



**SEVENTH SYMBIOSIS LAW SCHOOL,
PUNE - INTERNATIONAL CRIMINAL
TRIAL ADVOCACY COMPETITION
[SICTA- 2022]**

APRIL 21, 2022 – APRIL 24, 2022

॥ वसुधैव कुटुम्बकम् ॥

PREVIOUS YEARS' BEST MEMORIAL

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**SIXTH SYMBIOSIS LAW SCHOOL, PUNE – INTERNATIONAL CRIMINAL TRIAL
ADVOCACY, 2021**

Before

Trial Chamber I, International Criminal Court

The Hague, The Netherlands

THE PROSECUTOR

PROSECUTION

v.

UMBERTO ECO

DEFENSE

DEFENDANT CHARGED WITH

Crime against Humanity of Murder under Article 7(1)(A) of the Rome Statute

WRITTEN SUBMISSIONS ON BEHALF OF THE DEFENSE

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Criminal
Court



Original: **English**

No.: **ICC-09/03-21/10**

Date: [**April 23, 2021**]

TRIAL CHAMBER I

Before: Judge _____, the Presiding Judge

Judge _____, and

Judge _____,

SITUATION IN THE REPUBLIC OF TITAN

IN THE CASE OF

THE PROSECUTOR v. UMBERTO ECO

PUBLIC

**Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor
Against Umberto Eco**

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LIST OF ABBREVIATIONS

¶	Paragraph
AC	Appeals Chamber
Art.	Article
Doc	Document
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECtHR	European Court of Human Rights
ETS	European Treaty Series
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESOC	International Convention on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia

<i>Id.</i>	Idem
IT	International Tribunal
LRV	Legal Representatives of Victims
OHCHR	United Nations Office of High Commissioner of Human Rights
OTP	Office of the Prosecutor
PCIJ	Permanent Court of International Justice
PTC	Pre-Trial Chamber
ROEP	Rules of Evidence and Procedure
RTC	Regulations of the Court
RTP	Regulations of the Office of The Prosecutor
SCD	Special Committee on the Study of Demographics in Xuan
TC	Trial Chamber
U.N.T.S.	United Nations Treaty Series
UF	United Front
UKHL	United Kingdom House of Lords

UNCLOS	United Nations Convention on the Law of Sea
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
US	United States
v.	Versus
VCLT	Vienna Convention on the Law of Treaties

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3. Prosecutor v. Ble´ Goude´, Case No. ICC-02/11-02/11-186, Confirmation Decision, ¶146 (Dec. 11, 2014)_____2
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STATEMENT OF FACTS

Titan is an archipelagic country in Southeast Asia situated in the western Pacific Ocean. Titan has an area of 22,550 km² according to the local statistical authority and the World Bank, and as of 2017, a population of at least ten million (10,000,000). Christianity is the most widely followed religion of Titan whereas the majority of Titanians consider the Roman Catholic Church as their religious guide. Titan is a member of the United Nations, the World Trade Organization and the World Bank. It is a sovereign state, functioning as a unitary semi-presidential republic. Further, it has signed and ratified the Rome Statute, the International Covenant on Civil and Political Rights, the Genocide Convention, and the Geneva Conventions.

Xuan acts as the administrative and judicial center of Titan. In terms of population density, the sizeable civilian population of Xuan is concentrated on its fringes where the biggest ghetto community of Titan lies. The people living in these ghettos and rural areas lead a starkly distinct political and cultural life – accounting for only two percent (2%) of the total votes cast historically in the country’s general elections. Mostly, belonging to the protestant faith, this class also ranked the lowest on the employability figures as well as the wellness and happiness index maintained by various human rights organizations running in Titan.

Mr. Jude Steiner, a conservative, catholic, public figure and former President of Titan, governed the administration of the country from mid-2016 till the end of 2019. During his Presidency, the country witnessed mass atrocities, murders, torture and summary executions of thousands of Titanians under the umbrella of his anti-drug campaign, “War on Drugs”. He is believed to have taken absolute control over all branches of the State. The public officials who refused to follow the directions of his office were often charged with false accusations and charges revolving around corruption, dereliction of official duty and obstruction of justice. By the end of 2019, he is believed to have been responsible for the execution or murder of at least thirty-thousand civilians.

Mr. Umberto Eco (hereinafter, the accused) is a member of the judicial infrastructure of Titan. He and his family members have served in multiple important positions of authority under the administration of Mr. Jude Steiner. At the time of his arrest, the accused held the position of a

senior consultant to the Ministry of Justice, Law and Order (“Ministry”), Government of Titan while his wife, Mrs. Martha Ramage served as the chief secretary to the Ministry. His prior engagements include serving before the ADA Tribunal as a judicial officer (2019 - 2020), the Office of the Attorney General of Titan (2013 - 2015 and 2016 - 2018) and the Central University of Xuan as a Professor of Criminal Justice (2007 - 2013). During the period relevant from the perspective of the investigation undertaken by the ICC Prosecutor, the accused was serving the ADA Tribunal situated at Xuan.

Anti-Drug Authority (“ADA”) is a dedicated task force formed by the government to take swift measures which include the use of aggravated police force to arrest the distribution of drugs in all relevant communities of Titan. The ADA was directly linked with the office of the President and enjoyed an almost autonomous status in the governmental hierarchy.

Civil Rights Movement (“CRM”) is an apolitical, non-partisan, non-profit and non-governmental collective working under the aegis of the United Nations. This association operates as a specialized committee responsible for providing legal aid, humanitarian assistance and counseling in distress ridden communities of Titan. The association operates on an ad-hoc basis and is affiliated with multiple international non-governmental organizations including the Red Cross. The Court, admits applicant CRM as the Legal Representative of the Victims.

ALLEGATIONS RAISED

The accused is alleged to have participated in the persecution of civilian population of Titan by illegal use of his office and influence. The accused is alleged to have denied all legal claims and defenses of individuals arrested and tortured by the police forces and the local militia working for the government. Furthermore, he is alleged to have intentionally influenced the prosecution of such individuals towards maximum penalty and denial of rights at his disposal.

INVESTIGATIVE FINDINGS

(The period of investigation conducted by the Office of the ICC Prosecutor, based on due authorizations of this Court, extends from July, 2016 to October, 2020.)

December 14, 2016 - The accused, working for the Attorney General of Titan, submits a memorandum to the Ministry, arguing in favor of the “Unitary Executive Theory” that favored

legal interpretations which would grant unbridled powers with scarce checks and balances to the President of Titan.

January, 2017 - The accused is appointed to the drafting committee of ADA's "War on Drugs" policy.

March 4, 2017 - ADA sets up its local watch-dog units called "Friends of the Neighborhood" that were to facilitate and assist the general public and police forces to detect and eradicate all active drug syndicates.

July, 2017 to February, 2018 - Sharp increase in violence between the police forces of Titan and the members of the civil society alleged to be involved in drug related offenses. Thousands of casualties in the police offensive launched against drug syndicates operating in the cities of Titan. Communication sent from the ADA to all the police forces authorizing the use of firearms and assault weapons against gang members who refused to observe the community guidelines released by their territorial unit of "Friends of the Neighborhood".

April 30, 2018 - Mr. Steiner's political outfit gains victory in the parliamentary elections and he passes formal legislations consolidating his executive authority.

August 3, 2018 - ADA rolls out a controversial policy under which its local units and affiliates are authorized to arm, train and prepare a group of participating local volunteers from pre-screened civilian communities in each district. The local militia is given a free-hand with virtually negligible oversight. The policy is severely criticized by international human rights organizations and the media. The policy is upheld by the highest constitutional court of Titan on the basis of the arguments led by the accused.

Consequence: Within the next four (4) months, this policy leads to a sixty percent (60%) increase in gun violence and the death of seven hundred (700) individuals. Civil rights organizations are attacked by armed mobsters with support and intelligence inputs from the local police. Public officials including elected ministers who refuse to comply with the mandate of the administration are publicly lynched to set an example for others.

January 10, 2019 - Mr. Steiner appoints the accused to the position of the chief judge of the ADA Tribunal of Xuan. His appointment is in addition to the seventeen other judicial

appointments made by Mr. Steiner in that year. These individuals are believed to have been instrumental in executing the “War on Drugs” policy.

February, 2020 - Several countries impose restrictions and sanctions on Titan. These sanctions lead to public outcry against Mr. Steiner’s Presidency. Mr. Steiner’s administration responds to the protests by using paramilitary forces against the protestors. Mr. Steiner, however, is forced to resign from his position by his political party and is replaced by the vice-president of Titan, Mr. Francis Dolcini. The new president elect is critical of the former administration.

May, 2020 - A local court based in Vortex City finds three (3) police officers guilty for the cold-blooded murder of a seventeen (17) year old boy which sparks a public outrage. Responding to the pressure, the present government of Titan orders re-examination of several cases involving individuals charged with anti-drug legislations. These cases are summarily decided against the defendants in the first instance by the judges, including the accused.

PROCEDURAL HISTORY

April 24, 2020 - CRM requests the ICC Prosecutor to open investigation against the Situation relating to the crimes committed under the “War on Drugs” policy of the Steiner administration.

August 30, 2020 - The Prosecutor releases a preliminary report announcing that, in its opinion, the attacks referred under it, via the Situation in Titan, pass the legal standards governing the jurisdiction of the Court with reference to applicable provisions of the Rome Statute.

September 27, 2020 - The Pre-Trial Chamber authorizes the ICC Prosecutor to launch a formal investigation in connection with the Situation in Titan. (Meanwhile, Mr. Steiner, in return for a peaceful transition of power in favor of Mr. Francis Dolcini, was able to secure a safe passage for himself and his family members to China, thus, successfully evading arrest and trial by this Court.

The Pre Trial Chamber has decided to commit the accused to the Trial Chamber for trial on the charge of Crime against Humanity of Murder as confirmed.

ISSUES PRESENTED

I.

**WHETHER UMBERTO ECO HAS COMMITTED THE ACTS OF CRIMES AGAINST HUMANITY OF
MURDER UNDER ARTICLE 7(1)(A) OF THE ROME STATUTE**

II.

**WHETHER UMBERTO ECO SHALL BE HELD LIABLE UNDER INDIVIDUAL CRIMINAL
RESPONSIBILITY STIPULATED BY ARTICLE 25 (3) (A) OF THE STATUTE**

III.

WHETHER UMBERTO ECO SHALL BE HELD LIABLE AS AN ACCESSORY TO MR. JUDE STEINER

SUMMARY OF ARGUMENTS

I. THE ACCUSED UMBERTO ECO HAS NOT COMMITTED THE ACTS OF CRIMES AGAINST HUMANITY OF MURDER UNDER ARTICLE 7(1)(A) OF THE ROME STATUTE

- ❖ The Defense submits that the accused, Mr Umberto Eco has not committed Crimes Against Humanity of Murder within the meaning of Art. 7(1)(A) of the Rome Statute. It is submitted: Firstly, the Contextual Elements of Crimes Against Humanity under the Chapeau are not fulfilled in the present case [1.] Secondly, the Actus Reus element of murder is not fulfilled on part of the Accused [2.] Thirdly, subjective elements of the crime are not fulfilled [3.]

II. THE ACTS OF THE ACCUSED FALL WITHIN THE EXCEPTIONS TO CRIMINAL LIABILITY UNDER ROME STATUTE

- ❖ The Defense submits that the acts of the accused are exempted from attracting his liability under the Rome Statute. Firstly, the Accused acted under Duress as stipulated in Article 31(1)(d) [1.] Secondly, the Accused acted under superior orders and prescription of law as stipulated in Article 33 [2.]

III. THE ACCUSED UMBERTO ECO IS NOT LIABLE UNDER THE ROME STATUTE FOR THE ACTS COMMITTED BY HIM

- ❖ The Defense submits that the accused is not liable under Article 25 of the Rome Statute. Firstly, He shall not be held liable as a co-perpetrator under Article 25(3)(a) of the Statute [1.] Secondly, He shall not be held liable as an accessory to Mr. Jude Steiner under Articles 25(3)(c) and 25(3)(d) of the Statute [3 & 4.]

PLEADINGS

I. THE ACCUSED UMBERTO ECO HAS NOT COMMITTED THE ACTS OF CRIME AGAINST HUMANITY OF MURDER UNDER ARTICLE 7 OF THE ROME STATUTE

1. In the instant case, Mr. Umberto Eco has been charged under Article 7(1)(a) of the Statute. The Counsels for the Defense submit, that such a trial does not succeed on the merits as the requirements thereof have not been fulfilled.

1. CONTEXTUAL ELEMENTS OF CAH, AS STATED IN THE CHAPEAU OF ELEMENTS OF CRIME, ARTICLE 7 HAVE NOT BEEN FULFILLED

2. It is submitted that in order to establish a charge of Crimes against humanity (CAH), the following contextual elements need to be fulfilled: (i) there must be an attack; (ii) the attack must be widespread or systematic; (iii) the attack must be directed against any civilian population; (iv) the acts of the Accused must be part of the attack; and (v) the Accused must know that his or her acts constitute part of a widespread or systematic attack directed against any civilian population.¹

i. There was no attack.

3. According to the Rome Statute, an Attack has to involve multiple commission of acts referred to in paragraph 1, pursuant to or in furtherance of a State or organizational policy to commit such attack.² Firstly, the Defense contends that the mere occurrence of multiple acts alone shall not be sufficient to correctly define the term, since an attack is something more than '*a mere aggregate of random acts*'³; instead, a certain pattern is required to be established⁴. A certain '*degree of planning, direction or organisation by a group or*

¹ Prosecutor v. Kunarac, Case No. IT-96-23& IT-96-23/1-A, Appeal Judgement, ¶85, (Int'l Crim. Trib. for the Former Yugoslavia Jun. 12, 2002); Prosecutor v. Popovic', Case No. IT-05-88-T, Trial Judgement, ¶751, (Int'l Crim. Trib. for the Former Yugoslavia Jun. 10, 2010).

² Rome Statute of the International Criminal Court, Article 7(2)(a), July 17, 1988, 2187 U.N.T.S 99 (Entered into force on July 1, 2002).

³ Prosecutor v. Gbagbo, Case No. ICC-02/11-01/11-656-Red, Decision on the Confirmation of Charges, ¶209 (Jun. 12, 2014).

⁴ Prosecutor v. Bemba, Case No. ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ¶81 (Jun. 15, 2009) Chaitidou, in:

*organisation*⁵ is necessary to be established otherwise acts unrelated with each other shall not render them crimes against humanity. Therefore, the Defense submits that in the context of ICC statute, the existence of a certain pattern of attack as a constitutive element of crime is expressly required.

4. The Defense submits that it must be demonstrated that the acts were committed in furtherance of existence of a State or organizational policy to commit such attack.⁶ The Elements of Crimes specify that the policy requires the active promotion or encouragement of an attack against a civilian population by a State or organization. Further, the policy must be to commit crimes against humanity. It shall be noted that there was no policy to actively promote crimes against humanity⁷ against a civilian population, instead, a policy against the trade and consumption of drugs for any non-medical use⁸ existed.

ii. The attack was not widespread or systematic.

5. The systematic and widespread characterisation of these attacks is a disjunctive requirement.⁹ The adjective ‘systematic’ signifies the organised nature of the acts of violence and the improbability of their random occurrence.¹⁰ The common denominator of the various

MORTEN BERGSMO AND SONG TIANYING, ON THE PROPOSED CRIMES AGAINST HUMANITY CONVENTION 47, 66-67 (Torkel Opsahl Academic EPublisher, 2014).

⁵ *Gbagbo, supra* note 3, ¶210; *Prosecutor v. Ble´ Goude´*, Case No. ICC-02/11-02/11-186, Confirmation Decision, ¶ 146 (Dec. 11, 2014).

⁶ ROME STATUTE , *supra* note 2, Art. 7.

⁷ *Prosecutor v. Tadić*, Case No. IT-94-1, Opinion and Judgment, ¶653 (Int’l. Crim. Trib. for the Former Yugoslavia May 7, 1997).

⁸ *COMPROMIS*, ¶10.

⁹ *Prosecutor v. Momir Savić*, Case No. X-KR-07/478, 1st Instance Verdict, ¶30 (Court of BiH. Jul. 3, 2009); *Prosecutor v. Marko Samardžija*, Case No. X-KRZ-05/07, 2nd Instance Verdict, ¶14 (Court of BiH. Oct. 15, 2008).

¹⁰ *Prosecutor v. Blaškić*, Case no. IT-95-14-T, Trial Judgment, ¶203 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000); *Tadić, supra* note 7, ¶648; *Prosecutor v Akayesu*, Case no. ICTR-96-4-T, Trial Judgment, ¶ 580, (Sept. 2, 1998).

definitions found in the case law¹¹ is that such an attack ‘is one carried out pursuant to a preconceived policy or plan’¹², which serves as an indicator of the ‘systematicity’ of the attack.¹³ The Defense contends that there is no evidence to adduce that there was a preconceived policy or plan to further an attack against a civilian population to commit crimes against humanity. Therefore, the alleged acts cannot be termed as systematic as they lack any kind of premeditation.

6. The Defense submits that the Pre-Trial Chamber in the Prosecutor v. Bemba defined widespread by saying that it “connotes the large-scale nature of the attack, which should be

¹¹ *Tadić*, *supra* note 7, ¶648; KAI AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW VOLUME II: THE CRIMES AND SENTENCING 60 (Oxford University Press 2014).

¹² Prosecutor v. Bagilishema, Case No. ICTR-95-1A-A, Appeal Judgement, ¶77 (Jul. 3, 2002); Prosecutor v. Vasiljevic, Case No. IT-98-32-T, Appeals Judgement, ¶35 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 29, 2002); Prosecutor v. Germa in Katanga and Mathieu Ngudjolo Chui, Case No. ICC-01/04-01/07, Decision on the confirmation of charges, ¶397 (Sep. 30, 2008); Prosecutor v. Al-Bashir, Case No. ICC-02/05-01/09 OA2, Judgment in the Jordan Referral re Al-Bashir Appeal, ¶81 (May. 6, 2019); *Gbagbo*, *supra* note 3, ¶225; K. AMBOS & S. WIRTH, THE CURRENT LAW OF CRIMES AGAINST HUMANITY, 1 CRIM. L. FORUM. 13, 18 et seq., 30 (2002); STEPHAN MESEKE, DER TATBESTAND DER VERBRECHEN GEGEN DIE MENSCHLICHKEIT NACH DEM RÖMISCHEN STATUT DES INTERNATIONALEN STRAFGERICHTSHOFES: EINE VÖLKERSTRAFRECHTLICHE ANALYSE 136 (Berliner Wissenschafts-Verlag 2005); ROBERT CRYER, PROSECUTING INTERNATIONAL CRIMES: SELECTIVITY AND THE INTERNATIONAL CRIMINAL LAW REGIME 254 (Cambridge University Press 2005); JULIAN FERNANDEZ, XAVIER PACREAU & LOLA MAZE, STATUT DE ROME DE LA COUR PÉNALE INTERNATIONALE: COMMENTAIRE ARTICLE PAR ARTICLE 417,467 (A. Pedone 2012).

¹³ *Blaškić*, *supra* note 10, ¶100; Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement, ¶137 (Int’l Crim. Trib. for the Former Yugoslavia Sep. 1, 2004); Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A, Judgement, ¶698 (Int’l Crim. Trib. for the Former Yugoslavia Dec.12, 2012); Prosecutor v. Stanišić and Simatović, Case No. IT-03-69, Judgement, ¶963 (Int’l Crim. Trib. for the Former Yugoslavia May 30, 2013); Prosecutor v. Semanza, Case No. ICTR-97-20, Judgment, ¶329 (May 15, 2003); Prosecutor v. Mikaeli Muhimana, Case No. ICTR- 95-1B-T, Judgement and Sentence, ¶527 (Apr. 28, 2005); GUÉNAËL METTRAUX, INTERNATIONAL CRIMES AND THE AD HOC TRIBUNALS 172 (Oxford University Press, 2005); Prosecutor v. Harun and Kushayb, Case No. ICC-02/05-01/07-1-Corr, Decision on the Prosecution Application, ¶62 (Apr 27, 2007); Prosecutor v. Germain Katanga & Mathieu Chui, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶1098, (Mar. 7, 2014); *Gbagbo*, *supra* note 3, ¶216; CRYER, *supra* note 12, at 254,255.

massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims”¹⁴ Therefore, the onus of proving these elements of a widespread attack lies on the Prosecution.

iii. The attack was not directed against any civilian population.

7. The Defense maintains that in determining the existence of a civilian population, a court must consider ‘*the specific situation of the victim at the moment the crimes were committed, rather than his status*’.¹⁵ Further, it has been held in multiple authoritative pronouncements of this Court that the term civilian includes persons who have taken no active part in hostilities.¹⁶ It is pertinent to note here that the alleged civilian population was accused under the national laws of Titan¹⁷ and formed a part of gangs and drug syndicates who refused to observe community guidelines¹⁸. Therefore, the alleged acts cannot be said to have been directed towards a civilian population.
8. The Defence submits that ‘directed against’ means that “the civilian population must be the primary object of the attack and not just an incidental victim of the attack”.¹⁹ The Defence

¹⁴ *Bemba*, *supra* note 4, ¶83; *Akayesu*, *supra* note 10, ¶580.

¹⁵ Prosecutor v. Muvunyi, Case No. ICTR 2000-55A-T, Trial Judgement and Sentence, ¶513 (Sept. 12, 2006); Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Trial Judgement, ¶79 (June 7, 2000); *Blaškić*, *supra* note 10, ¶214.

¹⁶ *Tadić*, *supra* note 7, ¶637-638; *Akayesu*, *supra* note 10, ¶582; Prosecutor v. Galic’, Case No. IT 98-29-A, Appeal Judgment, ¶144, (Int’l Crim. Trib. for the Former Yugoslavia, Nov. 30, 2006) Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, Trial Judgement, ¶706 (Int’l Crim. Trib. for the Former Yugoslavia Sep. 27, 2006) Prosecutor v. Mrkšić et al., Case No. IT-95-13/1-T, Trial Judgement, ¶463 (Int’l Crim. Trib. for the Former Yugoslavia Sep.27, 2007) .

¹⁷ COMPROMIS ¶14

¹⁸ COMPROMIS ¶14

¹⁹ *Kunarac et al*, *supra* note 1, ¶90; *Katanga*, *supra* note 13, ¶1104; *Bemba*, *supra* note 4, ¶76; *Kunarac et al*, *supra* note 1, ¶91-92.

reiterates that the policy of the State was directed towards the eradication of the drug syndicate²⁰ in Titan and therefore, civilians were not the primary object of the alleged attack.

iv. The Acts of the Accused were not a part of the Attack.

9. The Statute and the Elements of Crimes, both make it unambiguously clear that the acts enumerated in Paragraph 1 of Article 7²¹ must be committed by the accused as part of an attack.²² There must be a sufficient nexus between the acts of the accused and the attack.²³ The same will be determined by factors such as the manner in which the accused's acts are associated with, or further the policy underlying the attack.²⁴ Hence, the fundamental requirement is that the unlawful acts must not be unrelated to the attack, and capable of being characterised as the isolated and random conduct of an individual acting alone.²⁵
10. The Defence contends that the acts of the Accused have no nexus with the alleged attack as his actions were in furtherance of a judicial function, being fundamentally distinct from executive action. Moreover, there is no clear evidence to adduce that Umberto Eco actively professed in favour of the policy to commit crime against humanity of murder, rather, he has maintained that he believes in the sincere rehabilitation of convicts of wrongdoings.²⁶ Therefore, the actions of the accused were independent from the allegedly illegitimate acts committed in furtherance of the policy of war against drugs.

²⁰ COMPROMIS ¶4

²¹ ROME STATUTE, *supra* note 2, Art. 7.

²² Elements of Crime, Art. 7

²³ *Akayesu*, *supra* note 10, ¶579; Report of ILC Special Rapporteur, note 62, ¶ 93.

²⁴ 1986 ILC Special Rapporteur Report, note 62, ¶ 93.

²⁵ *Tadić*, *supra* note 7, ¶644; FELDBRUGGE & STANISLAW POMORSKI, INTERNATIONAL AND NATIONAL LAW IN RUSSIA AND EASTERN EUROPE 139,152 (Kluwer Law International 2001); GUSTAVO ARBALLO, CUADERNOS DE DERECHO JUDICIAL 1,21 (Flores editores 2013); *Katanga*, *supra* note 13, ¶394; *Bemba*, *supra* note 4, ¶75, ¶77, ¶83; *Al-Bashir*, *supra* note 12, ¶81; *Katanga*, *supra* note 13, ¶1104, ¶1123.

²⁶ Annexure II, p.34.

v. The Accused did not know his acts constitute part of a widespread or systematic attack directed against any civilian population.

11. The Defense submits that the accused did not have the knowledge that his acts constitute a part of a widespread or systematic attack directed against a civilian population. The Defense contends that the accused merely acted in pursuit of the mandate of law and therefore, it cannot be said that he knew his acts constituted an attack against a civil population.

vi. The Accused did not kill/ cause death of any person

12. The Defence submits that as per the Elements of Crimes, one crucial element of crime against humanity of murder is that the perpetrator killed, or caused the death of, one or more persons.²⁷ According to the Pre-Trial Chamber in the case *Prosecutor v. Bemba*, the material elements of murder were held to be “that the victim is dead” and that the death must “result from the act of murder.”²⁸ The Defence categorically contends that neither did the accused kill, or cause death of any person himself nor any death was caused on account of the acts which the Prosecution claims the accused aided in. *Therefore*, the charge of crime against humanity or murder cannot be proved against the accused by any stretch of imagination.

13. It is *further*, submitted that the mere fact that the accused issued death warrants under law is not conclusive that the accused killed or caused death of anyone. *Firstly*, the act of issuing death warrants as per the law prevailing in Titan cannot be categorised as an unlawful act of murder.²⁹ *Furthermore*, there is no evidence which suggests that these death warrants were executed and hence, caused death of any person. The Defence brings the attention of the Hon’ble Trial Chamber towards the fact that Titan is a Republic³⁰ having an appellate form of judiciary, (including the Supreme Court of Titan) therefore, it can be reasonably construed that these death penalties are still pending adjudication and have not been executed in light of the fact that there is nothing which suggests otherwise.

²⁷ Elements of Crime, Art. 7

²⁸ *Bemba*, *supra* note 4, ¶132.

²⁹ *Akayesu*, *supra* note 10, ¶589..

³⁰ COMPROMIS ¶3

14. *Subsequently*, the charges levelled by the Prosecution that the accused aided the Steiner administration³¹ by systematically denying permission to prosecute police officers³² or denying rights at his disposal³³ cannot in anyway be linked with killing or causing death and therefore, either way, this essential element of Crimes Against Humanity of Murder cannot be established beyond reasonable doubt.
15. The Defence *further* elucidates that the standard which has been prescribed is that the perpetrator's act must be a substantial cause of the victim's death³⁴. *Hence*, the Defence submits that even if a death was caused, it shall not constitute crime against humanity of murder *qua* the accused as the same cannot be said to have been caused substantially by the acts of the accused. The deaths were caused by Steiner's officials under his control only, and they had no nexus with the Accused.

**II. THE ACTS OF THE ACCUSED FALL WITHIN THE EXCEPTIONS TO CRIMINAL LIABILITY
AS STIPULATED UNDER ARTICLE 31 OF THE ROME STATUTE**

1. THAT THE ACCUSED ACTED UNDER DURESS

***i.* The conduct alleged to constitute CAH has been caused by duress
resulting from a threat of imminent death and continuing serious
bodily harm constituted by circumstances outside the control of
the accused.**

16. The Defence, *inter alia*, submits that the conduct of the accused which is alleged to constitute a crime within the jurisdiction of this court has been caused by duress resulting from a threat of imminent death and of continuing serious bodily harm.³⁵ It exists when the defendant's

³¹ COMPROMIS, ¶9.

³² COMPROMIS, ¶9.

³³ COMPROMIS, ¶9.

³⁴ Prosecutor v. Marques (Los Palos case), No. 09/ 2000, Judgment, Special Panel for Serious Crimes, Dili District Court, 11 December 2001, paras. 644–649; Prosecutor v. Lino de Carvalho, No. 10/2001, Judgment, 18 March 2004, pp. 12–13; Prosecutor v. A. Martins, No. 11/2001, Judgment, Special Panel for Serious Crimes, Dili District Court, 13 November 2003.

³⁵ ROME STATUTE, *supra* note 2, Art. 31.

freedom of will and decision is so severely limited that there is eventually no moral choice³⁶ available. It is brought to the attention of the Hon'ble Chamber that the Steiner Administration had taken absolute control over all branches of the State and had issued broad directions to multiple state agencies, the judiciary and similarly placed officials to ensure that legislations and their policies are enforced indiscriminately against those charged with the violation of these laws.³⁷ It had established a pattern, *wherein*, harsh sentences and illegitimate sanctions were imposed against judges who opposed his views.³⁸

17. *Further*, evidence submitted by the ICC Prosecutor suggests that any organisation or person showing accommodation to civil rights [which was deemed to be in opposition of the administration and its policies] were attacked by armed mobsters in connivance with the local police.³⁹ Not only this, public officials to the extent of elected ministers who refused to comply with the mandate of administration were lynched publicly to set an example for others.⁴⁰ *Therefore*, it is patently clear from the prevailing circumstances that the accused was under duress resulting from a threat of imminent death and continuing serious bodily harm.

ii. The conduct alleged to constitute CAH has been caused by duress resulting from a threat of imminent death and continuing serious bodily harm made by other persons.

18. The Defence *further* submits that threats were also objectively given to the accused by Chief of the ADA by way of email⁴¹ warning about the lethal consequences of non-obedience on

³⁶ US v. Krauch et al., Trials of War Criminals before the Nuernberg Military Tribunals, Vol. III (1952) 1176, Weigend (2012) 10 JICJ [1219], 1234 et seq.

³⁷ COMPROMIS, ¶4.

³⁸ COMPROMIS, ¶4.

³⁹ COMPROMIS, ¶9.

⁴⁰ COMPROMIS, ¶15.

⁴¹ Annexure I, p. 33.

part of the accused, *hence*, qualifying the threshold standard ⁴² of a threat. *Thus*, it can be reasonably inferred that the accused was under serious duress emanating from threats of imminent death and continuous bodily harm objectively made by the Chief of ADA.

2. THE ACCUSED ACTED NECESSARILY AND REASONABLY TO AVOID THE THREAT

19. The Defence submits that the accused acted necessarily and reasonably to avoid the threat.

Firstly, on the first insistence by the Chief of ADA⁴³ to aid the policies of Steiner Administration, the accused categorically maintained that the nature of his office does not permit manifestation of any explicit bias⁴⁴. *Moreover*, he highlighted his constraints and prayed for concessions in his favour⁴⁵. *Further*, it is submitted that if the accused still did not curtail his sympathy in favour of the victims of war on drugs, there is reasonable basis to believe that the accused would have been assassinated just like the case of Mr Justin Blake.⁴⁶ *Thus*, it can be inferred that the accused did act necessarily and reasonably to avoid the threat.

i. The accused did not intend to cause greater harm than was sought to be avoided

20. The Defence submits that the accused did not intend to cause greater harm than was sought to be avoided by ensuring that his actions emanating from duress did not lead to the unlawful or unjust death of any innocent civilian. It is further submitted that considering the police brutality amongst undertrials⁴⁷, on his end, he made sure that trials were not kept pending for long and the same is the reason for his highest number of disposal of cases. *Therefore*, all the elements of excluding criminal liability under duress in case the conduct alleged constitutes a

⁴² KAI AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW VOLUME I: THE CRIMES AND SENTENCING 357 (Oxford University Press 2013); ROBERT CRYER, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 408 (Cambridge University Press 2014).

⁴³ ANNEXURE – I

⁴⁴ ANNEXURE – I

⁴⁵ ANNEXURE – I

⁴⁶ ANNEXURE – III

⁴⁷ COMPROMIS ¶8

crime have been adequately fulfilled and hence, the accused cannot be held criminally responsible for the same.

3. THAT THE ACCUSED ACTED UNDER SUPERIOR ORDERS AND PRESCRIPTION OF LAW

21. The Defence submits that the conduct of the Accused which is alleged to constitute a crime within the jurisdiction of this court has been caused pursuant to superior orders and prescription of law. Article 33 of the Statute stipulates the exemption of a person from criminal liability for commission of a crime within the jurisdiction of the court if such a crime was committed pursuant to an order of Government or of a superior.⁴⁸ It shall be noted that superior orders have to be seen in light of prescription of law.⁴⁹
22. The Defence *further* submits that an order in the sense of Article 33 includes all orders, oral or written, or otherwise express demands which may describe functions so as to behave in specific way, whether by acting or omitting.⁵⁰ *Moreover*, any sort of explicit or implied communication between a superior and subordinated person is sufficient to constitute an order.⁵¹ *Furthermore*, an order of a government can be issued by any of its branches or by a person in charge of specific functions which permit them to act on behalf of a government.
23. The superior-subordinate relationship within the meaning of Article 33 has a broad connotation and *therefore*, it is advisable to include *in principle* all superior-subordinate relationships in which superiors exercise some degree of control over their subordinates.
24. For the purposes of Article 33, the personal belief of the accused or his intention has no nexus whatsoever with the defence as it is sufficient in case the crime was initiated or inspired by the order, regardless of the fact that subordinate desired or was motivated to do

⁴⁸ ROME STATUTE, *supra* note 2, Art. 33.

⁴⁹ SALZBURGER KOMMENTAR (1998) MN 22 ET SEQ. 44 1996 PREPARATORY COMMITTEE II, ARTICLE Q, PROPOSAL 2, 102.

⁵⁰ 9 Conc. AMBOS, *supra* note 42, at 380; ANTONIO CASSESE, PAOLA GAETA & JOHN R.W.D. JONES, THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 957,969 (Oxford University Press 2002); Korte, Handeln auf Befehl (2003) 126.

⁵¹ AMBOS, *supra* note 42, at 380, Korte, Handeln auf Befehl (2003) 126; van Sliedregt, Individual Criminal Responsibility (2012) 293.

so. This is because the causal connection between order and the crime of subordinate has to be evaluated on an *ex-post* basis in accordance with the rules of natural sciences which leaves no scope for a connection between intent and crime to be ascertained.

25. The Defence contends that the acts of the accused fulfil all the contextual elements of Article 33 and *hence*, the accused shall be relieved of criminal responsibility. *Firstly*, the accused acted as per the prescription of law i.e., the orders of the legislative branch of the government. *Secondly*, it shall be noted that the ADA was directly linked to the office of the President⁵² and *therefore*, the accused can be said to be the subordinate of the President as he exercised control over the affairs of the Tribunal⁵³. *Thirdly, inter alia*, there were both explicit⁵⁴ and implicit⁵⁵ orders to the Accused to act in a particular way by curtailing his judicial discretion in favour of those accused under the war on drugs policy. *Thus*, all the contextual elements of Article 33 are fulfilled.

26. Further, the following material elements are required to be fulfilled to avail a defence under Article 33:-

- i.* The person was under a legal obligation to obey orders of the Government or the superior in question;
- ii.* The person did not know that the order was unlawful; and
- iii.* The order was not manifestly unlawful

***i.* The Accused was under a Legal Obligation to Obey Orders of the Government**

27. The Defence submits that the Accused by virtue of being a judge of the ADA Tribunal had a legal obligation to act as per the prescription of law, which were the legislations in place in Titan. It is brought to the attention of this Hon'ble Chamber that the legislations in Titan provided for extremely harsh penalties for offences relating to trade and consumption of drugs⁵⁶ and supported Steiner's "War on Drugs Policy".⁵⁷

⁵² COMPROMIS ¶10

⁵³ ANNEXURE – II

⁵⁴ ANNEXURE – I

⁵⁵ COMPROMIS ¶4

⁵⁶ COMPROMIS ¶4

28. *Moreover*, it is contended that the composition of ADA Tribunal was such that it was directly linked to the Office of the President⁵⁸ and *therefore*, the accused can be said to be the subordinate of the President as he exercised control over the affairs of the Tribunal in this scenario. *Thus*, in addition to the prescription of law, there were implicit⁵⁹ and explicit⁶⁰ orders from the President which the accused was under no position to refute.

i. The Accused did not know that the order was unlawful

29. The Defence submits that the Accused did not know the order was unlawful as the same was prescribed by law prevailing in Titan. *Moreover*, the orders of the Chief of the ADA cannot be termed “unlawful” as the requirement is that illegality must reflect from the content of the order, which must refer to a crime within the jurisdiction of this court. The Defence contends that *firstly*, the accused acted as per the legislations in force in Titan and *secondly*, the order of the of Chief of the ADA cannot be termed as unlawful as the same does not constitute a crime within the jurisdiction of this court. The orders to pace up the work of the tribunal are not unlawful.

ii. The order was not manifestly unlawful

30. The manifestly unlawful criterion establishes a high threshold such that the unlawfulness of the order must be obvious, self-evident and incontestable. It is submitted that legislations in place cannot be termed as manifestly unlawful. *Moreover*, the order of the Chief of ADA does not qualify the manifestly unlawful threshold as it is far from unlawful. The orders to pace up the work of the tribunal are not unlawful. *Thus*, for the foregoing reasons, it is submitted that the accused shall be relieved of criminal responsibility as he acted under the prescription of law.

⁵⁷ COMPROMIS ¶4

⁵⁸ COMPROMIS ¶10

⁵⁹ COMPROMIS ¶ 4

⁶⁰ ANNEXURE – I

III. THE SPECIFIC ELEMENTS OF CRIME AS STIPULATED UNDER ARTICLE 30 OF THE ROME STATUTE ARE NOT FULFILLED IN THE INSTANT CASE

31. The Defence submits that the Rome Statute stipulates that a person will be liable only if the material elements of a crime are committed with intent and knowledge.⁶¹ Hence, the Defense submits that the accused did not have the requisite limb of (i) intent and (ii) knowledge.

i. Intent

32. This requirement is enshrined under Article 30 (2) (a) of the Statute.⁶² It requires that the person means to engage in the conduct and means to cause the consequence or is aware that it will occur in the ordinary course of events.⁶³ The Defence contends that the accused Umberto Eco did not mean to engage in the conduct because he lacked the volitional element⁶⁴ as his alleged conduct was effectuated by duress which has been effectively established by the Defence in its previous submission⁶⁵.

33. The Defence *further* contends that the accused did not mean to cause the consequence or was aware that it will occur in ordinary course of events. The default rule of Article 30 of the ICC Statute does not accommodate any standard of *mens rea* below the threshold of knowledge of result in terms of practical certainty.⁶⁶ It submits that the accused could not have known that his curtailment of judicial discretion in favour of the victims would lead to the material elements of crime against humanity as the same is too farfetched to be defined in terms of practical certainty. *Thus*, it can be reasonably concluded that the accused did not mean to cause the consequence or was aware that it will occur in ordinary course of events.

⁶¹ ROME STATUTE, *supra* note 2, Art. 30.

⁶² *Ibid.*

⁶³ Art. 30 (2) (3); Lubanga, *supra* note 74, ¶350.

⁶⁴ Prosecutor v. Lubanga (ICC-01/04-01/06), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, ¶ 351. See also: Bemba (ICC-01/05-01/08), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 15 June 2009, ¶ 357.

⁶⁵ Argument II-A

⁶⁶ Bemba, *supra* note 4, ¶359; Prosecutor v. Lubanga, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, ¶1101 (Mar. 14, 2012).

34. The contention that the accused had probable knowledge of the consequences cannot prevail because a mere possibility cannot satisfy the standards of intent⁶⁷ under the statute. This is in harmony with the rule of strict construction under Article 22 (2)⁶⁸ of the Statute and is fully consonant with the academic writings on the matter.⁶⁹
35. For the purpose of establishing crimes against humanity of murder, it is pertinent to note that intent is only relevant to the extent that the material elements of that crime must be committed with it. *Further, mens rea* should be strictly construed.⁷⁰ Hence, mere participation in the drafting of the war on drugs policy⁷¹ or his push for the Unitary Executive Theory cannot be construed as intent to commit the material elements of crime against humanity of murder⁷². It requires that the perpetrator killed someone with intent and knowledge and that the same is not established beyond a reasonable doubt. *Thus*, this requirement cannot be met as the perpetrator never intended to kill anyone.

ii. Knowledge

36. In the instant case before this Hon'ble Chamber, the knowledge would entail awareness that a consequence will occur in the ordinary course of circumstances.⁷³ As shown in the above submissions, it does not cover probable knowledge of consequence.⁷⁴ It requires a standard of "virtual certainty"⁷⁵ which cannot be established beyond a reasonable doubt in the facts of

⁶⁷ Prosecutor v. Jean-Pierre Gombou, ICC-01/05-01/08, Decision pursuant to Article 61(7)(a) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bembe Gombo, ¶363 (Jun. 15, 2009) [hereinafter Gombou].

⁶⁸ ROME STATUTE, Art. 22(2)

⁶⁹ AMBOS IN CRYER AND BEKOU (2004), p. 22. See also: Weigend (2008) at 484.

⁷⁰ Werle, *supra* note 87, at 961.

⁷¹ COMPROMIS ¶ 11

⁷² COMPROMIS ¶ 11

⁷³ ROME STATUTE, *supra* note 2, Art. 30 (3).

⁷⁴ Bemba, *supra* note 4, ¶363.

⁷⁵ Katanga, *supra* note 13, ¶774.

the case. The accused was not aware that the acts of Steiner Administration constitute a crime under the Statute. *Therefore*, the Defence humbly submits that the requisite limb of ‘knowledge’ is not present in the instant case.

IV. THAT THE ACCUSED UMBERTO ECO IS NOT LIABLE UNDER ARTICLE 25 OF THE ROME STATUTE

37. In the instant case, the accused is made liable under Individual Criminal Responsibility for his involvement in the implementation of “War on Drugs” policy. The defence submits that there are five factors of ICL as identified by the pre-trial chamber in the case of Lubanga.⁷⁶ These elements were further confirmed and used by the trial chamber as well as the appeals chamber. The accused’s conduct is not in violation of any of the given elements. The defence contends:

1. THAT THE ACCUSED IS NOT LIABLE UNDER ARTICLE 25(3)(A) FOR CO-PERPETRATION IN THE SAID CRIME

38. It is submitted that for the confirmation of charges, there are five elements that need to be fulfilled: i) the existence of a common plan between two or more persons; ii) the coordinated essential contribution made by each co-perpetrator that results in the realization of the objective elements of the crime; iii) the accused was aware that by implementing the common plan, the criminal consequences would ‘occur in the ordinary course of events’; iv) the accused was aware that he provided an essential contribution to the implementation of the common plan and v) the accused was aware of the factual circumstances that established the existence of an armed conflict, and of the link between these facts and his conduct. In absence of any of these elements, the Accused cannot be held liable under the said article.

***i.* There is no common plan that can be derived from the facts presented**

39. It is humbly submitted before this Hon’ble Court that the present element stipulates the existence of a common goal and agreement between the person(s) involved⁷⁷. First of all,

⁷⁶ Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-803, Decision on the confirmation of charges, ¶343 (Jan. 29, 2007).

⁷⁷ *Id.*, ¶17.

there was no common goal that could be inferred from the facts presented. The accused was acting diligently as a judicial officer and as per the law of the land. made all the decisions free of any bias, however, under duress. He was appointed as the Chief Judge at the ADA tribunal solely because of his experience and competence. His personal beliefs never clouded his judgments and therefore, the allegations made against him are unfounded. There is no clear evidence that states that the accused acted as an accessory to the Steiner administration. *Hence*, the accused is not liable under this provision of the Rome Statute.

ii. The acts of the accused do not form essential contribution

40. It is humbly submitted before this learned Court that with regard to the requirement of an ‘essential contribution’ the Statute’s wording require that the offence be the result of ‘combined and coordinated’ contributions of those involved.⁷⁸ In order to form an essential contribution, the accused must have done an act, without furtherance of which, the plan would stay unattended. *However*, no such act is committed by the accused. *Therefore*, the accused has in no manner made an essential contribution rendering the allegations against him unfounded.

iii. The Subjective Elements have not been fulfilled

41. This element of co-perpetration asserts that subjective elements with regard to crime⁷⁹ as well as common plan must be fulfilled.⁸⁰ The Defense submits that the absence of intent and knowledge to commit material elements of crime on part of the Accused has already been established by the Defense in its previous submission.

42. With respect to the common plan, it is submitted that the subjective test is that the (i) co-perpetrators are mutually aware that implementing the common plan will result in the fulfilment of the material elements of the crimes; and yet (ii) they carry out their actions with the purposeful will (intent) to bring them about, or are aware that in the ordinary course of

⁷⁸ *Id.*, ¶9.

⁷⁹ Lubanga (ICC-01/04-01/06), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, paras 349–360.

⁸⁰ *Lubanga*, *supra* note 68, ¶349.

events, the fulfilment of the material elements will be a virtually certain consequence of their actions.⁸¹

43. The existing jurisprudence of this court has stipulated a very high threshold to establish the subjective elements of co perpetration. It is submitted that, by any stretch of imagination, the accused cannot be construed as aware that his legal actions of adjudication⁸² will, in all certainty, bring about material elements of a crime. *Thus*, the objective and subjective elements under Art 25(3)(a) have not been fulfilled and the Accused cannot incur criminal liability under the same.

**2. THAT THE ACCUSED IS NOT LIABLE UNDER ARTICLE 25(3)(B) FOR ORDERING,
SOLICITING OR INDUCING THE SAID CRIME**

44. It is humbly submitted that as per Article 25(3)(b) of the Statute, anyone who orders the commission of a crime under international law or who instigates (‘solicits’ or ‘induces’) another to commit such a crime is criminally liable.⁸³ Here criminal responsibility requires that the crime in question has actually been committed or has at least been attempted.⁸⁴ *Furthermore*, the order must directly and substantially effect commission of the crime.⁸⁵ It is necessary that the perpetrator commits or at least attempts the commission of the crime in carrying out the order.

45. The Defense *further* contends that the Accused cannot incur liability under the four corners of this Article as it merely deals with a person who orders, solicits or induces the “commission of a crime” It shall be noted that no conduct of the Accused can be construed as

⁸¹ Bemba (ICC-01/ 05-01/ 08), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 15 June 2009, paras 351, 370. In the same vein, Katanga et al. (ICC-01/ 04-01/ 07), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, para. 533; Muthaura et al. (ICC-01/09-02/ 11), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 23 January 2012, para. 410

⁸² COMPROMIS ¶ 16

⁸³ ROME STATUTE, *supra* note 2, Art. 25(3)(b).

⁸⁴ Prosecutor v. Ga lić , Case No. IT-98-29, Judgment, ¶168 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 5, 2003); Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71-I, Judgment, ¶455 (July 15, 2004).

⁸⁵ *Blaškić*, *supra* note 10, ¶ 42; Prosecutor v. Kordić and Čerkez, Case No. IT -95-14/2, Judgement, ¶27 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004).

ordering or inducing the commission of a “crime”. The Accused had no authority over the police or local *milita* to order or induce the commission of a crime.

46. The Defense submits that the absence of intent and knowledge to commit material elements of crime on part of the Accused has already been established by the Defense in its previous submission. *Thus*, the objective and subjective elements under Art 25(3)(a) have not been fulfilled and the Accused cannot incur criminal liability under the same.

3. THAT THE ACCUSED IS NOT LIABLE UNDER ARTICLE 25 (3) (C) FOR ASSISTANCE IN THE SAID CRIME

47. Article 25 (3) (c) of the Rome Statute relates to the responsibility for aiding, abetting or otherwise assisting in the commission or attempted commission of a crime within the jurisdiction of the court.⁸⁶ The purpose behind such aiding, abetting, or assistance should be the facilitation of the crime. *Furthermore*, it must be “direct and substantial”; i.e., the contribution should facilitate the commission of a crime in “some significant way”. This legal position was reiterated in the *Tadić* case.
48. The Defense submits that the Accused did not aid, abet or assist in the facilitation of a crime as there is no reliable evidence to adduce the same. *Moreover*, due to procedural safeguards, the official powers a judge are intrinsically curtailed in a way that it cannot directly or substantially aid in the facilitation of a crime. *Furthermore*, it shall be noted that if the supposed aiding and abetting occurs after the crime, there is the onus to establish a prior agreement existed between the principal and a who aided and abetted in the commission of crime.⁸⁷ *Thus*, it cannot be established that the Accused aided, abetted or assisted in the commission of a crime.
49. The Defense submits that to establish *mens rea* under Article 25(3)(c), the Accused must possess the “intention to facilitate the commission of the alleged crime”.⁸⁸ The lack of intent and knowledge on part of the accused has already been proved *hitherto* by the Defence in its previous submission.

⁸⁶ Article 25 (3) (c), Rome Statute.

⁸⁷ Blagojević Trial Judgement, para. 731.

⁸⁸ Blé Goudé Confirmation of Charges [167]

4. THAT THE ACCUSED IS NOT LIABLE UNDER ARTICLE 25 (3)(D) FOR CONTRIBUTING TO THE COMMISSION OF A CRIME OR AN ATTEMPTED CRIME BY A GROUP

50. The Defence submits that the Accused is not liable under Art. 25(3)(d) of the Statute as an accessory to CAH of Murder.⁸⁹
51. Art. 25(3)(d) functions as a catch-all provision as it requires less of a threshold than any other form of liability.⁹⁰ In *Mbarushimana*⁹¹ the PTC had set out the requirements for liability under Art. 25(3)(d) which are enumerated as follows:

i. The objective Elements have not been fulfilled

52. The subparagraph (d) displays the lowest objective threshold within the different modes of attribution of Article 25.⁹² As was held in *Mbarushimana*, the objective elements of the crime are: (i) a crime within the jurisdiction of the Court is attempted or committed; (ii) the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose; (iii) the individual contributed to the crime in any way other than those set out in Article 25(3)(a) to (c) of the Statute.⁹³
53. With reference to (i), it is submitted that the *ratione materiae* has not been fulfilled, as CAH of Murder due to the acts of Accused has not taken place in the instant case, which has been established above⁹⁴. As with regards to (ii), reference may be drawn from the pleadings submitted hitherto⁹⁵, *wherein*, it has been proved that the Accused and Steiner did not have any common purpose, *per se*.
54. As with respect to (iii), the PTC in *Mbarushimana* designated that there must be a ‘significant’ contribution.⁹⁶ As to the assessment of ‘significant’, the PTC proposed a case-

⁸⁹ *Lubanga*, ¶334.

⁹⁰ J.D Ohlin, Joint Intentions to Commit International Crimes, 11 CHI. J. OF INT’L L. 409 (2010).

⁹¹ Prosecutor v. Callixte Mbarushimana, ICC-01-04-01-10, Decision on the Prosecutor’s Application for a Warrant of Arrest, ¶41 (Dec. 16, 2011).

⁹² Prosecutor v. Ruto, ICC-01/09-01/11-373, Decision on the Confirmation of Charges, ¶354, (Jan. 23, 2012).

⁹³ *Mbarushimana*, ¶39.

⁹⁴ Actus Reus Argument

⁹⁵ Article 25(3)(a) Argument

⁹⁶ *Mbarushimana*, ¶283-¶285; Prosecutor v. Bosco Ntaganda, ICC-01/04-02/ 06- 309, Decision on the Confirmation of Charges, ¶158 (9 June 2014); Prosecutor v. Gbagbo, ICC- 02/11-01/11-656-R, Decision on the Confirmation of Charges, ¶252, (12 June, 2014).

by-case analysis of the person's conduct in the given context ⁹⁷ taking into account several factors which include:

(i) the sustained nature of the participation after acquiring knowledge of the criminality of the group's common purpose, (ii) any efforts made to prevent criminal activity or to impede the efficient functioning of the group's crimes, (iii) whether the person creates or merely executes the criminal plan, (iv) the position of the suspect in the group or relative to the group and (v) perhaps most importantly, the role the suspect played vis-a-vis the seriousness and scope of the crimes committed.⁹⁸

55. The Defense submits that the jurisprudence with regard to "significant contribution" has established very high threshold which requires a number of factors to be proved with regard to the person's conduct. The Defense contends that in absence of any act by the Accused which could remotely lead to CAH, and lack of intent or knowledge to cause harm, the Accused cannot be said to make a "significant contribution". *Thus*, it is submitted that objective elements of a significant contribution under Art. 25(3)(D) have not been fulfilled in the instant case.

ii. Subjective Elements have been Fulfilled.

56. It is submitted that the subjective elements are: (i) the contribution shall be intentional; and (ii) shall either (a) be made with the aim of furthering the criminal activity or criminal purpose of the group; or (b) in the knowledge of the intention of the group to commit the crime.⁹⁹

57. With reference to (i), it is submitted that, 'intentional' is to be understood as possessing the *dolus* as enumerated in Art. 30 of the Statute and means in relation to a conduct - 'to engage in that conduct' and in relation to consequence – as 'means to cause that consequence' or as being 'aware' that it will occur¹⁰⁰. It has already been proved by the Defense in its earlier submission that there was no intent to engage in relation to conduct or consequence on part of the Accused.¹⁰¹

⁹⁷ Mbarushimana, ¶284; Katanga Judgment, ¶1634.

⁹⁸ *Id.*

⁹⁹ *Mbarushimana*, ¶41.

¹⁰⁰ Triffterer, at 1014.

¹⁰¹ Article 30 Submission

58. As concerning (ii), with respect to (a), the accused must possess the '*dolus*', i.e. the specific intention to promote the ideas and acts of the group.¹⁰² The defense has already established a lack of common plan and therefore there is no intention to promote the ideas of a particular group in the instant case. *Therefore*, the objective and subjective elements under Art 25(3)(d) have not been fulfilled and the Accused cannot incur criminal liability under the same.

**5. THAT THE ACCUSED IS NOT LIABLE UNDER ARTICLE 25 (3)(F) FOR ATTEMPT AND
ABANDONMENT**

59. It is humbly submitted before this learned bench that the relevant article provides for the criminal responsibility of an individual who attempts to commit a crime within the jurisdiction of the Court if a person commits an act to carry out his or her intention and fails to successfully complete the crime only because of some independent factor which prevents him or her from doing so.

60. The phrase 'does not occur' recognizes that the notion of attempt by definition only applies to situations in which an individual endeavours to commit a crime and fails in this endeavour.¹⁰³ Thus, an individual incurs criminal responsibility for unsuccessfully attempting to commit a crime only when the following elements are present: (a) intent to commit a particular crime; (b) an act designed to commit it; and (c) non-completion of the crime for reasons independent of the perpetrator's will.¹⁰⁴

61. The defence submits that the accused neither intended to commit any particular crime, nor did he have an act designed to commit it. Therefore, the accused does not incur any criminal liabilities under Art. 25 (3)(f).

¹⁰² Prosecutor v. Semanza, Trial Chamber, ICTR-97-20, ¶ 313 (15 May 2003).

¹⁰³ OTTO TRIFFTERER & K. AMBOS, COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVERS' NOTES, ARTICLE BY ARTICLE 762-765 (Oxford, Beck/Hart 2015).

¹⁰⁴ Albin Eser, in CASSESE, *supra* note 50, at 803-818.

V. PRESUMPTION OF INNOCENCE

62. The Defense submits that pursuant to Article 66 of the Statute, everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.¹⁰⁵
63. ILC Draft Statute contained the following provision: ‘An accused shall be presumed innocent until proved guilty in accordance with law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt’. The second sentence, containing the reference to the ‘reasonable doubt’ standard had not been included in the 1993 ILC draft. However, that earlier version was accompanied by a commentary that left no doubt about this issue:

“This provision recognizes that in a criminal proceeding the accused is entitled to a presumption of innocence and the burden of proof rests with the prosecution. The presumption of innocence is recognized in article 14, paragraph 2, of the International Covenant on Civil and Political Rights which states that ‘Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law’. The Prosecutor has the burden to prove every element of the crime beyond a reasonable doubt or in accordance with the standard for determining the guilt or innocence of the accused. If the Prosecutor fails to prove that the accused committed the alleged crime, then the person must be found not guilty of the charges contained in the indictment.”¹⁰⁶

¹⁰⁵ Article 66

¹⁰⁶ SALZBURGER KOMMENTAR (1998) MN 22 ET SEQ. 44 1996 PREPARATORY COMMITTEE II, ARTICLE Q, PROPOSAL 2, 102.

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. The accused, Umberto Eco, did not commit the acts of Crime Against Humanity of Murder under Article 7(1)(a) of the Rome Statute.
- II. Umberto Eco is not Individually Criminally Responsible for the acts committed by him as a co-perpetrator.
- III. Umberto Eco is not Individually Criminally Responsible for the acts committed by him as a willing accessory.

COUNSELS FOR THE DEFENSE

**SIXTH SYMBIOSIS LAW SCHOOL, PUNE – INTERNATIONAL CRIMINAL TRIAL
ADVOCACY, 2021**

Before

Trial Chamber I, International Criminal Court

The Hague, The Netherlands

THE PROSECUTOR

PROSECUTION

v.

UMBERTO ECO

DEFENCE

DEFENDANT CHARGED WITH

Crime against Humanity under Article 7 of the Rome Statute

WRITTEN SUBMISSIONS ON BEHALF OF THE PROSECUTION

Word Count:6843



Original: **English**

No.: **ICC-09/03-21/10**

Date: [**April 23, 2021**]

TRIAL CHAMBER I

Before: **Judge _____, the Presiding Judge**
Judge _____, and
Judge _____,

SITUATION IN THE REPUBLIC OF TITAN

IN THE CASE OF

THE PROSECUTOR v. UMBERTO ECO

PUBLIC

**Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor
Against Umberto Eco**

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LIST OF ABBREVIATIONS

¶	Paragraph
AC	Appeals Chamber
ADA	Anti-Drug Authority
Art.	Article
CRM	Civil Rights Movement
Doc	Document
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECTHR	European Court of Human Rights
ETS	European Treaty Series
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESOC	International Convention on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
<i>Id.</i>	Idem
IT	International Tribunal
VLR	Victims' Legal Representative
OHCHR	United Nations Office of High Commissioner of Human Rights
OTP	Office of the Prosecutor
PCIJ	Permanent Court of International Justice
PTC	Pre-Trial Chamber
ROEP	Rules of Evidence and Procedure
RTC	Regulations of the Court
RTP	Regulations of the Office of The Prosecutor
SCD	Special Committee on the Study of Demographics in Xuan
TC	Trial Chamber
U.N.T.S.	United Nations Treaty Series

UF	United Front
UKHL	United Kingdom House of Lords
UNCLOS	United Nations Convention on the Law of Sea
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
US	United States
v.	Versus
VCLT	Vienna Convention on the Law of Treaties

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STATEMENT OF FACTS

Titan is an archipelagic country in Southeast Asia situated in the western Pacific Ocean. Titan has an area of 22,550 km² according to the local statistical authority and the World Bank, and as of 2017, a population of at least ten million (10,000,000). Christianity is the most widely followed religion of Titan whereas the majority of Titanians consider the Roman Catholic Church as their religious guide. Titan is a member of the United Nations, the World Trade Organization and the World Bank. It is a sovereign state, functioning as a unitary semi-presidential republic. Further, it has signed and ratified the Rome Statute, the International Covenant on Civil and Political Rights, the Genocide Convention, and the Geneva Conventions.

Xuan is the capital city of Titan and acts as the administrative and judicial center. In terms of population density, the sizeable civilian population of Xuan is concentrated on its fringes where the biggest ghetto community of Titan lies. The people living in these ghettos and rural areas lead a starkly distinct political and cultural life – accounting for only two percent (2%) of the total votes cast historically in the country’s general elections. Mostly, belonging to the protestant faith, this class also ranked the lowest on the employability figures as well as the wellness and happiness index maintained by various human rights organizations running in Titan.

Mr. Jude Steiner, a conservative, catholic, public figure and former President of Titan, governed the administration of the country from mid-2016 till the end of 2019. During his Presidency, the country witnessed mass atrocities, murders, torture and summary executions of thousands of Titanians under the umbrella of his anti-drug campaign, “War on Drugs”. He is believed to have taken absolute control over all branches of the State. The public officials who refused to follow the directions of his office were often charged with false accusations and charges revolving around corruption, dereliction of official duty and obstruction of justice. By the end of 2019, he is believed to have been responsible for the execution or murder of at least thirty-thousand civilians.

Mr. Umberto Eco (*hereinafter*, the accused) is a member of the judicial infrastructure of Titan. He and his family members have served in multiple important positions of authority under the administration of Mr. Jude Steiner. At the time of his arrest, the accused held the position of a senior consultant to the Ministry of Justice, Law and Order (“Ministry”), Government of Titan while his wife, Mrs. Martha Ränge served as the chief secretary to the Ministry. His prior engagements include serving before the ADA Tribunal as a judicial officer (2019 - 2020), the Office of the Attorney General of Titan (2013 - 2015 and 2016 - 2018) and the Central University of Xuan as a Professor of Criminal Justice (2007 - 2013). During the period relevant from the perspective of the investigation undertaken by the ICC Prosecutor, the accused was serving the ADA Tribunal situated at Xuan.

Anti-Drug Authority (“ADA”) is a dedicated task force formed by the government to take swift measures which include the use of aggravated police force to arrest the distribution of drugs in all relevant communities of Titan. The ADA was directly linked with the office of the President and enjoyed an almost autonomous status in the governmental hierarchy.

Civil Rights Movement (“CRM”) is an apolitical, non-partisan, non-profit and non-governmental collective working under the aegis of the United Nations. This association operates as a specialized committee responsible for providing legal aid, humanitarian assistance and counselling in distress ridden communities of Titan. The association operates on an ad-hoc basis and is affiliated with multiple international non-governmental organizations including the Red Cross. The Court, admits applicant CRM as the Legal Representative of the Victims.

ALLEGATIONS RAISED

The accused is alleged to have participated in the persecution of civilian population of Titan by illegal use of his office and influence. The accused is alleged to have denied all legal claims and defences of individuals arrested and tortured by the police forces and the local militia working for the government. Furthermore, he is alleged to have intentionally influenced the prosecution of such individuals towards maximum penalty and denial of rights at his disposal.

INVESTIGATIVE FINDINGS

(The period of investigation conducted by the Office of the ICC Prosecutor, based on due authorizations of this Court, extends from July, 2016 to October, 2020.)

December 14, 2016 - The accused, working for the Attorney General of Titan, submits a memorandum to the Ministry, arguing in favor of the “Unitary Executive Theory” that favored legal interpretations which would grant unbridled powers with scarce checks and balances to the President of Titan.

January, 2017 - The accused is appointed to the drafting committee of ADA’s “War on Drugs” policy.

March 4, 2017 - ADA sets up its local watch-dog units called “Friends of the Neighborhood” that were to facilitate and assist the general public and police forces to detect and eradicate all active drug syndicates.

July, 2017 to February, 2018 - Sharp increase in violence between the police forces of Titan and the members of the civil society alleged to be involved in drug related offenses. Thousands of casualties in the police offensive launched against drug syndicates operating in the cities of Titan. Communication sent from the ADA to all the police forces authorizing the use of firearms and assault weapons against gang members who refused to observe the community guidelines released by their territorial unit of “Friends of the Neighborhood”.

April 30, 2018 - Mr. Steiner’s political outfit gains victory in the parliamentary elections and he passes formal legislations consolidating his executive authority.

August 3, 2018 - ADA rolls out a controversial policy under which its local units and affiliates are authorized to arm, train and prepare a group of participating local volunteers from pre-screened civilian communities in each district. The local militia is given a free-hand with virtually negligible oversight. The policy is severely criticized by international human rights organizations and the media. The policy is upheld by the highest constitutional court of Titan on the basis of the arguments led by the accused.

Consequence: Within the next four (4) months, this policy leads to a sixty percent (60%) increase in gun violence and the death of seven hundred (700) individuals. Civil rights

organizations are attacked by armed mobsters with support and intelligence inputs from the local police. Public officials including elected ministers who refuse to comply with the mandate of the administration are publicly lynched to set an example for others.

January 10, 2019 - Mr. Steiner appoints the accused to the position of the chief judge of the ADA Tribunal of Xuan. His appointment is in addition to the seventeen other judicial appointments made by Mr. Steiner in that year. These individuals are believed to have been instrumental in executing the “War on Drugs” policy.

February, 2020 - Several countries impose restrictions and sanctions on Titan. These sanctions lead to public outcry against Mr. Steiner’s Presidency. Mr. Steiner’s administration responds to the protests by using paramilitary forces against the protestors. Mr. Steiner, however, is forced to resign from his position by his political party and is replaced by the vice-president of Titan, Mr. Francis Dolcini. The new president elect is critical of the former administration.

May, 2020 - A local court based in Vortex City finds three (3) police officers guilty for the cold-blooded murder of a seventeen (17) year old boy which sparks a public outrage. Responding to the pressure, the present government of Titan orders re-examination of several cases involving individuals charged with anti-drug legislations. These cases are summarily decided against the defendants in the first instance by the judges, including the accused.

PROCEDURAL HISTORY

April 24, 2020 - CRM requests the ICC Prosecutor to open investigation against the Situation relating to the crimes committed under the “War on Drugs” policy of the Steiner administration.

August 30, 2020 - The Prosecutor releases a preliminary report announcing that, in its opinion, the attacks referred under it, via the Situation in Titan, pass the legal standards governing the jurisdiction of the Court with reference to applicable provisions of the Rome Statute.

September 27, 2020 - The Pre-Trial Chamber authorizes the ICC Prosecutor to launch a formal investigation in connection with the Situation in Titan. (*Meanwhile*, Mr. Steiner, in return for a peaceful transition of power in favor of Mr. Francis Dolcini, was able to secure a safe passage

for himself and his family members to China, thus, successfully evading arrest and trial by this Court.

The Pre Trial Chamber has decided to commit the accused to the Trial Chamber for trial on the charge of Crime against Humanity of Murder as confirmed.

ISSUES PRESENTED

I.

**WHETHER UMBERTO ECO HAS COMMITTED CRIME AGAINST HUMANITY OF MURDER UNDER
ARTICLE 7(1)(A) OF THE ROME STATUTE**

II.

**WHETHER UMBERTO ECO CAN AVAIL EXCEPTIONS TO CRIMINAL LIABILITY UNDER ROME
STATUTE**

III.

**WHETHER UMBERTO ECO SHALL BE HELD LIABLE UNDER INDIVIDUAL CRIMINAL
RESPONSIBILITY STIPULATED BY ARTICLE 25 (3) (A) OF THE STATUTE**

SUMMARY OF ARGUMENTS

I. THE VICTIMS WERE SUBJECTED TO CRIMES AGAINST HUMANITY OF MURDER UNDER ARTICLE 7(1)(A) OF THE ROME STATUTE

- ❖ The Prosecution submits that the accused, Mr Umberto Eco has committed Crimes Against Humanity of Murder within the meaning of Art. 7(1)(A) of the Rome Statute. It is submitted: *Firstly*, the Contextual Elements of Crimes Against Humanity under the Chapeau are fulfilled in the present case [1.] *Secondly*, the Acts of the Accused caused death of the victims. [2.] *Thirdly*, the material elements of Crime against Humanity were committed with intent and knowledge [3.]

II. THE ACTS OF THE ACCUSED DO NOT FALL WITHIN THE EXCEPTIONS TO CRIMINAL LIABILITY UNDER ROME STATUTE

- ❖ The Prosecution submits that the acts of the accused are not exempted from attracting liability under the Rome Statute. *Firstly*, the acts do not fulfil the essential requisites of Article 31(1)(d) [1.] *Secondly*, the acts do not fulfil the essential requisites of Article 33 [2.]

III. THE ACCUSED UMBERTO ECO IS LIABLE UNDER THE ROME STATUTE FOR THE ACTS COMMITTED BY HIM

- ❖ The Prosecution submits that the accused is liable under Article 25 of the Rome Statute. *Firstly*, he shall be held liable as an co-perpetrator under Article 25(3)(a) of the Statute [1.] *Secondly*, he shall be liable as an accessory to Mr. Jude Steiner under Articles 25(3)(c) and 25(3)(d) of the Statute [2. & 3.]

ARGUMENTS IN DETAIL

I. THAT THE CRIME AGAINST HUMANITY OF MURDER HAS BEEN COMMITTED

1. THAT THE CONTEXTUAL ELEMENT OF CRIME AGAINST HUMANITY, AS STATED IN THE CHAPEAU OF ELEMENTS OF CRIME, ARTICLE 7 HAVE BEEN FULFILLED

1. The Prosecution submits that in order to establish a charge of Crimes Against Humanity (CAH), the following contextual elements need to be fulfilled¹ : (i) The attacks were systematic or widespread, (ii) the attacks were directed against a civilian population, (iii) the acts of the Accused form part of the attack; (iv) the Accused must know that his or her acts constitute part of a widespread or systematic attack directed against any civilian population²; and (v) there existed a State policy of CAH.

i. The attacks were systematic or widespread

2. The systematic and widespread characterization of these attacks is a disjunctive requirement.³ The adjective ‘systematic’ signifies the organized nature of the acts of violence and the improbability of their random occurrence.⁴ *Furthermore*, it shall be noted that for the purpose of attack comprising crimes against humanity, it need not be violent nor involve use of force,⁵ rather any mistreatment of civilian population suffices.⁶

¹ Rome Statute of the International Criminal Court, Article 7(2)(a), *adopted*, July 17, 1998, 2187 U.N.T.S 99 (Entered into force on July 1, 2002) [hereinafter ROME STATUTE].

² Kunarac Appeal Judgement, ¶ 85; Popović Trial Judgement, ¶ 751.

³ Prosecutor v. Savić, Case No. X-KR-07/478, 1st Instance Verdict ¶30 (Court of BiH. Jul. 3, 2009); Prosecutor v. Samardžija, Case No. X-KRZ-05/07, 2nd Instance Verdict 14, (Court of BiH. Oct. 15, 2008).

⁴ Prosecutor v. Blaškić, Case no. IT-95-14-T, ¶203 (ICTY Mar 3, 2000); Prosecutor v. Tadić, Case no. IT-94-1-A Opinion and Judgment, ¶648 (ICTY May 7 1997), Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Judgment, ¶ 580 (Sept 2 1998).

⁵ Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Trial Chamber Judgment, note 29, ¶ 581 (ICTY Sep 2 1998).

⁶ Kunarac (Trial Chamber Judgment), note 30, ¶ 416; Prosecutor v. Stakić, No. IT-97-24-T, Judgment, Trial Chamber, 31 July 2003, ¶ 623; Prosecutor v. Semanza, Case No. ICTR-97- 20-T, Trial Chamber Judgment, ¶ 327, (ICTY May 15 2003); Prosecutor v. Kajelijeli, ICTR-98-44A-T, Trial Chamber Judgment, ¶ 868, 1 December 2003; Prosecutor v. Katanga, ICC-01/04-01/07, Trial Chamber Judgment, note 30, ¶ 1101; Werle, *Vo lkerstrafrecht* (2012) mn 872; *id.* and Jessberger, *Principles of International Criminal Law* (2014) 338.

3. According to the Trial Chamber in *Blaškić*, the ‘systematic’ requirement comprises of the following four tests:⁷ (i) Existence of political objective: a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community, (ii) Perpetration of the criminal act on a large scale: Act should have been perpetrated on a very large scale over the victims or repeatedly perpetrated, (iii) Perpetration should use resources: public, private, military or otherwise, and (iv) the implication of a high-level political or military authority.
4. The Prosecution submits that there was a systematic attack against the civilian population of Titan under the umbrella of “War on Drugs” policy⁸ which was perpetrated to destroy, persecute and weaken the civilian population of Titan, particularly, the disenfranchised⁹ minority protestant community. As per reports on record, there were large-scale instances of gun violence resulting in death,¹⁰ in addition to several instances of arson, sexual violence and loot against the marginalized protestant community, which was touted to be the epicenter of drug related crimes by the Steiner Administration.¹¹ These attacks were only made possible with the connivance of the state police,¹² high-ranking public officials¹³ and members of the judiciary¹⁴. *Thus*, the essentials mentioned in *Blaškić* have been fulfilled and *therefore*, it is established that there was a systematic attack against the civilian population of Titan.
5. The Prosecution, *inter alia*, submits that the attacks were widespread. The term ‘widespread’ refers to a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity in victims.¹⁵ It deals with quantitative nature

⁷ Id., *Blaškić*, ¶203.

⁸ COMPROMIS, ¶4.

⁹ COMPROMIS, ¶2.

¹⁰ COMPROMIS, ¶15.

¹¹ COMPROMIS, ¶15.

¹² COMPROMIS, ¶15.

¹³ COMPROMIS, ¶ 21.

¹⁴ COMPROMIS, ¶4.

¹⁵ Samardžija, *supra* note 2, p. 10; Akayesu, *supra* note 3, ¶ 580; Savić, *supra* note 2, p. 30.

of the attack¹⁶ and refers to the scale of the attack or, equivalently, to the [large] number of victims.¹⁷

6. The Prosecution submits that numerous attacks were carried out against civilian population of Titan, with the help of ‘Friends of Neighborhood’ and other forces backed by the State, which claimed the lives of 30,000 civilians¹⁸ just within a span of two years. This fulfils the widespread requirement as this Court has recognized cases as widespread in which as low as 200 civilians were affected.¹⁹ Thus, it can be concluded that the attacks furthered by the Steiner Administration were systematic and widespread.

ii. The acts of the Accused form part of the attack

7. The Prosecution submits that the acts of Accused in itself need not be widespread or systematic.²⁰ The Accused is not required to commit an attack as it only needs to be established that his acts comprise a part of the attack²¹ furthered by the Steiner

¹⁶ M. C. BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 419 (2nd ed. 1999).

¹⁷ Ambos, Commentary on Rome Statute of International Criminal Court ; Prosecutor v. Kunarac, Case no. IT-96-23-T & IT-96-23/1-T, Trial Chamber Judgment, ¶ 428; Prosecutor v. Tadic, Case no. IT-94-1-A Opinion and Judgment, note 29, ¶648 (ICTY May 7 1997), Prosecutor v. Blaškić, Case no. IT-95-14-T, Trial Chamber Judgment, note 30 ¶202 (ICTY Mar 3, 2000); Prosecutor v. Krnojelac, No. IT-97- 25-T, Trial Chamber Judgment, ¶57 (ICTY Mar 15 2002), Prosecutor v. Kordic, Case No. IT-95-14/2, Appeals Chamber Judgment, note 94, ¶ 94, (ICTY Dec, 17 2004), Prosecutor v. Blaskic, No. IT-95-14-A, Appeals Chamber Judgment, ¶101 (ICTY July 29 2004); Prosecutor v. Kunarac, Case No. IT-96-23-A, Appeals Chamber Judgment, ¶94 (ICTY June 12 2002); Prosecutor v. Muvunyi, Case No. ICTR-00-55A-T, Trial Chamber Judgment, note 30, ¶512; Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Trial Chamber Judgment, ¶ 527 (April 28 2005); Prosecutor v. Kajelijeli, ICTR-98-44A-T, Trial Chamber Judgment, note 91, ¶ 871 (December 1 2003) ; Prosecutor v. Semanza Case No. ICTR-97-20-T, Trial Chamber Judgment, note 91, ¶ 329 (May 15 2003); Prosecutor v. Musema, Case No. ICTR-96-13-T, Trial Chamber Judgment, note 30, ¶ 203–204 (Jan 27 2000).

¹⁸ COMPROMIS, ¶ 6.

¹⁹ The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui.

²⁰ Prosecutor v. Kordić, Case No. IT-95-14/2-A, Judgement, note 94, ¶ 94, (ICTY Dec 17 2004), Prosecutor v. Blaškić, IT-95-14-A, Appeals Chamber Judgment, note 121, ¶ 101, (ICTY July 29 2004); Prosecutor v. Kunarac, IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgment, note 121, ¶ 96; Ambos, Treatise on ICL, 75-6, (2nd edition 2014); Prosecutor v. Mrksic, Case no. IT-95-13-R61, Vukovar Hospital Decision, ¶ 30, (April 3 1996).

²¹ Elements of Crime.

administration. *Further*, the *Bemba* Pre-Trial Chamber stated that while determining whether the ‘part of’ requirement was met, it would consider “the characteristics, the aims, the nature or consequences of the act”²². *However*, there must be a sufficient nexus between the unlawful acts of the accused and the attack²³ and they should not be capable of being characterized as isolated and random conduct of an individual acting alone. To determine whether a certain act was part of the attack or not, the test is whether it would have been less dangerous for the victim if the attack and the underlying policy had not existed.

8. The Prosecution contends that the acts of the Accused form a part of the attack furthered by Steiner Administration on multiple levels. *Firstly*, the accused has actively contributed to the conceptualization of policies²⁴ which eventually led to the attack on the civilian population of Titan. *Secondly*, the Accused is believed to have illegally used his office and influence²⁵ to further the “War on Drugs” narrative of the Steiner Administration by intentionally influencing prosecution of individuals²⁶, denying legal claims and ensuring maximum penalty²⁷. *Thirdly*, on the basis of formal records, it is abundantly clear that the accused issued the highest number of death penalties²⁸ and systematically denied permission to prosecute and dismiss cases against officials for police brutality, loot and torture,²⁹ which eventually bolstered the ground forces furthering the attack and gave legitimacy to the Steiner Administration. *Lastly*, these acts qualify the test laid down to ascertain complicity

²² Prosecutor v. Tadic, Case No. IT-94-1-AR72, Trial Chamber Judgment, note 29, ¶ 649 (ICTY July 15 1999); Prosecutor v. Šljivančanin, IT-95-13/1-A, note 95, ¶ 30 (ICTY May 5 2009); Vukovar Hospital Decision, note 95, ¶ 30; Meyrowitz, La repression par les tribunaux allemands des crimes contre l’humanité et de l’appartenance à une organisation criminelle (1960) 282; Greenwood (1998) 2 MPYbUNL 97, 97 et seq., 135; Prosecutor v. Kordic, Case No. IT-95-14/2, Appeals Chamber Judgment, note 94, ¶ 94, (ICTY Dec, 17 2004); Prosecutor v. Blaškić, IT-95-14-A, Appeals Chamber Judgment, note 121, ¶ 101, (ICTY July 29 2004); Prosecutor v. Šljivančanin, IT-95-13/1-A, note 95, ¶ 30 (ICTY May 5 2009).

²³ Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Trial Chamber Judgment, note 29, ¶ 579 (ICTY Sep 2 1998); Report of ILC Special Rapporteur, note 62, ¶ 93.

²⁴ COMPROMIS, ¶ 7.

²⁵ COMPROMIS, ¶ 8.

²⁶ COMPROMIS, ¶ 8.

²⁷ COMPROMIS, ¶ 8.

²⁸ COMPROMIS, ¶ 8.

²⁹ COMPROMIS, ¶ 8.

because it is evident that the accused would not have committed such acts had there been no underlying policy. *Thus*, it is unambiguously clear that the acts of the accused form a part of the attack.

iii. The attacks were directed against a civilian population

9. The Prosecution submits that the term civilian has a very broad connotation as it includes within its ambit all persons who are not members of the armed forces.³⁰ The prosecution highlights that the people affected by the attacks carried out in furtherance of the War on Drugs policy were members of the civil society of Titan.³¹ *Thus*, it can be safely concluded that the acts were directed against a civilian population.
10. The Prosecution *further* submits that ‘*directed against*’ means that “*the civilian population must be the primary object of the attack and not just an incidental victim of the attack*”.³² The Prosecution highlights several³³ instances of violence directed against the civil society of Titan³⁴. In these attacks, thousands of civilians were killed³⁵ and they were subjected to grossly unjustified instances of denial of rights, torture and arson³⁶ which makes it emphatically clear that the attacks were primarily directed against the civilian population of Titan.

³⁰ Geneva Convention IV *supra* note 43, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 43 and 50, June 8, 1977; Prosecutor v. Uhuru, Case No. ICC-01/09 -02/11, Situation in the Republic of Kenya, ¶ 82 (Mar. 31, 2010), Prosecutor v. Gombo, Case No. ICC-01/05-01/08-427, Situation in Central African Republic ¶ 78 (Jun. 22, 2009), Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 425 (ICTY Feb. 22, 2001).

³¹ COMPROMIS, ¶ 14.

³² Prosecutor v. John Pierre Bemba, Case no. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ¶76; Prosecutor v Kunarac et al., IT-96-23 & 23/2, ICTY A. Ch., 12 June 2002, ¶ 91-92.

33 COMPROMIS, ¶ 15.

34 COMPROMIS, ¶ 14.

35 COMPROMIS, ¶ 6.

36 COMPROMIS, ¶ 15.

iv. The Accused had the knowledge of the attack

11. Article 7 explicitly requires that the accused must commit the acts with knowledge of the broader widespread or systematic attack on the civilian population³⁷. It is submitted that the same has been established *hereinafter* under the *mens rea* argument.

v. There existed a State or organizational policy of CAH.

12. For ordinary crimes to rise to the level of CAH, they need to be backed by a State or organizational policy.³⁸ The standard of requirement is not that the policy should be formalized,³⁹ but only that the entity having *de facto* control⁴⁰ should at least tolerate⁴¹ or omit to prevent the attack.⁴² It shall be noted that the policy may not be inherently criminal but the means to achieve non-criminal goals may involve the commission of CAH⁴³. Reliance is placed on the decision in *Kvočka et al.*, wherein, the non-criminal plan of “the creation of a Serbian state within the former Yugoslavia” was achieved through the persecution of Muslims and Croats and was recognised as properly pleaded by the Appeals Chamber.⁴⁴

13. The Prosecution submits that there was a clear State and organizational policy to further CAH. This can be established by the manner the “War on Drugs” policy was executed, which in itself was a policy to further CAH and ensure maximum harm is done to the civilian population of Titan. The prosecution highlights a number of factors which adumbrate the existence of the same. Under the guise of “War on Drugs” policy, President Steiner issued broad directions to indiscriminately enforce legislations against those in violation of them by

³⁷ Tadić (Trial Chamber Judgment), *Supra* note 2, ¶ 656; Finta, 701.

³⁸ ROME STATUTE, *supra* note 1, Art. 7(2); ELEMENTS OF CRIMES, *supra* note 1, Introduction to Art. 7.

³⁹ *Tadić*, *supra* note 3, ¶653.

⁴⁰ Convention on the Non-Applicability of Statutory Limitations, Art. 2, Nov. 26, 1968; *Tadić*, *supra* note 3, ¶¶ 654-655.

⁴¹ KAI AMBOS, Superior Responsibility, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 6 (Antonio Cassese *et. al* ed., 2002).

⁴² F. Fontaine, Outstanding Issues for the June Prep Com: Position paper NGO coalition for the Establishment of the International Criminal Court, Coalition for the International Criminal Court, <http://www.igc.apc.org/icc>.

⁴³ Crime in Intl. Law, p. 211.

⁴⁴ *Kvočka* Appeal Judgment, ¶ 46. 1148; Prosecutor v. Ramush Haradinaj, Fourth Amended Indictment”, IT-04-84bis-PT, 21 January 201, ¶ 24.

disregarding all procedural safeguards under law.⁴⁵ As per official records, in the execution of the policy, there were frequent instances of violence, torture and arson resulting in death of at least 700 individuals.⁴⁶ Thus, the apparently non-criminal anti-drug campaign was achieved through commission of CAH.

14. Moreover, there were several organized instances including the release of inflammatory content by the President's office to induce hate crimes⁴⁷, inception of local militia "Friends of Neighbourhood" which was instrumental in executing⁴⁸ CAH against the marginalized protestant communities. Furthermore, omission on part of judges and prosecutors from launching prosecution⁴⁹ against those who indulged in gruesome acts amounting to CAH, *inter alia*, are a testament to a clear State and organizational policy to commit CAH.

2. THAT THE ACTUS REUS LIMB IS SATISFIED

15. The Prosecution submits that a crucial element of crime against humanity of murder is that the perpetrator killed, or caused the death of, one or more persons.⁵⁰ According to the Pre-Trial Chamber in the case *Prosecutor v. Bemba*, the material elements of murder were held to be that the victim is dead and that the death must result from the act or omission of the Accused.⁵¹ That said, it is clear that, if the perpetrator uses any medium to cause death of the civilians, such an action would fall within the four corners of Article 7.
16. The Prosecution contends that the Accused fulfils this material element of causing death on multiple levels. Firstly, he awarded the highest number [1700] of deaths penalties⁵² in furtherance of the criminal design of Steiner, without following any due process or trial. It shall be noted that the legislations on the basis of which he awarded these penalties were in contravention to the mandate of International Law and conventions ratified by Titan.⁵³

⁴⁵ COMPROMIS, ¶ 4.

⁴⁶ COMPROMIS, ¶ 15.

⁴⁷ COMPROMIS, ¶ 5.

⁴⁸ COMPROMIS, ¶ 14.

⁴⁹ COMPROMIS, ¶ 8.

⁵⁰ Elements of Crime.

⁵¹ *Prosecutor v. Bemba*, ICC PT. Ch. II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ¶ 132.

⁵² COMPROMIS, ¶ 8.

⁵³ COMPROMIS, ¶ 3.

Article 6(2) of the ICCPR stipulates that a penalty of death may be imposed only for the most serious crimes.

17. *Furthermore*, the UN Human Rights Commission has proclaimed that drug-related offences and drug trafficking⁵⁴, cannot be construed as most serious crimes.⁵⁵ It is submitted that the Accused awarded death penalties in crimes as inconsequential as possession of drugs⁵⁶. *Moreover*, out of all 30,000 deaths, many were caused by summary executions⁵⁷, *thus*, pointing towards the execution of death warrants issued by the accused.
18. *Therefore*, the legality of award of these death penalties should be ascertained on the touchstone of the hierarchy of applicable law to this Court, which gives precedence to conventions and principles of International Law over national laws.⁵⁸
19. It is brought to the attention of the Hon'ble Chamber that the cases tried by the Accused were also reopened⁵⁹ by the subsequent Administration and the Supreme Court of Titan overturned a trial verdict given by the Accused on the ground that the same was effectuated by bias rendering him unfit to act as a neutral judge⁶⁰. It is submitted that judicial independence⁶¹ and impartiality⁶² are elementary principles of judicial conduct under International law. *Furthermore*, it is reiterated that the Accused would not have done these acts had there been no larger attack on the population by the Administration, *hence*, this indiscriminate awarding of death penalties effectuated by bias smacks of foul play and cannot be termed as lawful by any stretch of imagination.

⁵⁴ UN Human Rights Council, *Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, ¶ 8, UN Doc. A/HRC/42/28 (Aug 28, 2019).

⁵⁵ Billy Holmes, *on-universal Human Rights? How Article 6 (2) of the International Covenant on Civil and Political Rights Undermines Human Right*, Int'l 99 (May 24, 2020).

⁵⁶ COMPROMIS, ¶ 10.

⁵⁷ COMPROMIS, ¶ 4.

⁵⁸ Article 21.

⁵⁹ COMPROMIS, ¶ 21.

⁶⁰ COMPROMIS, ¶ General Description of testimony, Page 28.

⁶¹ Bangalore Principles of Judicial Conduct, value 1, ECOSOC Res. 2006/23 (July 27, 2006).

⁶² Bangalore Principles of Judicial Conduct, value 2, ECOSOC Res. 2006/23 (July 27, 2006).

20. *Secondly*, the Accused caused death of civilians by omitting to act⁶³ as per his duties and obligations as a judge which included initiating prosecutions against public officials for human rights abuses⁶⁴. *Furthermore*, the accused denied all legal claims, defences and rights⁶⁵ to under trials who were subjected to torture⁶⁶ by police officials often resulting in death. Reliance is placed on the case of *Radic*, *wherein*, the Accused did not exercise his authority to prevent the guards from committing crimes and *hence*, it was held that his non-intervention condoned, encouraged, and contributed to the commission and continuance of crimes.⁶⁷
21. The Prosecution clarifies that it is that not unusual for International Courts to prosecute actions that at first are not manifestly illegal. There exist a catena of cases, *wherein*, Accused were prosecuted for actions apparently within the scope of the law because those actions turned out to facilitate the commission of crimes.⁶⁸
22. *Lastly*, the effect of these acts and omissions was such that it inevitably bolstered the executing forces of War on Drugs policy and gave legitimacy to the Steiner Administration because it became clear to them that no matter what they did, they would not be held accountable. This eventually caused thousands of deaths and the Accused shares the criminal responsibility of the same under Article 25 of the Statute. *Thus*, it is established that the *actus reus* requirements have been satisfied in the instant case.

3. THAT THE REQUISITE LIMB OF MENS REA IS SATISFIED

23. The Prosecution submits that the Statute stipulates that a person will be liable only if the material elements of a crime are committed with intent and knowledge.⁶⁹ *Hence*, the Prosecution submits that the accused has satisfied the requisite limb of (a) intent and (b) knowledge.

⁶³ COMPROMIS, ¶ 8.

⁶⁴ COMPROMIS, ¶ 8.

⁶⁵ COMPROMIS, ¶ 8.

⁶⁶ Media report page 35 also ¶ 8.

⁶⁷ Kvočka Trial Judgement, ¶ 538.

⁶⁸ ICTR-99-52.

⁶⁹ Rome Statute.

i. The intent requirement is fulfilled.

24. This requirement is enshrined under Article 30 (2) (a) of the Statute.⁷⁰ It requires the person means to engage in the conduct and means to cause the consequence or is aware that it will occur in the ordinary course of events.⁷¹ For the purposes of Article 30, the term ‘conduct’ denotes positive action as well as intentional omission⁷².
25. The Prosecution contends that the accused meant to engage in the conduct which can be construed from a number of factors. The Accused wilfully perpetrated the criminal design of Steiner by formulating policies⁷³ to further CAH which resulted in thousands of civilian deaths⁷⁴. His voluntariness can be construed from the fact that he willingly to accepted his position on the drafting committee of war on drugs policy⁷⁵ and took charge as the Chief Judge of ADA⁷⁶ as part of the Steiner campaign.
26. The Prosecution further contends that be accused harboured a similar ideology further CAH which can be ascertained from the fact that he disregarded procedure, notions of civil rights⁷⁷ and asserted his willingness⁷⁸ and commitment⁷⁹ to implement the vision and policies of the Steiner Administration. *Furthermore*, he believed that powerful executive is imperative to prevent the moral and ethical decay of Titan⁸⁰. *Therefore*, he denied all legal claims and defences to under trials⁸¹ and systematically denied permission to prosecute cases⁸² brought against officials for police brutality, loot, public humiliation and torture which proves beyond reasonable doubt that he meant to engage with the conduct by his acts and omissions out of his own volition.

⁷⁰ Rome Statute Art 30, *supra* note 1.

⁷¹ Art. 30 (2) (3); *Lubanga*, *supra* note 74, ¶350.

⁷² Article 8 ¶ 2 (b) (xxv) 1996 Preparatory Committee, Vol. I, note 6, p. 45, ¶ 199.

⁷³ COMPROMIS, ¶ 7.

⁷⁴ COMPROMIS, ¶ 6.

⁷⁵ COMPROMIS, ¶ 11.

⁷⁶ COMPROMIS, ¶ 16.

⁷⁷ COMPROMIS, ¶ 34.

⁷⁸ COMPROMIS, ¶ Page 31 Email 1

⁷⁹ COMPROMIS, ¶ Page 32 Email

⁸⁰ COMPROMIS, ¶ 11

⁸¹ COMPROMIS, ¶ 8

⁸² COMPROMIS, ¶ 8

27. The Prosecution *further* submits that the Accused meant to cause the consequence and was aware that it will occur in ordinary course of events. The prosecution highlights that the Accused was well aware of the havoc wrecked⁸³ by the war on drugs policy, yet, the Accused continued to be on drafting committee and subsequently agreed to be appointed as the Chief Judge of the ADA, which further resulted in loss of lives by way of acts and omissions. It relies on the decision rendered in *Kvoc̣ka* Trial Judgment, *wherein*, intent to further crimes was inferred from the continued presence of the accused as a guard shift leader in the camp and personal implication in the crimes of violence, harassment and intimidation against detainees.⁸⁴
28. *Moreover*, when the Accused was appointed as the Chief Judge of ADA, he very well knew what the consequences of his actions and omissions would entail considering the exalted nature of the office. Prosecution, *inter alia*, relies on the *Kvoc̣ka* Appeal Judgement, *wherein*, position of authority was recognised relevant for establishing the awareness of the accused about the system and his participation in enforcing or perpetuating the common criminal purpose of the system.⁸⁵ The Accused was well aware that his actions of awarding death penalties, denying legal rights, and deliberately omitting to prosecute perpetrators of human rights abuse⁸⁶ would lead to deprivation of life and bolster eventually the executionary forces of the war on drugs policy, which would further lead to commission of CAH.
29. For the foregoing reasons, it is evident that the accused meant to engage in the conduct, cause the consequence and was aware that it would occur in the ordinary course of events.

ii. The knowledge requirement is fulfilled

30. With regard to the requirement of knowledge, the ICTR in *Prosecutor v. Kayishema* noted as follows:⁸⁷

“The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. Accordingly, actual or constructive knowledge of the

83 COMPROMIS, ¶ 14

⁸⁴ *Kvoc̣ka* Trial Judgment, ¶ 499.

⁸⁵ *Kvoc̣ka* Appeal Judgement, ¶ 101, *Krnojelac* Appeal Judgment, ¶ 96.

⁸⁶ COMPROMIS, ¶ 8.

⁸⁷ *Prosecutor v. Kayishema*, Case no. ICTR-95-1-T, Trial Chamber Judgment, ¶133-34, (21 May 1999).

broader context of the attack, meaning that the Accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some sort of policy or plan”

31. The elements of CAH of murder also warrant the perpetrator to know that the conduct was part of or intended to be a part of a widespread or systematic attack against a civilian population.⁸⁸ This standard was further reiterated in *Kunarac*.⁸⁹ It is submitted that the Accused knew his acts form a part of a larger attack against the civilian population as the same was common knowledge appearing regularly in the media.⁹⁰ Moreover, his contribution in the policies,⁹¹ communication via emails⁹² and position of authority held during the perpetration of the war on drugs policy indicate that the Accused was well aware of the larger attack perpetrated against the civil population of Titan. Therefore, the Accused knew his acts formed a part of a larger attack against the civil population of Titan.
32. The prosecution further submits that in terms of Article 30 (3) of the Statute, knowledge would entail awareness that a consequence will occur in the ordinary course of circumstances.⁹³ It requires a standard of “virtual certainty”⁹⁴ In addition to the above, it is submitted that the acts of the Accused in light of the position of authority held by him and his close contact with the executive branch of ADA⁹⁵ is indicative of the fact that he was virtually aware of the consequence of his acts. Reliance is placed on the decision rendered in *Simba*, wherein, it was held that it is inconceivable to conclude that a person who had constant contact with the perpetrators would not have known of the relevant circumstances.⁹⁶

⁸⁸ Elements of Crime, Art.7

⁸⁹ *Kunarac*, Id., ¶102, 134; *Prosecutor v. Krnojelac*, Case no. IT-97-25-T, Trial Judgment, ¶ 59 (ICTY, Mar. 15, 2002).

⁹⁰ COMPROMIS, Annexure-III

⁹¹ COMPROMIS, ¶ 7.

⁹² COMPROMIS, p.32.

⁹³ ROME STATUTE, supra note 2, Art. 30 (3).

⁹⁴ *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶774 (Mar. 7, 2014).

⁹⁵ *Compromis*, Annexure-I

⁹⁶ *Prosecutor v. Aloys Simba*, Case No. ICTR-2001-76-T, Judgment and Sentence (Dec. 13, 2005).

33. *Therefore*, the Accused fulfills all the requisite limbs of criminal liability, thereby, incurring liability under Article 7(1)(a) of the Statute.

**II. THAT THE ACTS OF THE ACCUSED DO NOT FALL WITHIN THE EXCEPTIONS TO
CRIMINAL LIABILITY AS STIPULATED UNDER ARTICLE 31 & ARTICLE 33 OF THE ROME
STATUTE**

1. THAT THE DEFENCE UNDER ARTICLE 31(1)(D) IS NOT APPLICABLE

34. Article 31 (1) relates to the grounds for the exclusion of criminal liability for the crimes committed within the jurisdiction of this court. The relevant ground in the instant case is Article 31 (1) (d).

35. Article 31 (1) (d)⁹⁷ stipulates a ground, *wherein*, a person would not be held liable if the conduct alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or bodily harm against that person, and the person acts necessarily and reasonably to avoid this threat. The proviso to this Article states that the person should not intend to cause a greater harm than the one sought to be avoided.⁹⁸

36. The Prosecution submits that, *firstly*, there was no threat of imminent death or of continuing or imminent serious bodily harm to the accused. This defence is only available when defendant's freedom of will and decision is so severely limited that there is eventually no moral choice available⁹⁹. The Prosecution contends that even if the accused was threatened¹⁰⁰, he was threatened only to the extent that he should dismiss at least 50% applications against illegal detentions¹⁰¹ but the accused went to the extent of issuing the highest number of death warrants and denying victims basic rights and *hence*, willfully went way beyond the threat. *Therefore*, his conduct cannot be condoned by duress as it was evidently volitional.

⁹⁷ Article 31 (1) (d) Rome Statute supra note 1.

⁹⁸ Ambos, in: Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2002) 1003, 1040.

⁹⁹ *US v. Krauch et al. (case 6)*, in: *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. III (1952) 1176; Weigend (2012) 10 JICJ [1219], 1234 et seq.

¹⁰⁰ COMPROMIS Annexure-I.

¹⁰¹ COMPROMIS, Annexure-I

37. The threat must be of the stature that the Accused cannot reasonably be expected to resist.¹⁰² Self-induced risks do not fall within the purview of duress¹⁰³ Moreover, the defendant loses his right to invoke the defence of duress, when he does not take an advantage of a reasonable opportunity to escape.¹⁰⁴ The Prosecution submits that the threat, if any, was self-induced because he voluntarily took charge as Chief Judge of ADA in order to derive benefits¹⁰⁵ and perpetrate his ideology.¹⁰⁶ Such threat could have been reasonably resisted as the Accused had ample opportunity to escape by way of resignation or taking recourse to the mechanisms involving higher judiciary. Prosecution, *inter alia*, relies on the *Kvoc`ka* Trial Judgement in which it was held that if the Accused was unwilling to resign because it would prejudice his career, or he feared he would be punished, did not serve as a defence to criminal liability for participating in CAH.¹⁰⁷ Hence, the Accused cannot avail the defence provided under Article 31(1)(d).
38. The Prosecution *further* submits that the accused did not act necessarily and reasonably to avoid the threat. Assuming that there was a threat, it is submitted that the accused did not show any palpable signs of resistance whatsoever. Moreover, considering the exalted nature of a judicial office and the inalienable elements of independence and impartiality attached to it, the Accused was expected to show more resistance in enduring dangers than normal citizens¹⁰⁸. It shall be noted that had the Administration faced any resistance by the Accused,

¹⁰² § 42, The Law Commission, A Criminal Code for England and Wales, Vol. I(1989).R v Howe and Others (1987) CLRev 480.

¹⁰³ Cf. Cryer, Cryer et al. (eds.), An Introduction to International Criminal Law and Procedure (2014) 408; Werle and Jessberger, Principles of International Criminal Law (2014) mn 644; Heller and Dubber (eds.), Handbook of Comparative Criminal Law (2011) 593, 613.

¹⁰⁴ Lippman (2009), p. 310.

¹⁰⁵ COMPROMIS, Annexure-I

¹⁰⁶ COMPROMIS, Annexure-II

¹⁰⁷ *Kvoc`ka* Trial Judgement, ¶ 403.

¹⁰⁸ Ambos, Cassese, Gaeta and Jones (eds.), The Rome Statute of the International Criminal Court: A Commentary (2002) 1003, 1039, Treatise on International Criminal Law (2013) 358; Cryer, Cryer et al. (eds.), An Introduction to International Criminal Law and Procedure (2014) 408.

it is reasonable to believe that it would have been compelled to desist from its criminal purpose.¹⁰⁹

39. The Prosecution submits that the acts of the Accused as far as they relate to issuance of 1700 death penalties, allowing torture of prisoners, denying prosecution of officials, and ultimately leading to thousands of deaths ensued a greater harm than the one sought to be avoided. The consequence of not adhering to the orders, or resigning would have, at most, been removal from service or unlawful prosecution of the accused¹¹⁰, *however*, he caused grievous bodily harm and death of numerous civilians through his acts and omissions.
40. *Therefore*, the acts of the accused do not meet the requisite standard of Article 31, *and* hence this defence cannot be claimed.

2. THAT THE DEFENCE UNDER ARTICLE 33 IS NOT APPLICABLE

41. Article 33 of the Statute provides for the exemption from criminal liability, if a crime is committed in pursuance to an order of Government or of a superior, whether military or civilian.¹¹¹
42. *However*, the following elements are conjunctively required to be fulfilled before availing this defence:-
- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The person did not know that the order was unlawful; and
 - (c) The order was not manifestly unlawful.
43. The Prosecution submits that as far as the contention that the Accused acted as per the law prevailing in Titan goes, the same is unsustainable before this Hon'ble Chamber on multiple grounds. *Firstly*, it is not covered within the four corners of Article 33 as this Article merely deals with an exemption when there is an 'order' from the government or a superior. Reliance is placed on Article 31 of the VCLT, which mandates for Interpretation of a term in its ordinary meaning.¹¹² *Moreover*, a judge cannot be legally obligated to obey orders of the

¹⁰⁹ Llandovery Castle Case, German Supreme Court at Leipzig, Annual Digest of International Law Cases, 1923–1924, Case No. 235, British Command Paper (1921) Cmd. 1422, p. 45.

¹¹⁰ Victim Witness Number-1.

¹¹¹ Article 33 Rome Statute supra note 1

¹¹² Vienna Convention on the Law of Treaties, art. 31, May 23, 1969, 1155 U.N.T.S. 331.

government or superior in discharge of his duties which require impartiality and discretion to act without fear or favour.¹¹³ *Thus*, the accused cannot claim exclusion from criminal liability under Article 33.

44. The Prosecution *further* submits that a reference to national prescriptions of law cannot relieve the subordinate from criminal liability as it flows from Article 21 that national law can be applied only as far as it is ‘not inconsistent with this Statute’.¹¹⁴ *Moreover*, the Accused remained legally and morally obliged to conduct himself in accordance with the relevant norms of international humanitarian law.¹¹⁵ The defence that the Accused acted under the prescription of national law cannot shield him from liability as the same is inconsistent with the statute by virtue of being antithetical to principles of International law and conventions ratified by Titan¹¹⁶, whose application takes precedence over prescription of national laws¹¹⁷. *Thus*, there cannot be any exclusion of liability on this ground.
45. The Prosecution submits that any order which dictates a judge to act in any manner which would prejudice the cause of justice towards the detriment of a party by arbitrarily depriving him/her of life is manifestly unlawful as it goes against the letter and spirit of International law¹¹⁸ and conventions ratified by Titan.¹¹⁹
46. It is submitted that the Accused was a person with relevant expertise and abundant knowledge of law¹²⁰ and legal affairs, *therefore*, it is reasonable to believe that he had knowledge that the supposed order is unlawful.
47. *Lastly*, paragraph 2 of the Article 33 clearly lays down that an order requiring commission of CAH of murder is manifestly unlawful¹²¹. The Accused was aware of the context in which

¹¹³ Bangalore Principles of Judicial Conduct, value 1, ECOSOC Res. 2006/23 (July 27, 2006).

¹¹⁴ ¶ 1 [c] Article 21, Rome Statute; Ambos, *Treatise on ICL I* (2013) 380.

¹¹⁵ Prosecutor v. Bralo, IT-95-17-A, Judgement, Appeals Chamber, 2. April 2007, ¶ 23–25.

¹¹⁶ ICCPR Articles 6(1) & 6 (2).

¹¹⁷ Article 21, Rome Statute.

¹¹⁸ UN Commission on Human Rights, *Commission on Human Rights Resolution 2003/43: Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers*, 23 April 2003, E/CN.4/RES/2003/43, available at: <https://www.refworld.org/docid/43f313390.html> [accessed 23 April 2021].

¹¹⁹ ICCPR Articles 6(1).

¹²⁰ COMPROMIS, ¶ 7

¹²¹ *Id.*

his acts were carried out i.e., in furtherance of the main attack of CAH on the civilians. *Therefore*, it is clear that the acts of accused do not fulfill the essentials of the defence under Article 33 and *hence*, cannot be defended there under.

III. THAT THE ACCUSED UMBERTO ECO IS LIABLE FOR THE ACTS COMMITTED BY HIM

48. *Grosso modo*, an individual is criminally responsible if he perpetrates, takes part in or attempts to commit a crime within the jurisdiction of the Court¹²². The contention that the Accused acted in his official capacity as Chief Judge of ADA shall not absolve him of criminal responsibility as Article 27 of the Statute expressly precludes any such exemption.¹²³ *Furthermore*, judges have been subjected to criminal liability for facilitating a crime since the Nuremberg Trials.¹²⁴
49. It is *further* submitted that a person may ‘commit’ a crime by the different modes of participation. The Accused, in the instant case, is individually criminally responsible for his participation in perpetration of CAH by multiple modes of participation as enumerated below.

1. HE SHALL BE HELD LIABLE AS A CO-PERPETRATOR UNDER ARTICLE 25(3)(A)

50. The prosecution submits that the Accused incurs individual criminal responsibility for his acts under Article 25(3)(A) of the Statute. It relies on the decision rendered in the *Lubanga*¹²⁵ case to set out the parameters for incurring Individual Criminal Responsibility. There must be a plurality of persons who act on the basis of an – explicit or implicit – common plan or purpose, and the accused must take part in this plan, at least by supporting or aiding its realization¹²⁶. It is *further* expounded in the *ratio* that any person making a contribution to the crime can be considered as a principal in the crime.¹²⁷ *Therefore*, any person who has

¹²² Commentary

¹²³ Article 27, Rome Statute.

¹²⁴ USA v. Alstoetter, el al Case.

¹²⁵ Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on Confirmation of Charges (Jan. 29, 2007).

¹²⁶ Prosecutor v. Tadic, No. IT-94-1-A, Judgment, AC, 15 July 1999, ¶ 227.

Cassese et al., ICL (2013) 163; Ambos (2007) 5 JICJ 171; Jain, Perpetrators and Accessories in ICL (2014), 55-6.

¹²⁷ *Id.*, ¶326.

committed a crime in conjunction with others will be deemed as “Principal Offender”.¹²⁸ The parameters for the same have been enumerated below:

i. The Objective elements have been fulfilled

a. Existence of a common plan between two or more persons

51. This element stipulates the existence of a common goal and agreement between the person(s) involved.¹²⁹ The Prosecution highlights the existence of an agreement on the common plan between the Accused and the Steiner Administration which was to perpetrate CAH against the civilian population of Titan, under the guise of the “War on Drugs” policy. It is reiterated that perpetrators may agree upon the common plan, which is not inherently criminal but the means to achieve such non-criminal goals may involve the commission of CAH¹³⁰, as is the case in the instantaneous matter. Reliance is placed on the PTC decision in *Ruto, wherein*, Mr. Ruto and other members of the organization executed the non-criminal plan to evict members of certain communities because of their perception as the PNU supporters, which was implemented through the commission of a number of CAH.¹³¹
52. The Prosecution *further* submits that agreement can be proved by silent consent to reach a common goal by coordinated cooperation and joint control over the criminal conduct.¹³² The existence of an agreement can also be inferred from the subsequent concerted action of the co-perpetrators.¹³³ This can be ascertained from the systematic conduct of the Accused in aiding the policies of Steiner¹³⁴, multiple acknowledgements through emails¹³⁵ and excerpts from the address¹³⁶ of the Accused. *Thus*, the existence of an agreement on the common plan has been established.

¹²⁸ A-G Israel v. Eichmann, 36 I.L.R. 18, Judgment, ¶194 (District Court, Jerusalem, 1968).

¹²⁹ *Stakić, supra* note 15, ¶469-¶472.

¹³⁰ Crime in Int Law, p. 211.

¹³¹ Prosecutor v. Ruto (ICC-01/09-01/11), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 23 January 2012, ¶ 302.

¹³² *Id.*, ¶440.

¹³³ *Lubanga, supra* note 69, ¶345.

¹³⁴ COMPROMIS, ¶ 8.

¹³⁵ Annexure 1- Email.

¹³⁶ Annexure -II

a. *Essential Contribution*

53. There should be a coordinated essential contribution made by each co-perpetrator resulting in the realization of the objective elements of the crime.¹³⁷ In *Katanga*, it was held that such essential contribution can be carried out by co-perpetrators physically or, alternatively, be executed through another person.¹³⁸
54. The Prosecution relies on the principle discussed above to establish the ‘essential role’ played by the Accused. It shall be noted that the Accused was the Chief judge of ADA, which dealt with all cases relating to drug abuse¹³⁹ and violations on part of public officials.¹⁴⁰ Moreover, his influence on other judges¹⁴¹ and systematic denial of permission to prosecute public officials for commission of CAH¹⁴² highlights the essential role played by the Accused in incapacitating the system of accountability and *therefore*, giving the ground forces a free hand to perpetrate CAH.
55. It is *further* submitted that by virtue of the powers vested in his office, the Accused had the responsibility to stop and prosecute the commission of CAH in Titan. *However, per contra*, the Accused by aiding the policies of Steiner and willfully omitting to hold perpetrators accountable, played an essential role resulting in the realization of objective elements of the crime which would have not been possible without his contribution.

ii. **The Subjective Elements have been fulfilled**

a. The subjective elements must be fulfilled

56. This element of co-perpetration asserts that subjective elements with regard to crime as well as common plan must be fulfilled.¹⁴³ The Prosecution submits that the intent and knowledge

¹³⁷ *Lubanga, supra* note 69, ¶346.

¹³⁸ *Katanga et al. (ICC-01/04-01/07)*, Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, ¶ 521

¹³⁹COMPROMIS, ¶ 16.

¹⁴⁰COMPROMIS, ¶ 17.

¹⁴¹COMPROMIS, ¶ 8.

¹⁴²COMPROMIS, ¶ 8.

¹⁴³ *Lubanga, supra* note 68, ¶349.

of the Accused with respect to the crime¹⁴⁴ has already been established by the prosecution in its previous submission.

57. With respect to the common plan, it is submitted that the subjective test is that the (i) co-perpetrators are mutually aware that implementing the common plan will result in the fulfilment of the material elements of the crimes; and yet (ii) they carry out their actions with the purposeful will (intent) to bring them about, or are aware that in the ordinary course of events, the fulfilment of the material elements will be a virtually certain consequence of their actions.¹⁴⁵
58. The prosecution submits that the Accused was fully aware that he was implementing the common plan of Steiner which can be ascertained from the email communications and the manner of implementation¹⁴⁶ of the War on Drugs policy. of the Accused. *Furthermore*, he had full knowledge that the consequences of his acts and omissions would entail commission of CAH which can be inferred from the position of authority¹⁴⁷ he held. *Thus*, both the objective and subjective elements of incurring liability under Article 25(3)(A) have been fulfilled.

2. HE SHALL BE LIABLE UNDER ARTICLE 25 (3)(C) OF THE ROME STATUTE

59. Article 25 (3) (c) of the Statute relates to the responsibility for aiding, abetting or otherwise assisting in the commission or attempted commission of a crime within the jurisdiction of the court.¹⁴⁸ The purpose behind such aiding, abetting, or assistance should be the facilitation of the crime. *Moreover*, these are disjunctive requirements¹⁴⁹ and cover any act, which

¹⁴⁴ Lubanga (ICC-01/04-01/06), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, ¶s 349–360.

¹⁴⁵ Prosecutor v. Bemba (ICC-01/05-01/08), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 15 June 2009, ¶s 351, 370; Katanga et al. (ICC-01/04-01/07), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, ¶ 533; Prosecutor v. Muthaura, (ICC-01/09-02/11), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 23 January 2012, ¶ 410.

¹⁴⁶ Media Report.

¹⁴⁷ Kvočka Appeal Judgement, ¶ 101. See also: Krnojelac Appeal Judgement, ¶ 96.

¹⁴⁸ Article 25 (3) (c) Rome Statute.

¹⁴⁹ Prosecutor v. Ble Goudé, No. ICC-02/11-02/11-186, Decision on the Confirmation of Charges, PTC, 11 December 2014, ¶ 167; Triffterer, Hankel and Stuby (eds.), *Strafgerichte gegen Menschenverbrechen* (1995) 169, 229.

contributes to the commission or attempted commission of a crime¹⁵⁰. *However*, the contribution must be substantial in nature.¹⁵¹

60. It is *further* submitted that the contribution to the crime is irrespective of the fact whether the Accused was present or removed both in time and place from the actual commission of the crime.¹⁵² *Moreover*, the decisions rendered in *Celebici*¹⁵³ and, more recently, in *Naletilic* and *Martinovic*¹⁵⁴ suggest that all acts of assistance by words or acts that lend encouragement or support¹⁵⁵ fall within the purview of aid and abetment. *Furthermore*, the assistance need not be ‘tangible’¹⁵⁶ and ‘moral support and encouragement’ is sufficient¹⁵⁷.
61. The Prosecution contends that the acts of the Accused aided and assisted in giving legitimacy to the Steiner Administration and providing substantial moral support to the forces committing CAH. This can be proved from his biased conduct and illegal use of office by denying legal defences and influencing prosecution of individuals towards maximum penalty, which inevitably supported Steiner’s agenda and public perception of his policies.
62. The Prosecution *further* submits that “aiding and abetting” may also consist of an omission¹⁵⁸; It shall be noted that an act of non-interference coupled with position of authority held by the Accused amounts to a tacit approval and encouragement to commit the

¹⁵⁰ Cf. Finnin, *Accessory Modes of Liability* (2012) 73 et seq., 90–1.

¹⁵¹ Prosecutor v. Tadić, No. IT-94-1-T, Judgment, TC, 7 May 1997, ¶s. 674, 688–92; Prosecutor v. Delalic., No. IT-96-21-A, Judgment, AC, 20 February 2001, ¶ 352.

1996 ILC Draft Code, 24 (¶ 10).

¹⁵² Blasćkić Appeal Judgement, ¶ 48.

¹⁵³ Prosecutor v. Delalić et al., No. IT-96-21-T, Judgment, TC, 16 November 1998, ¶s. 325–9.

¹⁵⁴ Prosecutor v. Naletilić and Martinović, No. IT-98-34-T, Judgment, TC, 31 March 2003, ¶ 726; Prosecutor v. Blagojević and Jokić, No. IT-02-60-T, Judgment, TC, 17 January 2005, ¶ 726.

¹⁵⁵ Prosecutor v. Tadić, No. IT-94-1-T, Judgment, TC, 7 May 1997, ¶ 687; LRTWC 49-51, (1948) 15; Prosecutor v. Tadić, No. IT-94-1-A, Judgment, AC, 15 July 1999, ¶ 691.

¹⁵⁶ Prosecutor v. Kayishema and Ruzindana, No. ICTR 95-1-T, Judgment, TC, 21 May 1995, ¶ 200.

¹⁵⁷ Prosecutor v. Furundžija, No. IT-95-17/1-T, Judgment, TC, 10 December 1998, ¶s. 190–249.

¹⁵⁸ Prosecutor v. Akayesu, No. ICTR-96-4-T, Judgment, TC, 2 September 1998, ¶ 548; Prosecutor v. Kamuhanda, No. ICTR-95-54A-T, Judgment, TC, 22 January 2004, ¶ 597; Prosecutor v. Bisengimana, No. ICTR-00-60-T, Judgment and Sentence, TC, 13 April 2006, ¶ 34; Prosecutor v. Mpambara, No. ICTR-01-65-T, Judgment, TC, 11 September 2006, ¶ 22; Prosecutor v. Muvunyi, No. ICTR-2000-55A-T, Judgment and Sentence, TC, 12 September 2006, ¶ 470; Prosecutor v. Ndahimana, No. ICTR-01-68-A, Judgment, AC, 16 December 2013, ¶ 147.

crime.¹⁵⁹ *Furthermore*, the failure to punish for the crimes constitutes “aiding and abetting” to commit further crimes. For an omission to qualify as “aiding and abetting”, it is necessary to demonstrate that (i) the omission had a substantial effect on the crime in the sense that the crime would have been substantially less likely, had the accomplice acted; and (ii) the accomplice knew that the commission of the crime was probable and his inaction assisted it.¹⁶⁰

63. The Prosecution submits that had the Accused acted as per his legal obligations and held public officials and local militia indulging in CAH accountable, it is highly unlikely that those crimes would have occurred. The lack of accountability in the ADA due to the omission on part of the Accused tantamount to a tacit approval and encouragement to commit crimes which effectuated the CAH.

64. *Furthermore*, it is submitted that the accused knew his inaction assisted the commission of crime by virtue of his role and authority as Chief Judge of ADA, which was responsible for admitting all cases relating to admission of human rights violation by public officials who were indulging in CAH. Prosecution highlights that the issue of public officials committing inhumane acts on the civil population was common knowledge appearing regularly in the media.¹⁶¹ *Therefore*, the Accused was aware that he had the authority to frustrate the commission of these crimes yet he omitted to do so.

65. In conclusion, the conduct of the Accused incurs liability under Article 25(3)(c) of the Statute.

3. UMBERTO ECO SHALL BE HELD LIABLE UNDER ARTICLE 25 (3) (D)

66. The Prosecution submits that, in addition to above, the Accused is also liable under Art. 25(3)(d) of the Rome Statute as an accessory to CAH of Murder.¹⁶²

67. Art. 25(3)(d) functions as a catch-all provision as it requires less of a threshold than any other form of liability.¹⁶³ In *Mbarushimana*¹⁶⁴ the PTC had set out the requirements for liability under Art. 25(3)(d) which are enumerated as follows:

¹⁵⁹ Brđanin Appeal Judgement, ¶ 273; Oric’ Appeal Judgement, ¶ 42; Kayishema Appeal Judgement, ¶s 201–202.

¹⁶⁰ Mrks’ic’ and S’ljivanc’anin Appeal Judgement, ¶s 97, 101; Oric’ Appeal Judgement, ¶ 43.

¹⁶¹ Media report.

¹⁶² *Lubanga*, ¶334.

¹⁶³ J.D Ohlin, Joint Intentions to Commit International Crimes, 11 CHI. J. OF INT’L L. 409 (2010).

i. The objective Elements have been fulfilled

68. The subparagraph (d) displays the lowest objective threshold within the different modes of attribution of Article 25.¹⁶⁵ As was held in *Mbarushimana*, the objective elements of the crime are: (i) a crime within the jurisdiction of the Court is attempted or committed; (ii) the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose; (iii) the individual contributed to the crime in any way other than those set out in Article 25(3)(a) to (c) of the Statute.¹⁶⁶
69. With reference to (i), it is submitted that the *ratione materiae* has been fulfilled, as CAH of Murder is a crime under the Statute, which has been committed as established above. As with reference to (ii), reference may be drawn from the pleadings submitted hitherto, where the accused and Steiner have been proved as acting coordinately with a common purpose.
70. As with respect to (iii), the PTC in *Mbarushimana* designated that there must be a ‘significant’ contribution.¹⁶⁷ As to the assessment of ‘significant’, the PTC proposed a case-by-case analysis of the person’s conduct in the given context¹⁶⁸ taking into account several factors which include:
- (i) the sustained nature of the participation after acquiring knowledge of the criminality of the group’s common purpose, (ii) any efforts made to prevent criminal activity or to impede the efficient functioning of the group’s crimes, (iii) whether the person creates or merely executes the criminal plan, (iv) the position of the suspect in the group or relative to the group and (v) perhaps most importantly, the role the suspect played vis-a`-vis the seriousness and scope of the crimes committed.¹⁶⁹
71. *Firstly*, the Prosecution reiterates that the Accused continued to be a part of the criminal design of Steiner after acquiring full knowledge of the crimes being perpetrated in execution

¹⁶⁴ Prosecutor v. Callixte Mbarushimana, ICC-01-04-01-10, Decision on the Prosecutor’s Application for a Warrant of Arrest, ¶41 (Dec. 16, 2011).

¹⁶⁵ Prosecutor v. Ruto, ICC-01/09-01/11-373, Decision on the Confirmation of Charges, ¶354, (Jan. 23, 2012).

¹⁶⁶ *Mbarushimana*, ¶39.

¹⁶⁷ *Mbarushimana*, ¶283-¶285; Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06- 309, Decision on the Confirmation of Charges, ¶158 (9 June 2014); Prosecutor v. Gbagbo, ICC- 02/11-01/11-656-R, Decision on the Confirmation of Charges, ¶252, (12 June, 2014).

¹⁶⁸ *Mbarushimana*, ¶284; Katanga Judgment, ¶1634.

¹⁶⁹ *Id.*

of the plan. While the existence knowledge can be ascertained from his position of authority and media reports¹⁷⁰, the fact that he continued to favour the administration in his position as Chief Judge proves his sustained nature of participation in the criminal design.

72. *Secondly*, it is submitted that the Accused did not make any palpable effort to impede the perpetration of CAH by the administration. It shall be noted that the accused, by virtue of his position, knew that he had the ability to frustrate the objective of the group by using his powers to hold to account those responsible for crimes.¹⁷¹ *However*, he did not make any effort to do so.
73. *Thirdly*, the Accused had not only executed the nefarious design of the Administration, but also helped in the conceptualization of policies.¹⁷²
74. *Fourthly*, the position of the Accused in the group was pivotal as he was the Chief Judge of ADA, having plenary powers¹⁷³ to hold to account the perpetrators of CAH in Titan.
75. *Fifthly*, the role played by the Accused was vital as it gave legitimacy to the Steiner Administration by aiding the public perception of the War on Drugs policy. It shall be noted Steiner was ousted from power¹⁷⁴ only after International sanctions were imposed on Titan which resulted in public criticism about his way of governance¹⁷⁵. The prosecution submits that the decisions rendered by the accused were used by to bolster and justify¹⁷⁶ the illegal acts of his Administration. This premediated¹⁷⁷ and concerted effort inevitably gave undue credibility to the policy and helped the perpetration of CAH to sustain.
76. *Thus*, it is submitted that all objective elements of a significant contribution under Art. 25(3)(D) have been fulfilled.

¹⁷⁰ Annexure III.

¹⁷¹ Stakic Trial Judgement, paras 497–498.

¹⁷² COMPROMIS, ¶7.

¹⁷³ COMPROMIS, ¶ 17.

¹⁷⁴ COMPROMIS, ¶ 20.

¹⁷⁵ COMPROMIS, ¶ 19.

¹⁷⁶ Annexure I

¹⁷⁷ Annexure I

ii. Subjective Elements have been Fulfilled.

77. It is submitted that the subjective elements are: (i) the contribution shall be intentional; and (ii) shall either (a) be made with the aim of furthering the criminal activity or criminal purpose of the group; or (b) in the knowledge of the intention of the group to commit the crime.¹⁷⁸
78. With reference to (i), it is submitted that, ‘intentional’ is to be understood as possessing the *dolus* as enumerated in Art. 30 of the Statute and means in relation to a conduct - ‘to engage in that conduct’ and in relation to consequence – as ‘means to cause that consequence’ or as being ‘aware’ that it will occur¹⁷⁹. The same has already been proved by the Prosecution in its earlier submission.
79. As concerning (ii), with respect to (a), the accused must possess the ‘*dolus*’, i.e. the specific intention to promote the ideas and acts of the group.¹⁸⁰ This requirement can be ascertained by the address of the Accused on inauguration of courtroom number V¹⁸¹, *wherein*, he expressed his willingness¹⁸² and commitment¹⁸³ to implement the vision and policies of the Steiner Administration.
80. In the alternative, with respect (b), it is not only a ‘positive knowledge’, but it is sufficient that the participant is aware that a crime will probably be committed.¹⁸⁴ In the instant case, the Accused was aware that the crimes would be committed on account of the nefarious design of the Administration and history of execution¹⁸⁵ of the policy.
81. *Thus*, it is submitted that both the objective as well as subjective elements of the crime have been fulfilled and *hence*, the accused is liable under Art. 25(3)(D).

¹⁷⁸ *Mbarushimana*, ¶41.

¹⁷⁹ Triffterer., at 1014.

¹⁸⁰ Prosecutor v. Semanza, Trial Chamber, ICTR-97-20, ¶ 313 (15 May 2003).

¹⁸¹ Annexure -II.

¹⁸² COMPROMIS, p.31.

¹⁸³ COMPROMIS, p.32.

¹⁸⁴ Prosecutor v. Furundžija, No. IT-95-17/1-T, Judgment, ¶246 (Int’l Cri. Trib. for Former Yugoslavia 10 December 1998).

¹⁸⁵ COMPROMIS, ¶15

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. The accused, Umberto Eco, did commit the acts of Crime Against Humanity of Murder under Article 7(1)(a) of the Rome Statute.
- II. Umberto Eco is Individually Criminally Responsible and be convicted for the acts committed by him as a Co-Perpetrator.
- III. Umberto Eco is Individually Criminally Responsible and be convicted for the acts committed by him as a willing accessory.

All of which is respectfully submitted,

COUNSELS FOR THE PROSECUTION

**SIXTH SYMBIOSIS LAW SCHOOL, PUNE – INTERNATIONAL CRIMINAL TRIAL
ADVOCACY, 2021**

Before

Trial Chamber I, International Criminal Court

The Hague, The Netherlands

THE PROSECUTOR

PROSECUTION

v.

UMBERTO ECO

DEFENSE

DEFENDANT CHARGED WITH

Crime against Humanity of Murder under Article 7(1)(A) of the Rome Statute

WRITTEN SUBMISSIONS ON BEHALF OF THE VICTIMS

Word Count:7478

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-09/03-21/10**

Date: [**April 23, 2021**]

TRIAL CHAMBER I

Before: Judge _____, the Presiding Judge

Judge _____, and

***Judge* _____,**

SITUATION IN THE REPUBLIC OF TITAN

IN THE CASE OF

THE PROSECUTOR v. UMBERTO ECO

PUBLIC

**Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor
Against Umberto Eco**

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LIST OF ABBREVIATIONS

¶	Paragraph
AC	Appeals Chamber
ADA	Anti-Drug Authority
Art.	Article
CRM	Civil Rights Moment
Doc	Document
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECtHR	European Court of Human Rights
ETS	European Treaty Series
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESOC	International Convention on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
<i>Id.</i>	Idem
IT	International Tribunal
LRV	Legal Representatives of Victims
OHCHR	United Nations Office of High Commissioner of Human Rights
OTP	Office of the Prosecutor
PCIJ	Permanent Court of International Justice
PTC	Pre-Trial Chamber
ROEP	Rules of Evidence and Procedure
RTC	Regulations of the Court
RTP	Regulations of the Office of The Prosecutor
SCD	Special Committee on the Study of Demographics in Xuan
TC	Trial Chamber
U.N.T.S.	United Nations Treaty Series

UF	United Front
UKHL	United Kingdom House of Lords
UNCLOS	United Nations Convention on the Law of Sea
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
US	United States
v.	Versus
VCLT	Vienna Convention on the Law of Treaties

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STATEMENT OF FACTS

Titan is an archipelagic country in Southeast Asia situated in the western Pacific Ocean. Titan has an area of 22,550 km² according to the local statistical authority and the World Bank, and as of 2017, a population of at least ten million (10,000,000). Christianity is the most widely followed religion of Titan whereas the majority of Titanians consider the Roman Catholic Church as their religious guide. Titan is a member of the United Nations, the World Trade Organization and the World Bank. It is a sovereign state, functioning as a unitary semi-presidential republic. Further, it has signed and ratified the Rome Statute, the International Covenant on Civil and Political Rights, the Genocide Convention, and the Geneva Conventions.

Xuan acts as the administrative and judicial center of Titan. In terms of population density, the sizeable civilian population of Xuan is concentrated on its fringes where the biggest ghetto community of Titan lies. The people living in these ghettos and rural areas lead a starkly distinct political and cultural life – accounting for only two percent (2%) of the total votes cast historically in the country’s general elections. Mostly, belonging to the protestant faith, this class also ranked the lowest on the employability figures as well as the wellness and happiness index maintained by various human rights organizations running in Titan.

Mr. Jude Steiner, a conservative, catholic, public figure and former President of Titan, governed the administration of the country from mid-2016 till the end of 2019. During his Presidency, the country witnessed mass atrocities, murders, torture and summary executions of thousands of Titanians under the umbrella of his anti-drug campaign, “War on Drugs”. He is believed to have taken absolute control over all branches of the State. The public officials who refused to follow the directions of his office were often charged with false accusations and charges revolving around corruption, dereliction of official duty and obstruction of justice. By the end of 2019, he is believed to have been responsible for the execution or murder of at least thirty-thousand civilians.

Mr. Umberto Eco (*hereinafter*, the Accused) is a member of the judicial infrastructure of Titan. He and his family members have served in multiple important positions of authority under the administration of Mr. Jude Steiner. At the time of his arrest, the Accused held the position of a senior consultant to the Ministry of Justice, Law and Order (“Ministry”), Government of Titan while his wife, Mrs. Martha Ränge served as the chief secretary to the Ministry. His prior engagements include serving before the ADA Tribunal as a judicial officer (2019 - 2020), the Office of the Attorney General of Titan (2013 - 2015 and 2016 - 2018) and the Central University of Xuan as a Professor of Criminal Justice (2007 - 2013). During the period relevant from the perspective of the investigation undertaken by the ICC Prosecutor, the Accused was serving the ADA Tribunal situated at Xuan.

Anti-Drug Authority (“ADA”) is a dedicated task force formed by the government to take swift measures which include the use of aggravated police force to arrest the distribution of drugs in all relevant communities of Titan. The ADA was directly linked with the office of the President and enjoyed an almost autonomous status in the governmental hierarchy.

Civil Rights Movement (“CRM”) is an apolitical, non-partisan, non-profit and non-governmental collective working under the aegis of the United Nations. This association operates as a specialized committee responsible for providing legal aid, humanitarian assistance and counseling in distress ridden communities of Titan. The association operates on an ad-hoc basis and is affiliated with multiple international non-governmental organizations including the Red Cross. The Court, admits applicant CRM as the Legal Representative of the Victims.

ALLEGATIONS RAISED

The Accused is alleged to have participated in the persecution of civilian population of Titan by illegal use of his office and influence. The Accused is alleged to have denied all legal claims and defences of individuals arrested and tortured by the police forces and the local militia working for the government. Furthermore, he is alleged to have intentionally influenced the VLR of such individuals towards maximum penalty and denial of rights at his disposal.

INVESTIGATIVE FINDINGS

(The period of investigation conducted by the Office of the ICC Prosecutor, based on due authorizations of this Court, extends from July, 2016 to October, 2020.)

December 14, 2016 - The Accused, working for the Attorney General of Titan, submits a memorandum to the Ministry, arguing in favor of the “Unitary Executive Theory” that favored legal interpretations which would grant unbridled powers with scarce checks and balances to the President of Titan.

January, 2017 - The Accused is appointed to the drafting committee of ADA’s “War on Drugs” policy.

March 4, 2017 - ADA sets up its local watch-dog units called “Friends of the Neighborhood” that were to facilitate and assist the general public and police forces to detect and eradicate all active drug syndicates.

July, 2017 to February, 2018 - Sharp increase in violence between the police forces of Titan and the members of the civil society alleged to be involved in drug related offenses. Thousands of casualties in the police offensive launched against drug syndicates operating in the cities of Titan. Communication sent from the ADA to all the police forces authorizing the use of firearms and assault weapons against gang members who refused to observe the community guidelines released by their territorial unit of “Friends of the Neighborhood”.

April 30, 2018 - Mr. Steiner’s political outfit gains victory in the parliamentary elections and he passes formal legislations consolidating his executive authority.

August 3, 2018 - ADA rolls out a controversial policy under which its local units and affiliates are authorized to arm, train and prepare a group of participating local volunteers from pre-screened civilian communities in each district. The local militia is given a free-hand with virtually negligible oversight. The policy is severely criticized by international human rights organizations and the media. The policy is upheld by the highest constitutional court of Titan on the basis of the arguments led by the Accused.

Consequence: Within the next four (4) months, this policy leads to a sixty percent (60%) increase in gun violence and the death of seven hundred (700) individuals. Civil rights organizations are

attacked by armed mobsters with support and intelligence inputs from the local police. Public officials including elected ministers who refuse to comply with the mandate of the administration are publicly lynched to set an example for others.

January 10, 2019 - Mr. Steiner appoints the Accused to the position of the chief judge of the ADA Tribunal of Xuan. His appointment is in addition to the seventeen other judicial appointments made by Mr. Steiner in that year. These individuals are believed to have been instrumental in executing the “War on Drugs” policy.

February, 2020 - Several countries impose restrictions and sanctions on Titan. These sanctions lead to public outcry against Mr. Steiner’s Presidency. Mr. Steiner’s administration responds to the protests by using paramilitary forces against the protestors. Mr. Steiner, however, is forced to resign from his position by his political party and is replaced by the vice-president of Titan, Mr. Francis Dolcini. The new president elect is critical of the former administration.

May, 2020 - A local court based in Vortex City finds three (3) police officers guilty for the cold-blooded murder of a seventeen (17) year old boy which sparks a public outrage. Responding to the pressure, the present government of Titan orders re-examination of several cases involving individuals charged with anti-drug legislations. These cases are summarily decided against the defendants in the first instance by the judges, including the Accused.

PROCEDURAL HISTORY

April 24, 2020 - CRM requests the ICC Prosecutor to open investigation against the Situation relating to the crimes committed under the “War on Drugs” policy of the Steiner administration.

August 30, 2020 - The Prosecutor releases a preliminary report announcing that, in its opinion, the attacks referred under it, via the Situation in Titan, pass the legal standards governing the jurisdiction of the Court with reference to applicable provisions of the Rome Statute.

September 27, 2020 - The Pre-Trial Chamber authorizes the ICC Prosecutor to launch a formal investigation in connection with the Situation in Titan. (*Meanwhile*, Mr. Steiner, in return for a peaceful transition of power in favor of Mr. Francis Dolcini, was able to secure a safe passage

for himself and his family members to China, thus, successfully evading arrest and trial by this Court.

The Pre-Trial Chamber has decided to commit the Accused to the Trial Chamber for trial on the charge of Crime against Humanity of Murder as confirmed.

ISSUES PRESENTED

I.

**WHETHER THE VICTIMS WERE SUBJECTED TO CRIMES AGAINST HUMANITY OF MURDER
UNDER ARTICLE 7(1)(A) OF THE ROME STATUTE**

II.

**WHETHER UMBERTO ECO CAN AVAIL EXCEPTIONS TO CRIMINAL LIABILITY UNDER ROME
STATUTE**

III.

**WHETHER UMBERTO ECO SHALL BE HELD LIABLE UNDER INDIVIDUAL CRIMINAL
RESPONSIBILITY STIPULATED BY ARTICLE 25 (3) (A) OF THE STATUTE**

IV.

**WHETHER THE VICTIMS ARE ENTITLED TO COMPENSATION UNDER ARTICLE 75 OF THE
STATUTE**

SUMMARY OF ARGUMENTS

I. THE VICTIMS WERE SUBJECTED TO CRIMES AGAINST HUMANITY OF MURDER UNDER ARTICLE 7(1)(A) OF THE ROME STATUTE

- ❖ The VLR submits that the Accused, Mr Umberto Eco has committed Crimes Against Humanity of Murder within the meaning of Art. 7(1)(A) of the Rome Statute. It is submitted: *Firstly*, the Contextual Elements of Crimes Against Humanity under the Chapeau are fulfilled in the present case [1.] *Secondly*, the Acts of the Accused caused death of the victims. [2.] *Thirdly*, the material elements of Crime against Humanity were committed with intent and knowledge [3.]

II. THE ACTS OF THE ACCUSED DO NOT FALL WITHIN THE EXCEPTIONS TO CRIMINAL LIABILITY UNDER ROME STATUTE

- ❖ The VLR submits that the acts of the Accused are not exempted from attracting liability under the Rome Statute. *Firstly*, the acts do not fulfil the essential requisites of Article 31(1)(d) [1.] *Secondly*, the acts do not fulfil the essential requisites of Article 33 [2.]

III. THE ACCUSED UMBERTO ECO IS LIABLE UNDER THE ROME STATUTE FOR THE ACTS COMMITTED BY HIM

- ❖ The VLR submits that the Accused is liable under Article 25 of the Rome Statute. *Firstly*, he shall be held liable as an co-perpetrator under Article 25(3)(a) of the Statute [1.] *Secondly*, he shall be liable as an accessory to Mr. Jude Steiner under Articles 25(3)(c) and 25(3)(d) of the Statute [2. & 3.]

IV. THAT THE VICTIMS ARE ENTITLED TO REPARATIONS FOR THE DAMAGE CAUSED BY THE CRIME

- ❖ The VLR submits that the Victims in the present case shall be properly remedied for the damage caused by the crime. *Firstly*, the victims qualify the standard for receiving restitution, compensation, and rehabilitation [1.] *Secondly*, the order of reparations shall be made directly against the convict, or the Trust Fund maintained by the court shall be used for the above-mentioned purpose [2.]

ARGUMENTS IN DETAIL

I. THE VICTIMS WERE SUBJECT TO CRIME AGAINST HUMANITY OF MURDER UNDER ART. 7(1)(A) OF THE ROME STATUTE

1. The Accused has committed Crimes Against Humanity under Art. 7 of the Statute through implementation of the Anti-Drug Policy of Steiner Administration. His actions amount to Crimes Against Humanity as they fulfil all the essentials of the crime.

1. THAT, THE CONTEXTUAL ELEMENTS OF CRIME AGAINST HUMANITY, AS STATED IN THE CHAPEAU OF ELEMENTS OF CRIME, ART. 7 HAVE BEEN FULFILLED

2. The Victim's Legal Representative (VLR) submits that in order to establish a charge of Crimes Against Humanity (CAH), the following contextual elements need to be fulfilled¹ : **(i)** The attacks were systematic or widespread, **(ii)** the attacks were directed against a civilian population, **(iii)** the acts of the Accused form part of the attack; **(iv)** the Accused must know that his or her acts constitute part of a widespread or systematic attack directed against any civilian population²; and **(v)** there existed a State policy of CAH.

i. The attacks were systematic or widespread

3. The systematic and widespread characterization of these attacks is a disjunctive requirement.³ The adjective 'systematic' signifies the organized nature of the acts of violence and the improbability of their random occurrence.⁴ *Furthermore*, it shall be noted that for the purpose of attack comprising crimes against humanity, it need not be violent nor involve use of force,⁵ rather any mistreatment of civilian population suffices.⁶

¹ Rome Statute of the International Criminal Court, Article 7(2)(a), *adopted*, July 17, 1998, 2187 U.N.T.S 99 (Entered into force on July 1, 2002).

² Kunarac Appeal Judgement, ¶ 85; Popovic' Trial Judgement, ¶ 751.

³ Prosecutor v. Savić, Case No. X-KR-07/478, 1st Instance Verdict ¶30 (Court of BiH. Jul. 3, 2009); Prosecutor v. Samardžija, Case No. X-KRZ-05/07, 2nd Instance Verdict 14, (Court of BiH. Oct. 15, 2008).

⁴ Prosecutor v. Blaškić, Case no. IT-95-14-T, ¶203 (ICTY Mar 3, 2000); Prosecutor v. Tadić, Case no. IT-94-1-A Opinion and Judgment, ¶648 (ICTY May 7 1997), Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Judgment, ¶ 580 (Sept 2 1998).

⁵ Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Trial Chamber Judgment, note 29, ¶ 581 (ICTY Sep 2 1998).

4. According to the Trial Chamber in *Blaškić*, the ‘systematic’ requirement comprises of the following four tests:⁷ (i) Existence of political objective: a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community, (ii) Perpetration of the criminal act on a large scale: Act should have been perpetrated on a very large scale over the victims or repeatedly perpetrated, (iii) Perpetration should use resources: public, private, military or otherwise, and (iv) the implication of a high-level political or military authority.
5. The VLR submits that there was a systematic attack against the civilian population of Titan under the umbrella of “War on Drugs” policy⁸ which was perpetrated to destroy, persecute and weaken the civilian population of Titan, particularly, the disenfranchised⁹ minority protestant community. As per reports on record, there were large-scale instances of gun violence resulting in death,¹⁰ in addition to several instances of arson, sexual violence and loot against the marginalized protestant community, which was touted to be the epicenter of drug related crimes by the Steiner Administration.¹¹ These attacks were only made possible with the connivance of this state police,¹² high-ranking public officials¹³ and members of the judiciary¹⁴. Thus, the essentials mentioned in *Blaškić* have been fulfilled and therefore, it is established that there was a systematic attack against the civilian population of Titan.
6. The VLR, *inter alia*, submits that the attacks were widespread. The term ‘widespread’ refers to a massive, frequent, large-scale action, carried out collectively with considerable

⁶ Kunarac (Trial Chamber Judgment), note 30, ¶ 416; Prosecutor v. Stakić, No. IT-97-24-T, Judgment, Trial Chamber, 31 July 2003, ¶ 623; Prosecutor v. Semanza, Case No. ICTR-97-20-T, Trial Chamber Judgment, ¶ 327, (ICTY May 15 2003); Prosecutor v. Kajelijeli, ICTR-98-44A-T, Trial Chamber Judgment, ¶ 868, 1 December 2003; Prosecutor v. Katanga, ICC-01/04-01/07, Trial Chamber Judgment, note 30, ¶ 1101; Werle, *Vo Ikerstrafrecht* (2012) mn 872; id. and Jessberger, *Principles of International Criminal Law* (2014) 338.

⁷ Id., *Blaškić*, ¶203.

⁸ COMPROMIS, ¶4.

⁹ COMPROMIS, ¶2.

¹⁰ COMPROMIS, ¶15.

¹¹ COMPROMIS, ¶15.

¹² COMPROMIS, ¶15.

¹³ COMPROMIS, ¶ 21.

¹⁴ COMPROMIS, ¶4.

seriousness and directed against a multiplicity in victims.¹⁵ It deals with quantitative nature of the attack¹⁶ and refers to the scale of the attack or, equivalently, to the [large] number of victims.¹⁷

7. The VLR submits that numerous attacks were carried out against civilian population of Titan, with the help of ‘Friends of Neighbourhood’ and other forces backed by the State, which claimed the life of 30,000 civilians¹⁸ just within a span of two years. This fulfils the widespread requirement as this Court has recognized cases as widespread in which as low as 200 civilians were affected.¹⁹ Thus, it can be concluded that the attacks furthered by the Steiner Administration were systematic and widespread.

ii. The acts of the Accused form part of the attack

8. The VLR submits that the acts of Accused in itself need not be widespread or systematic.²⁰ The Accused is not required to commit an attack as it only needs to be established that his

¹⁵ Samardžija, supra note 2, p. 10; Akayesu, supra note 3, ¶ 580; Savić, supra note 2, p. 30.

¹⁶ M. C. BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 419 (2nd ed. 1999).

¹⁷ Ambos, Commentary on Rome Statute of International Criminal Court ; Prosecutor v. Kunarac, Case no. IT-96-23-T & IT-96-23/1-T, Trial Chamber Judgment, ¶ 428; Prosecutor v. Tadic, Case no. IT-94-1-A Opinion and Judgment, note 29, ¶648 (ICTY May 7 1997), Prosecutor v. Blaškić, Case no. IT-95-14-T, Trial Chamber Judgment, note 30 ¶202 (ICTY Mar 3, 2000); Prosecutor v. Krnojelac, No. IT-97- 25-T, Trial Chamber Judgment, ¶57 (ICTY Mar 15 2002), Prosecutor v. Kordic, Case No. IT-95-14/2, Appeals Chamber Judgment, note 94, ¶ 94, (ICTY Dec, 17 2004), Prosecutor v. Blaskic, No. IT-95-14-A, Appeals Chamber Judgment, ¶101 (ICTY July 29 2004); Prosecutor v. Kunarac, Case No. IT-96-23-A, Appeals Chamber Judgment, ¶94 (ICTY June 12 2002); Prosecutor v. Muvunyi, Case No. ICTR-00-55A-T, Trial Chamber Judgment, note 30, ¶512; Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Trial Chamber Judgment, ¶ 527 (April 28 2005); Prosecutor v. Kajelijeli, ICTR-98-44A-T, Trial Chamber Judgment, note 91, ¶ 871 (December, 1 2003); Prosecutor v. Semanza Case No. ICTR-97-20-T, Trial Chamber Judgment, note 91, ¶ 329 (May 15 2003); Prosecutor v. Musema, Case No. ICTR-96-13-T, Trial Chamber Judgment, note 30, ¶ 203–204 (Jan 27 2000).

¹⁸ COMPROMIS, ¶ 6.

¹⁹ The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui.

²⁰ Prosecutor v. Kordić, Case No. IT-95-14/2-A, Judgement, note 94, ¶ 94, (ICTY Dec 17 2004), Prosecutor v. Blaškić, IT-95-14-A, Appeals Chamber Judgment, note 121, ¶ 101, (ICTY July 29 2004); Prosecutor v. Kunarac, IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgment, note 121, ¶ 96; Ambos, Treatise on ICL, 75-6, (2nd edition 2014); Prosecutor v. Mrksic, Case no. IT-95-13-R61, Vukovar Hospital Decision, ¶ 30, (April 3 1996).

acts comprise a part of the attack²¹ furthered by the Steiner administration. *Further*, the *Bemba* Pre-Trial Chamber stated that while determining whether the ‘part of’ requirement was met, it would consider “the characteristics, the aims, the nature or consequences of the act”²². *However*, there must be a sufficient nexus between the unlawful acts of the Accused and the attack²³ and they should not be capable of being characterized as isolated and random conduct of an individual acting alone. To determine whether a certain act was part of the attack or not, the test is whether it would have been less dangerous for the victim if the attack and the underlying policy had not existed.

9. The VLR contends that the acts of the Accused form a part of the attack furthered by Steiner Administration on multiple levels. *Firstly*, the Accused has actively contributed to the conceptualization of policies²⁴ which eventually led to the attack on the civilian population of Titan. *Secondly*, the Accused is believed to have illegally used his office and influence²⁵ to further the “War on Drugs” narrative of the Steiner Administration by intentionally influencing VLR of individuals²⁶, denying legal claims and ensuring maximum penalty²⁷. *Thirdly*, on the basis of formal records, it is abundantly clear that the Accused issued the highest number of death penalties²⁸ and systematically denied permission to prosecute and dismiss cases against officials for police brutality, loot and torture,²⁹ which eventually

²¹ Elements of Crime, Art 7.

²² Prosecutor v. Tadic, Case No. IT-94-1-AR72, Trial Chamber Judgment, note 29, ¶ 649 (ICTY July 15 1999); Prosecutor v. Šljivančanin, IT-95-13/1-A, note 95, ¶ 30 (ICTY May 5 2009); Vukovar Hospital Decision, note 95, ¶ 30; Meyrowitz, La repression par les tribunaux allemands des crimes contre l’humanité et de l’appartenance à une organisation criminelle (1960) 282; Greenwood (1998) 2 MPYbUNL 97, 97 et seq., 135; Prosecutor v. Kordic, Case No. IT-95-14/2, Appeals Chamber Judgment, note 94, ¶ 94, (ICTY Dec, 17 2004); Prosecutor v. Blaškić, IT-95-14-A, Appeals Chamber Judgment, note 121, ¶ 101, (ICTY July 29 2004); Prosecutor v. Šljivančanin, IT-95-13/1-A, note 95, ¶ 30 (ICTY May 5 2009).

²³ Prosecutor v. Akayesu, Case no. ICTR-96-4-T, Trial Chamber Judgment, note 29, ¶ 579 (ICTY Sep 2 1998); Report of ILC Special Rapporteur, note 62, ¶ 93.

²⁴ COMPROMIS, ¶ 7.

²⁵ COMPROMIS, ¶ 8.

²⁶ COMPROMIS, ¶ 8.

²⁷ COMPROMIS, ¶ 8.

²⁸ COMPROMIS, ¶ 8.

²⁹ COMPROMIS, ¶ 8.

bolstered the ground forces furthering the attack and gave legitimacy to the Steiner Administration. *Lastly*, these acts qualify the test laid down to ascertain complicity because it is evident that the Accused would not have committed such acts had there been no underlying policy. *Thus*, it is unambiguously clear that the acts of the Accused form a part of the attack.

iii. The attacks were directed against a civilian population

10. The VLR submits that the term civilian has a very broad connotation as it includes within its ambit all persons who are not members of the armed forces.³⁰ The VLR highlights that the people affected by the attacks carried out in furtherance of the War on Drugs policy were members of the civil society of Titan.³¹ *Thus*, it can be safely concluded that the acts were directed against a civilian population.
11. The VLR *further* submits that '*directed against*' means that "*the civilian population must be the primary object of the attack and not just an incidental victim of the attack*".³² The VLR highlights several³³ instances of violence directed against the civil society of Titan³⁴. In these attacks, thousands of civilians were killed³⁵ and they were subjected to grossly unjustified instances of denial of rights, torture and arson³⁶ which makes it emphatically clear that the attacks were primarily directed against the civilian population of Titan.

³⁰ Geneva Convention IV *supra* note 43, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 43 and 50, June 8, 1977; Prosecutor v. Uhuru, Case No. ICC-01/09 -02/11, Situation in the Republic of Kenya, ¶ 82 (Mar. 31, 2010), Prosecutor v. Gombo, Case No. ICC-01/05-01/08-427, Situation in Central African Republic ¶ 78 (Jun. 22, 2009), Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 425 (ICTY Feb. 22, 2001).

³¹ COMPROMIS, ¶ 14.

³² Prosecutor v. John Pierre Bemba, Case no. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ¶76; Prosecutor v Kunarac et al., IT-96-23 & 23/2, ICTY A. Ch., 12 June 2002, ¶ 91-92.

33 COMPROMIS, ¶ 15.

34 COMPROMIS, ¶ 14.

35 COMPROMIS, ¶ 6.

36 COMPROMIS, ¶ 15.

iv. The Accused had the knowledge of the attack

12. Article 7 explicitly requires that the Accused must commit the acts with knowledge of the broader widespread or systematic attack on the civilian population³⁷. It is submitted that the same has been established *hereinafter* under the *mens rea* argument.

v. There existed a State or organizational policy of CAH.

13. For ordinary crimes to rise to the level of CAH, they need to be backed by a State or organizational policy.³⁸ The standard of requirement is not that the policy should be formalized,³⁹ but only that the entity having *de facto* control⁴⁰ should at least tolerate⁴¹ or omit to prevent the attack.⁴² It shall be noted that the policy may not be inherently criminal but the means to achieve non-criminal goals may involve the commission of CAH⁴³. Reliance is placed on the decision in *Kvočka et al.*, wherein, the non-criminal plan of “the creation of a Serbian state within the former Yugoslavia” was achieved through the persecution of Muslims and Croats and was recognised as properly pleaded by the Appeals Chamber.⁴⁴

14. The VLR submits that there was a clear State and organizational policy to further CAH. This can be established by the manner the “War on Drugs” policy was executed, which in itself was a policy to further CAH and ensure maximum harm is done to the civilian population of Titan. The VLR highlights a number of factors which adumbrate the existence of the same. Under the guise of “War on Drugs” policy, President Steiner issued broad directions to indiscriminately enforce legislations against those in violation of them by disregarding all

³⁷ Tadić (Trial Chamber Judgment), *Supra* note 2, ¶ 656; Finta, 701.

³⁸ ROME STATUTE, *supra* note 1, Art. 7(2); ELEMENTS OF CRIMES, *supra* note 1, Introduction to Art. 7.

³⁹ *Tadić*, *supra* note 3, ¶653.

⁴⁰ Convention on the Non-Applicability of Statutory Limitations, Art. 2, Nov. 26, 1968; *Tadić*, *supra* note 3, ¶¶ 654-655.

⁴¹ KAI AMBOS, Superior Responsibility, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 6 (Antonio Cassese *et. al* ed., 2002).

⁴² F. Fontaine, Outstanding Issues for the June Prep Com: Position paper NGO coalition for the Establishment of the International Criminal Court, Coalition for the International Criminal Court, <http://www.igc.apc.org/icc>.

⁴³ Crime in Intl. Law, p. 211.

⁴⁴ *Kvočka* Appeal Judgment, ¶ 46. 1148; Prosecutor v. Ramush Haradinaj, Fourth Amended Indictment”, IT-04-84bis-PT, 21 January 201, ¶ 24.

procedural safeguards under law.⁴⁵ As per official records, in the execution of the policy, there were frequent instances of violence, torture and arson resulting in death of at least 700 individuals.⁴⁶ Thus, the apparently non-criminal anti-drug campaign was achieved through commission of CAH.

15. Moreover, there were several organized instances including the release of inflammatory content by the President’s office to induce hate crimes⁴⁷, inception of local militia “Friends of Neighbourhood” which was instrumental in executing⁴⁸ CAH against the marginalized protestant communities. Furthermore, omission on part of judges and prosecutors from launching VLR⁴⁹ against those who indulged in gruesome acts amounting to CAH, *inter alia*, are a testament to a clear State and organizational policy to commit CAH.

2. THAT THE ACTUS REUS LIMB IS SATISFIED

16. The VLR submits that a crucial element of crime against humanity of murder is that the perpetrator killed, or caused the death of, one or more persons.⁵⁰ According to the Pre-Trial Chamber in the case *Prosecutor v. Bemba*, the material elements of murder were held to be that the victim is dead and that the death must result from the act or omission of the Accused.⁵¹ That said, it is clear that, if the perpetrator uses any medium to cause death of the civilians, such an action would fall within the four corners of Article 7.
17. The VLR contends that the Accused fulfils this material element of causing death on multiple levels. Firstly, he awarded the highest number [1700] of deaths penalties⁵² in furtherance of the criminal design of Steiner, without following any due process or trial. It shall be noted that the legislations on the basis of which he awarded these penalties were in contravention to

45 COMPROMIS, ¶ 4.

46 COMPROMIS, ¶ 15.

47 COMPROMIS, ¶ 5.

48 COMPROMIS, ¶ 14.

49 COMPROMIS, ¶ 8.

⁵⁰ Elements of Crime, Art. 7

⁵¹ *Prosecutor v. Bemba*, ICC PT. Ch. II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ¶ 132.

⁵² COMPROMIS, ¶ 8.

the mandate of International Law and conventions ratified by Titan.⁵³ Article 6(2) of the ICCPR stipulates that a penalty of death may be imposed only for the most serious crimes.

18. *Furthermore*, the UN Human Rights Commission has proclaimed that drug-related offences and drug trafficking⁵⁴, cannot be construed as most serious crimes. It is submitted that the Accused awarded death penalties in crimes as inconsequential as possession of drugs⁵⁵. *Moreover*, out of all 30,000 deaths, many were caused by summary executions⁵⁶, *thus*, pointing towards the execution of death warrants issued by the Accused.
19. *Therefore*, the legality of award of these death penalties should be ascertained on the touchstone of the hierarchy of applicable law to this Court, which gives precedence to conventions and principles of International Law over national laws.⁵⁷
20. It is brought to the attention of the Hon'ble Chamber that the cases tried by the Accused were also reopened⁵⁸ by the subsequent Administration and the Supreme Court of Titan overturned a trial verdict given by the Accused on the ground that the same was effectuated by bias rendering him unfit to act as a neutral judge⁵⁹. It is submitted that judicial independence⁶⁰ and impartiality⁶¹ are elementary principles of judicial conduct under International law. *Furthermore*, it is reiterated that the Accused would not have done these acts had there been no larger attack on the population by the Administration, *hence*, this indiscriminate awarding of death penalties effectuated by bias smacks of foul play and cannot be termed as lawful by any stretch of imagination.
21. *Secondly*, the Accused caused death of civilians by omitting to act⁶² as per his duties and obligations as a judge which included initiating prosecutions against public officials for

⁵³ COMPROMIS, ¶ 3.

⁵⁴ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Human Rights Council, A/HRC/42/28. ¶ 8.

⁵⁵ COMPROMIS, ¶ 10.

⁵⁶ COMPROMIS, ¶ 4.

⁵⁷ Article 21 of Rome Statute

⁵⁸ COMPROMIS, ¶ 21.

⁵⁹ COMPROMIS, ¶ General Description of testimony, Page 28.

⁶⁰ Bangalore Principles of Judicial Conduct, value 1, ECOSOC Res. 2006/23 (July 27, 2006).

⁶¹ Bangalore Principles of Judicial Conduct, value 2, ECOSOC Res. 2006/23 (July 27, 2006).

⁶² COMPROMIS, ¶ 8.

human rights abuses⁶³. *Furthermore*, the Accused denied all legal claims, defences and rights⁶⁴ to under trials who were subjected to torture⁶⁵ by police officials often resulting in death. Reliance is placed on the case of *Radic*, wherein, the Accused did not exercise his authority to prevent the guards from committing crimes and *hence*, it was held that his non-intervention condoned, encouraged, and contributed to the commission and continuance of crimes.⁶⁶

22. The VLR clarifies that it is that not unusual for International Courts to prosecute actions that at first are not manifestly illegal. There exist a catena of cases, wherein, Accused were prosecuted for actions apparently within the scope of the law because those actions turned out to facilitate the commission of crimes.⁶⁷

23. *Lastly*, the effect of these acts and omissions was such that it inevitably bolstered the executing forces of War on Drugs policy and gave legitimacy to the Steiner Administration because it became clear to them that no matter what they did, they would not be held accountable. This eventually caused thousands of deaths and the Accused shares the criminal responsibility of the same under Article 25 of the Statute. *Thus*, it is established that the *actus reus* requirements have been satisfied in the instant case.

3. THAT, THE REQUISITE LIMB OF MENS REA IS SATISFIED

24. It is humbly submitted that the Statute stipulates that a person will be liable only if the material elements of a crime are committed with intent and knowledge.⁶⁸ *Hence*, the VLR submits that the Accused has satisfied the requisite limb of (a) intent and (b) knowledge.

i. The intent requirement is fulfilled.

25. This requirement is enshrined under Article 30 (2) (a) of the Statute.⁶⁹ It requires the person means to engage in the conduct and means to cause the consequence or is aware that it will

⁶³ COMPROMIS, ¶ 8.

⁶⁴ COMPROMIS, ¶ 8.

⁶⁵ Media report page 35 also ¶ 8.

⁶⁶ Kvočka Trial Judgement, ¶ 538.

⁶⁷ ICTR-99-52.

⁶⁸ Rome Statute.

⁶⁹ Rome Statute Art 30, *supra* note 1.

occur in the ordinary course of events.⁷⁰ . For the purposes of Article 30, the term ‘conduct’ denotes positive action as well as intentional omission⁷¹.

26. The VLR contends that the Accused meant to engage in the conduct which can be construed from a number of factors. The Accused wilfully perpetrated the criminal design of Steiner by formulating policies⁷² to further CAH which resulted in thousands of civilian deaths⁷³. His voluntariness can be construed from the fact that he willingly to accepted his position on the drafting committee of War on Drugs policy⁷⁴ and took charge as the Chief Judge of ADA⁷⁵ as part of the Steiner campaign.
27. The VLR further contends that be Accused harboured a similar ideology further CAH which can be ascertained from the fact that he disregarded procedure, notions of civil rights⁷⁶ and asserted his willingness⁷⁷ and commitment⁷⁸ to implement the vision and policies of the Steiner Administration. *Furthermore*, he believed that powerful executive is imperative to prevent the moral and ethical decay of Titan⁷⁹. *Therefore*, he denied all legal claims and defences to under trials⁸⁰ and systematically denied permission to prosecute cases⁸¹ brought against officials for police brutality, loot, public humiliation and torture which proves beyond reasonable doubt that he meant to engage with the conduct by his acts and omissions out of his own volition.
28. The VLR further contends that be Accused harboured a similar ideology to further CAH which can be ascertained from the fact that he disregarded procedure, notions of civil rights⁸²

⁷⁰ Art. 30 (2) (3); *Lubanga*, supra note 74, ¶350.

⁷¹ Article 8 ¶ 2 (b) (xxv) 1996 Preparatory Committee, Vol. I, note 6, p. 45, ¶ 199.

⁷² COMPROMIS, ¶ 7.

⁷³ COMPROMIS, ¶ 6.

⁷⁴ COMPROMIS, ¶ 11.

⁷⁵ COMPROMIS, ¶ 16.

⁷⁶ COMPROMIS, ¶ 34.

⁷⁷ COMPROMIS, p.31.

⁷⁸ COMPROMIS, p.32.

⁷⁹ COMPROMIS, ¶ 11.

⁸⁰ COMPROMIS, ¶ 8.

⁸¹ COMPROMIS, ¶ 8.

⁸² COMPROMIS, p.32.

and asserted his willingness⁸³ and commitment⁸⁴ to implement the vision and policies of the Steiner Administration. *Furthermore*, he believed that powerful executive is imperative to prevent the moral and ethical decay of Titan⁸⁵. *Therefore*, he denied all legal claims and defences to under trials⁸⁶ and systematically denied permission to prosecute cases⁸⁷ brought against officials for police brutality, loot, public humiliation and torture which proves that he meant to engage with the conduct by his acts and omissions.

29. The VLR *further* submits that the Accused meant to cause the consequence and was aware that it will occur in ordinary course of events. The VLR highlights that the Accused was well aware of the havoc wrecked⁸⁸ by the War on Drugs policy, yet, the Accused continued to be on drafting committee and subsequently agreed to be appointed as the Chief Judge of the ADA, which further resulted in loss of lives by way of acts and omissions. It relies on the decision rendered in *Kvoc`ka* Trial Judgment, *wherein*, intent to further crimes was inferred from the continued presence of the Accused as a guard shift leader in the camp and personal implication in the crimes of violence, harassment and intimidation against detainees.⁸⁹
30. *Moreover*, when the Accused was appointed as the Chief Judge of ADA, he very well knew what the consequences of his actions and omissions would entail considering the exalted nature of the office. VLR, *inter alia*, relies on the *Kvoc`ka* Appeal Judgement, *wherein*, position of authority was recognised relevant for establishing the awareness of the Accused about the system and his participation in enforcing or perpetuating the common criminal purpose of the system.⁹⁰ The Accused was well aware that his actions of awarding death penalties, denying legal rights, and deliberately omitting to prosecute perpetrators of human rights abuse⁹¹ would lead to deprivation of life and bolster eventually the executionary forces of the War on Drugs policy, which would further lead to commission of CAH.

⁸³ COMPROMIS, p.31.

⁸⁴ COMPROMIS, p.32.

⁸⁵ COMPROMIS, ¶ 11.

⁸⁶ COMPROMIS, ¶ 8.

⁸⁷ COMPROMIS, ¶ 8.

⁸⁸ COMPROMIS, ¶ 14.

⁸⁹ *Kvoc`ka* Trial Judgement, ¶ 499.

⁹⁰ *Kvoc`ka* Appeal Judgement, ¶ 101. See also: *Krnojelac* Appeal Judgement, ¶ 96.

⁹¹ COMPROMIS, ¶ 8.

31. For the foregoing reasons, it is evident that the Accused meant to engage in the conduct, cause the consequence and was aware that it would occur in the ordinary course of events.

ii. The knowledge requirement is fulfilled

32. With regard to the requirement of knowledge, the ICTR in *Prosecutor v. Kayishema* noted as follows:⁹²

“The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. Accordingly, actual or constructive knowledge of the broader context of the attack, meaning that the Accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some sort of policy or plan”

33. The elements of CAH of murder also warrant the perpetrator to know that the conduct was part of or intended to be a part of a widespread or systematic attack against a civilian population.⁹³ This standard was further reiterated in *Kunarac*.⁹⁴ It is submitted that the Accused knew his acts form a part of a larger attack against the civilian population as the same was common knowledge appearing regularly in the media.⁹⁵ Moreover, his contribution in the policies,⁹⁶ communication via emails⁹⁷ and position of authority held⁹⁸ during the perpetration of the War on Drugs policy indicate that the Accused was well aware of the larger attack perpetrated against the civil population of Titan. Therefore, the Accused knew his acts formed a part of a larger attack against the civil population of Titan.

34. The VLR further submits that in terms of Article 30 (3) of the Statute, knowledge would entail awareness that a consequence will occur in the ordinary course of circumstances.⁹⁹ It

⁹² Prosecutor v. Kayishema, Case no. ICTR-95-1-T, Trial Chamber Judgment, ¶133-34, (21 May 1999).

⁹³ Elements of Crime.

⁹⁴ Kunarac, Id., ¶102, 134; Prosecutor v. Kvojejac, Case no. IT-97-25-T, Trial Judgment, ¶ 59 (ICTY, Mar. 15, 2002).

⁹⁵ COMPROMIS, Media Reports.

⁹⁶ COMPROMIS, ¶ 7.

⁹⁷ COMPROMIS, p.32.

⁹⁸ *Supra* note 85.

⁹⁹ ROME STATUTE, *supra* note 2, Art. 30 (3).

requires a standard of “virtual certainty”.¹⁰⁰ In addition to the above, it is submitted that the acts of the Accused in light of the position of authority held by him and his close contact with the executive branch of ADA¹⁰¹ is indicative of the fact that he was virtually aware of the consequence of his acts. Reliance is placed on the decision rendered in *Simba, wherein*, it was held that it is inconceivable to conclude that a person who had constant contact with the perpetrators would not have known of the relevant circumstances.¹⁰²

35. *Therefore*, the Accused fulfills all the requisite limbs of criminal liability, thereby, incurring liability under Article 7(1)(a) of the Statute.

II. THAT THE ACTS OF THE ACCUSED DO NOT FALL WITHIN THE EXCEPTIONS TO CRIMINAL LIABILITY AS STIPULATED UNDER ART. 31 & ART. 33 OF THE ROME STATUTE

1. THAT THE DEFENCE UNDER ARTICLE 31 IS NOT APPLICABLE

36. Article 31 (1) relates to the grounds for excluding criminal liability for the crimes committed within the jurisdiction of this court. The relevant ground in the instant case is Article 31 (1) (d).

i. The defence of duress under Article 31(1) (d) is not applicable

37. Article 31 (1) (d)¹⁰³ stipulates a ground, *wherein*, a person would not be held liable if the conduct alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or bodily harm against that person, and the person acts necessarily and reasonably to avoid this threat. The proviso to this Article states that the person should not intend to cause a greater harm than the one sought to be avoided.¹⁰⁴

¹⁰⁰ Prosecutor v. Germain Katanga, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶774 (Mar. 7, 2014).

¹⁰¹ Annexure-I

¹⁰² Prosecutor v. Aloys Simba, Case No.ICTR-2001-76-T, Judgment and Sentence (Dec. 13, 2005).

¹⁰³ Article 31 (1) (d) Rome Statute supra note 1.

¹⁰⁴ Ambos, in: Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2002) 1003, 1040.

38. The VLR submits that, *firstly*, there was no threat of imminent death or of continuing or imminent serious bodily harm to the Accused. This defence is only available when defendant's freedom of will and decision is so severely limited that there is eventually no moral choice available¹⁰⁵. The VLR contends that even if the Accused was threatened¹⁰⁶, he was threatened only to the extent that he should dismiss at least 50% applications against illegal detentions¹⁰⁷ but the Accused went to the extent of issuing the highest number of death warrants and denying victims basic rights and *hence*, willfully went way beyond the threat. *Therefore*, his conduct cannot be condoned by duress as it was evidently volitional.
39. The threat must be of the stature that the Accused cannot reasonably be expected to resist.¹⁰⁸ Self-induced risks do not fall within the purview of duress¹⁰⁹ *Moreover*, the defendant loses his right to invoke the defence of duress, when he does not take an advantage of a reasonable opportunity to escape.¹¹⁰ The VLR submits that the threat, if any, was self-induced because he voluntarily took charge as Chief Judge of ADA in order to derive benefits¹¹¹ and perpetrate his ideology.¹¹² Such threat could have been reasonably resisted as the Accused had ample opportunity to escape by way of resignation or taking recourse to the mechanisms involving higher judiciary. VLR, *inter alia*, relies on the *Kvoc`ka* Trial Judgement in which it was held that if the Accused was unwilling to resign because it would prejudice his career, or he feared he would be punished, did not serve as a defence to criminal liability for participating in CAH.¹¹³ *Hence*, the Accused cannot avail the defence provided under Article 31(1)(d).

¹⁰⁵ US v. Krauch et al. (case 6), in: Trials of War Criminals before the Nuremberg Military Tribunals, Vol. III (1952) 1176; Weigend (2012) 10 JICJ [1219], 1234 et seq.

¹⁰⁶ Email from Chief of ADA.

¹⁰⁷ Email from Chief of ADA.

¹⁰⁸ § 42, The Law Commission, A Criminal Code for England and Wales, Vol. I (1989). R v Howe and Others (1987) CLRev 480.

¹⁰⁹ Cf. Cryer, Cryer et al. (eds.), An Introduction to International Criminal Law and Procedure (2014) 408; Werle and Jessberger, Principles of International Criminal Law (2014) mn 644; Heller and Dubber (eds.), Handbook of Comparative Criminal Law (2011) 593, 613.

¹¹⁰ Lippman (2009), p. 310.

¹¹¹ COMPROMIS, p. 33.

¹¹² COMPROMIS, Annexure-II.

¹¹³ *Kvoc`ka* Trial Judgement, ¶ 403.

40. The VLR *further* submits that the Accused did not act necessarily and reasonably to avoid the threat. Assuming that there was a threat, it is submitted that the Accused did not show any palpable signs of resistance whatsoever. *Moreover*, considering the exalted nature of a judicial office and the inalienable elements of independence and impartiality attached to it, the Accused was expected to show more resistance in enduring dangers than normal citizens¹¹⁴. It shall be noted that had the Administration faced any resistance by the Accused, it is reasonable to believe that it would have been compelled to desist from its criminal purpose.¹¹⁵
41. The VLR submits that the acts of the Accused as far as they relate to issuance of 1700 death penalties, allowing torture of prisoners, denying prosecution of officials, and ultimately leading to thousands of deaths ensued a greater harm than the one sought to be avoided. The consequence of not adhering to the orders, or resigning would have, at most, been removal from service or unlawful prosecution of the Accused¹¹⁶, *however*, he caused grievous bodily harm and death of numerous civilians through his acts and omissions.
42. *Therefore*, the acts of the Accused do not meet the requisite standard of Article 31, *and* hence this defence cannot be claimed.

ii. That the defence under Article 33 is not applicable

43. Article 33 of the Statute provides for the exemption from criminal liability, if a crime is committed in pursuance to an order of Government or of a superior, whether military or civilian.¹¹⁷
44. *However*, the following elements are conjunctively required to be fulfilled before availing this defence:-
- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;

¹¹⁴ Ambos, Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2002) 1003, 1039, *Treatise on International Criminal Law* (2013) 358; Cryer, Cryer et al. (eds.), *An Introduction to International Criminal Law and Procedure* (2014) 408.

¹¹⁵ Llandovery Castle Case, German Supreme Court at Leipzig, *Annual Digest of International Law Cases, 1923–1924*, Case No. 235, *British Command Paper* (1921) Cmd. 1422, p. 45.

¹¹⁶ Victim Witness Number-1.

¹¹⁷ Article 33 Rome Statute *supra* note 1.

- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

45. The VLR submits that as far as the contention that the Accused acted as per the law prevailing in Titan goes, the same is unsustainable before this Hon'ble Chamber on multiple grounds. *Firstly*, it is not covered within the four corners of Article 33 as this Article merely deals with an exemption when there is an 'order' from the government or a superior. Reliance is placed on Article 31 of the VCLT, which mandates for Interpretation of a term in its ordinary meaning.¹¹⁸ *Moreover*, a judge cannot be legally obligated to obey orders of the government or superior in discharge of his duties which require impartiality and discretion to act without fear or favour.¹¹⁹ *Thus*, the Accused cannot claim exclusion from criminal liability under Article 33.
46. The VLR *further* submits that a reference to national prescriptions of law cannot relieve the subordinate from criminal liability as it flows from Article 21 that national law can be applied only as far as it is 'not inconsistent with this Statute'.¹²⁰ *Moreover*, the Accused remained legally and morally obliged to conduct himself in accordance with the relevant norms of international humanitarian law.¹²¹ The defence that the Accused acted under the prescription of national law cannot shield him from liability as the same is inconsistent with the statute by virtue of being antithetical to principles of International law and conventions ratified by Titan¹²², whose application takes precedence over prescription of national laws¹²³. *Thus*, there cannot be any exclusion of liability on this ground.
47. The VLR submits that any order which dictates a judge to act in any manner which would prejudice the cause of justice towards the detriment of a party by arbitrarily depriving

¹¹⁸ Vienna Convention on the Law of Treaties, art. 31, May 23, 1969, 1155 U.N.T.S. 331.

¹¹⁹ Bangalore Principles of Judicial Conduct, value 2, ECOSOC Res. 2006/23 (July 27, 2006).

¹²⁰ ¶ 1 [c] Article 21, Rome Statute; Ambos, Treatise on ICL I (2013) 380.

¹²¹ Prosecutor v. Bralo, IT-95-17-A, Judgement, Appeals Chamber, 2. April 2007, ¶ 23–25.

¹²² ICCPR Articles 6(1) & 6 (2).

¹²³ Article 21, Rome Statute.

him/her of life is manifestly unlawful as it goes against the letter and spirit of International law¹²⁴ and conventions ratified by Titan.¹²⁵

48. It is submitted that the Accused was a person with relevant expertise and abundant knowledge of law¹²⁶ and legal affairs, *therefore*, it is reasonable to believe that he had knowledge that the supposed order is unlawful.

49. *Lastly*, paragraph 2 of the Article 33 clearly lays down that an order requiring commission of CAH of murder is manifestly unlawful¹²⁷. The Accused was aware of the context in which his acts were carried out i.e., in furtherance of the main attack of CAH on the civilians. *Therefore*, it is clear that the acts of Accused do not fulfill the essentials of the defence under Article 33 and *hence*, cannot be defended there under.

III. THAT THE ACCUSED UMBERTO ECO IS LIABLE FOR THE ACTS COMMITTED BY HIM

50. *Grosso modo*, an individual is criminally responsible if he perpetrates, takes part in or attempts to commit a crime within the jurisdiction of the Court. The contention that the Accused acted in his official capacity as Chief Judge of ADA shall not absolve him of criminal responsibility as Article 27 of the Statute expressly precludes any such exemption.¹²⁸ *Furthermore*, judges have been subjected to criminal liability for facilitating a crime since the Nuremberg Trials.¹²⁹

51. It is *further* submitted that a person may ‘commit’ a crime by the different modes of participation. The Accused, in the instant case, is individually criminally responsible for his participation in perpetration of CAH by multiple modes of participation as enumerated below.

¹²⁴ UN Commission on Human Rights, *Commission on Human Rights Resolution 2003/43: Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers*, 23 April 2003, E/CN.4/RES/2003/43, available at: <https://www.refworld.org/docid/43f313390.html> [accessed 23 April 2021]

¹²⁵ ICCPR Articles 6(1).

¹²⁶ COMPROMIS, ¶ 7.

¹²⁷ *Id.*

¹²⁸ Article 27, Rome Statute

¹²⁹ USA v. Alstoeffer, et al Case

1. HE SHALL BE HELD LIABLE AS A CO-PERPETRATOR UNDER ART. 25(3)(A)

52. The VLR submits that the Accused incurs individual criminal responsibility for his acts under Article 25(3)(A) of the Statute. It relies on the decision rendered in the *Lubanga*¹³⁰ case to set out the parameters for incurring Individual Criminal Responsibility. There must be a plurality of persons who act on the basis of an – explicit or implicit – common plan or purpose, and the Accused must take part in this plan, at least by supporting or aiding its realization¹³¹. It is *further* expounded in the *ratio* that any person making a contribution to the crime can be considered as a principal in the crime.¹³² *Therefore*, any person who has committed a crime in conjunction with others will be deemed as “Principal Offender”.¹³³ The parameters for the same have been enumerated below:

i. The Objective Elements have been fulfilled

a. Existence of a common plan between two or more persons

53. This element stipulates the existence of a common goal and agreement between the person(s) involved.¹³⁴ The VLR highlights the existence of an agreement on the common plan between the Accused and the Steiner Administration which was to perpetrate CAH against the civilian population of Titan, under the guise of the “War on Drugs” policy. It is reiterated that perpetrators may agree upon the common plan, which is not inherently criminal but the means to achieve such non-criminal goals may involve the commission of CAH¹³⁵, as is the case in the instantaneous matter. Reliance is placed on the PTC decision in *Ruto, wherein*, Mr. Ruto and other members of the organization executed the non-criminal plan to evict

¹³⁰ Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on Confirmation of Charges (Jan. 29, 2007).

¹³¹ Prosecutor v. Tadic, No. IT-94-1-A, Judgment, AC, 15 July 1999, ¶ 227.

Cassese et al., ICL (2013) 163; Ambos (2007) 5 JICJ 171; Jain, Perpetrators and Accessories in ICL (2014), 55-6.

¹³² *Id.*, ¶326.

¹³³ A-G Israel v. Eichmann, 36 I.L.R. 18, Judgment, ¶194 (District Court, Jerusalem, 1968).

¹³⁴ *Stakić, supra* note 15, ¶469-¶472.

¹³⁵ Crime in Int Law, p. 211

members of certain communities because of their perception as the PNU supporters, which was implemented through the commission of a number of CAH.¹³⁶

54. The VLR *further* submits that agreement can be proved by silent consent to reach a common goal by coordinated cooperation and joint control over the criminal conduct.¹³⁷ The existence of an agreement can also be inferred from the subsequent concerted action of the co-perpetrators.¹³⁸ This can be ascertained from the systematic conduct of the Accused in aiding the policies of Steiner¹³⁹, multiple acknowledgements through emails¹⁴⁰ and excerpts from the address¹⁴¹ of the Accused. *Thus*, the existence of an agreement on the common plan has been established.

a. Essential Contribution

55. There should be a coordinated essential contribution made by each co-perpetrator resulting in the realization of the objective elements of the crime.¹⁴² In *Katanga*, it was held that such essential contribution can be carried out by co-perpetrators physically or, alternatively, be executed through another person.¹⁴³

56. The VLR relies on the principle discussed above to establish the ‘essential role’ played by the Accused. It shall be noted that the Accused was the Chief judge of ADA, which dealt with all cases relating to drug abuse¹⁴⁴ and violations on part of public officials.¹⁴⁵ *Moreover*, his influence on other judges¹⁴⁶ and systematic denial of permission to prosecute public

¹³⁶ Prosecutor v. Ruto (ICC-01/09-01/11), Pre-Trial Chamber II, Decision on the Confirmation of Charges, 23 January 2012, ¶ 302.

¹³⁷ *Id.*, ¶ 440.

¹³⁸ *Lubanga*, *supra* note 69, ¶ 345.

¹³⁹ COMPROMIS, ¶ 8.

¹⁴⁰ Annexure 1- Email.

¹⁴¹ Annexure –II.

¹⁴² *Lubanga*, *supra* note 69, ¶ 346.

¹⁴³ *Katanga et al.* (ICC-01/04-01/07), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, ¶ 521.

¹⁴⁴ COMPROMIS, ¶ 16

¹⁴⁵ COMPROMIS, ¶ 17

¹⁴⁶ COMPROMIS, ¶ 8.

officials for commission of CAH¹⁴⁷ highlights the essential role played by the Accused in incapacitating the system of accountability and *therefore*, giving the ground forces a free hand to perpetrate CAH.

57. It is *further* submitted that by virtue of the powers vested in his office, the Accused had the responsibility to stop and prosecute the commission of CAH in Titan. *However, per contra*, the Accused by aiding the policies of Steiner and willfully omitting to hold perpetrators accountable, played an essential role resulting in the realization of objective elements of the crime which would have not been possible without his contribution.

ii. The Subjective Elements have been fulfilled

a. The subjective elements of the crime must be fulfilled

58. This element of co-perpetration asserts that subjective elements with regard to crime as well as common plan must be fulfilled.¹⁴⁸ The VLR submits that the intent and knowledge of the Accused with respect to the crime¹⁴⁹ has already been established by the VLR in its previous submission.¹⁵⁰

2. HE SHALL BE HELD LIABLE UNDER ART. 25(3)(C) OF THE ROME STATUTE

59. Article 25 (3) (c) of the Statute relates to the responsibility for aiding, abetting or otherwise assisting in the commission or attempted commission of a crime within the jurisdiction of the court.¹⁵¹ The purpose behind such aiding, abetting, or assistance should be the facilitation of the crime. *Moreover*, these are disjunctive requirements¹⁵² and cover any act, which

¹⁴⁷COMPROMIS, ¶ 8.

¹⁴⁸ *Lubanga, supra* note 68, ¶349.

¹⁴⁹ Lubanga (ICC-01/04-01/06), Pre-Trial Chamber I, Decision on the Confirmation of Charges, 29 January 2007, ¶s 349–360.

¹⁵⁰ Article 30 Argument

¹⁵¹ Article 25 (3) (c) Rome Statute.

¹⁵² Prosecutor v. Ble Goud'e, No. ICC-02/11-02/11-186, Decision on the Confirmation of Charges, PTC, 11 December 2014, ¶ 167; Triffterer, Hankel and Stuby (eds.), *Strafgerichte gegen Menschenverbrechen* (1995) 169, 229.

contributes to the commission or attempted commission of a crime¹⁵³. *However*, the contribution must be substantial in nature.¹⁵⁴

60. It is *further* submitted that the contribution to the crime is irrespective of the fact whether the Accused was present or removed both in time and place from the actual commission of the crime.¹⁵⁵ *Moreover*, the decisions rendered in *Celebici*¹⁵⁶ and, more recently, in *Naletilic* and *Martinovic*¹⁵⁷ suggest that all acts of assistance by words or acts that lend encouragement or support¹⁵⁸ fall within the purview of aid and abetment. *Furthermore*, the assistance need not be ‘tangible’¹⁵⁹ and ‘moral support and encouragement’ is sufficient¹⁶⁰.
61. The VLR contends that the acts of the Accused aided and assisted in giving legitimacy to the Steiner Administration and providing substantial moral support to the forces committing CAH. This can be proved from his biased conduct and illegal use of office by denying legal defences and influencing prosecution of individuals towards maximum penalty, which inevitably supported Steiner’s agenda and public perception of his policies.
62. The VLR *further* submits that “aiding and abetting” may also consist of an omission¹⁶¹; It shall be noted that an act of non-interference coupled with position of authority held by the

¹⁵³ Cf. Finnin, *Accessory Modes of Liability* (2012) 73 et seq., 90–1.

¹⁵⁴ Prosecutor v. Tadić, No. IT-94-1-T, Judgment, TC, 7 May 1997, ¶s. 674, 688–92; Prosecutor v. Delalic., No. IT-96-21-A, Judgment, AC, 20 February 2001, ¶ 352.

1996 ILC Draft Code, 24 (¶ 10).

¹⁵⁵ Blas̃kic’ Appeal Judgement, ¶ 48.

¹⁵⁶ Prosecutor v. Delalić et al., No. IT-96-21-T, Judgment, TC, 16 November 1998, ¶s. 325–9.

¹⁵⁷ Prosecutor v. Naletilić and Martinović, No. IT-98-34-T, Judgment, TC, 31 March 2003, ¶ 726; Prosecutor v. Blagojević and Jokić, No. IT-02-60-T, Judgment, TC, 17 January 2005, ¶ 726.

¹⁵⁸ Prosecutor v. Tadić, No. IT-94-1-T, Judgment, TC, 7 May 1997, ¶ 687; LRTWC 49-51, (1948) 15; Prosecutor v. Tadić, No. IT-94-1-A, Judgment, AC, 15 July 1999, ¶ 691.

¹⁵⁹ Prosecutor v. Kayishema and Ruzindana, No. ICTR 95-1-T, Judgment, TC, 21 May 1995, ¶ 200.

¹⁶⁰ Prosecutor v. Furundzija, No. IT-95-17/1-T, Judgment, TC, 10 December 1998, ¶s. 190–249.

¹⁶¹ Prosecutor v. Akayesu, No. ICTR-96-4-T, Judgment, TC, 2 September 1998, ¶ 548; Prosecutor v. Kamuhanda, No. ICTR-95-54A-T, Judgment, TC, 22 January 2004, ¶ 597; Prosecutor v. Bisengimana, No. ICTR-00-60-T, Judgment and Sentence, TC, 13 April 2006, ¶ 34; Prosecutor v. Mpambara, No. ICTR-01-65-T, Judgment, TC, 11 September 2006, ¶ 22; Prosecutor v. Muvunyi, No. ICTR-2000-55A-T, Judgment and Sentence, TC, 12 September 2006, ¶ 470; Prosecutor v. Ndahimana, No. ICTR-01-68-A, Judgment, AC, 16 December 2013, ¶ 147.

Accused amounts to a tacit approval and encouragement to commit the crime.¹⁶² *Furthermore*, the failure to punish for the crimes constitutes “aiding and abetting” to commit further crimes.¹⁶³ For an omission to qualify as “aiding and abetting”, it is necessary to demonstrate that (i) the omission had a substantial effect on the crime in the sense that the crime would have been substantially less likely, had the accomplice acted; and (ii) the accomplice knew that the commission of the crime was probable and his inaction assisted it.¹⁶⁴

63. The VLR submits that had the Accused acted as per his legal obligations and held public officials and local militia indulging in CAH accountable, it is highly unlikely that those crimes would have occurred. The lack of accountability in the ADA due to the omission on part of the Accused tantamount to a tacit approval and encouragement to commit crimes which effectuated the CAH.
64. *Furthermore*, it is submitted that the Accused knew his inaction assisted the commission of crime by virtue of his role and authority as Chief Judge of ADA, which was responsible for admitting all cases relating to admission of human rights violation by public officials who were indulging in CAH. VLR highlights that the issue of public officials committing inhumane acts on the civil population was common knowledge appearing regularly in the media.¹⁶⁵ *Therefore*, the Accused was aware that he had the authority to frustrate the commission of these crimes yet he omitted to do so.
65. In conclusion, the conduct of the Accused incurs liability under Article 25(3)(c) of the Statute.

3. UMBERTO ECO SHALL BE HELD LIABLE UNDER ART. 25(3)(D)

66. The VLR submits that, in addition to above, the Accused is also liable under Art. 25(3)(d) of the Rome Statute as an accessory to CAH of Murder.¹⁶⁶

¹⁶² Brđanin Appeal Judgement, ¶ 273; Oric’ Appeal Judgement, ¶ 42; Kayishema Appeal Judgement, ¶s 201–202.

¹⁶³ Blas’kic’ Trial Judgement, ¶ 337.

¹⁶⁴ Mrks’ic’ and S’ljivanc’anin Appeal Judgement, ¶s 97, 101; Oric’ Appeal Judgement, ¶ 43.

¹⁶⁵ Media report, Annexure-III

¹⁶⁶ *Lubanga*, ¶334.

67. Art. 25(3)(d) functions as a catch-all provision as it requires less of a threshold than any other form of liability.¹⁶⁷ In *Mbarushimana*¹⁶⁸ the PTC had set out the requirements for liability under Art. 25(3)(d) which are enumerated as follows:

i. The objective elements have been fulfilled.

68. The subparagraph (d) displays the lowest objective threshold within the different modes of attribution of Article 25.¹⁶⁹ As was held in *Mbarushimana*, the objective elements of the crime are: (i) a crime within the jurisdiction of the Court is attempted or committed; (ii) the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose; (iii) the individual contributed to the crime in any way other than those set out in Article 25(3)(a) to (c) of the Statute.¹⁷⁰

69. With reference to (i), it is submitted that the *ratione materiae* has been fulfilled, as CAH of Murder is a crime under the Statute, which has been committed as established above. As with reference to (ii), reference may be drawn from the pleadings submitted hitherto¹⁷¹, where the Accused and Steiner have been proved as acting coordinately with a common purpose.

70. As with respect to (iii), the PTC in *Mbarushimana* designated that there must be a ‘significant’ contribution.¹⁷² As to the assessment of ‘significant’, the PTC proposed a case-by-case analysis of the person’s conduct in the given context¹⁷³ taking into account several factors which include:

- (i) the sustained nature of the participation after acquiring knowledge of the criminality of the group’s common purpose, (ii) any efforts made to prevent criminal activity or to impede the efficient functioning of the group’s crimes, (iii) whether the person creates or merely executes the criminal plan, (iv) the position of the suspect in

¹⁶⁷ J.D Ohlin, Joint Intentions to Commit International Crimes, 11 CHI. J. OF INT’L L. 409 (2010).

¹⁶⁸ Prosecutor v. Callixte Mbarushimana, ICC-01-04-01-10, Decision on the Prosecutor’s Application for a Warrant of Arrest, ¶41 (Dec. 16, 2011).

¹⁶⁹ Prosecutor v. Ruto, ICC-01/09-01/11-373, Decision on the Confirmation of Charges, ¶354, (Jan. 23, 2012).

¹⁷⁰ *Mbarushimana*, ¶39.

¹⁷¹ Article 25(3)(a), Rome Statute.

¹⁷² *Mbarushimana*, ¶283-¶285; Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06- 309, Decision on the Confirmation of Charges, ¶158 (9 June 2014); Prosecutor v. Gbagbo, ICC- 02/11-01/11-656-R, Decision on the Confirmation of Charges, ¶252, (12 June, 2014).

¹⁷³ *Mbarushimana*, ¶284; Katanga Judgment, ¶1634.

the group or relative to the group and (v) perhaps most importantly, the role the suspect played vis-a-vis the seriousness and scope of the crimes committed.¹⁷⁴

71. *Firstly*, the VLR reiterates that the Accused continued to be a part of the criminal design of Steiner after acquiring full knowledge of the crimes being perpetrated in execution of the plan. While the existence knowledge can be ascertained from his position of authority and media reports¹⁷⁵, the fact that he continued to favour the administration in his position as Chief Judge proves his sustained nature of participation in the criminal design.
72. *Secondly*, it is submitted that the Accused did not make any palpable effort to impede the perpetration of CAH by the administration. It shall be noted that the Accused, by virtue of his position, knew that he had the ability to frustrate the objective of the group by using his powers to hold to account those responsible for crimes.¹⁷⁶ *However*, he did not make any effort to do so.
73. *Thirdly*, the Accused had not only executed the nefarious design of the Administration, but also helped in the conceptualization of policies.¹⁷⁷
74. *Fourthly*, the position of the Accused in the group was pivotal as he was the Chief Judge of ADA, having plenary powers¹⁷⁸ to hold to account the perpetrators of CAH in Titan.
75. *Fifthly*, the role played by the Accused was vital as it gave legitimacy to the Steiner Administration by aiding the public perception of the War on Drugs policy. It shall be noted Steiner was ousted from power¹⁷⁹ only after International sanctions were imposed on Titan which resulted in public criticism about his way of governance¹⁸⁰. The VLR submits that the decisions rendered by the Accused were used by to bolster and justify¹⁸¹ the illegal acts of his Administration. This premediated¹⁸² and concerted effort inevitably gave undue credibility to the policy and helped the perpetration of CAH to sustain.

¹⁷⁴ Id.

¹⁷⁵ Annexure III.

¹⁷⁶ Stakic Trial Judgement, paras 497–498.

¹⁷⁷ COMPROMIS, ¶ 7.

¹⁷⁸ COMPROMIS, ¶ 17.

¹⁷⁹ COMPROMIS, ¶ 20.

¹⁸⁰ COMPROMIS, ¶ 19.

¹⁸¹ Annexure-I

¹⁸² Annexure-I

76. *Thus*, it is submitted that all objective elements of a significant contribution under Art. 25(3)(D) have been fulfilled.

ii. Subjective elements have been fulfilled.

77. It is submitted that the subjective elements are: (i) the contribution shall be intentional; and (ii) shall either (a) be made with the aim of furthering the criminal activity or criminal purpose of the group;

78. With reference to (i), it is submitted that, ‘intentional’ is to be understood as possessing the *dolus* as enumerated in Art. 30 of the Statute¹⁸³. The same has already been proved by the VLR in its earlier submission.¹⁸⁴

79. As concerning (ii), with respect to (a), the Accused must possess the ‘*dolus*’, i.e. the specific intention to promote the ideas and acts of the group.¹⁸⁵ This requirement can be ascertained by the address of the Accused on inauguration of courtroom number V¹⁸⁶, *wherein*, he expressed his willingness¹⁸⁷ and commitment¹⁸⁸ to implement the vision and policies of the Steiner Administration.

80. *Thus*, it is submitted that both the objective as well as subjective elements of the crime have been fulfilled and *hence*, the Accused is liable under Art. 25(3)(D).

**IV. THAT THE VICTIMS OF CRIME AGAINST HUMANITY OF MURDER MUST BE
APPROPRIATELY REMEDIED**

81. In order for this Court to provide true justice for victims of international criminal acts, it must incorporate a process that adequately recognizes the personal interest of the victims, and not only focus on punishing the criminal¹⁸⁹.

82. The VLR submits that reparation for victims of gross violations of human rights is necessary in offering justice¹⁹⁰. Victims of international criminal acts are entitled to seek justice and

¹⁸³ Triffterer, at 1014.

¹⁸⁴ Article 30 Submission

¹⁸⁵ Prosecutor v. Semanza, Trial Chamber, ICTR-97-20, ¶ 313 (15 May 2003).

¹⁸⁶ Annexure -II

¹⁸⁷ COMPROMIS, p.31 Email.

¹⁸⁸ COMPROMIS, p.32 Email.

¹⁸⁹ Zimmermann, article 5.

receive prompt redress.¹⁹¹ The right of victims to reparations is a constitutive part of the right to justice¹⁹².

**1. THE VICTIMS WHO SUFFERED THIS GREAT HARM ARE CONSIDERED “VICTIMS”
UNDER APPLICABLE LAW**

83. The Victims Declaration defines ‘Victims’ as: “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States”¹⁹³
84. *Furthermore*, Rule 85 of the Court’s rules defines Victims as, “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”.¹⁹⁴ The “harm” may include “material, physical, and psychological harm,”¹⁹⁵ and it can “attach to both direct and indirect victims.”¹⁹⁶
85. The VLR submits that the victims in the instant case are natural persons who have suffered harm as a result of the commission of a crime within the jurisdiction of the Court. Certainly, human beings who have been subjected to torture, public humiliation,¹⁹⁷ arson, sexual violence, loot,¹⁹⁸ etc and witnessed thousands of illegal killings¹⁹⁹ do qualify the standard for victims as laid down by the declaration as well as by the rules of this court.

¹⁹⁰ Theo Van Boven, & Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms 11-15, in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1, General Considerations (Neil J. Kritz ed., United States Institute of Peace Press, 1995).

¹⁹¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, Annex, U.N. Doc. A/RES/ 40/34/Annex (Nov. 29, 1985).

¹⁹² Donat-Cattin, article 68, mn. 3.

¹⁹³ *Id.*

¹⁹⁴ Rule 85 Rules of Procedures and Evidence.

¹⁹⁵ *The Prosecutor v. Thomas Lubanga Dyilo, Judgment on the Appeals of The Prosecutor and The Defense against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008*, ICC-01/04-01/06, ¶ 32 (Appeals Chamber, 11 July 2008).

¹⁹⁶ *Lubanga*, Judgment on the Appeals of The Prosecutor and The Defense against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, *supra* note_, ¶ 32.

¹⁹⁷ *COMPROMIS* ¶ 8.

¹⁹⁸ *COMPROMIS* ¶ 15.

86. The civilian victims of Titan have both individually and collectively suffered great physical and psychological harm. The surviving victims have suffered immense mental injury and emotional suffering from witnessing family members being brutally murdered²⁰⁰. Finally, these victims have suffered extreme economic loss as they were looted and their property destroyed²⁰¹. Thus, they should be considered victims in respect to claiming reparations, restitution, compensation, and rehabilitation.

i. The ICC Must Establish Principles Relating to Reparations to, or in Respect of, Victims, Including Restitution, Compensation and Rehabilitation

87. This Court may, either upon request or on its own motion, determine the scope and extent of any damage, loss and injury to, or in respect of, victims.²⁰²

88. The VLR submits that the victims in the present case are entitled to reparations as provided under Article 75 of the Statute. It is submitted that the victims were subject to Crimes Against Humanity as established hitherto²⁰³ and have suffered a great harm on account of the same. The victims qualify the standard for receiving reparations from the Accused as well as restitution, compensation and rehabilitation from the Trust Fund maintained by the Court.

ii. The Court May Make an Order Directly Against the Convicted Person

89. The ICC has jurisdiction over individual criminals. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation²⁰⁴. The Accused must make fair restitution to these victims, their families and dependants as he was substantially responsible for the harm caused²⁰⁵. The General Assembly has agreed that victims are entitled to have their property returned, get paid for the harm or loss suffered, and receive reimbursement of expenses incurred as a result of the victimization.²⁰⁶

¹⁹⁹ *COMPROMIS* ¶ 6.

²⁰⁰ VW-2., supra note 67.

²⁰¹ *COMPROMIS* ¶ 15 and ¶19.

²⁰² Article 75 Rome Statute supra note 1.

²⁰³ Written Submission on Behalf of the Victims - Contention I.

²⁰⁴ Rome Statute art. 75, 2.

²⁰⁵ Lubanga Reparations' Decision, see note 34, at para. 269

²⁰⁶ Victims Declaration, supra note 165.

iii. The Trust Fund Maintained by the Court Should Alternatively be used for Remediating the Victims

90. Article 79 of the Rome Statute sets forth the concept of a trust fund. Subsection (1) of Article 79 enables the Assembly of State Parties to establish a trust fund for the benefit of victims.²⁰⁷ Once the ICC is found to be the proper jurisdiction for international crimes (which it is, in the present case), the Court may order money and other property collected through fines to be transferred through the trust fund to the victims and the families of such victims²⁰⁸.
91. The VLR submits that if the court is of the view that the defendant is not capable enough to compensate such a large number of victims in the instant case, it must reach out for other means of compensation. The trust fund created under Article 79 of the Rome Statute is precisely what the victims in the instant case need in order to re-establish their lives and be compensated for the harm they have suffered. *Therefore*, the victims should be adequately compensated by the defendants and/or from Trust Fund.

²⁰⁷ Rome Statute art. 79.

²⁰⁸ Article 79 (2) Rome Statute supra note 1.

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. The Accused, Umberto Eco, did commit the acts of Crime Against Humanity of Murder under Article 7(1)(a) of the Rome Statute.
- II. Umberto Eco is Individually Criminally Responsible for the acts committed by him as a Co-Perpetrator.
- III. Umberto Eco is Individually Criminally Responsible for the acts committed by him as a willing accessory.
- IV. The Victims are Entitled to Compensation for the Harm caused by the Crimes.

**COUNSEL FOR THE
VICTIMS**

*Legal Representative of the
Victims*