

MEMORIAL FOR THE PROSECUTION
P20

PLEADINGS

PRELIMINARY MATTERS

THE COURT HAS JURISDICTION

(a) A non-international armed conflict existed in Homeland.

1. The war crimes charges brought are premised on a finding that a non-international armed conflict ('NIAC') occurred within Homeland. As confirmed in *Lubanga*,¹ a NIAC exists where there is protracted or intense armed violence between governmental authorities and/or organized armed groups.²
2. There was armed violence between the Homeland Armed Forces ('HAF') and the Northland Forces ('NF').³ The HAF were governmental forces and the NF were sufficiently organized, given evidence of a command structure led by the Armed Resistance Council ("ARC").⁴ The fighting was intense, involving over 10,000 troops, being a "full-fledged civil war", with the use of sophisticated weaponry and large numbers of casualties.⁵ A NIAC therefore existed.

¹ *Prosecutor v s Lubanga* (Decision on the Confirmation of Charges) (2007), ICC, ICC-01/04-01/06, ¶233

² *Prosecutor v Tadić* (1995), IT-94-1, ¶70

³ Facts, ¶10, 20, 23

⁴ Facts, ¶10

⁵ Facts, ¶9, 11, 17, 25

THIS CASE IS ADMISSIBLE

3. The Defendant and her government challenge the admissibility of this case, primarily on the belief that she would obtain a more “lenient” sentence in the Northland domestic courts. However, the burden is on the Defence to prove that a case is inadmissible,⁶ which they are unable to discharge for three reasons.

4. First, the leniency of any domestic sentence only supports admissibility. The relevant question under Article 17, ICC Statute, as observed in *Katanga*, is to determine whether the state with jurisdiction has genuinely attempted to investigate or prosecute the counts charged.⁷ A domestic prosecution which imposes a “lenient” penalty is plainly incompatible with a “genuine” prosecution⁸ as the proceedings would lack “intent to bring the person concerned to justice”.⁹ The lack of any domestic legislation for the crimes charged also indicates a lack of any genuine intent, especially as the Homeland authorities have had ample time (over four years since the end of hostilities) to establish a domestic legal framework to investigate and prosecute crimes from the civil war.

5. Second, under Article 17, if the relevant state has failed to initiate an investigation, admissibility is presumed and the Pre-Trial Chamber “need not

⁶ *Prosecutor v Mbarushimana* (2011), ICC-01/04-01/10, ¶4

⁷ *Prosecutor v Katanga and Chui* (2009), ICC-01/04-01/07-1497

⁸ ICC Office of the Prosecutor, *The Principle of Complementarity in Practice* (2003), Annex 4, P. 28-29

⁹ Rome Statute of the International Criminal Court (“**ICC Statute**”), Article 17(2)(c)

make any analysis of unwillingness or inability.¹⁰ No proceedings were apparently contemplated or brought against the Defendant, thereby supporting admissibility.

6. Third, if a state has decided not to act, the case is admissible if the state is unwilling or unable to carry out the investigation or prosecution genuinely.¹¹ The Ministry of Defence and Security was “ready to co-operate in order to identify the organizers”,¹² but investigations were never initiated.¹³ The Homeland Government has yet to identify any perpetrators and no charges have been brought before a Homeland national court, which shows unwillingness to prosecute or even investigate the alleged charges.

(b) The counts are sufficiently grave.

7. Scale, nature and manner of the crimes are factors that aid in determining the gravity and thus admissibility of a case.¹⁴ A direct disruption to medical services for civilians and those *hors de combat* was noted in *Lubanga* to be of a nature to cause international “social alarm”.¹⁵ This occurred on the facts, as independently verified by the International Emergency Medics Association.¹⁶

¹⁰ *Prosecutor v Lubanga* (Arrest Warrant Decision) (2006), ICC-01/04-01/06, ¶40

¹¹ ICC Statute, Article 17(1)(a-b)

¹² Facts, ¶22

¹³ *Ibid.*

¹⁴ Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (2010), ICC-01/09, ¶62

¹⁵ *Supra.*, n.10, ¶46

¹⁶ Facts, ¶25

Furthermore, the scale of the crimes highlight the gravity of the case as in Count One, over five million people, a third of Northland's population, fell victim to a cyber attack.¹⁷

INDICTMENT ONE

THE DEFENDANT SHOULD BE TRIED UNDER ARTICLE 8(2)(c)(i),

ARTICLE 8(2)(e)(iv) AND ARTICLE 7(1)(k)

8. Between 5-11 of October 2012, Colmer's power grid and the General Hospital's data archives were attacked.¹⁸ There are substantial grounds to believe that the Defendant bears responsibility under Article 25(3)(d) for war crimes or crimes against humanity.

THE CYBER ATTACKS IN COLMER CONSTITUTED WAR CRIMES

(a) Cyber attacks constitute a form of "attack" under Article 8.

9. Articles 8(2)(c)(i) and 8(2)(e)(iv) require "violence" to life and person, and intentionally directing "attacks" against certain civilian objects, respectively. The issue therefore is whether cyber attacks fall within the ambit of "violence" and "attacks".

¹⁷ Facts, ¶2, 20

¹⁸ Facts, ¶20

10. It has been observed by the International Court of Justice that the advancement of new weapons technology does not escape scrutiny according to the proportionality and necessity principles, the consequences rather than form of weaponry being the primary consideration.¹⁹ Despite its ephemeral nature, cyber attack can cause indiscriminate and widespread harm.²⁰ Furthermore, under the Additional Protocols to the Geneva Conventions, an “attack” is defined as an “act of violence against the adversary”.²¹ The existence of civilian deaths flowing from a cyberattack would therefore be enough to classify it as an attack,²² as “attacks” are characterized by their violent consequences.²³

(b) The cyber attack violated the principle of distinction.

11. The principle of distinction requires parties to an armed conflict to distinguish civilian objects and military objectives when participating in armed conflicts.²⁴ However, the hack on the Supervisory Control and Data Acquisition (SCADA) system and the hospital in Colmer constituted a blanket

¹⁹ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] Rep 226, ¶86

²⁰ General Assembly Resolution 53/70, A/RES/53/70 (4 January 1999)

²¹ Protocol I Additional to the 1949 Geneva Conventions I-IV (“**Additional Protocol I**”), Article 49(1)

²² Tallinn Manual on the International Law Applicable to Cyber Warfare, UK, Cambridge University Press, 2013, P. 106-107

²³ *Prosecutor v Tadić* (1995), IT-94-1, ¶120,124

²⁴ *Prosecutor v. Blaskić* (2000), IT-95-14-T, ¶180

attack that did not distinguish between military objectives and civilian objects as it resulted in 150 civilian deaths.²⁵

(c) The target of the hacks were not legitimate military objectives.

12. Articles 8(2)(c)(i) and 8(2)(e)(iv) require an attack on “persons taking no active part in hostilities” and “hospitals [...] provided they are not military objectives”. Military objectives are defined as “objects which by their nature, location, purpose or use make an effective contribution to military action” and “whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.²⁶

13. The SCADA assists with the power grid’s distribution of electricity throughout Colmer.²⁷ It can be inferred that part of SCADA’s functionality includes control of specific “nodes”,²⁸ allowing for optimum distribution of electricity. Although Colmer is a metropolitan area, there are legitimate military objectives within it.²⁹ The fact that SCADA was subject to an indiscriminate hack rather than one that would only target nodes of military significance, is a violation of the principle of distinction. Furthermore, the hack of the hospital violated Article 8(2)(e)(iv) as the corruption of medical

²⁵ Facts, ¶25

²⁶ Additional Protocol I, Article 52(2)

²⁷ Facts, ¶20

²⁸ Ibid.

²⁹ ICTY Committee, Final Report to the Prosecutor by the Committee Established to Review the Nato Bombing Campaign, ¶75

records of *hors de combat* offered no definite military advantage, making the hospital a civilian target.

THE CYBER ATTACKS ALSO CONSTITUTED A CRIME AGAINST HUMANITY

14. The Prosecution also brings charges under Article 7(1)(k), which proscribes “other inhumane acts” intentionally causing great suffering committed as part of a widespread or systematic attack directed against a civilian population. The Prosecution submits that there is sufficient latitude within Article 7(1)(k), as a residual crime against humanity, to encompass cyber-attacks, even if Article 8 does not.

15. First, under Article 7(1)(k), there must be an “attack directed against civilians”. As argued, cyber-attacks constitute an “attack”, and there is no principled reason to treat differently the definition of “attack” under Article 7 and 8.³⁰ Additionally, Colmer’s five million residents are “civilians” and those *hors de combat* can still be victims of crimes against humanity.³¹ Moreover, “directed against” implies that the civilians are the primary object of attack.³² The hospital in Colmer was the victim of a separate cyber attack which corrupted medical data, which clearly served no military purpose.³³

³⁰ *Supra.*, n.22

³¹ *Prosecutor v Martić* (2008), IT-95-11-A, ¶307

³² *Prosecutor v Kunarac et. al* (2000), IT-96-23, (“**Kunarac Appeal**”), ¶91

³³ Facts, ¶20

16. Second, the test for “widespread or systematic” is disjunctive.³⁴ To determine if the attack was “widespread” the Pre-Trial Chamber must “identify the population which is the object” and decide whether the attack is widespread in light of the “means and result”.³⁵ The cyber attack on SCADA and the hospital were widespread in disrupting power for five million residents, leading to 150 deaths, which is sufficient for the Court to consider it widespread.

17. Third, under Article 7(1)(k) an “inhumane act” arises where the conduct cause serious mental or physical suffering which is a similar gravity to other crimes against humanity.³⁶ It is readily inferable that the deprivation of power to hospital facilities would cause serious mental or physical suffering for patients reliant on electronic technology. The death of 150 *hors de combat* and civilians is plainly equivalent in effects to other crimes against humanity such as murder.³⁷

18. Finally, the mental element of crimes against humanity requires that (i) the perpetrator knew of the widespread or systematic attack and (ii) that the offence comprised part of the attack.³⁸ The Defendant was aware that the attack took place, as her subordinates in the HAF promptly “took advantage of

³⁴ *Prosecutor v Ntakirutimana Ntakirutimana* (2004), ICTR-96-10-A, ¶516

³⁵ *Prosecutor v Kunarac et. al* (2001), IT-96-23-T, ¶430

³⁶ *Prosecutor v Blagojević and Jokić* (2005), IT-02-60-T, ¶74

³⁷ *Ibid*, ¶556

³⁸ *Kunarac Appeal*, ¶85, 99, 102-103

the chaos caused by the outage” to mount an offensive on Colmer.³⁹ Which, combined with the information from the anonymous leak and comments by the Prime Minister that “precautions are being taken to [...] minimize adverse consequences on the population.”, indicate that the Defendant fulfills the first and second mental element.

19. Therefore, the charge under Article 7(1)(k) should be confirmed.

**THE DEFENDANT IS RESPONSIBLE FOR DIRECTING ATTACKS
AGAINST CIVILIANS**

**THERE ARE SUBSTANTIAL GROUNDS TO BELIEVE THAT THE
DEFENDANT IS RESPONSIBLE UNDER ARTICLE 25(3)(d)**

20. Article 25(3)(d) states that a person is criminally responsible if they “contribute” to the commission of a crime by a group of persons acting with a “common purpose”.

(a) The Defendant contributed to the commission of the offence.

21. A “contribution” shall be made with either (i) the aim of furthering the criminal activity or (ii) the knowledge of the intention of the group to commit the crime.⁴⁰

³⁹ Facts, ¶20

⁴⁰ *Prosecutor v Mbarushimana* (2010), ICC-01/04-01/10-1, ¶38

22. The source from HAF Intelligence Command (“INTELCOM”) alleged that FTN was funded by the Ministry of Defence for over a year.⁴¹ The Defendant was Chief of Defence Staff and had control over the Ministry’s operations.⁴² She must have therefore approved or endorsed the provision of financial assistance to the FTN Company during her tenure. Such conduct which aided in the commission of Count One, is a “contribution”.

(b) The Defendant and the FTN share a common purpose.

23. A common purpose is an arrangement or understanding amounting to an agreement between two or more persons that the crime will be committed.⁴³ FTN were dedicated to “supporting the Homeland government’s fight against terrorist networks” and received funding from the Ministry of Defence.⁴⁴ Taken together there are substantial grounds to believe that HAF and FTN shared a common purpose in its attack on Colmer.

24. Alternatively, previous case law shows that the common purpose does not have to be previously arranged and can arise extemporaneously from the co-perpetrators.⁴⁵ The fact that the Colmer attack conveniently took place 12 hours after the cyberattack to “take advantage of the chaos”,⁴⁶ which also

⁴¹ Facts, ¶22

⁴² Facts, ¶5

⁴³ *Supra.*, n.1, ¶343-345

⁴⁴ Facts, ¶21

⁴⁵ *Prosecutor v Dusko Tadić* (1999), IT-94-1-A, ¶227

⁴⁶ Facts, ¶20

adhered to the HAF's "long standing military tactic of neutralizing the defences of a city",⁴⁷ generates substantial grounds to believe that the Defendant contributed to the commission of the offence.

INDICTMENT TWO

THE ELDERS WERE CIVILIANS

25. Under Article 8(2)(e)(i), civilians not taking direct part in hostilities may not intentionally be made the direct object of attack. The issue therefore is whether the Elders are to be characterized as civilians or a hostile party.

26. The term "civilian" is defined negatively as anyone who is not a member of the armed forces or of an organised military group belonging to a party to the conflict.⁴⁸ By contrast, to take a "direct" part in hostilities means acts of war which by their nature of purpose are likely to cause harm to the personnel or material of the enemy armed forces.⁴⁹ Furthermore, the ICRC in its authoritative guidance noted that it is necessary to establish that the relevant civilian undertook specific acts that were so closely related to the hostilities that they constituted an integral part of those hostilities.⁵⁰ By contrast, membership of an organised armed group cannot depend on abstract affiliation

⁴⁷ Facts, ¶22

⁴⁸ *Prosecutor v Galić* (2003), IT-98-29-T, ¶47; Article 50 of Additional Protocol I

⁴⁹ *Ibid*, ¶48

⁵⁰ *Prosecutor v. Abu Garda* (2010), ICC-02/05-02/09, ¶80; *Prosecutor v. Mbarushimana* (2011), ICC-01/04-01/10, ¶148

or other criteria prone to error or abuse.⁵¹ In case of doubt whether a person is a civilian, that person is considered a civilian.⁵²

27. There is no evidence that the Elders performed anything but a titular function, as the “custodians of Northland history and culture”.⁵³ This is radically different from the assumption of a function so integral to the hostilities. The creation of the ARC to perform a military function provides an indication that military decisions and control were vested in this body, rather than the Council of Elders.⁵⁴ That the ARC proclaimed to be under the “exclusive guidance” of the Elders does not mean that they cede military authority to them. There is no particular action by the Elders that was specifically designed to support a party to the conflict by harming another, hence there is no evidence to prove Elders’ intention to commit such act. It is unreasonable to infer such purpose merely from the spiritual public support of the ARC and other acts of the Elders.

IN ANY EVENT, THE ATTACK CONSTITUTED A DIRECT ATTACK ON CIVILIANS

28. Even assuming the Elders were civilians taking direct part in hostilities, their presence within the civilian population of individuals does not deprive the

⁵¹ Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, P.33

⁵² Additional Protocol I, Article 50(1)

⁵³ Facts, ¶3

⁵⁴ Facts, ¶10

population of its civilian character.⁵⁵ Article 8(2)(e)(i) pertains to the direct targeting of civilians, which may be inferred where a strike is indiscriminate or disproportionate.⁵⁶

29. Article 52(1) of the Additional Protocol I clearly states that civilians shall not become the primary target of an attack only, which means it may be justified if an attack is not primarily aimed at civilians.

30. However, the principles of proportionality and military necessity must be taken into consideration. Only collateral damage among the civilian population which were necessary to fulfill the military mission and which were proportionate in relation to the military advantage sought, may be justified.⁵⁷

31. According to Article 57(2)(a)(iii) of the Additional Protocol I, the expression “concrete and direct” was intended to show that the advantage sought should be substantial and relatively close. Advantages which would only appear in the long terms should be avoided.⁵⁸

⁵⁵ Additional Protocol I, Article 50

⁵⁶ *Prosecutor v Galić* (2003), ICTY, IT-98-29-T

⁵⁷ ARNOLD, Roberta, *The ICC as a New Instrument for Repressing Terrorism* 75 (2004)

⁵⁸ DÖRMANN, Knut, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* 163-163 (2003)

32. The destruction, capture or neutralisation must offer a definite military advantage in the circumstances ruling at the time. Thus, an attack offering potential or indeterminate advantages is prohibited. In case of doubt, the safety of the civilian population must be taken into consideration.⁵⁹

33. With the controversial status of the Elders, the military advantage offered by the attack directly targeting lacks objective verification. In particular, the identity as innocent civilians of the ten families and the adult and child observed on the drone video after the first strike is not in dispute and it is clearly that those innocent civilians were primarily targeted in the attack directed by the Defendant. Such action breaches the principle of distinction, military necessity and proportionality enshrined in international humanitarian law.⁶⁰

THE DEFENDANT IS RESPONSIBLE UNDER ARTICLE 25(3)(b)

34. Article 25(3)(b) imputes criminal responsibility to a perpetrator who “ordered” another to commit a crime.⁶¹ According to *Mudacumura*, the perpetrator must be (i) in a position of authority, (ii) instructing another person, (iii) having a direct effect on the commission of the crime, (iv) which the person was aware

⁵⁹ JUNOD, Sulvie-S., Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 363 (1987)

⁶⁰ TRIFFTERER, Otto, Commentary on the Rome Statute of the International Criminal Court (2nd Edition), Germany, Verlag C.H.Beck oHG, 2008, P.338

⁶¹ *Prosecutor v Laurent Gbagbo* (2014), ICC-02/11-01/11, ¶243

would result in a crime.⁶² All elements are met here, as the Defendant was in a position of authority as Chief of Defence.⁶³ The facts plainly state that she “ordered” two consecutive strikes on the Heron apartment building that had been carried out.⁶⁴ The Defendant’s order of the first strike was immediately carried out as a missile struck the apartment block, and thus had a direct effect.⁶⁵ Finally, the Defendant was fully aware of the existence of civilian survivors and intended to kill them by ordering an immediate second attack.⁶⁶ The Defendant was fully aware of the details and circumstances at the scene despite not being physically present.

INDICTMENT THREE

ARTICLE 8(2)(e)(xv) PROHIBITS THE USE OF EXPANDING BULLETS

35. Article 8(2)(e)(xv) makes it a war crime to employ bullets which “expand or flatten easily in the human body”. This is a treaty provision which should be construed in light of its “ordinary meaning”.⁶⁷ Such bullets are therefore absolutely prohibited in armed conflict, including a NIAC.⁶⁸ Despite

⁶² *Prosecutor v Mudacumura* (2002) ICC-01/04-01/12, ¶63

⁶³ Facts, ¶5

⁶⁴ Facts, ¶17

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Vienna Convention Law of Treaties, Article 31

⁶⁸ International Institute of Humanitarian Law, Declaration on the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, ¶B2; Customary International Humanitarian Law Volume 1, Rule 77

assertions by the Homeland government that expanding bullets are used by law enforcement agencies throughout the world, this practice does not modify in any way the *lex specialis* regime applicable in times of conflict, which Article 8(2)(e)(xv) unequivocally addresses.

36. Further, it is evident from the facts that the HAF employed expanding bullets in the context of a NIAC with NF militants. In *Lubanga*, a clear nexus between a crime and the armed conflict can be established when there are substantial grounds to believe that the alleged crimes were closely related to the hostilities.⁶⁹ The attack was performed “with a view to strengthen their control East Colmer”,⁷⁰ an area which NF militants had built “extensive defensive positions” over as a foundation of their attacks.⁷¹ The significance in ensuring the total control of East Colmer and providing an advantage to HAF illustrate the connection the crime had with the armed conflict.

37. Furthermore, it is apparent that the perpetrators were aware that the use of expanding bullets arose in the context of an armed conflict. *Tadić* characterizes the nature of an armed conflict from the organization of parties and the intensity of hostilities,⁷² and the awareness of the existence of an armed conflict is determined from an objective assessment of the factual circumstances.⁷³ The perpetrators were aware that both HAF and NF were

⁶⁹ *Prosecutor v Lubanga* (2007), ICC-01/04-01/06, ¶288

⁷⁰ Facts, ¶23

⁷¹ Facts, ¶15

⁷² *Supra.*, n.23, ¶562

⁷³ *Prosecutor v Kordić and Čerkez* (2004), IT-95-14/2-A, ¶373

organized and possessed a clear military hierarchy. The perpetrators are also aware that HAF units comprised many (at least 10,000) troops.⁷⁴ The attack also took place under “fierce resistance”,⁷⁵ illustrating the perpetrators’ awareness of the factual circumstances in establishing the existence of an armed conflict. Therefore, a war crime has been committed under Article 8(2)(e)(xv).

EVEN IF EXPANDING BULLETS MAY BE EMPLOYED, THEIR USE WAS DISPROPORTIONATE

38. The Prosecution’s primary argument is that the use of expanding bullets is outright prohibited under Article 8(2)(e)(xv). In the alternative, it is submitted that their use may only be justified where it is proportionate, necessary and used with precaution, in line with established jurisprudence.⁷⁶

39. It is unlawful to use any weapon which cause more suffering or injury than another which offers the same military advantage.⁷⁷ The Defence may submit that expanding bullets can reduce the chance of retaliatory fire from the targeted individual, but NF militants were low in numbers and already significantly weakened following HAF’s arrests, interrogations and detainments.⁷⁸ Ordinary bullets were capable of causing injuries to NF

⁷⁴ Facts, ¶9

⁷⁵ Facts, ¶23

⁷⁶ *Prosecutor v Kupreškić* (2000), IT-95-16-T, ¶524

⁷⁷ Customary International Humanitarian Law Volume 1, Rule 70

⁷⁸ Facts, ¶23

militants whilst achieving the military goal of strengthening control over East Colmer. Given the small number (12) of NF militants and the advantageous position HAF was already in from its control over East Colmer at the time, the use of expanding bullets was disproportionate to the negligible military advantage obtained.⁷⁹

THE DEFENDANT HAD FACILITATED THE CRIMES BY PROVIDING EXPANDING BULLETS TO HOMELAND UNDER ARTICLE 25(3)(c)

40. An individual bears responsibility under Article 25(3)(c) where they aid, abet or assist in the commission of a crime. Providing reinforcements to others can constitute aiding or assisting.⁸⁰ It is also necessary to establish a causal relationship between the aiding or assisting and the actual crime.⁸¹

41. By entering into the military cooperation agreement ('Agreement') for a newly developed modular pistol (that allowed the use of expanding bullets) on Homeland's behalf, the Defendant had aided the search and sweep operations that took place on and around 11 October 2012.⁸² There is no evidence or suggestion that expanding bullets could have been used with existing weapons and machinery of HAF. Thus, it is reasonable to presume that expanding bullets that caused injuries and suffering to NF militants had emanated from

⁷⁹ ICRC, Conference of Government Experts on the Use of Certain Conventional Weapons: Report (1975) P.9

⁸⁰ *Prosecutor v Ntawukulilyayo* (2010), ICTR-05-82-T, ¶293

⁸¹ *Prosecutor v Dusko Tadić* (1997), IT-94-1-T, ¶674, 688-692

⁸² Facts, ¶23

the specific developed modular pistols provided pursuant to the Agreement that had been implemented. This satisfies the causal relationship between the Dolmar agreement and the commission of the perpetrators' crimes.

42. Alternatively, the charge of Article 25(3)(c) may be committed by an omission in failing to act or refraining from action.⁸³ The ability of the Defendant to order attacks at will⁸⁴ and her refusal to open negotiations as a condition to cease-fire⁸⁵ portray her ability to control the Homeland Forces and her failure to refrain from further injuries caused by expanding bullets.

43. The *mens rea* of Article 25(3)(c) can be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.⁸⁶ The Defendant's refusal to open negotiations with Northland and her knowledge that the Agreement had been fully implemented had facilitated the perpetration of the crime of causing unnecessary suffering.

⁸³ *Prosecutor v Akayesu* (1998), ICTR-96-4-T, ¶548

⁸⁴ Facts, ¶17

⁸⁵ Facts, ¶13

⁸⁶ *Prosecutor v Kristić* (2004), IT-98-33-A, ¶137, 138, 144

PRAYER FOR RELIEF

The Prosecution respectfully submits that there are “substantial grounds to believe” that the Defendant is liable under Article 8(2)(c)(i), 8(2)(e)(iv), 7(1)(k), 8(2)(e)(i), 7(1)(a), 8(2)(b)(xix) and 8(2)(b)(xx) of the ICC Statute, with individual criminal responsibility under Article 25(3)(d), 25(3)(b) and 25(3)(c) under the ICC Statute.

**RESPECTFULLY SUBMITTED,
COUNSELS FOR THE PROSECUTION.**