





Pre-Trial Chamber VI
ICLN ICC Trial Competition

Situation in Libidan
The Prosecutor v. John Stark

Decision on Jurisdiction and Admissibility

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

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

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

5. On 10 March 2010, at the request of the High Commissioner, the Johnson Commission reconvened to undertake a follow-up investigation. According to the Second Johnson Commission Report, issued on 10 March 2011, “[a]lthough ritual servitude has been criminalized in Libidan, there has been no real effort to enforce the law, and no one has ever been prosecuted for the crime.” The Second Johnson Commission Report documented 1,523 ongoing cases of ritual servitude.
6. There is no allegation that John Stark, himself, ever ordered or participated in the practice of ritual servitude. However, the Second Johnson Report concluded that he shouldered primary blame for the persistence of the practice in Libidan. According to the Second Johnson Commission Report, “[a]s head of Libidan’s government, Premier Stark should have known of the extent of continuing practice of ritual servitude, yet failed to use the machinery of his government to eradicate it. We therefore conclude that Premier Stark knowingly tolerated and thereby encouraged the commission of systematic and widespread crimes against humanity in Libidan.”
7. At a press conference on 11 March 2011, John Stark told the assembled media: “Libidan is being unfairly singled out. Ritual servitude is practiced in a number of other countries. We don’t condone the practice, but we believe education, not prosecution, is the best solution. We’re making progress, but it takes time.” At the end of the press conference, a thirteen year-old Libidan girl in the audience named Akira, who had recently run away from a Shrine where she was subject to ritual servitude, doused herself with gasoline and set herself on fire to protest the practice. Images of Akira’s self-immolation went viral on the internet. Soon thereafter, the problem of ritual servitude in Libidan became the cause de jur Tw 0.23n, no1.42 0 Tihirtee4(i)r2(t)-10uicirtey m2(t)-10u(r)14Henc latJo prots.19 14(r

9. At the request of the ICC Prosecutor, on 30 May 2011, this Pre-Trial Chamber issued an arrest warrant for John Stark, finding that there were reasonable grounds to believe that he is criminally responsible under Article 25(3)(e) (co-perpetration), Article 25(3)(b) (command responsibility), and Article 25(3)(c) (aiding and abetting) for crimes against humanity in Libidan, including enslavement, rape, torture, sexual slavery, and other inhumane acts, from 10 March 2011 to the present. Immediately thereafter, at the request of the ICC Prosecutor, INTERPOL issued a Red Notice for John Stark's arrest.
10. On 10 June 2011, John Stark traveled to Titania to participate in an annual summit of regional leaders. Although Titania has been a State Party to the ICC since 2008, it did not immediately arrest Stark, taking the position that doing so would violate his Head of State Immunity.

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

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

For these reasons, the Chamber hereby:

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

Dated 15 September 2011

At The Hague, The Netherlands

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