



International Criminal Court Trial Competition Case April 2012

Case before the International Criminal Court (ICC): Appeal from the Pre-Trial Chamber's Decision on Jurisdiction and Admissibility in the Case of John Stark of Libidan

Introduction

This is a fictional case, intended to enable students to familiarize themselves with the law and practice of the ICC. Participants will be divided into three groups: (1) Counsel for the government of Libidan, (2) The Defense Counsel, and (3) Counsel for the Prosecution. (Note, normally Victim's Counsel would also participate, but for purposes of this year's competition we will not have such participation since the victims' views are so similar to that of the prosecution on these issues). In accordance with the rules of the competition, each team shall write a Memorial for each of these groups, setting forth its legal arguments in the context of the interlocutory appeal by the Government of Libidan and the Defense from the Pre-Trial Chamber's Decision on Jurisdiction and Admissibility in the Case of John Stark. The facts and procedural history are set forth in the Decision of the Pre-Trial Chamber, reproduced below. Also relevant is the appended Security Council Resolution. Each team will be evaluated on its knowledge of the relevant rules and precedents of international criminal law; the quality of its arguments; and its overall presentation. The Memorials will be graded by the same Judges as the ones adjudicating in the Appeals Chamber. The Judges of the competition will be academics, practitioners, and jurists.

Established Agenda for Appeal of the Pre-Trial Chamber's Decision

The Appeals Chamber seeks submissions of all parties on the following issues:

- a. Whether the allegations against John Stark constitute a cognizable and sufficiently serious case of crimes against humanity within the Court's jurisdiction;
- b. Whether the customary international law doctrine of Head of State Immunity precludes Titania from surrendering John Stark to the ICC;
- c. Whether the Libidan Governing Council's actions are sufficient to invoke complementarity and render the case inadmissible, and/or whether this Court should temporarily defer prosecution to Libidan under Article 94 of the ICC Statute.



[This is a fictional document for use in the ICC Trial Competition]

**Cour
Pénale
Internationale**

**International
Criminal
Court**

Pre-Trial Chamber VI

ICLN ICC Trial Competition

Situation in Libidan

The Prosecutor v. John Stark

Decision on Jurisdiction and Admissibility

Pre-Trial Chamber VI of the International Criminal Court renders this decision on the application filed by the Government of Libidan challenging the admissibility of the case, and the application filed by the Defense challenging the jurisdiction of the ICC.

1. This case arises out of allegations of crimes against humanity committed in the territory of the Republic of Libidan, which is not a State Party to the ICC. Libidan (population 10 million) and the Kingdom of Titania (population 8 million), are located on a single island, with Libidan situated on the western half. Since gaining independence from its colonial power in 1990, Libidan has been governed by a five-person Ruling Council headed and appointed by the democratically-elected Premier, John Stark. The Libidan government is highly centralized and hierarchical, with all government, police, and military institutions headquartered in Libidan's capital City of Tuba (population 1 million) under the authority and control of Premier Stark. John Stark has been re-elected to the position of Premier five times in national plebiscites held every six years.
2. Although Libidan's cities and major towns are fairly modern, the rural areas tend to follow traditional religious and cultural practices with roots going back hundreds of years. One of those is the practice of ritual servitude, which is similar to Trokosi, practiced in some parts of Ghana; voodooosi, practiced in some parts of Togo; and Vudusi, practiced in some parts of Benin.
3. In response to a series of reports by human rights NGOs, on 15 May 2006, the UN High Commissioner for Human Rights established a fact-finding mission, headed by Sir Lawrence Johnson of the United Kingdom, to investigate the practice of ritual servitude in Libidan from 1990 to the present. One year later, on 15 May 2007, the Johnson Commission issued a 320-page report, documenting 5,489 past and 2,346 ongoing cases of ritual servitude in Libidan. According to the Johnson Commission Report, "[i]n rural areas throughout Libidan, whenever a relative commits a crime, ranging from petty theft to murder, the family must offer a daughter or granddaughter, typically from eight to fifteen years of age, to the local shrine, where she will become a slave of the gods. The so-called Devine Overseers, who run the shrines, then exert full ownership rights over these girls, demanding labor and sex from them." The Johnson Commission concluded that "[r]itual servitude in Libidan constitutes sexual slavery in violation of the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1957 Abolition of Forced Labor Convention; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child – all of which Libidan had ratified in the 1990s." The Johnson Commission specifically named 419 Shrine Overseers who were involved in acts of sexual slavery.
4. Two weeks after the publication of the Johnson Commission Report, the Ruling Council of Libidan promulgated a national law rendering ritual servitude a crime punishable by a mandatory three-year prison term for those found guilty, and pledged to stamp out the

odious practice. News of this law was extensively reported throughout the country. Yet, during the next several years, human rights NGOs continued to report the persistence of widespread acts of ritual servitude throughout Libidan.

5. On 10 March 2010, at the request of the High Commissioner, the Johnson Commission reconvened to undertake a follow-up investigation. According to the Second Johnson Commission Report, issued on 10 March 2011, “[a]lthough ritual servitude has been criminalized in Libidan, there has been no real effort to enforce the law, and no one has ever been prosecuted for the crime.” The Second Johnson Commission Report documented 1,523 ongoing cases of ritual servitude.
6. There is no allegation that John Stark, himself, ever ordered or participated in the practice of ritual servitude. However, the Second Johnson Report concluded that he shouldered primary blame for the persistence of the practice in Libidan. According to the Second Johnson Commission Report, “[a]s head of Libidan’s government, Premier Stark should have known of the extensive continuing practice of ritual servitude yet failed to use the machinery of his government to eradicate it. We therefore conclude that Premier Stark knowingly tolerated and thereby encouraged the commission of systematic and widespread crimes against humanity in Libidan.”
7. At a press conference on 11 March 2011, John Stark told the assembled media: “Libidan is being unfairly singled out. Ritual servitude is practiced in a number of other countries. We don’t condone the practice, but we believe education, not prosecution, is the best solution. We’re making progress, but it takes time.” At the end of the press conference, a thirteen year-old Libidan girl in the audience named Akira, who had recently run away from a Shrine where she was subject to ritual servitude, doused herself with gasoline and set herself on fire to protest the practice. Images of Akira’s self-immolation went viral on the internet. Soon thereafter, the problem of ritual servitude in Libidan became the cause de jure of a group of famous Hollywood actors, and a number of prime time television specials were devoted to the subject in early April 2011 in the United States, the United Kingdom, and France. The self-immolation of Akira triggered anti-government protests and rioting in Libidan’s urban centers, ultimately escalating into a nation-wide popular uprising against the ruling regime.
8. On 15 April 2011, the U.N. Security Council adopted a Chapter VII resolution (S.C. Res. 1990-A), referring “the situation of Libidan relating to the widespread practice of ritual servitude/sexual slavery since 10 March 2011 to the International Criminal Court,” in accordance with Article 13 of the ICC Statute. The resolution is appended to this decision. A week later, on 22 April 2011, the Pre-Trial Chamber approved the Prosecutor’s request to initiate an investigation in accordance with Article 15 of the ICC Statute.

9. At the request of the ICC Prosecutor, on 30 May 2011, this Pre-Trial Chamber issued an arrest warrant for John Stark, finding that there were reasonable grounds to believe that he is criminally responsible under Article 25(3)(e) (co-perpetration), Article 25(3)(b) (command responsibility), and Article 25(3)(c) (aiding and abetting) for crimes against humanity in Libidan, including enslavement, rape, torture, sexual slavery, and other inhumane acts, from 10 March 2011 to the present. Immediately thereafter, at the request of the ICC Prosecutor, INTERPOL issued a Red Notice for John Stark's arrest.
10. On 10 June 2011, John Stark traveled to Titania to participate in an annual summit of regional leaders. Although Titania has been a State Party to the ICC since 2008, it did not immediately arrest Stark, taking the position that doing so would violate his Head of State Immunity.
11. While Stark was out of the country, the revolutionaries seized control of the capital city of Tuba and announced the establishment of a new government, headed by a three-member "Transitional Governing Council." The Transitional Governing Council announced that it would rule the country until elections for a new Premier are held the first Tuesday of November 2012.
12. During the next few weeks, the Transitional Governing Council proceeded to promulgate a series of decrees, including TGC Order # 8, requiring the closure of all shrines practicing ritual servitude; TGC Order #9, ordering national police and prosecutors to bring criminal proceedings against Shrine Overseers who were involved in ritual servitude; and TGC Order #10 establishing the Libidan High Tribunal to prosecute John Stark and the members of his Ruling Council for crimes against humanity in the form of ritual servitude committed against thousands of Libidan women and girls from 1990 to June 2011.
13. According to the submission of the Transitional Governing Council, the Statute and Rules of Procedure of the Libidan High Tribunal are closely modeled upon the Statute and Rules of the Iraqi High Tribunal which prosecuted Saddam Hussein, including the death penalty as a possible punishment upon conviction for crimes against humanity. The Transitional Governing Council has begun construction of a secure courtroom facility and appointed a special prosecutor, public defender, and panel of trial and appeals judges for the trial of John Stark. The International Bar Association has organized a series of training sessions for the newly appointed judges, prosecutors, and defense counsel of the Libidan High Tribunal, and the Transitional Governing Council has represented that it will be ready to commence the trial of John Stark within eighteen months.
14. At a press conference in Titania on 15 June 2011, John Stark proclaimed that he continued to be the legitimate, democratically-elected, Head of State of Libidan and that

he had organized a government in exile, based in Titania. To date, 30 States have recognized the Transitional Governing Council as the legitimate government, while 22 States including Titania have recognized Stark's government in exile as the continuing government of Libidan.

15. Libidan and Titania have an extradition treaty dating back to 1991. Upon the request of the Transitional Governing Council for the extradition of John Stark for crimes against humanity and with John Stark's consent, on 21 June 2011 the authorities of Titania placed John Stark under "voluntary house arrest" at the King of Titania's Summer Palace. Faced with competing requests for Stark from the ICC and the Transitional Governing Council, Titania announced that it would take no further action until its obligations were clarified by the ICC.
16. On 1 August 2011, representatives of the Libidan Transitional Governing Council, the ICC Office of the Prosecutor, victims counsel, and counsel for John Stark submitted briefs and made oral presentations before this Pre-Trial Chamber. After duly considering these submissions, the Chamber hereby makes the following findings and conclusions:
17. First, the Chamber finds without merit the Defense argument that the allegations against John Stark do not constitute a cognizable case of crimes against humanity under the Court's Statute.
18. Second, the Chamber finds without merit the Defense argument that the customary international law doctrine of Head of State Immunity precludes Titania from surrendering John Stark to the ICC.
19. Third, the Chamber finds that the Libidan Transitional Governing Council's actions are not sufficient to render the case inadmissible under Article 19 of the Court's Statute. The Chamber also finds without merit the Transitional Governing Council's argument that its intent to prosecute crimes pre-dating 10 March 2011 brings this case within Article 94 of the ICC Statute. Moreover, the Chamber rejects the Transitional Governing Council's argument that the ICC should defer prosecution in the interests of justice in accordance with the standard set forth in Article 53 of the Statute.

For these reasons, the Chamber hereby:

1. Determines that the case falls within the jurisdiction of the Court and is admissible.
2. Orders the Registrar to notify the parties of this decision.

Dated 15 September 2011

At The Hague, The Netherlands



APPENDIX

[This is a fictional document for use in the ICC Trial Competition]

ICLN ICC Trial Competition

SC Res 1990-A/2011



Security Council Resolution 1990-A, 15 April 2011.

Adopted by a unanimous vote of the Security Council at its 7491st meeting on 15 April 2011

The Security Council,

Taking note of the 15 May 2007 Report of the UN High Commissioner for Human Rights fact-finding mission to investigate the practice of ritual servitude in Libidan from 1990 to the present (the Johnson Commission),

Deploring the persistence of widespread and systematic acts of sexual slavery in Libidan as documented by the Second Johnson Commission Report, dated 10 March 2011,

Stressing the need to hold to account those most responsible for the continuation of widespread and systematic acts of sexual slavery in Libidan,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* that the Libidan government take immediate steps to bring an end to the practice of ritual servitude/sexual slavery in Libidan;

2. *Decides* to refer the situation in Libidan relating to the widespread practice of ritual servitude/sexual slavery since 10 March 2011 to the International Criminal Court;
3. *Decides* that the Libidan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;
4. *Recognizes* that none of the expenses incurred in connection with the referral, including expenses related to investigation or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;
5. *Decides* to remain seized of the matter.