

Moot Number: D12
Memorial for the Defendant
Word Count: 3980

PROSECUTOR V. PRIME MINISTER DON MIR (MIR)

I. PRELIMINARY

1. THE CASE IS INADMISSIBLE BEFORE THE ICC

1.1. THE CASE DOES NOT MEET THE SUFFICIENT GRAVITY THRESHOLD

1. The gravity of a given case should be assessed from a quantitative and qualitative dimension.¹
2. The Quantitative aspect is assessed with regard to the number of victims.² This requirement is not met in **Count 2** as the collateral damage to civilians was few in numbers. Similarly in **Count 3** only 200 persons were allegedly deported.
3. The Pre-trial Chamber in *Abu Garda* found that the qualitative aspect is established through *inter alia*, the nature of the unlawful behaviour and the means employed to execute the crime.³
4. The enforced disappearances in **Count 1** do not satisfy the elements as the alleged victims were merely detained for interrogation. Further, the perpetrators in Xeros have not been identified by the prosecution on substantial grounds to believe. Thus, the gravity of the crime may not be questioned in the absence of the crime being established.

2. EVIDENTIARY THRESHOLD IS NOT MET

5. The prosecution has failed to meet the burden of proving the crimes on substantial grounds through evidence.⁴ Indirect evidence should be accorded lower probative value.⁵ Confirmation of charges cannot be solely based on one indirect piece of evidence.⁶ It should be corroborated by other evidence.⁷

¹ *Prosecutor v. Abu Garda* (Pre-Trial Chamber I) ICC-02/05-02/09-243-Red (8 February 2010) ¶31 [**‘Abu Garda’**]

² *Abu Garda* ¶31

³ *Abu Garda* ¶31

⁴ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90/37 Article 61(7) [**‘Rome Statute’**]

⁵ *Prosecutor v. Bemba* (Decision Pursuant to Article 61(7)(a) and(b) Of the Rome Statute on the Charges of the Prosecutor, Pre-Trial Chamber II) ICC-01/05-01/08 (15 June 2009) ¶47, 51 [**‘Bemba Confirmation’**]

⁶ *Bemba Confirmation* ¶51

⁷ *Bemba Confirmation* ¶53

6. In analyzing the probative value of evidence, courts are guided by the nature of the evidence, its credibility, reliability, source, context in which it was obtained and its nexus to the charges of the case or the alleged perpetrator.⁸ The defense submission on the prosecution failing to meet this evidentiary threshold is extensively established under counts **1** and **3**.

II. COUNT ONE

1. CRIME AGAINST HUMANITY UNDER ARTICLE 7(1)(I) OF THE ICC STATUTE

1.1. THE PROSECUTION HAS NOT PROVED THE *ATTACK* WITH SUFFICIENT EVIDENCE WHICH MEETS THE EVIDENTIARY THRESHOLD

7. An attack is defined as a campaign or operation carried out against a civilian population.⁹ Such attack must be proved by providing concrete and tangible proof demonstrating a clear line of reasoning underpinning specific allegations.¹⁰ However, the prosecution has not submitted such evidence.
8. Deprivation of liberty of Mary Price has not been proved since incommunicado detention was a mere *allegation* which, together with Price's prior intention to leave Morok¹¹ fails to establish the crime of subjecting her to enforced disappearance. Further, she allegedly went missing in January 2003 while her contentious article was due in December 2002.¹² Thus, it even disproves the alleged intent of the perpetrators to victimize her.
9. NGOs and UN mechanisms were merely *sharing* unsubstantiated *allegations*¹³ of human rights abuses. The report by the Xeros NGO 'Journalists without borders'¹⁴ was

⁸ *Prosecutor v. Ruto, Kosgey and Sang* (Pre-Trial Judgement) ICC-01/09-01/11 (23 January 2012) ¶66 [**'Ruto'**]

⁹ *Situation in the Republic of Kenya* (Decision on the Authorisation of Investigation, Pre-Trial Chamber) ICC-01/09-19 (31 March 2010) ¶80

¹⁰ *Ruto* ¶42

¹¹ C¶10

¹² C¶9

¹³ C¶13

¹⁴ C¶24

not corroborated by any other reliable evidence. Further, it is not a credible source since it receives part of its funding from the State Willandra which opposed Morok.¹⁵

10. Marsha Pixel's findings are not credible since she was invited by the *opponents of the Morok government*¹⁶ who would be biased in providing information. Further, details about detainees were second hand information. Thus, this piece of evidence must not be taken into consideration even if corroborated.¹⁷

1.2. THE CRIME OF DEPRIVING PERSONS OF LIBERTY IN MOROK HAS NOT BEEN PROVEN

11. The right to liberty is not absolute.¹⁸ A person may be deprived of liberty in the enforcement of criminal laws¹⁹ while security detention by State is also acknowledged.²⁰ Morok had old colonial criminal laws.²¹ Detention by the Police is proved to be in accordance with such laws as some people were convicted of charges and imprisoned once interrogation was over. Thus the detention by Police was prescribed by the laws of Morok.

1.3. IN ANY EVENT THERE WAS NO AUTHORIZATION, SUPPORT OR ACQUIESCENCE OF THE STATE OF MOROK

12. The crime is perpetrated by the State only if there is authorization, support or acquiescence.²² The responsibility to non-State organs are imputed based on a test of

¹⁵ C¶24

¹⁶ C¶33

¹⁷ *Prosecutor v. Katanga and Ngudjolo Chui* (Decision on Prosecutor's Bar Table Motions, Pre-Trial Chamber II) ICC-01/04-01/07 (17 December 2010) ¶13

¹⁸ UNHRC 'General Comment no. 35 Article 9' (16 December 2014) CCPR/C/GC/35 ['GC 35'] ¶10

¹⁹ GC 35 ¶10

²⁰ GC 35 ¶15

²¹ C¶24

²² *Situation in Republic of Burundi* (Pre-Trial Chamber I) ICC-01/17-9-Red (9 November

‘control’²³ or acknowledgement²⁴. *Tadic*²⁵ required the participation in planning and supervision of military operations while in *Nicaragua*²⁶ no control was established despite the heavy subsidies and other support provided. Further, conduct will not be attributable to a State where it merely acknowledges the factual existence of conduct or expresses its verbal approval of it.²⁷

13. The prosecution has failed to furnish evidence of the state involving in the planning of the alleged crimes. Disappearance in Xeros cannot be linked to the state of Morok since there is no evidence confirming the rumours about black vehicles. Anonymous bloggers have previously associated the Morok government with black *vans*. Hence, the reference to black *vehicles* does not corroborate. The Xeros based NGO which confirmed the disappearance lacks probative value as established in **Section 1.1** above.
14. In any event, these reports confirm that they were detained in centres ‘close to Xeros borders’ while none state that the government of Morok was directly perpetrating the crimes. It should be noted that the border control was flexible²⁸ and movement between both countries was a frequent occurrence. Hence, State involvement cannot be proved from the mere evidence on alleged victims having been detained in Morok. Thus, the prosecution has failed in meeting the threshold.

1.4. MIR WAS NOT INDIVIDUALLY CRIMINALLY RESPONSIBLE UNDER ARTICLE 25(3)(B) OF THE ICC STATUTE

2017)¶118 [‘*Burundi*’]

²³ Draft Articles on Responsibility of States for Internationally Wrongful Acts (adopted on November 2001) Supplement No. 10 (A/56/10) chp.IV.E.1 Article 8 [‘*Draft Articles*’]

²⁴ *Draft Articles*, Article 11

²⁵ *Prosecutor v. Dusko Tadic* (Appeals Chamber) ICTY- IT-94-1-A (19 November 1999) ¶117

²⁶ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America) (Merits, Judgment) ICJ Reports 1986,14,62

²⁷ International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (Yearbook of the International Law Commission, vol. II, Part II, 2001) 53

²⁸ C¶3

1.4.1. There was no superior subordinate relationship between Mir and RP to establish ‘order’

15. The accused must be in a ‘position of authority’.²⁹ This requires a degree of control over subordinates which is similar to that of military commanders.³⁰ Mir had no authority over RP which was indeed formed in Xeros as a result of internal discrimination.³¹ Further, they were led by Brian Frenzel who had no links with Mir.³²

1.4.2. Mir did not give orders

16. Giving an order requires a positive act and thus may not be committed by omission.³³ Mir never made volition to give (by virtue of a positive act) any explicit or implicit orders to the Police in Morok or RP. Mir calling RP members ‘brothers and sisters’ is a mere expression which must be understood in its historical context where Mir consistently supported the unification.³⁴

1.5. COMMON PURPOSE LIABILITY OF MIR UNDER ARTICLE 25(3)(D) OF THE ICC STATUTE HAS NOT BEEN ESTABLISHED

17. In the case of *Ruto*, Mr.Sang directly appealed to the perpetrators through FM statements inciting violence.³⁵ This can be distinguished from the case at hand where

²⁹ *Prosecutor v. Mudacumura*, (Decision on the Prosecutor’s Application under Article 58, Pre-Trial Chamber II) ICC-01/04-01/12-1Red (13 July 2012) ¶¶63,65

³⁰ *Prosecutor v. Delalić et al.* (Trial Judgment) ICTY-IT-96-21-T (16 November 1998) ¶378 [‘*Delalic*’]

³¹ C¶14

³² C¶15

³³ *Prosecutor v. Jadranko Prlic* (Trial Chamber Judgement) ICTY-IT-04-74-T (29 May 2013) ¶231

³⁴ C¶5

³⁵ *Prosecutor v. Ruto et al* (Decision on the Confirmation of Charges, Pre-Trial Chamber II) ICC-01/09-01/11-373 (23 January 2012) ¶354

Mir appealed to the media in general to stop spreading fake news and the government of Xeros to respond to the call of the people, with the aim of fostering peace.

18. *Mbarushimana* held that the FDLR's secretary general issuing press releases and directing media campaigns from France, did not amount to significant contributions to the alleged crimes.³⁶ In many cases, the perpetrators were unidentified and the detention by police was for reasons of investigation and interrogation. Thus, 'contribution' by Mir has not been established.

III. COUNT TWO

1. WAR CRIME UNDER ARTICLE 8(2)(B)(IV) OF THE ICC STATUTE.

1.1. THERE WAS NO INTERNATIONAL ARMED CONFLICT WHEN THE ATTACK ON 6TH MARCH TOOK PLACE

19. One or more States resorting to armed force against another State, regardless of the reasons for or the intensity of the confrontation leads to an international armed conflict.³⁷ RP claimed responsibility for the attack³⁸ on 6th March 2017 and the evidence available on the attack is not strong enough to establish overall control of Morok over RP.

1.1.1. Morok did not exercise overall control over RP

20. The degree of control exerted by a State over an armed group is used to assess the indirect participation of the State. The conflict is considered to be internationalised when the state plays a role in 'organising, co-ordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group'. It is not required that the State give specific orders

³⁶ *Prosecutor v. Mbarushimana* (Decision on the Confirmation of Charges) ICC-01/04-01/10-465-Red (16 December 2011) ¶303, 315 [*'Mbarushimana'*]

³⁷ ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (2nd edition, 2016) ¶218[*Commentary to 2nd GC*]; *Prosecutor v. Tadic* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY- IT-94-1-T (2 October 2005) ¶70

³⁸ C¶21

or direct each military operation.³⁹

21. Evidence available is insufficient to establish a link between Morok and RP. The booby traps manufactured in Morok which were found when clearing the buildings occupied by RP militia⁴⁰ is not sufficient to prove that Morok financed or trained the RP. It was a well-known fact that Morok was manufacturing cheap military weapons of such nature⁴¹ and RP being a political group formed by the 50% of Xeros population were facing economic hardships. Hence, the most logical choice of weapons for RP was the low cost weapons manufactured in their neighbouring country.
22. RP was a political group formed as a last resort to respond to the economic inequality in Xeros. Their initial campaigns were peaceful⁴² and the element of violence came into place as the opposition to RP grew within Xeros.⁴³ Morok did not have a hand in these incidents.

**1.2. DAMAGE CAUSED BY THE ATTACKS ARE NOT EXCESSIVE IN RELATION TO THE
CONCRETE AND DIRECT OVERALL MILITARY ADVANTAGE ANTICIPATED**

23. There can be lawful incidental injury and collateral damage in military activities in the context of an armed conflict.⁴⁴
24. Launching an attack which may be expected to cause incidental loss of civilian life which would be excessive in relation to the concrete and direct military advantage is

³⁹ *Prosecutor v. Katanga* (Trial Chamber II) ICC-01/04-01/07 (7 March 2014) ¶1178 [‘*Katanga Trial*’]

⁴⁰ C¶23.

⁴¹ C¶ 7

⁴² C¶14

⁴³ *ibid*

⁴⁴ Otto Triffterer and Kai Ambos, *Rome statute to the International Criminal Court: Commentary* (3rd edition 2015) [Triffterer] 377; Elements of Crimes (adopted and entered into force 9 September 2002) ICC-ASP/1/3(Part-II-B) fn 36

prohibited.⁴⁵ However, Lawrence and Schmitt⁴⁶, state that relying on the *API* standard will make the relevant Rome Statute provision redundant, since the *API* standard, is nearly impossible to meet at all but in the most egregious circumstances. Further, footnote 37 in the elements of crimes document requires a value judgement based on the requisite information available on whether the attack is excessive in relation to the concrete and direct overall military advantage. The Canadian military manual further confirms that an attack on a legitimate target may cause civilian casualties or damage to civilian object and that such damage don't make the attack unlawful.⁴⁷

25. In *Katanga*⁴⁸ the chamber had reasonable ground to believe that taking over a village which was instrumental in coordinating forces was a definitive military advantage. Similarly, the decision to attack the Xeros forces who snuck across the Morokian border and attacked several industrial towns was not excessive to the military advantage gained by Morok. The number of civilian casualties is less than the deaths of the Xeros militants. The timing of the attack necessitated a quick decision as the Xeros forces were retreating fast. The attack was initiated by Xeros without any provocation on the part of Morok and caused significant damage to several industrial towns in Morok. As per the statement released by Morok on the following day, given the nature of the offence, Morok was obliged to respond.⁴⁹

1.3. MIR CANNOT BE HELD RESPONSIBLE FOR THE CRIME COMMITTED UNDER ARTICLE 28(B) OF THE ICC STATUTE

⁴⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts Protocol I (Adopted on 8 June 1977 entered into force on 7 December 1978) 1125 UNTS 3 Article 49(1) [*'API'*]

⁴⁶ *Triffterer* 379

⁴⁷ Office of the Judge Advocate General, 'The Law of Armed Conflict at the Operational and Tactical Level' (1999) 4

⁴⁸ *Prosecutor v. Katanga and Ngudjolo Chui* (Pre Trial Chamber) ICC-01/04-01/07-55-Red (5 November 2007) ¶38

⁴⁹ C¶31

26. According to *Delalic*⁵⁰ a superior, whether military or civilian, may be held liable under the principle of superior responsibility on the basis of his *de facto* position of authority. There also needs to be at least an indirect superior subordinate relationship and effective control over subordinates.⁵¹
27. The superior being a merely influential person is not sufficient in assessing such person's authority.⁵² Further, that person should possess the material ability to prevent subordinates from committing offences or punish subordinate offenders after the commission of the crimes.⁵³
28. The defence submits that Mir did not have *de facto* authority over RP. RP was a political group formed as a response to the repeated unfair treatment directed at the 50% of Xeros Population mostly living in rural areas. The leader of the RP is Brian Frenzel who was a professor in international humanitarian law. There is no evidence to show that there was any interaction, let alone a relationship of a superior subordinate nature between the leader of RP and Mir. Brian Frenzel at any point did not indicate that the activity of RP is being overseen by another power. The fact that Morokian ex- military members were seen with the RP forces can be discounted as they are no longer affiliated with the Morokian military.

IV. COUNT THREE

1. WAR CRIME UNDER ARTICLE 8(2)(B)(VIII) OF THE ICC STATUTE

⁵⁰ *Delalic* ¶377

⁵¹ *Prosecutor v. Brdjanin* (Trial Chamber) ICTY- IT-99-36-T (1 September 2004) ¶281; *Prosecutor v. Kordic and Cerkez* (Trial Chamber) ICTY- IT-95-14/2-T (26 February 2001) ¶416

⁵² *Brdjanin* ¶281

⁵³ *Kordic* ¶416

1.1. RP DID NOT HAVE EFFECTIVE CONTROL OVER THE TERRITORY.

29. A territory is considered to be occupied when it is actually placed under the authority of the hostile army.⁵⁴ Effective control is essential for a territory to be occupied.⁵⁵ Currently, the requirements in the 2016 commentary to the Geneva conventions to establish effective control are not satisfied.⁵⁶

1.1.1. RP has not substituted as an authority to control the territory

30. Occupation requires the exercise of *actual* authority by the hostile forces as opposed to *potential* authority.⁵⁷ There must be sufficient evidence to demonstrate that such authority was in fact *established* and *exercised* by the hostile army.⁵⁸ The occupants should introduce a system of direct administration which is capable of political direction, maintaining law and order and complying with the IHL principles.⁵⁹

31. However, RP has only gained control of few strategic locations and infrastructure in the North West of Xeros.⁶⁰ There is no evidence to state that they have established or exercised any authority that is of a *governmental nature* which is capable of performing its functions and obligations.

1.1.2. The forces of Xeros have not surrendered or withdrawn

⁵⁴ Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (Adopted on 18 October 1907 entered into force 27 January 1910) Article 42

⁵⁵ *Commentary to 2nd GC* ¶302

⁵⁶ *ibid* ¶304.

⁵⁷ *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda) (Judgment) ICJ Reports 2005, 168 ¶173.

⁵⁸ *Prosecutor v. Lubanga* (Decision on Confirmation of Charges) ICC-01/04-01/06 (29 January 2007) ¶212

⁵⁹ Tristan Ferraro, 'Determining the beginning and end of an occupation under international humanitarian law' (Spring 2012) 94 885 ICRC,141

⁶⁰ C ¶29

32. An area where the combats are still ongoing cannot be considered as occupied.⁶¹ The armed hostilities between the two parties were still going on which showcases that RP has not gained the entire control of the North West part of Xeros.⁶² Therefore, the armed forces of Xeros have not completely withdrawn.
33. Without prejudice to the aforementioned arguments, it is also submitted that there is no account of evidence stating that the people who were deported are from the North West part of Xeros which is alleged by the prosecution to be under the occupation of RP. Therefore, in any event it is not the population of the ‘occupied territories’ that have been deported.

1.2. THERE WAS NO ELEMENT OF COERCION THAT FORCED THE MOVEMENT OF THESE PEOPLE

34. The displacement in a case of deportation must be ‘forced’.⁶³ The Prosecutor has the burden of proving that the acts the perpetrator performed produced the effect to deport the victims.⁶⁴ However, in the current case the people have been moving from Xeros to other countries even before November 2017. Morok complained to Xeros that the conflict was causing civilians to flee into Morok.⁶⁵ Therefore, it shows that there was no necessary link between the conduct of RP and the resulting effect of the people leaving the area. Furthermore, both Morok and RP wanted reunification. However if it is RP that created a coercive environment which forced the people to leave, the people would not have transferred to Morok which upholds the same values as RP. However, the transfer of people to Morok indicates that they were merely attempting to evade the war. Also, the fact that only a very limited number⁶⁶ was transferred showcases that there is no coercive environment in general.

⁶¹ *Eritrea-Ethiopia Claims Commission* (28 April 2004) Permanent Court of Arbitration ¶57

⁶² C¶34

⁶³ *Prosecutor v. Krstić* (Judgement) ICTY-IT-98-33-T (2 August 2001) ¶519–532

⁶⁴ *Prosecutor v. Ruto et al.* (Pre-Trial Chamber II) ICC-01/09-01/11-373(23 January 2012) ¶245

⁶⁵ C¶27

⁶⁶ C¶28

35. The acts of violence related to a state of war always give rise to some degree of terror among the civilian population and such is not considered as ‘spreading terror’.⁶⁷ In determining whether displacement was forced, only unlawful violence should be taken into account.⁶⁸ In the current case, an increasing number of persons started leaving Xeros, only when the fighting in Xeros got intensified.⁶⁹ If they departed because of the fear of being persecuted, they would not have moved to Morok. Thus, the people have moved voluntarily due to the general fear that is created as an aftermath of war.

1.2.1. Even if there were acts of violence, they do not amount to coercive acts which took away the ability to exercise genuine choice.

36. The acts must create a coercive environment where *there is no choice but to leave*.⁷⁰ In the case of *Muthaura*, in order to establish the environment of coercion, the court considered evidence such as the destruction of homes in residential areas, the brutality of the killings and the injuries, and the public announcements such as "all Luos must leave".⁷¹ In *Ruto and Sang*⁷², around 1,475 houses were burnt and destroyed, while killing and injuring hundreds of people causing deportation.

37. In the current case, the only pieces of evidence relied by the prosecution to build a coercive environment are the reports issued by two NGOs which themselves have issues of credibility and reliability along with a low probative value. Even if those reports are to be relied, they have stated that there are widespread arbitrary detentions,

⁶⁷ Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC) ¶1940.

⁶⁸ Jan Willms, ‘Without order, anything goes? The prohibition of forced displacement in non-international armed conflict’ [2009] 91 875 ICRC, 565

⁶⁹ C¶34

⁷⁰ *Prosecutor v. Jovica Stanišić and Franko Simatović* (Trial Chamber) ICTY-IT-03-69-T(30 May 2013) ¶992-993

⁷¹ *Prosecutor v. Muthaura* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute Pre-Trial Chamber II) ICC-01/09-02/11 (23 January 2012) ¶244

⁷² *Prosecutor v. Ruto and Sang* (Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang Pre-Trial Chamber II) ICC-01/09-01/11-01 (08 March 2011)¶18

torture, disappearances of civilians in the areas controlled by RP.⁷³ However in comparison to aforementioned cases, there are no records of evidence to state that the people were left with *no other choice* other than to transfer.

1.3. THE EVIDENCE RELIED BY THE PROSECUTOR TO PROVE THE CRIMES DOES NOT MEET THE BURDEN OF PROOF

38. The low probative value attached to indirect evidence such as NGO reports is proven under **Section I(2)** above. In addition, the courts have noticed that ‘the Human rights reporters have their own agendas and the neutrality of other bodies such as NGOs are always in question’.⁷⁴

39. In this case, it has only been the reports of two NGOs namely, ‘Emergency Rescue’ and ‘Journalists without borders’ that have stated that there are widespread arbitrary detentions, torture and disappearance of civilians in the areas of Xeros controlled by RP.⁷⁵ Furthermore, the provenance and reliability of the content of these reports are entirely uninvestigated and untested, which makes the probative value even lesser.⁷⁶ There has been no other indication that RP subjected the people to any form of physical or psychological coercion. Moreover, it should be noticed that ‘Journalists without borders’ was based on Xeros and ‘Emergency Rescue’ was based on Willandra. Further, “Journalists without borders” received parts of its funding from states such as Willandra. Therefore, there are doubts about reliability and credibility of these evidences other than the low probative value attached to them.

1.4. COMMON PURPOSE LIABILITY OF MIR UNDER ARTICLE 25(3)(D) OF THE ICC STATUTE HAS NOT BEEN ESTABLISHED

40. In order to prove liability under this Article, the accused’s contribution must be connected to the commission of the crime and not solely to the activities of the group

⁷³ C¶34

⁷⁴ *Ruto* ¶25

⁷⁵ C¶34

⁷⁶ *Prosecutor v. Bemba* (Decision on the Admissibility and Abuse of Process Challenges) ICC-01/05-01/08-802 (24 June 2010) ¶235, 254-255

in a general sense.⁷⁷ The accused must make a *significant* contribution to the commission of the *crime*.⁷⁸

41. Even if Morok provided military and logistical support to RP, yet it would be a contribution only to the general activities of RP. However, there is no evidence to support that Mir in any manner engaged or encouraged any form of coercive act that forced the people to leave the occupied provinces. In fact, Morok has constantly complained to Xeros that the conflict was causing civilians to flee into Morok.⁷⁹ Therefore, Mir cannot be held responsible under Article 25(3)(d) of the ICC statute.

⁷⁷ *Katanga Trial* ¶1632

⁷⁸ *Mbarushimana* ¶282

⁷⁹ C¶27