S INTERVIEW IS ADMISSIBLE UNDER RULE 68 OF THE ICC RULES OF PROCEDURE AND EVIDENCE

[41] The OTP exercised its investigatory powers conferred by the Statute⁷⁴ to question Ms Valerie Porter during the investigative process. The questioning of Ms Porter was meant to follow the general requirements of *viva voce* testimony since she was supposed to take the stand⁷⁵. However, since she was subjected to improper interference from Mrs Swanson, in order to ensure her safety, she is not able to present her testimony before the Court. Pursuant to Rule 68 of the Rules of Procedure and Evidence (RPE) and therefore Art 69 (2) and (4) of the Rome Statute (RS), the OTP submits that the transcript of Ms Porter’s interview should be deemed admissible by the PTC.

III.A. Protection of Mrs Porter’s physical and psychological well-being

[42] Art. 69(2) of the RS mentions that testimony can be given through means other than in person, in the exception that Art. 68 RS or the RPE apply. Thus, if there are concerns about the well-being of the witness⁷⁶, a written statement, such as in this case, can be admissible. Mrs Swanson threatened to hurt Ms Porter’s son if she was to appear in front of the Court⁷⁷, therefore the Prosecution is allowed to take the measures it deems necessary to ensure her and her son’s safety, allowing her written testimony to be used as evidence.⁷⁸ The written testimony shows that Ms Porter is deeply traumatised by the events that occurred in Esoria, specifically her sexual enslavement.⁷⁹ Especially in cases involving sexual enslavement and related crimes, there is a high risk of retraumatization of the victim, meaning appropriate measures to protect and support the victim should be taken.⁸⁰ Admitting the written testimony of Ms Porter protects the interest of the victims, which is recognised as a key element of the administration of justice⁸¹.

⁷⁴ Art. 54 (3) (b) Rome Statute.

⁷⁵ Facts of the case, para 18.

⁷⁶ Art. 68 of the Rome Statute.

⁷⁷ Facts of the case, para 18.

⁷⁸ Article 68: Protection of victims and witnesses (...) (2022), in K. Ambos (Ed.), Rome Statute of the International Criminal Court: Article-by-Article Commentary, (München: Beck/Nomos/Hart), p. 2028.

⁷⁹ Facts of the case, Evidence Exhibit.

⁸⁰ ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15 A A2, Public Document by the UN Special Rapporteur, para 9.

⁸¹ Policy Paper on the Interest of Justice, ICC-OTP-2007 p.5

III.B. The evidence is sufficiently relevant and has sufficient probative value to be admitted

[43] As established by Article 69(4) of the RS and reinforced in case law⁸², the Court may rule on the admissibility of evidence based on three criteria: (a) the relevance of the evidence, (b) its probative value, and (c.) the weight of this probative value against any prejudicial effect. The OTP submits that the transcript of Ms Porter is sufficiently relevant and has enough probative value to be admitted by the Court, while not having prejudicial effects on the right to a fair trial of the accused.

[44] Relevance of the evidence, as defined by the Court, entails a piece of evidence that makes the existence of a fact at issue more or less probable⁸³. The Fact Sheet, as well as the arguments under Sections I. and II., show that Mrs Swanson knew about the effects that the AIF attack had on the female population of Esoria, and that she facilitated the commission of the crime of sexual slavery. The written testimony supports these facts by giving further insight into the way Mrs Swanson acted towards Ms Porter, forcing her to perform house chores, and her knowledge of the sexual relationship Mr Swanson had with Ms Porter, and knowledge of Ms Porter's sexual enslavement.

[45] Probative value is determined by the reliability of the evidence and its significance for proving the commitment of the crime.⁸⁴ It is only required to prove that the evidence has *prima facie* probative value⁸⁵, and no finite list to exclude a piece of evidence based on its reliability⁸⁶ exists.

[46] The written testimony is a reliable source as it is the transcript of an interview with one of the victims who suffered first-hand from the crime. Ms Porter was sexually enslaved by Mr Swanson from February 2020 until March 2021. As such, she can provide valuable information about her experience. The numerous accounts of sexual violence contained in NGO reports and news interviews⁸⁷, emphasises the reliability of the evidence produced by Ms Porter.⁸⁸ Furthermore, the means for its evaluation were adequate, since the transcript is the result of an interview conducted and recorded by the OTP. This piece of evidence is crucial for the Court's determination⁸⁹ of the extent to which Mrs Swanson knew and assisted in the commission of the crime.

III.C. The relevance and probative value outweigh the prejudice that the evidence may have.

[47] Art 69 (4) of the RS indicates that the Court must take any prejudice that the admission of evidence may have to a fair trial into account. The possible prejudice is that the defence cannot use their right to examine the witness.⁹⁰ There are certain limits to this right, as Art. 68(2) as well as Rule 68 RPE, allow the introduction of evidence by means other than oral testimony, which can

⁸² ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1399 and *Katanga*, ICC-01/04-01/07-2635

⁸³ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-2635, Trial Chamber II Judgment, 7 March 2014, para. 16

⁸⁴ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-2635, Trial Chamber II Judgment, 7 March 2014, para. 20.

⁸⁵ ICC, *Prosecutor v. Katanga & Ngudjolo* (Decision on the Confirmation of Charges) ICC-01-04-01/07, para 77.

⁸⁶ ICC, *Prosecutor v. Lubanga* (Decision on the Admissibility of Four Documents) ICC-01/04-01/06, para 32.

⁸⁷ Facts of the case, para 20.

⁸⁸ ICC, *Prosecutor v. Bemba et al*, ICC-01/05-01/13, Trial Chamber VII Judgment, 19 October 2016, paras 269-271.

⁸⁹ ICC, *Prosecutor v. Katanga & Ngudjolo* (Decision on the Confirmation of Charges) ICC-01-04-01/07, para 34.

⁹⁰ Art. 67 (1)(e) of the Rome Statute.

lead to the impossibility to examine a witness. Furthermore, there is no explicit provision including a full right to cross-examination⁹¹, thus the rights of the accused are not infringed upon.⁹²

III.D. The transcript should be deemed admissible as Ms Porter was subject to interference.

[48] Pursuant to Rule 68 (2) of the RPE, if the witness is not present before the Chamber, previously recorded material can be introduced under certain circumstances. In particular, the Court should deem admissible prior recorded testimony if the person who gave the testimony was subjected to interference.⁹³

[49] Ms Porter cannot attend as a witness due to improper interference from Mrs Swanson. The decision not to take the stand was influenced by psychological threats in an email sent by Mrs Swanson, intimidating Ms Porter that if she took the stand, Mrs Swanson would harm the young son of Ms Porter⁹⁴. The consequences on Ms Porter's physical and psychological well-being through this interference are further developed in paragraph [42] of the submission. Therefore, Mrs Swanson's behaviour should be regarded as improper interference, recognised by Rule 68 RPE.⁹⁵

[50] Furthermore, reasonable efforts were made to secure the attendance of Ms Porter as a witness.⁹⁶ She was first interviewed at her place of residency, and the interview was recorded by the OTP. This is a common practice as recognised by the Court, especially in cases of victims of sexual violence which hold a higher degree of protection.⁹⁷

[51] Therefore, the OTP submits that the introduction of the testimony serves the best interest of justice and should be deemed admissible since it has sufficient relevance and probative value, and it does not prejudice the rights of the accused as Ms Porter was subjected to improper interference.

IV. PRAYER

Corroborating the aforementioned arguments in agreement with the jurisprudence of the ICC, the Prosecution hereby solicits this Court to:

- I. Find that the case falls within the jurisdiction of the International Criminal Court
- I. Declare that Mrs Stella Swanson is criminally responsible for aiding and abetting the perpetration of the Crime against humanity of sexual slavery
- II. Deem the transcript of the witness testimony admissible before this Chamber.

⁹¹ Article 67: Rights of the accused. (2022), in K. Ambos (Ed.), Rome Statute of the International Criminal Court: Article-by-Article Commentary, (München: Beck/Nomos/Hart), p. 1989.

⁹² ICC, *Prosecutor v Ruto and Sang* (judgement on the appeal against the decision of TC V). ICC-01/09-01/11 OA 10, para 47.

⁹³ Rule 68 (2)(d), Rules of Procedure and Evidence.

⁹⁴ Facts of the case, para 18.

⁹⁵ Rule 68 (2)(d)(ii), Rules of Procedure and Evidence.

⁹⁶ Rule 68 (2)(d)(i), Rules of Procedure and Evidence.

⁹⁷ Piragoff and Clarke, *Evidence* (2013), pp. 406-408.