

Team No.: 2025-45

Prosecution

Nuremberg Moot Court 2025

I. THE REQUIREMENTS FOR HOLDING THE CONFIRMATION OF CHARGES HEARING AGAINST MR RHODES <i>IN ABSENTIA</i> HAVE BEEN MET	3
I.A. Mr Rhodes is a person that “cannot be found”	3
I.B. Reasonable steps were taken to secure Mr Rhodes’ appearance and to inform him of charges	4
<i>I.B.1. Reasonable steps were taken to secure Mr Rhodes’ appearance</i>	<i>4</i>
<i>I.B.2. Reasonable steps were taken to inform Mr Rhodes of the charges.....</i>	<i>4</i>
<i>I.B.3. The steps taken to inform Mr Rhodes of the hearing cannot be assessed</i>	<i>5</i>
I.C. There is cause to hold the confirmation of charges in absentia	5
<i>I.C.1. Potential evidence against Mr Rhodes may be available.....</i>	<i>5</i>
<i>I.C.2. There are no overriding rights attributed to co-suspects of Mr Rhodes</i>	<i>6</i>
<i>I.C.3. The victims of Mr Rhodes have overriding interests</i>	<i>6</i>
<i>I.C.4. The hearing may reinvigorate international efforts to bring Mr Rhodes to justice.....</i>	<i>6</i>
II. THE CASE AGAINST MR RHODES IS ADMISSIBLE UNDER ART. 17(1)(C) OF THE STATUTE	7
II.A. Pursuant to Art. 17(1)(c) the complementarity principle is satisfied	7
<i>II.A.1. Mr Rhodes has not been tried in Raspia for conduct which is the subject of the complaint ..</i>	<i>7</i>
<i>II.A.2. A trial by the ICC is permitted under Art. 20(3).....</i>	<i>8</i>
<i>II.A.2.a. Domestic proceedings shielded Mr Rhodes from criminal responsibility</i>	<i>9</i>
<i>II.A.2.b. Domestic proceedings were not independent or impartial and were conducted in a manner inconsistent with an intent to bring Mr Rhodes to justice</i>	<i>10</i>
III. THERE ARE SUBSTANTIAL GROUNDS TO BELIEVE THAT MR RHODES IS CRIMINALLY LIABLE FOR DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE UNDER ART. 25(3)(E).....	10
III.A. The incitement was public.....	11
III.B. The incitement was direct.....	11
III.C. <i>Mens rea</i> is met	12
<i>III.C.1 Mr Rhodes had intent for the direct and public incitement to genocide.....</i>	<i>13</i>
<i>III.C.2. Alternatively, Mr Rhodes had the dolus specialis to destroy the Adrelan religious group .</i>	<i>13</i>
PRAYER FOR RELIEF	14

I. THE REQUIREMENTS FOR HOLDING THE CONFIRMATION OF CHARGES HEARING AGAINST MR RHODES *IN ABSENTIA* HAVE BEEN MET

1. Art. 61(1) of the Rome Statute (hereinafter “the Statute”) states that, as a suspect, Mr Jasper Rhodes (hereinafter “Mr Rhodes”) must as a default be present for the hearing regarding the confirmation of charges.¹ However, there are two exceptional situations in which the ICC can hold such a hearing in the absence of Mr Rhodes.² The relevant exception in Art.62(2)(b) of the Statute, which sets out the following requirements for holding a confirmation hearing *in absentia*: (I.A.) Mr Rhodes “cannot be found;” (I.B.) all reasonable steps have been taken to secure his appearance, inform him of the charges, and notify him that a hearing to confirm those charges will be held; and (I.C.) there is a cause to hold the confirmation hearing *in absentia*. It is submitted that the requirements for holding the confirmation of charges hearing against Mr Rhodes *in absentia* have been met.

I.A. Mr Rhodes is a person that “cannot be found”

2. The requirement that a person “cannot be found” set forth in Art. 61(2)(b) of the Statute means that Mr Rhodes must have never been available to the ICC, and despite efforts to locate and arrest him, his whereabouts remain unknown.³ The whereabouts of Mr Rhodes have been unknown since his release from prison.⁴ While the accused remains at large, the extensive efforts undertaken by the Registry to trace him, following the issuance of the Arrest Warrant, have been unsuccessful.⁵ Thus, Mr Rhodes is a person who “cannot be found”.

3. Furthermore, it may be argued that Mr Rhodes does not qualify as a person who “cannot be found,” as he is “rumored” to be in Prala and his approximate whereabouts are known.⁶ The court’s inability to locate him stems from “reasons unrelated to the identification of the suspect’s location, for instance due to lack of cooperation from relevant States.”⁷ The ICC has dismissed rumors and unconfirmed reports as “insufficient” to challenge the suspect’s status as a person who “cannot be found.”⁸ Accordingly, Mr

¹ ICC, *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-103, Decision on Issues Related to the Hearing on the Confirmation of Charges, 17 November 2010, para. 4; ICC, *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Suspect’s Absence, 23 November 2023, para. 26.

² Rome Statute, Art. 61(2); *Ibid.*, paras. 26-27; ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, para. 23.

³ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Suspect’s Absence, 23 November 2023, para. 31; STL, *Prosecutor v. Ayyash*, STL-18-10/I/TC, Decision to hold trial in absentia, 5 February 2020, para. 45.

⁴ Facts, para. 22.

⁵ See I.B.1. below.

⁶ Facts, para. 22.

⁷ *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Suspect’s Absence, 23 November 2023, para. 32.

⁸ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, para. 77.

Rhodes' whereabouts remain unknown and he is a person who "cannot be found."

I.B. Reasonable steps were taken to secure Mr Rhodes' appearance and to inform him of charges

I.B.1. Reasonable steps were taken to secure Mr Rhodes' appearance

4. Efforts made under Art. 61(2)(b) of the Statute to secure the suspect's presence do not necessarily need to succeed. The key consideration is the "sufficiency and adequacy" of "all reasonable steps" taken to ensure Mr Rhodes's presence irrespective of the results.⁹ The "reasonable steps" include i) transmitting the Arrest Warrant and cooperation requests to other states, ii) conducting law enforcement operations, iii) publishing the Arrest Warrant on the ICC website and other media outlets, and iv) carrying out public campaigns and outreach activities to broadcast the Arrest Warrant.¹⁰

5. The Registry has taken extensive measures to locate and arrest Mr Rhodes. Requests for Mr Rhodes' arrest were sent to all three countries in the region.¹¹ The cooperation between the Ministries of Justice of Raspia and Croyla suggests a form of law enforcement collaboration.¹² The Arrest Warrant was published on the ICC website, with announcements made via Babblr.¹³ Numerous outreach activities were undertaken, including podcast appearances and meetings with relevant communities to disseminate the Arrest Warrant to the rural populations in Prala.¹⁴ It is submitted that the measures taken were sufficient and effective in ensuring Mr Rhodes' appearance before the court.¹⁵

I.B.2. Reasonable steps were taken to inform Mr Rhodes of the charges

6. The requirement under Article 61(1)(b) of the Statute to inform Mr Rhodes of the charges is deemed to have been met when "all efforts have been made to inform the person that charges against him or her exist and that these charges were available for consultation."¹⁶ The "charges" here refer to the Document Containing the Charges (hereinafter "DCC"), which informs a suspect of the "nature, cause, and content of the charges."¹⁷ The ICC, while assessing the efforts taken to notify the suspect, has given weight to radio broadcasts targeted at specific audiences rather than wider audiences, engaging relevant

⁹ *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution's Request to Hold a Confirmation of Charges Hearing in the Suspect's Absence, 23 November 2023, paras. 36-39; *Ibid.*, para. 38; Rules for Procedure and Evidence, Rule 123(3).

¹⁰ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, paras. 40-42.

¹¹ Exhibit 2, "Official Communication with Governments".

¹² *Ibid.*

¹³ *Ibid.*, "ICC Website" & "Social Media".

¹⁴ Facts, paras. 8 & 23; *Ibid.*, "Podcast Appearances".

¹⁵ *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution's Request to Hold a Confirmation of Charges Hearing in the Suspect's Absence, 23 November 2023, paras. 41-44.

¹⁶ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-481, Second Decision on the Prosecution's Request to Hold a Confirmation of Charges Hearing in the Kony Case in the Suspect's Absence, para. 8.

¹⁷ ICC, *Prosecutor v. Kenyatta and Ali*, ICC-01/09-02/11-584, Decision on the Content of the Updated Document Containing the Charges, 28 December 2012, para. 18; ICC, *Prosecutor v. Ali Kushayb*, ICC-02/05-01/20-433, Decision on the Confirmation of Charges Against Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb'), 9 July 2021, para. 23.

communities through field activities, and raising awareness via the ICC website and other platforms.¹⁸

7. The Registry undertook extensive measures to disseminate the DCC. The relevant pages on the ICC website were updated to include the DCC.¹⁹ Other platforms, such as Blabbr, were also utilized.²⁰ Specific podcasts were used to disseminate summaries of the DCC, in both English and Pralan, targeting relevant audiences in Eskos and the areas bordering Croyla and Prala.²¹ Field activities were conducted with relevant communities in and around Eskos, as well as the border region with Prala.²² Therefore, the efforts included “large-scale media campaigns” aimed at “engaging with relevant stakeholders and communities,”²³ and thus it is submitted that all reasonable steps have been taken to notify Mr Rhodes of the charges against him.

I.B.3. The steps taken to inform Mr Rhodes of the hearing cannot be assessed

8. The requirement to inform Mr Rhodes of the confirmation of charges hearing can only be assessed once the ICC decides to hold such a hearing and the Registry undertakes the necessary notification efforts.²⁴ The court is yet to decide on the matter and, therefore, this requirement is not relevant at this stage of the proceedings.

I.C. There is cause to hold the confirmation of charges in absentia

9. Even if all the requirements under Art. 61(2)(b) of the Statute are met, the decision to hold a confirmation of charges hearing *in absentia* remains at the court’s discretion.²⁵ The ICC decides whether the departure from the general rule under Art. 61(1) is justified for holding a confirmation of charges hearing without Mr Rhodes.²⁶ While assessing whether holding the hearing *in absentia*, the ICC has given particular importance to (I.C.1.) potential availability of evidence; (I.C.2.) rights of co-suspects; (I.C.3.) interests of victims; and (I.C.4.) potential reinvigoration of efforts.

I.C.1. Potential evidence against Mr Rhodes may be available.

10. The ICC considered the conviction of Dominic Ongwen in Uganda as an indication of the availability

¹⁸ *Prosecutor v. Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, para. 56; ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-481, Second Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Kony Case in the Suspect’s Absence, 4 March 2024, para. 6-7.

¹⁹ Exhibit 2, “ICC Website.”

²⁰ *Ibid.*, “Social Media.”

²¹ *Ibid.*, “Podcast Appearances” & “Traditional Media and Podcast Appearances.”

²² *Ibid.*, “Meetings in the Relevant Communities.”

²³ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05-481, Second Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Kony Case in the Suspect’s Absence, 4 March 2024, para. 6.

²⁴ ICC, *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Suspect’s Absence, 23 November 2023, paras. 45, 49.

²⁵ *Ibid.*, paras. 58-59.

²⁶ ICC, *Prosecutor v. Joseph Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, para. 75; ICC, *Prosecutor v. Kony*, ICC-02/04-01/05, Decision on the Prosecution’s Request to Hold a Confirmation of Charges Hearing in the Suspect’s Absence, 23 November 2023, para. 62.

of potential evidence against Joseph Kony.²⁷ The fact that the District Court sentenced Mr Rhodes to five years in prison suggests the existence of at least some relevant evidence that may be significant for his future trial concerning crimes against humanity and incitement to genocide.²⁸

I.C.2. There are no overriding rights attributed to co-suspects of Mr Rhodes

11. The ICC has rejected requests to hold confirmation hearings *in absentia* every time one of the co-suspects was apprehended and the others were still at large, due to potential delays and prejudice against the available suspect's fundamental rights to a fair and expeditious trial under Art. 64(2) and 67(1) of the Statute.²⁹ However, the current proceedings involve only Mr Rhodes and there are no other apprehended suspects whose rights would be affected by charging him.³⁰ Therefore, it is submitted that there are no co-suspects' rights that would override the interests of holding a confirmation hearing *in absentia*.

I.C.3. The victims of Mr Rhodes have overriding interests

12. The ICC held elsewhere that the confirmation of charges against "the only remaining suspect" *in absentia* would provide victims who have been waiting for a long time "with an opportunity to voice their views and concerns, albeit within the limited framework of pre-trial proceedings."³¹ Similarly, Mr Rhodes, being the single most important suspect as the President and perhaps the only one potentially facing trial before the ICC, means that victims should be given the opportunity to express "their views and concerns." As a result, it is submitted that the overriding interests of victims justify holding the confirmation of charges hearing *in absentia*.

I.C.4. The hearing may reinvigorate international efforts to bring Mr Rhodes to justice

13. The fact that the confirmation hearing will be held in absentia will remind the international community, in particular the neighbouring countries, that Mr. Rhodes is a wanted fugitive and "may reinvigorate efforts to locate him and bring him before the Court."³² The new wave of proceedings, almost three years after the issuance of the Arrest Warrant, may revive and put political pressure on Prala to cooperate in the arrest of Mr. Rhodes. Therefore, it is submitted that holding the confirmation of charges hearing *in absentia* could potentially strengthen international efforts to arrest Mr Rhodes.

In conclusion, it is submitted that the requirements of Article 61(2)(b) of the Statute for holding a

²⁷ Ibid., 71.

²⁸ Facts, para. 21; See III. below.

²⁹ ICC, *Prosecutor v. Ali Kushayb*, ICC-02/05-01/20-92, Decision severing the case against Mr Ali Kushayb, 16 June 2020, para. 8; *Prosecutor v. Kony, Otti, Odhiambo and Ongwen*, ICC-02/04-01/05, Decision Severing the Case Against Dominic Ongwen, 6 February 2015, para. 8.

³⁰ Facts, para. 2.

³¹ *Prosecutor v. Kony*, ICC-02/04-01/05-532, Decision on the Criteria for Holding Confirmation of Charges Proceedings in Absentia, 29 October 2024, para. 71; Ibid., paras. 66-67.

³² Ibid.

confirmation of charges hearing in the absence of Mr Rhodes are satisfied. Accordingly, the proceedings may proceed.

II. THE CASE AGAINST MR RHODES IS ADMISSIBLE UNDER ART. 17(1)(C) OF THE STATUTE

II.A. Pursuant to Art. 17(1)(c) the complementarity principle is satisfied

14. The ICC is complementary to national judicial proceedings.³³ To determine the admissibility of a case before the ICC, it is necessary to assess whether there are ongoing domestic investigations or prosecutions over the same case, or whether they occurred in the past where the State decided not to prosecute the person concerned.³⁴ Mr Rhodes has already been tried for hate speech.³⁵ For this reason, Art. 17(1)(c) of the Statute applies to the present case. This provision renders a case inadmissible before the ICC if the person concerned has already been tried for conduct that is the subject of the complaint, and a trial by the ICC is not permitted under Art. 20(3). These conditions have not been met in the present case. It is thus submitted that Mr Rhodes' case is admissible before the ICC.

II.A.1. Mr Rhodes has not been tried in Raspia for conduct which is the subject of the complaint

15. An individual who has already been tried by another court cannot be tried by the ICC for the same conduct.³⁶ The “same person / substantially the same conduct test” applies.³⁷ The application of this test requires a case-by-case analysis of all the circumstances, the context of the crimes, and the overall allegations against the suspect.³⁸ Moreover, it requires a comparison of the incidents investigated and the conduct of the suspect in the domestic and the ICC proceedings.³⁹ The ICC defines an “incident” as a historical event, defined in time and place, where crimes within the Court’s jurisdiction allegedly occurred.⁴⁰ It is the degree of overlap between the incidents investigated by the ICC and by the State that determines whether “substantially the same conduct” is being prosecuted by the two jurisdictions.⁴¹

³³ ICC, *Prosecutor v. Kony, Otti, Odhiambo, Ongwen*, ICC-02/04-01/05, Decision on the admissibility of the case under Art. 19(1) of the Statute, 10 March 2009, para. 34.

³⁴ Rome Statute, Art. 17(1)(a), Art. 17(1)(b); ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07 OA 8, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, para. 78.

³⁵ Facts, para. 21.

³⁶ Rome Statute, Art. 17(1)(c).

³⁷ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-8-Corr, Decision concerning Pre-Trial Chamber I’s Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo, 24 February 2006, para. 31.

³⁸ ICC, *Prosecutor v. Gaddafi and Al-Senussi*, ICC-01/11-01/11-547-Red, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”, 21 May 2014, para. 62.

³⁹ *Ibid.*, para. 73.

⁴⁰ *Ibid.*, para. 62.

⁴¹ *Ibid.*, para. 72.

According to ICC jurisprudence, the party challenging admissibility bears the burden of proof.⁴²

16. Mr Rhodes, the same individual, was prosecuted in Raspia and is being prosecuted by the ICC. Mr Rhodes was domestically prosecuted for “hate speech” under Raspian law.⁴³ The national provision under which Mr Rhodes was convicted criminalises violating human dignity through insults and defamation.⁴⁴ The ICC has charged Mr Rhodes with direct and public incitement to genocide and for the crimes against humanity of persecution and torture.⁴⁵ The specific incidents on which the ICC charges are based include social media posts shared on the social media platform Babbler, a television address delivered on 10 December 2022, discriminatory policies against the Adrelans, as well as instances of forced arrest and torture of detained protest leaders. In contrast, the decisions of the District and Appeals Court of Brolin are based solely on Mr Rhodes’ statements through the publication of public posts on Babbler and the above-mentioned television address. It is therefore submitted that there is insufficient overlap between the events underlying the domestic proceedings and the ICC charges. Although the same person is under investigation, the case is admissible before the ICC since the conduct underlying the domestic and ICC proceedings is not substantially the same.

II.A.2. A trial by the ICC is permitted under Art. 20(3)

17. Art. 17(1)(c) shall be read in conjunction with Art. 20(3) of the Statute. Art. 17(2) and Art. 20(3) contain similar language and share the same meaning.⁴⁶ Therefore, these two provisions are considered together hereinafter. There are two situations in which a case that has already been tried by another court is admissible before the ICC. These are (II.A.2.a) if the national proceedings over the same conduct proscribed under Art. 6 were to shield the person concerned from criminal responsibility⁴⁷ and (II.A.2.b) if the national proceedings cumulatively were not conducted independently or impartially in accordance with the norms of due process recognised by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.⁴⁸ Direct and public incitement to commit genocide as a form of liability is provided for in Art. 6 of the Statute, as it constitutes a punishable preparatory act included within the meaning of the “committed” crime under

⁴² Ibid., para. 52.

⁴³ Facts, para. 20.

⁴⁴ Ibid.

⁴⁵ Ibid., para. 2.

⁴⁶ ICC, *Prosecutor v. Gaddafi and Al-Senussi*, ICC-01/11-01/11 OA 6, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled “Decision on the admissibility of the case against Abdullah Al-Senussi”, 24 July 2014, para. 222.

⁴⁷ Rome Statute, Art. 20(3)(a).

⁴⁸ Ibid., Art. 20(3)(b).

Art. 58(1)(a) of the Statute.⁴⁹

II.A.2.a. Domestic proceedings shielded Mr Rhodes from criminal responsibility

18. The shielding of a perpetrator from his criminal responsibility by a State amounts to unwillingness of such State to genuinely prosecute.⁵⁰ In the present case, several indicators point to an unwillingness on the part of Raspia to prosecute Mr Rhodes. The matters under contention include: i) the imposition of an inferior penalty,⁵¹ ii) the rashness of the proceedings,⁵² iii) and the conviction to an inadequate sentence.⁵³ It is submitted that the presence of these indicators in the present case demonstrates the willingness of Raspia to shield Mr Rhodes from criminal responsibility.

19. **Imposition of inferior penalty.** The national law of Raspia contains two provisions on hate speech.⁵⁴ The first provision covers conduct of higher gravity, applicable when hate speech “incites hatred” and “calls for violent or arbitrary measures against them [protected groups]”.⁵⁵ However, the District Court of Brolin applied the second provision when sentencing Mr Rhodes. The second provision only mentions the violation of human dignity by “insulting, maliciously maligning or defaming”.⁵⁶ The application of this provision is not adequate as it does not reflect the nature of Mr Rhodes’ speeches, which called for “fight”, “protect by force”, and “take up arms” against the Adrelans.⁵⁷ The Appeals Court also failed to recharacterise the offence and upheld the application of the lesser charge.

20. **Rushed proceedings.** The Appeals Court of Brolin issued its final decision seven days after the District Court of Brolin had issued its decision.⁵⁸ The short period of time between the two decisions indicates that the judicial process of the Appeals Court was rushed and lacked thoroughness.⁵⁹

21. **Inadequate sentence vis-à-vis the gravity.** The reduction of Mr Rhodes’ sentence from sixty months to two months by the Appeals Court of Brolin⁶⁰ indicates a strong discrepancy between the two national courts and the inadequacy of the sentence. Two months amounts to the time that Mr Rhodes was

⁴⁹ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision on the Prosecution Application for a Warrant of Arrest, 6 March 2007, para. 33.

⁵⁰ David P. Hein, Jo Stigen, “The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity”, *Journal of International Criminal Justice*, 7(2009), p. 259.

⁵¹ *Ibid.*, p. 260.

⁵² *Ibid.*, p. 274; Office of the Prosecutor of the ICC, *Informal Expert Paper: The Principle of Complementarity in Practice* (2006), p. 30.

⁵³ *Ibid.*; Hein and Stigen, “The Relationship between the ICC and National Jurisdictions”, p. 286.

⁵⁴ Facts, para. 20.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*; Clarification 3.

⁵⁷ *Ibid.*, para. 17; Exhibit 1. *See* III.B.

⁵⁸ Facts, para. 21.

⁵⁹ Hein and Stigen, 2009, pp. 273-274.

⁶⁰ Clarification 2; Facts, para. 21.

detained.⁶¹ Consequently, sentencing Mr Rhodes to two months of imprisonment is materially the same as releasing him. Mr Rhodes' television address and social media posts inciting to the commission of genocide against the Adrelan religious group threatened approximately 30% of the Raspian population and 80% of the Croyla population. 17.8 million Adrelans were put at risk of persecution and genocide.⁶² A two-month sentence is disproportional to the case at hand.

II.A.2.b. Domestic proceedings were not independent or impartial and were conducted in a manner inconsistent with an intent to bring Mr Rhodes to justice

22. For a court to be independent it must be autonomous from the executive branch of the State and from the party to the proceedings.⁶³ For a court to be impartial its judges must be personally or subjectively impartial and there must be no reasonable doubts as to its impartiality.⁶⁴ Proceedings that are inconsistent with the intent to bring the person concerned to justice refer to sham proceedings that result in a suspect evading justice.⁶⁵ In assessing impartiality, the linkages between the perpetrator and the judge must be taken into account.⁶⁶ In the present case, the judges of the Appeals Court and Supreme Court were appointed by Mr Rhodes.⁶⁷ This indicates his influence over the judiciary. Given the loyalty of the judges of the Appeals Court and the Supreme Court to Mr Rhodes, it is submitted that there is reasonable doubt to impartiality.⁶⁸ It can be concluded that the domestic courts are partial to the accused and that the domestic proceedings were conducted with the intention of shielding him from criminal liability.

III. THERE ARE SUBSTANTIAL GROUNDS TO BELIEVE THAT MR RHODES IS CRIMINALLY LIABLE FOR DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE UNDER ART. 25(3)(E)

23. The Statute prescribes individual criminal responsibility for the crime of direct and public incitement to commit genocide.⁶⁹ In the absence of directly applicable ICC jurisprudence on this issue, it is appropriate to draw on the jurisprudence of the ICTR and ICTY. In order to establish the crime of incitement to commit genocide, three conditions must be met: i) the directness of the message; ii) the

⁶¹ Facts, para. 21.

⁶² Exhibit 1; Facts, paras. 8, 9, 17.

⁶³ ICC, *Prosecutor v. Gaddafi and Al-Senussi*, ICC-01/11-01/11 OA 6, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled "Decision on the admissibility of the case against Abdullah Al-Senussi", 24 July 2014, para. 250.

⁶⁴ Ibid.

⁶⁵ Ibid, para. 230.

⁶⁶ Office of the Prosecutor of the ICC, *Principle of Complementarity in Practice*, p. 30.

⁶⁷ Facts, para. 21.

⁶⁸ Ibid.; ICC, *Prosecutor v. Gaddafi and Al-Senussi*, ICC-01/11-01/11 OA 6, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled "Decision on the admissibility of the case against Abdullah Al-Senussi", 24 July 2014, para. 250.

⁶⁹ Rome Statute, Art 25(3)(e).

public nature of the message; and iii) the intent to destroy a protected group.⁷⁰ Direct and public incitement to commit genocide is an inchoate crime. As such, its commission does not require the commission or attempted commission of genocide.⁷¹

III.A. The incitement was public

24. For the incitement to commit genocide to be considered public, the call for criminal action must be communicated to a number of individuals in a public place or to members of the general public through means such as the mass media. For example, radio or television.⁷² To disseminate his message of committing genocide, Mr Rhodes used his monthly television address to the nation.⁷³ The television address is a public space with nationwide reach. In addition, Mr Rhodes also used the social media platform Babbler as a means of mass communication with uncontrollable reach.⁷⁴ As a result, the reach of his message is significant, as evidenced by the engagement with the posts: the call to “rebel, whatever it costs” received 12,000 *likes*; the call to “neutralise barbarism” received 10,000 *likes*, and the call to “fight the terrorists in your neighbourhood” received 20,000.⁷⁵ Similar to the Appeals Chamber’s finding that a burgomaster’s statements allegedly have significant influence because “the population will certainly follow” what authority says.⁷⁶ Mr Rhodes’ position as the President increases the reach and influence of his statements. The engagement goes far beyond the numbers shown in Exhibit 1, as there is a number of *reshares*,⁷⁷ and the posts remain available for public access. It is therefore submitted that the use by Mr Rhodes of his monthly television address to the nation and the social media platform Babbler to disseminate a genocidal message satisfies the publicity requirement.

III.B. The incitement was direct

25. Direct incitement requires a direct appeal to take criminal action with causation between incitement and the main offence.⁷⁸ The link must be subjective, “volitional”, and directed at the genocidal aim of the inciting act.⁷⁹ Incitement is punishable if the incitement *per se* never occurs.⁸⁰ Furthermore, casting

⁷⁰ ICTR, *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Appeals Judgement, 28 November 2007, para. 677.

⁷¹ *Ibid.*, para. 678.

⁷² UN doc. A/51/10 (1996), Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f), p. 22.

⁷³ Facts, para. 17.

⁷⁴ Exhibit 1. ICTR, *Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Appeals Chamber Judgment, 20 October 2010, para. 158; Albin Eser, “Individual Criminal Responsibility” in Antonio Cassese (ed.) et al., *The Rome Statute of the International Criminal Court: A Commentary*, Volume I (Oxford, 2002), p. 805.

⁷⁵ Exhibit 1.

⁷⁶ ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Appeals Judgement, 1 June 2001, para. 235-237.

⁷⁷ Exhibit 1.

⁷⁸ ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 557.

⁷⁹ Eser, 2002, p. 804.

⁸⁰ ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, paras. 561-562.

suspicion on groups that are favourable to the perpetration of the crime can suffice.⁸¹ In assessing whether the crime of incitement to commit genocide has been committed, cultural and linguistic context must be assessed as a speech may be perceived differently depending on the audience and context.⁸² The accuracy and tone of the statement must be taken into account in determining its content.⁸³ In the present case, Mr Rhodes stated that it is “impossible for this country to survive with them [referring to the Adrelans] in it” and called to “remove this plague of violence through any means necessary⁸⁴. Mr Rhodes’ rhetoric language parallels that of *Nahimana*, where terms such as “wipe them,” or “make them disappear,”⁸⁵ constituted incitement to genocide.⁸⁶ It should be noted that Mr Rhodes’ speeches calling for the commission of genocide followed years of violent rhetoric and discrimination. In this context, the audience could understand Mr Rhodes’ speeches as an incitement to exterminate the Adrelans. In *Nahimana*, certain RTLM broadcasts equated all Tutsi with the enemy.⁸⁷ Similarly, Mr Rhodes’ rhetoric consistently portrayed the whole Adrelans as terrorists. No distinction was made between the “Resistance” bombers and the general Adrelan population. Mr Rhodes speeches characterised all “Adrelan neighbours” as having “taste of violence” and “being incapable of living side-by-side with us” making his call to “remove the plague of violence” and “fight all terrorists in your neighbourhood” address religious group.⁸⁸ As President, Mr Rhodes’ statements carried official authority, making his call to action more likely to be understood as a directive.⁸⁹ This is evidenced by Croyla’s invasion one week after the television address to quickly prevent an impending extermination.⁹⁰ It is therefore submitted that the incitement was direct.

III.C. *Mens rea* is met

26. For the *mens rea* requirement to be met there must be a double intent on behalf of the inciter: i) the inciter is to have knowledge that the statement is public and ii) must intend to prompt and provoke those incited to act with the purpose of destroying, in whole or in part, a religious group.⁹¹ The incitement must

⁸¹ Ibid., paras. 557-558; UN doc. A/C.6/SR.3, Summary Records of the Sixth Committee of the General Assembly, 21 September-10 December 1948, Official Records of the General Assembly.

⁸² ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, paras. 557-558.

⁸³ ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Judgment and Sentence, 3 December 2003, para. 1022.

⁸⁴ Facts, para. 17.

⁸⁵ ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Judgment and Sentence, 3 December 2003, para. 483.

⁸⁶ ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Appeals Judgment, 28 November 2007, para. 727.

⁸⁷ ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Appeals Judgment, 28 November 2007, para. 739.

⁸⁸ Facts, para. 17; Exhibit 1.

⁸⁹ See ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Appeals Judgment, 1 June 2001, para. 235-237.

⁹⁰ Facts, para. 18.

⁹¹ Eser, 2002, p.806; Rome Statute, Art.6; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 560;

create a particular state of mind necessary to commit genocide.⁹² Art.25(3)(e) of the Statute does not provide for a special subjective requirement. In contrast, in Art. 25(3)(b) explicitly states the need for a special mental element. Mr Rhodes himself is not required to have special intent.⁹³

III.C.1 Mr Rhodes had intent for the direct and public incitement to genocide

27. The actual language used as well as the purpose of the speech are the indicators of the intent.⁹⁴ In the present case, Mr Rhodes described the Adrelans as having an inherent “taste for violence,” and referred to them as a “plague” that must be “removed.”⁹⁵ This rhetoric demonstrates that Mr Rhodes attributes violent characteristics to all the Adrelans. It can be inferred that the accused does this to convey the idea that the Adrelans are a threat that must be eliminated. The escalated social media rhetoric culminated in the television address made by Mr Rhodes when he called for the use of “any means necessary” against the Adrelans.⁹⁶ Mr Rhodes statements generated a state of mind among the Rospian population that was capable of leading to genocidal acts. It is therefore submitted, that Mr Rhodes statements meet the required intent for criminal responsibility.

III.C.2. Alternatively, Mr Rhodes had the *dolus specialis* to destroy the Adrelan religious group

28. In the context of genocidal intent, destruction means the physical elimination of a group.⁹⁷ A perpetrator’s *mens rea* may be inferred from i) his actions,⁹⁸ ii) other systematic acts against the group, iii) scale and nature of atrocities in a region, and iv) evidence of deliberately targeting victims based on the genocidal ground.⁹⁹ Mr Rhodes’ post declaring that “Rospia should only count civilians devoted to Osin” and “any other faith is barbarism”¹⁰⁰ demonstrates that the accused specifically targeted the Adrelans on the basis of their religious beliefs. Mr Rhodes systematically discriminated against the Adrelan religious minority through legal restrictions that barred them from governmental positions, leadership roles, top universities, and public sector employment.¹⁰¹ Given the disproportionate impact that Mr Rhodes’ discriminatory policies caused on the Adrelan minority, it can be concluded that these were specifically designed to persecute the Adrelans since they comprise 30% of the population.¹⁰² Mr Rhodes’ campaign consistently portrayed them as the enemy, as “rich outsiders dictating how true

⁹² Ibid.

⁹³ Eser, 2002, p. 806.

⁹⁴ ICTR, *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Judgement and Sentence, 3 December 2003, para. 1001.

⁹⁵ Facts, para. 17.

⁹⁶ Ibid.

⁹⁷ ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Appeals Judgement, 19 April 2004, paras. 25-26.

⁹⁸ ICTR, *Prosecutor v. Semanza*, Case No. ICTR-97-20 (Trial Chamber), May 15, 2003, para. 313.

⁹⁹ ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 523.

¹⁰⁰ Exhibit 1.

¹⁰¹ Facts, paras. 12-13.

¹⁰² Ibid., paras. 9, 13.

Raspians live their lives”.¹⁰³ Mr Rhodes’ policies led to the forcible arrest of 30 Adrelan religious leaders. Additionally, it is alleged that his policies also led to the imposition of electric shock and sleep deprivation treatment on 35 Adrelans.¹⁰⁴ The call for action against the Adrelans, combined with Rhodes’ ongoing discriminatory policies and systematic persecution of the Adrelans as a religious group, demonstrates that the *mens rea* criteria are met. It is therefore submitted that Mr Rhodes had both the *dolus specialis* and the intent for the direct and public incitement to genocide.

PRAYER FOR RELIEF

29. In accordance with all abovementioned arguments, the Office of the Prosecutor respectfully requests the Pre-Trial Chamber I to adjudge and declare that:

1. All requirements for a confirmation of charges hearing *in absentia* against Mr Rhodes have been met;
2. Mr Rhodes' previous conviction for hate speech in Raspia does not render the case inadmissible before the ICC nor violate the *ne bis in idem* principle; and
3. There are substantial grounds to believe that Mr Rhodes is criminally liable for the crime of direct and public incitement to commit genocide.

¹⁰³ Ibid., para.11.

¹⁰⁴ Ibid., paras. 14-16.