



SRMUN Charlotte 2018
Global Interdependence and the Changing Role of the United Nations
April 12-14, 2018
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Esteemed Delegates,

It is an honor to welcome you to SRMUN Charlotte 2018 and to the International Criminal Court (ICC). My name is Mei Pou Ho and I will be serving as the Director along with my respected Assistant Director, Andrea Greer. We have worked diligently on composing this background guide in order to provide you with a document that will not only heighten your awareness of International Criminal Law (ICL) in the context of the selected cases, but will also assist you in preparation for the conference.

The ICC, often referred to as “the Court,” was established by the *Rome Statute* and became fully operational in 2002. It is the first permanent, treaty based, international criminal court established to try cases against individuals accused of the most serious crimes within the international community. Independent from the United Nations, the ICC decides if the accused should be acquitted or convicted. If convicted, sentencing occurs, which may include imprisonment and reparations to the victims. The ICC is a crucial mechanism for strengthening the fight to end impunity, and more specifically, the failure to punish grave breaches of international humanitarian law.

Keeping in mind the jurisdiction of the International Criminal Court and the conference theme “*Global Interdependence and the Changing Role of the United Nations*,” we have chosen the following cases to be decided by the Court during this year’s conference:

- Case I. Situation in Uganda (The Prosecutor v. Dominic Ongwen)
- Case II. ICC v. Bosco Ntaganda (Democratic Republic of the Congo)
- Case III. ICC v. Laurent Gbagbo and Charles Blé Goudé

This committee presents an extraordinary opportunity for delegates who have a passion for mock trial and conflict arbitration to simulate cases of the ICC. For the purposes of our simulation, both cases will be considered within the *Trial Division* of the Court and delegates will have the opportunity to serve in one position as a Prosecutor, Defense Counsel, Victim’s Advocate, or Judge. Delegates serving as a Prosecutor, Defense Counsel, or Victim’s Advocate will present arguments to the Court and Judges will objectively reach decisions on each of the cases throughout the simulation. Rather than writing resolutions or reports during committee sessions, you will be responsible for drafting judgments and opinions in addition to decisions on reparations. Due to the distinct nature of the ICC and the ongoing developments, certain elements of the ICC trial process have been altered for the purposes of this simulation. **As such, an Addendum with additional guidance on the committee will be published shortly after this background guide on www.srmun.org/charlotte.**

Each delegation is required to submit a “position paper” based on their assigned roles in the Court. This committee is uniquely different from prior simulations held at SRMUN, requiring a different style of position paper: Judges will submit preliminary opinions, Prosecutors will submit indictments, and the Defense Counsel and Victims’ Representatives will submit legal briefs. More detailed guidelines on position papers along with the Rules of Procedure for the ICC will be published in the ICC Addendum. ***All ICC position papers MUST be submitted by Friday, March 23, 2018 at 11:59 pm EST via the online submission system on the SRMUN website.***

This background guide will serve as a strong foundation for your research; however, it should not be utilized as a complete means for the selected cases. This challenging and exclusive committee will require delegates to conduct extensive research beyond the parameters of this background guide. Delegates will be held accountable to a high level of engagement and participation during the conference, thus, requiring a thorough understanding of the Court and its proceedings, in addition to logical rigor and superior debating ability. Finally, we would like to congratulate you on being appointed to the Court and we send you our best regards in preparation for SRMUN Charlotte 2018!

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History of the International Criminal Court

*"There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance."*¹

—Benjamin B. Ferencz, a former Nürnberg prosecutor

On 17 July 1998, the Rome Statute established the International Criminal Court (ICC), also recognized as “the Court,” as a permanent international court to investigate, prosecute, and try cases against individuals accused of genocide, crimes against humanity, war crimes, or crimes of aggression.² Although the idea of such a body dates back to the end of the First World War, the ICC is the world’s first permanent international criminal court.³ It was not until the aftermath of World War II that the first successful international organs of criminal justice – the Nuremberg (1945-46) and Tokyo (1946-48) International Military Tribunals – were able to hold individuals legally accountable for crimes against humanity.⁴ These tribunals set out largely to punish Nazi leaders and physicians in Germany, as well as the Japanese war criminals who led their people to fight with Germany in the Second World War.⁵ Though imperfect, the Nuremberg and Tokyo Tribunals advanced international law and are regarded as archetypes for the ICC.⁶

In 1948, the United Nation’s General Assembly adopted the *Convention on the Prevention and Punishment of the Crime of Genocide*, which defined genocide as a crime under international law and permitted the International Law Committee (ILC) to explore the possibility of creating a permanent international judicial body for trying people for crimes of genocide.⁷ However, heightened geopolitical tensions brought on by the Cold War significantly hindered progress on reaching an agreement, and the consideration of a draft statute was postponed until a definition of aggression was adopted.⁸ In the meantime, the large-scale atrocities committed in the former Yugoslavia and Rwanda had prompted the United Nations to set up two ad hoc tribunals, in 1993 and 1994, respectively.⁹ The creation of these two tribunals further highlighted the need for a permanent international criminal court.¹⁰ More importantly, they have been instrumental to the development of international justice and international humanitarian law on which the ICC is based.¹¹

Court Jurisdiction

Upon ratification by 60 States, the ICC went into effect 1 July 2002.¹² Since its inauguration, there have been 25 cases before the Court with a total of 6 verdicts (9 convictions and 1 acquittal) issued by the judges.¹³ At this time, the Office of the Prosecutor (OTP) is investigating crimes allegedly committed in Sudan (for the situation in Darfur), the Democratic Republic of the Congo, Uganda, the Central African Republic, Kenya, Libya, Côte d’Ivoire,

¹ Benjamin B. Ferencz, *The Coming of International Law and Order*, November 1989, <http://www.benferencz.org/index.php?id=4&article=31> (accessed December 19, 2014).

² Coalition for the International Criminal Court, “History of the ICC,” <http://www.iccnw.org/?mod=icchistory> (accessed September 1, 2014).

³ International Criminal Court, “Frequently Asked Questions,” http://www.iccpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx (accessed September 2, 2014).

⁴ Coalition for the International Criminal Court, “History of the ICC,” <http://www.iccnw.org/?mod=icchistory> (accessed September 1, 2014).

⁵ Ibid.

⁶ Ibid.

⁷ Coalition for the International Criminal Court, “History of the ICC,” <http://www.iccnw.org/?mod=icchistory> (accessed September 1, 2014).

⁸ Ibid.

⁹ Coalition for the International Criminal Court, “History of the ICC,” <http://www.iccnw.org/?mod=icchistory> (accessed September 1, 2014).

¹⁰ Ibid.

¹¹ Ibid.

¹² International Criminal Court, “Frequently Asked Questions,” http://www.iccpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx (accessed September 2, 2014).

¹³ Ibid.

Georgia, and Mali.¹⁴ Additionally, the OTP is conducting preliminary investigations for 10 situations: Afghanistan, Colombia, Burundi, Gabon, Iraq/United Kingdom; Guinea, Nigeria, Palestine, registered vessels of Comoros, Greece and Cambodia, and Ukraine.¹⁵ The Court currently sits in The Hague, Netherlands.¹⁶ A request to the Prosecutor to carry out an investigation may be made by any State Party.¹⁷ The ICC may also initiate proceedings when requested by the UN Security Council, acting under Chapter VII of the UN Charter.¹⁸ However, the Court only has jurisdiction over individuals who are nationals of the State Parties to the Rome Statute.¹⁹ As stated in the ICC Statute, States retain the primary responsibility for the prosecution of international crimes.²⁰ Under the Geneva Conventions and Additional Protocol I of 1977, States must prosecute people accused of war crimes before their own national courts or extradite them for trial elsewhere.²¹ By virtue of the principle of complementarity, the ICC's jurisdiction is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction.²²

Structure of the Court

The Court is comprised of four organs—the Presidency, the Judicial Division, the Office of the Prosecutor, and the Registry.²³ Each organ functions in accordance with the Rome Statute.²⁴ The Presidency has three main areas of responsibility: judicial/legal functions, administration, and external relations.²⁵ This organ creates and assigns cases to Chambers, conducts judicial reviews of certain decisions of the Registrar, and arranges Court-wide cooperation agreements and negotiations among States.²⁶ It also organizes the work of the judicial divisions, although its primary function is to maintain relations with States and other entities and to promote public awareness of the Court.²⁷ The Presidency is composed of three judges of the Court—President, First Vice-President, and Second Vice-President—who are elected by their fellow judges for a term of three years.²⁸

The Judicial Division is comprised of eighteen judges, each assigned to one of three trial divisions—the Pre-Trial Division, the Trial Division, and the Appeals Division.²⁹ The primary purpose of the Pre-Trial Division is to resolve all issues before the trial phase begins by supervising how the Office of the Prosecutor carries out its investigatory and prosecutorial activities.³⁰ This chamber has the authority to decide whether to issue warrants or confirm charges

¹⁴ Ibid.

¹⁵ International Criminal Court, “Frequently Asked Questions,” http://www.iccpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx (accessed September 2, 2014).

¹⁶ Ibid.

¹⁷ International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998, http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (accessed September 1, 2014).

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998, http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (accessed September 1, 2014).

²¹ Ibid.

²² Ibid.

²³ International Criminal Court, “Structure of the Court,” http://iccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

²⁴ Ibid.

²⁵ Ibid.

²⁶ International Criminal Court, “Structure of the Court,” http://iccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

²⁷ International Criminal Court, “Structure of the Court,” http://iccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

²⁸ Ibid.

²⁹ Ibid.

³⁰ International Criminal Court, “Structure of the Court,” http://iccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

against a person.³¹ They may also decide the admissibility of evidence during the Trial stage.³² The Trial Division is made up of three judges.³³ Once an arrest warrant is issued and the charges are confirmed by the Pre-Trial Division, it determines whether the accused is innocent or guilty of the charges.³⁴ If he or she is found guilty, this division can impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment and/or a financial penalty.³⁵ The Appeals Division is comprised of the Presidency and four other judges. It can uphold, reverse, or amend the decisions made in either the Pre-Trial or Trial Divisions.³⁶ It can also revise a final judgment, conviction, or sentence and also order a new trial before a different Trial Chamber.³⁷

The Office of the Prosecutor (OTP) functions independently from the rest of the Court and is composed of three Divisions.³⁸ The Investigative Division is responsible for conducting investigations, including gathering and examining evidence, questioning persons under investigation as well as victims and witnesses.³⁹ The Prosecution Division has a role in the investigative process, but its principal responsibility is litigating cases before the various Chambers of the Court.⁴⁰ The Jurisdiction, Complementarity, and Cooperation Division, with the support of the Investigation Division, assesses and analyzes situations and cases to determine their admissibility and helps secure the cooperation required by the OTP.⁴¹

The Registry services the Chambers and the Office of the Prosecutor by conducting the non-judicial duties of the administration.⁴² The Registrar's function is to help the Court conduct fair and impartial trials by developing effective mechanisms for assisting victims, witnesses, and the defense to safeguard their rights under the Rome Statute and the Rules of Procedure and Evidence.⁴³

The Assembly of States Parties (ASP) is the Court's governing body and is comprised of the States that have ratified the Rome Statute.⁴⁴ As of 2017, 124 countries have ratified the ICC, representing all regions: 34 from African, 19 from Asia-Pacific, 18 from Eastern Europe, 28 from Latin American and the Caribbean, and 25 from Western Europe and other States.⁴⁵ The two newest State Parties to join are El Salvador (3 March 2016) and Palestine (1 April 2015).⁴⁶

³¹ Ibid.

³² Ibid.

³³ International Criminal Court, "Structure of the Court," http://icccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

³⁴ Ibid.

³⁵ Ibid.

³⁶ International Criminal Court, "Structure of the Court," http://icccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

³⁷ International Criminal Court, "Structure of the Court," http://icccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

³⁸ International Criminal Court, "Structure of the Court," http://icccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ International Criminal Court, "Structure of the Court," http://icccpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx (accessed September 1, 2014).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ International Criminal Court, "The States Parties to the Rome Statute," http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (accessed September 1, 2014).

⁴⁵ Ibid.

⁴⁶ International Criminal Court, "The States Parties to the Rome Statute," http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (accessed September 1, 2014).

Case I: Situation in Uganda (The Prosecutor v. Dominic Ongwen)

“It is the first ICC case to reach the trial stage in the Uganda Situation in relation to the 26-year conflict between the Lord’s Resistance Army (LRA) and the Government of Uganda, considered to be the longest running conflict on the African continent.”⁴⁷

-Brigit Inder, Executive Director of the Women’s Initiatives for Gender Justice

Introduction

Since achieving independence from Britain in 1962, Uganda has suffered from relentless brutality due to various armed rebellions, generally split along ethnic lines.⁴⁸ While the east African country is widely regarded by Western governments as a developmental success, having made substantial progress against AIDS and claiming a 6.7 percent average annual economic growth from 1995 to 2005, much of this growth lies in southern Uganda and its capital city, Kampala.⁴⁹ Uganda’s current president, Yoweri Museveni, seized power with a military coup in 1986.⁵⁰ Although he has been cited as bringing about stability and prosperity to the east African country, he is also accused of leading a corrupt government.⁵¹ The Acholi tribal people, who populate three of northern Uganda’s districts, credit atrocities committed by Museveni’s forces when he came to power as the catalyst leading to the rise of the Lord’s Resistance Army (LRA).⁵²

In 1987, Joseph Kony, who claimed to be religiously inspired, became the leader of the LRA and pledged to overthrow Museveni.^{53 54} The LRA waged war across five Member States in east and central Africa for nearly 30 years.⁵⁵ According to the arrest warrant issued by the ICC, the LRA is an armed rebel group that carried out an insurgency against the Government of Uganda, the Ugandan Army, and local defense units since at least 1987.⁵⁶ The LRA is alleged to be responsible for a ‘cycle of violence’ with a pattern of ‘brutalization of civilians through acts including murder, abduction, sexual enslavement, mutilation, as well as mass burnings of houses and looting of camp settlements.⁵⁷ The group has been blamed for the deaths of about 100,000 people and the abduction of 60,000 children.⁵⁸ LRA relied on the abduction of villagers and refugees, including children, to provide labor and combatants.⁵⁹ Girls were forced into sexual and domestic slavery while boys were forced to take up arms.⁶⁰

⁴⁷ Women’s Initiatives for Gender Justice. <http://4genderjustice.org/documentaries/interview-with-brigid-inder-executive-director/> (accessed December 4, 2017).

⁴⁸ Paul Raffaele, “Uganda: The Horror,” *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Paul Raffaele, “Uganda: The Horror,” *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁵² Ibid.

⁵³ Profile: Dominic Ongwen of Uganda’s LRA. <http://www.bbc.com/news/world-africa-30709581> (accessed December 5, 2017).

⁵⁴ Paul Raffaele, “Uganda: The Horror,” *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁵⁵ Profile: Dominic Ongwen of Uganda’s LRA. <http://www.bbc.com/news/world-africa-30709581> (accessed December 5, 2017).

⁵⁶ Warrant of Arrest for Dominic Ongwen, ICC-02/04-01/05-57. Available at https://www.icc-cpi.int/CourtRecords/CR2006_01112.PDF (accessed December 6, 2017).

⁵⁷ Case Information Sheet: The Prosecutor v. Dominic Ongwen. <https://www.icc-cpi.int/uganda/ongwen/Documents/OngwenEng.pdf> (accessed November 3, 2017).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Case Information Sheet: The Prosecutor v. Dominic Ongwen. <https://www.icc-cpi.int/uganda/ongwen/Documents/OngwenEng.pdf> (accessed November 3, 2017).

During its history, the LRA abducted at least 30,000 children into its ranks, in large part because they are easier to manipulate than adults.⁶¹ Through mind-control methods that instill fear, and brutality, the LRA has initiated children into the group and forced them to undergo what they call “military training.”⁶² Children were often forced to kill adults or other children who fail to obey the LRA’s strict rules or who try to escape.⁶³ The ICC’s Rome Statute does not provide jurisdiction over crimes committed by someone under 18, but Dominic Ongwen can be tried for the crimes he committed as an adult.⁶⁴ His status as a child abductee could be a mitigating factor during sentencing in the event of trial and conviction, and may also be relevant to his legal defense.⁶⁵ The prosecution alone has signaled it will call more than 70 witnesses.⁶⁶ If convicted, Ongwen faces a life sentence, or up to 30 years in prison.⁶⁷

Approximately 1.6 million Ugandan civilians, or 90 percent of northern Uganda’s population, are internally displaced due to the LRA’s terror tactics and bloody clashes between the rebel group and Uganda’s army.⁶⁸ They are forced to live in squalid conditions at government camps, where malnutrition, disease, and crime is common.⁶⁹ While the group has become weaker in recent years, LRA fighters continue to conduct smaller-scale attacks in northeastern Congo and the Central African Republic.⁷⁰

Current Situation

Dominic Ongwen is an ex-commander of the Sinia Brigade of the LRA, a guerilla group that formerly operated in northern Uganda.⁷¹ Born in a northern Ugandan village of Coorom, in the Amaru District, the LRA abducted Dominic Ongwen in 1990, when he was just under ten years old.⁷² Known as the White Ant, Ongwen was walking to school when he was abducted and later, morphed into one of LRA’s most ruthless commanders, according to the campaign group LRA Crisis Tracker.⁷³ Having suffered through the LRA’s forced recruitment as a child, he maintains that, like thousands of other Ugandans, he too, is a victim of the LRA.⁷⁴ Ongwen is the first former child soldier to face trial at the institution and the first defendant to be both alleged perpetrator and victim of the same crimes.⁷⁵

⁶¹ ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC', *ICC Press Release*, ICC-20040129-44, https://www.icccpi.int/pages/item.aspx?name=president+of+uganda+refers+situation+concerning+the+lord_s+resistance+army+_lra_+to+the+icc6 (accessed November 4, 2017).

⁶² Ibid.

⁶³ Ibid.

⁶⁴ ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC', *ICC Press Release*, ICC-20040129-44, https://www.icccpi.int/pages/item.aspx?name=president+of+uganda+refers+situation+concerning+the+lord_s+resistance+army+_lra_+to+the+icc6 (accessed November 4, 2017).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC', *ICC Press Release*, ICC-20040129-44, https://www.icccpi.int/pages/item.aspx?name=president+of+uganda+refers+situation+concerning+the+lord_s+resistance+army+_lra_+to+the+icc6 (accessed November 4, 2017).

⁶⁷ Ibid.

⁶⁸ Paul Raffaele, “Uganda: The Horror,” *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁶⁹ Paul Raffaele, “Uganda: The Horror,” *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁷⁰ Warrant of Arrest for Dominic Ongwen, ICC-02/04-01/05-57, https://www.icc-cpi.int/CourtRecords/CR2006_01112.PDF (accessed December 8, 2017).

⁷¹ Profile: Dominic Ongwen of Uganda’s LRA. <http://www.bbc.com/news/world-africa-30709581> (accessed December 5, 2017).

⁷² Conor Gaffey, “WHO IS DOMINIC ONGWEN, THE UGANDAN EX-CHILD SOLDIER ON TRIAL IN THE HAGUE?” *Newsweek*, 6 December 2016. <http://www.newsweek.com/who-dominic-ongwen-ugandan-ex-child-soldier-trial-hague528877> (accessed November 21, 2017).

⁷³ Profile: Dominic Ongwen of Uganda’s LRA. <http://www.bbc.com/news/world-africa-30709581> (accessed December 5, 2017).

⁷⁴ Ibid.

⁷⁵ Trial of ex-child soldier Dominic Ongwen to hear prosecution case. 16 January 2017. <https://www.theguardian.com/law/2017/jan/16/trial-ex-child-soldier-dominic-ongwen-to-hear-prosecution-case-icc-uganda> (accessed December 6, 2017).

In March 2002, the Sudanese government allowed Ugandan military forces to strike the LRA in southern Sudan.⁷⁶ Even though the Ugandan troops were successful in destroying the primary LRA camps in Sudan, Kony responded by increasing raids and abductions in northern Uganda.⁷⁷ LRA rebels are estimated to have abducted more than 10,000 Ugandan children between 2002 and 2003.⁷⁸ Unable to protect northern Ugandan citizens from these raids, it was around this time when Museveni ordered the Acholi population into government camps.⁷⁹ According to Ken Davies, director of the U.N.'s World Food Program (WFP) in Uganda, "In April 2002 there were 465,000 in the camps displaced by the LRA. By the end of 2003 there were 1.6 million in the camps."⁸⁰

Most of the charges against Ongwen focus on attacks on refugee camps between 2002 and 2005.⁸¹ In December 2009, his troops were responsible for one of the worst attacks in North-Eastern Congo.⁸² Known as the Makombo Massacre, LRA troops under Ongwen's command led a four-day raid on the camps, killing about 350 civilians and abducting another 250, including at least 80 children.⁸³

ICC Investigations and Findings

Court Jurisdiction

Uganda signed the Rome Statute on 17 March 1999 and ratified it on 14 June 2002, becoming a State Party to the ICC.⁸⁴ On 16 December 2003, the Ugandan Government referred the situation in Uganda to the ICC, resulting in the first referral by a State Party to the Rome Statute to be received by the Court.⁸⁵

In July 2004, the ICC prosecutor announced that the ICC was opening an investigation into the situation in northern Uganda.⁸⁶ In July 2005, the ICC issued sealed arrest warrants for war crimes and crimes against humanity for the LRA's top five leaders at that time: Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen.⁸⁷ The warrants were later unsealed in October 2005.⁸⁸ Ongwen remained at large and evaded arrest for 11 years before he turned himself into the ICC, citing fear that Kony planned to kill him.⁸⁹

The Court held the confirmation of charges hearing from 21 to 27 January 2016 at the seat of the Court.⁹⁰ This includes the sexual violence and gender-based crimes committed against women and girls, who are still suffering the

⁷⁶ Paul Raffaele, "Uganda: The Horror," *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> accessed December 8, 2017).

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Paul Raffaele, "Uganda: The Horror," *Smithsonian Magazine* (February 2005), <https://www.smithsonianmag.com/history/uganda-the-horror-85439313/> (accessed December 8, 2017).

⁸⁰ Ibid.

⁸¹ Trial of ex-child soldier Dominic Ongwen to hear prosecution case. 16 January 2017. <https://www.theguardian.com/law/2017/jan/16/trial-ex-child-soldier-dominic-ongwen-to-hear-prosecution-case-icc-uganda> (Accessed December 6, 2017).

⁸² Warrant of Arrest for Dominic Ongwen, ICC-02/04-01/05-57, https://www.iccpi.int/CourtRecords/CR2006_01112.PDF (accessed December 6, 2017).

⁸³ "Questions and Answers on the LRA Commander Dominic Ongwen and the ICC," Human Rights Watch, January 2016. <https://www.hrw.org/news/2016/12/05/questions-and-answers-lra-commander-dominic-ongwen-and-icc> (accessed November 21, 2017).

⁸⁴ "ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC", *ICC Press Release*, ICC-20040129-44. Available at <https://www.icc-cpi.int/pages/item.aspx?name=president+of+uganda+refers+situation+concerning+the+lord+s+resistance+army+lra+to+the+icc6> (accessed November 4, 2017).

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Trial of ex-child soldier Dominic Ongwen to hear prosecution case. 16 January 2017. <https://www.theguardian.com/law/2017/jan/16/trial-ex-child-soldier-dominic-ongwen-to-hear-prosecution-case-icc-uganda> (accessed December 6, 2017).

⁸⁸ Ibid.

⁸⁹ Marlise Simons, "Dominic Ongwen, Ugandan Rebel Leader, Denies Charges at I.C.C. Trial," *New York Times*, 6 December 2016. <https://www.nytimes.com/2016/12/06/world/africa/dominic-ongwen-uganda-rebel-hague-icc.html> (accessed November 22, 2017).

⁹⁰ Ibid.

consequences of those incidents.⁹¹ On 23 March 2016, Pre-Trial Chamber II confirmed the 70 counts of crimes brought by the Prosecutor against Ongwen and committed him to trial before a Trial Chamber.⁹²

In addition to being the first former child soldier brought before the Court, this is a special case because this is the first time before the ICC that charges of forced pregnancy and forced marriage have been brought by the Office of the Prosecutor (OPT).⁹³ These charges, combined with the characterization of sexual and gender-based violence as other forms of criminality, such as torture and enslavement, are unique features of the Ongwen case.⁹⁴ Prior to the Hearing, the Women's Initiatives for Gender Justice expressed its satisfaction to see justice being taken seriously for the victims of LRA crimes.⁹⁵

Charges against the Accused

Dominic Ongwen is charged with 70 counts of war crimes and crimes against humanity, the highest number of charges ever brought by the OPT in a case before the ICC.⁹⁶ These charges also include the largest number and widest range of charges for sexual and gender-based crime, including rape, sexual slavery, forced marriage and forced pregnancy with charges of torture, enslavement and outrages upon personal dignity also underpinned by acts of sexual and gender-based violence.⁹⁷ The lack of respect towards the victims who are entitled to their self-respect and respect toward others self-worth. Details of charges are as follows:

War crimes: *attack against the civilian population; murder and attempted murder; rape; sexual slavery; torture; cruel treatment; outrages upon personal dignity; destruction of property; pillaging; the conscription and use of children under the age of 15 to participate actively in hostilities;*

Crimes against humanity: *murder and attempted murder; torture; sexual slavery; rape; enslavement; forced marriage as an inhumane act; persecution; and other inhumane acts.*⁹⁸

Application of International Criminal Law

The International Criminal Court's application and interpretation of international law pursuant to Article 21 of the Rome Statute must remain consistent with internationally recognized human rights.⁹⁹ According to Article 21, the principal sources of international law that the Court shall apply include the Rome Statute; Elements of Crimes and its Rules of Procedure and Evidence; and, where appropriate, relevant treaties and the principles and rules of international law.¹⁰⁰ As they relate to the charges against the accused, Article 7 of the Rome Statute elucidates actions identified as crimes against humanity, while Article 8 expounds upon war crimes as they relate to Common Article 3 of the Geneva Conventions of 1949.¹⁰¹

⁹¹ Women's Initiatives for Gender Justice statement, 'First ICC confirmation of charges hearing in the Uganda situation', 20 January 2016, <http://4genderjustice.org/first-icc-confirmation-of-charges-hearing-in-the-uganda-situation/> (accessed December 6, 2017).

⁹² Decision on the confirmation of charges against Dominic Ongwen. ICC-02/04-01/15-422-Red. (accessed December 6, 2017).

⁹³ Ibid.

⁹⁴ "Questions and Answers on the LRA Commander Dominic Ongwen and the ICC," Human Rights Watch, January 2016. <https://www.hrw.org/news/2016/12/05/questions-and-answers-lra-commander-dominic-ongwen-and-icc> (accessed November 21, 2017).

⁹⁵ Ibid.

⁹⁶ First ICC Trial in the Uganda Situation. 5 December 2016. <http://www.4genderjustice.org/pub/First-ICC-Trial-in-Uganda-Situation-Statement.pdf> (accessed December 6, 2017).

⁹⁷ Ibid.

⁹⁸ Case Information Sheet: Situation in Uganda. The prosecutor v. Dominic Ongwen. January 2017. <https://www.icc-cpi.int/uganda/ongwen/Documents/OngwenEng.pdf> (accessed December 6, 2017).

⁹⁹ *The Rome Statute of the International Criminal Court*, International Criminal Court, 17 July 1998. (accessed December 26, 2017).

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

Legal Instruments and Documents

Under the Additional Protocols to the Four Geneva Conventions of 1949 (1977), 15 is the minimum age of recruitment in armed conflict and is applied to both governmental and non-governmental parties, as well as in both internal and international armed conflict.¹⁰² Article 77(2) of Additional Protocol I is applicable to international conflict and states:

“The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavor to give priority to those who are oldest.”¹⁰³

Furthermore, Article 4(3)(c) of the Additional Protocol II, of the Additional Protocols to the Four Geneva Conventions of 1949 (1977), applies to non-international armed conflicts and states: “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”¹⁰⁴

The African Charter on the Rights and Welfare of the Child is currently the only regional treaty to address the issue of child soldiers.¹⁰⁵ It was adopted and enforced by the African Union in 1999 and, without exception, defines a child as anyone under the age of 18.¹⁰⁶ Furthermore, Article 22.2 of the Charter says, “States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.”¹⁰⁷

Allegedly the commander of the Sinia Brigade of the LRA at the time of his arrest, Ongwen is accused as a direct perpetrator, indirect perpetrator and indirect co-perpetrator under Article 25(3)(a) of the Rome Statute, and alternatively for ordering, soliciting or inducing the crimes, and for contributing in any other way to the commission or attempted commission of the crimes, under Articles 25(3)(b) and (d)(i) and (ii) respectively.¹⁰⁸ Ongwen is also charged in the alternative as a commander under Article 28(a) of the Rome Statute.¹⁰⁹

Case Separation

On 6 February 2015, Pre-Trial Chamber II severed the proceedings against Ongwen from the case of The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen.¹¹⁰ As the three other suspects in the case either had not appeared or had not been apprehended yet, the Chamber deemed it necessary to separate the case to not delay the pre-trial proceedings against Ongwen.¹¹¹ After having consulted the Prosecutor, the Chamber decided not to proceed against the other suspects in absentia.¹¹²

¹⁰² “International Standards,” Child Soldiers International. <https://www.child-soldiers.org/international-standards> (accessed December 9, 2017).

¹⁰³ Decision on the confirmation of charges against Dominic Ongwen. ICC-02/04-01/15-422-Red. https://www.icc-cpi.int/CourtRecords/CR2016_02331.PDF (accessed December 6, 2017).

¹⁰⁴ Ibid.

¹⁰⁵ “International Standards,” Child Soldiers International. <https://www.child-soldiers.org/international-standards> (accessed December 9, 2017).

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ “International Standards,” Child Soldiers International. <https://www.child-soldiers.org/international-standards> (accessed December 9, 2017).

¹⁰⁹ Decision on the confirmation of charges against Dominic Ongwen. ICC-02/04-01/15-422-Red. https://www.icc-cpi.int/CourtRecords/CR2016_02331.PDF (accessed December 6, 2017).

¹¹⁰ ICC press release, ‘ICC Pre-Trial Chamber II separates Dominic Ongwen case from Kony et al. case’. Available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1088> (accessed December 6, 2017).

¹¹¹ Ibid.

¹¹² Ibid.

Current Situation of the Case

*“In the name of God, I deny all these charges...I am not the LRA... It is the LRA who abducted people in northern Uganda. It is the LRA who killed people.”*¹¹³
-Ongwen to the Court in December 2016.

In recent years, Joseph Kony’s group has reportedly diminished to only approximately 100 men.¹¹⁴ Ongwen told the court in December 2016 that he was “one of the people against whom the LRA committed atrocities” and should not be on trial.¹¹⁵ Fatou Bensouda, who is leading the prosecution team, told the court at the earlier hearing that past victimization as a child might be a mitigating factor in sentencing but was not a defense of Ongwen’s alleged decision to wholeheartedly embrace violence.¹¹⁶

Ongwen is the only former child abductee to face charges before the ICC.¹¹⁷ Although the ICC issued arrest warrants in 2005 for Ongwen and four other LRA commanders, most notably the leader of the LRA, Joseph Kony, only Ongwen is in ICC custody and currently facing trial.¹¹⁸ To date, three have since died, and Kony is reportedly hiding near South Sudan.¹¹⁹

Based on ICC records, more than 4,100 victims have been granted the right to participate in proceedings in the Ongwen case.¹²⁰ To date, this is the second largest number of victims to be recognized in a case to reach the trial stage.¹²¹

Committee Directive

With the number of firsts that the case against Dominic Ongwen presents, the Defense Council has the unique challenge of not only ensuring that the defendant’s rights as a perpetrator are met, but also his situation as a victim. As the first former child soldier to be brought before the Court, the Defense Council is responsible for making this a mitigating factor in the crimes for which he is accused. It would behoove delegates to become familiar with the Geneva Convention. In particular, the factors that prosecution could be dependent on age. In addition, The Rome Statute contains several grounds on which criminal responsibility can be included or excluded. Article 26 addresses the exclusion of jurisdiction over persons under eighteen. Because the ICC does not have jurisdiction over individuals younger than eighteen years old, should this be taken into account?

Some of the questions delegates should be able to answer include but are not limited to the following: In considering that Ongwen was abducted by the LRA and enlisted as a child soldier, is he solely responsible for the crimes he is accused of committing? With Ongwen’s trial being a case of many firsts, what relevant case studies, treaties, and rules of international law that delegate can use for their arguments, the decision whether Ongwen should be convicted, and ultimately his punishment, if applicable? Even though this is the first time that the ICC is

¹¹³ ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC', *ICC Press Release*, ICC-20040129-44 <https://www.icc-cpi.int/pages/item.aspx?name=president+of+uganda+refers+situation+concerning+the+lord+s+resistance+army+ira+to+the+icc6> (accessed November 4, 2017).

¹¹⁴ Marlise Simons, “Dominic Ongwen, Ugandan Rebel Leader, Denies Charges at I.C.C. Trial,” *New York Times*, 6 December 2016. <https://www.nytimes.com/2016/12/06/world/africa/dominic-ongwen-uganda-rebel-hague-icc.html> (accessed November 22, 2017).

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Marlise Simons, “Dominic Ongwen, Ugandan Rebel Leader, Denies Charges at I.C.C. Trial,” *New York Times*, 6 December 2016. <https://www.nytimes.com/2016/12/06/world/africa/dominic-ongwen-uganda-rebel-hague-icc.html> (accessed November 22, 2017).

¹¹⁸ Marlise Simons, “Dominic Ongwen, Ugandan Rebel Leader, Denies Charges at I.C.C. Trial,” *New York Times*, 6 December 2016. <https://www.nytimes.com/2016/12/06/world/africa/dominic-ongwen-uganda-rebel-hague-icc.html> (accessed November 22, 2017).

¹¹⁹ *Ibid.*

¹²⁰ Warrant of Arrest for Dominic Ongwen, ICC-02/04-01/05-57. Available at https://www.icc-cpi.int/CourtRecords/CR2006_01112.PDF (accessed December 4, 2017)

¹²¹ *Ibid.*

presented with such case, is there any precedent case that could be brought forward to the Court? Should the LRA be accused as an entity for the purposes of this case, or should Ongwen be accused separately while ignoring his victim's status?

Case II: ICC v. Bosco Ntaganda (Democratic Republic of the Congo)

Introduction

Located in the African Great Lakes region, the Democratic Republic of Congo (DRC) is the second-largest state in the African continent at about 2.3 million square kilometers in size.¹²² It has an estimated population of 75 million, making it the fourth most populous state in Africa, and the 19th most populous state in the world.¹²³ In terms of natural resources, the DRC is one of the richest states in the world.¹²⁴ The land contains a multitude of natural resources, such as cobalt, copper, petroleum, gold, diamonds, silver, and timber.¹²⁵ Yet, in spite of the DRC's wealth in natural resources, a decades-long conflict has impoverished the state, resulting in it having the fourth lowest GDP per capita in the world after Malawi, Burundi, and the Central African Republic.¹²⁶

The Rwandan genocide in 1994 had a profound impact on the DRC's stability.¹²⁷ In 1996, the state experienced the First Congo War, and just two years later, in 1998, it fell into the Second Congo War.^{128 129} The two wars came to be known as "Africa's World War," as several neighboring states, including Rwanda, Uganda, Burundi, Central African Republic, Congo Brazzaville, and Angola, were also involved.¹³⁰ Since 1998, Congolese government forces faced more than 25 different armed militia and rebel groups, particularly in the country's eastern region.¹³¹ Altogether, approximately 5.4 million people reportedly died due to war related causes, making the conflict in the DRC one of the world's deadliest conflicts since World War II.¹³²

The Situation in Ituri

The Democratic Republic of Congo's regions of Ituri and North and South Kivu experienced the bulk of the fighting between government forces and local rebel groups, giving it the reputation as the DRC's bloodiest corner.¹³³ Ituri and the larger region is rich in natural resources such as gold, diamonds, and timber.¹³⁴ The desire to gain control of these resources essentially fueled the ongoing conflict between Ugandan and Rwandan militaries.¹³⁵ As the clashes over the region's mineral-rich resources intensified, so did the longstanding feud between ethnic Hema and Lendu groups.¹³⁶ The Lendu began identifying with ethnic Hutus, and the Hema with ethnic Tutsis.¹³⁷ Ituri has historically been the site of conflict between ethnic Hema and Lendu communities, with what started as localized land disputes between the two communities dating as far back as Belgium's rule over Congo in the late-nineteenth century.¹³⁸

¹²² "About DRC: Did You Know?" Eastern Congo Initiative. <http://www.easterncongo.org/about-drc/did-you-know> (accessed October 24, 2017).

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ "About DRC: Did You Know?" Eastern Congo Initiative. <http://www.easterncongo.org/about-drc/did-you-know> (accessed October 24, 2017).

¹²⁶ *Ibid.*

¹²⁷ "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹²⁸ *Ibid.*

¹²⁹ "Situation in the Democratic Republic of the Congo," The Hague Justice Portal. <http://www.haguejusticeportal.net/index.php?id=6174> (accessed October 16, 2017).

¹³⁰ *Ibid.*

¹³¹ "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ "About DRC: Did You Know?" Eastern Congo Initiative. <http://www.easterncongo.org/about-drc/did-you-know> (accessed October 24, 2017).

¹³⁵ "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹³⁶ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

Tensions intensified in 1994, when the disputes became entwined with the Hutu-led genocide of Tutsis in neighboring Rwanda.¹³⁹ During the same time as the Rwandan genocide, widespread discontent spread throughout then-named Zaire (present day DRC) as a result of the gradual erosion of all state institutions under President Mobutu Sese Seko's three-decade dictatorship.¹⁴⁰ By 1996, a rebel group backed by Rwanda and Uganda, known as the Alliance of Democratic Forces for the Liberation of Congo (AFDL), seized control over Zaire.¹⁴¹ The AFDL renamed the country the Democratic Republic of Congo, and in 1997, the organization's leader, Laurent Kabila, declared himself president.¹⁴² Once in power, Kabila quickly cut ties with his former allies and gained growing support from Angola, Zimbabwe, Burundi, and *Mai-Mai*, an anti-Tutsi Congolese militia.¹⁴³

In spite of the United Nations' (UN) involvement and the signing of the Sun City peace agreement in April 2002, the fighting between warring sides continued.¹⁴⁴ In August 2002, the *Hema Union des patriotes congolais* (UPC), alongside the Ugandan army, launched a violent attack to gain control of Bunia, Ituri's main town.¹⁴⁵ The campaign intentionally targeted and killed ethnic Lendu, Bira, and Nande civilians.¹⁴⁶ The UPC controlled Bunia from August 2002 to March 2003, during which it created a Hema-controlled government under UPC's leader, Thomas Lubanga.¹⁴⁷ Between November 2002 and June 2003, the UPC, led by Lubanga, allegedly killed about 800 civilians in the gold mining region of Mongbwalu on the basis of their ethnicity.¹⁴⁸ Numerous rebel groups and smaller factions operated in Ituri from 2002 onward, though the three main groups perpetrating the violence were the UPC, the *Ngiti Force de resistance patriotique en Ituri* (FRPI), and the *Lendu Front des nationalistes et integrationnistes* (FNI).¹⁴⁹ As a policy implemented by the rebel groups, children were often recruited and enlisted to take part in the fighting.¹⁵⁰ Described as an "army of children," the UPC forcibly recruited children as young as seven, including girls, for military service.¹⁵¹

Unable and unwilling to charge the perpetrators of these crimes in national courts, Congolese government made a self-referral to the International Criminal Court (ICC) in 2002.¹⁵² In September 2003, the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) initiated its peacekeeping mission in Ituri.¹⁵³ In 2004, the Congolese government finalized a peace agreement with the rebel organizations.¹⁵⁴ Similar peace agreements followed suit in Ituri in 2007 and Kivu in 2009.¹⁵⁵ In spite of these agreements, armed conflict continued in the following years, often comprising of serious international crimes such as the illegal recruitment of child soldiers, forced displacement, mass murder, and sexual and gender-based violence.¹⁵⁶

¹³⁹ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ "Situation in the Democratic Republic of the Congo," The Hague Justice Portal. <http://www.haguejusticeportal.net/index.php?id=6174> (accessed October 16, 2017).

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁵² "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹⁵³ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ "Bosco Ntaganda: Background," International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

Current Situation

Bosco Ntaganda served in a number of armed militia and rebel groups throughout eastern DRC from as early as 1990.¹⁵⁷ He was commonly known as “The Terminator” among his peers due to his reputation for brutality and of leading from the front and directly participating military operations.¹⁵⁸ Ntaganda was alleged to be the Deputy Chief of Staff and Commander of Operations of rebel organization, the *Union des Patriotes Congolais/Forces Patriotiques pour la Liberation du Congo* (Patriotic Forces for the Liberation of Congo) (UPC/FPLC).¹⁵⁹ From 2002 through 2003, the armed militia was involved in two conflicts in the Ituri Province of DRC.¹⁶⁰ The first conflict involved widespread, systematic attack against civilians perceived to be non-Hema, as part of an organizational policy implemented by the UPC/FPLC.¹⁶¹ The second was an armed conflict between the UPC/FPLC and other rebel groups.¹⁶²

In addition to his apparent leadership of the UPC/FPLC, Ntaganda also held a significant position of power in the National Congress for the Defense of the People (CNDP).¹⁶³ Following a 2009 peace agreement between the CNDP and the Congolese government, Ntaganda went on to serve as a general in the Congolese army until 2012.¹⁶⁴ In April 2012, Ntaganda and a group of Congolese soldiers defected from the army to form M23, a rebel group that was notorious for committing several crimes against humanity and war crimes, including summary executions, forced enlistment of child soldiers, and mass rape.¹⁶⁵

Under the jurisdiction of the ICC in the Democratic Republic of Congo, six military leaders have been charged for human rights abuses and war crimes.¹⁶⁶ In 2012, the Court found UPC/FPLC leader Thomas Lubanga guilty of “war crimes of enlisting and conscripting of children under the age of 15 years and using them actively participate in hostilities.”¹⁶⁷ He was sentenced to 14 years imprisonment.¹⁶⁸ In 2014, Germain Katanga was sentenced to 12 years imprisonment for “complicity in murders and attacks on civilians.”¹⁶⁹ After evading arrest for six years, Bosco Ntaganda voluntarily surrendered himself at the United States embassy in Kigali, Rwanda, and requested to be transferred to the ICC in The Hague on 18 March 2013.¹⁷⁰

ICC Investigation and Findings

Court Jurisdiction

The Democratic Republic of Congo ratified the Rome Statute of the International Criminal Court (ICC) on 11 April 2002.¹⁷¹ According to the Rome Statute, the ICC only has jurisdiction (*rations temporis*) to prosecute crimes

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ “The Prosecutor v. Bosco Ntaganda: Alleged crimes (non-exhaustive list),” International Criminal Court. <https://www.iccpi.int/drc/ntaganda/pages/alleged-crimes.aspx> (accessed October 19, 2017).

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² “The Prosecutor v. Bosco Ntaganda: Alleged crimes (non-exhaustive list),” International Criminal Court. <https://www.iccpi.int/drc/ntaganda/pages/alleged-crimes.aspx> (accessed October 19, 2017).

¹⁶³ “Bosco Ntaganda: Background,” International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Anna Kuniewicz, “Case: International Criminal Court Prosecutor v. Bosco Ntaganda,” *Chicago-Kent Journal of International and Comparative Law* (January 1, 2015). <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1126&context=ckjicl> (accessed October 22, 2017).

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Anna Kuniewicz, “Case: International Criminal Court Prosecutor v. Bosco Ntaganda,” *Chicago-Kent Journal of International and Comparative Law* (January 1, 2015). <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1126&context=ckjicl> (accessed October 22, 2017).

¹⁷⁰ “Bosco Ntaganda: Background,” International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁷¹ “Situation in the Democratic Republic of the Congo,” The Hague Justice Portal. <http://www.haguejusticeportal.net/index.php?id=6174> (accessed October 16, 2017).

committed after the Rome Statute's ratification in the host country.¹⁷² The Court may exercise jurisdiction only after a referral of a situation by a State party, the United Nations Security Council, or after the initiation of an investigation by the Prosecutor.¹⁷³ Once a situation has been referred, the Court has jurisdiction over crimes listed in the Rome Statute, including genocide, crimes against humanity, war crimes and the crime of aggression.¹⁷⁴ Even though suspected war crimes and crimes against humanity were reported to have occurred as early as the 1990s, during the First Congo War, the ICC could only look at crimes committed after 2002, following its establishment of jurisdiction in DRC.¹⁷⁵

Following a preliminary investigation by the ICC Office of the Prosecutor (OTP) beginning on 3 March 2004, the ICC launched the first investigation in its history on 21 June 2004.¹⁷⁶ The Court focused its investigation on several leaders of armed rebel groups in the Ituri region, as well as the North and South Kivu provinces in eastern DRC, who were suspected of committing crimes against humanity and war crimes.¹⁷⁷

Charges against the Accused

The Court held the confirmation of charges hearing for Bosco Ntaganda on 10-14 February 2014.¹⁷⁸ At that time, the prosecution called 71 witnesses when presenting its evidence to the court, in which three victims provided testimony and five victims presented their opinions and apprehensions to the court.¹⁷⁹ Additionally, the two parties disclosed roughly 69,000 pages of evidence to submit to the Chamber for its determination.¹⁸⁰ Based on the evidence submitted, the Chamber confirmed the charges against Ntaganda on 9 June 2014 and committed him to trial before a Trial Chamber.¹⁸¹ On 9 June 2014, Pre-Trial Chamber II unanimously confirmed the charges against Bosco Ntaganda and committed the case to trial.¹⁸²

Ntaganda faces 13 counts of war crimes, including murder and attempted murder; attacking civilians; sexual assault of civilians; rape; pillaging; displacement of civilians; destruction of enemy property; attacking protected objects; and the rape, sexual slavery, enlistment, and forced conscription of child soldiers under the age of 15 years.¹⁸³ Additionally, he is accused of five counts of crimes against humanity: murder and attempted murder, rape, sexual slavery, persecution, and forcible transfer of populations.¹⁸⁴ All 18 criminal charges Ntaganda faces were allegedly committed over the course of one year, from 2002 to 2003, in the Ituri Province, DRC.¹⁸⁵ According to ICC

¹⁷² Ibid.

¹⁷³ "Justice in the Democratic Republic of Congo: A background," The Hague Justice Portal, December 17, 2009. <http://www.haguejusticeportal.net/index.php?id=11284> (accessed October 16, 2017).

¹⁷⁴ Ibid.

¹⁷⁵ "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹⁷⁶ "Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda," International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁷⁷ "Democratic Republic of Congo," Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

¹⁷⁸ "Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda," International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁷⁹ "The Trial of Bosco Ntaganda at the ICC," Open Society Foundations, June 2017. <https://www.opensocietyfoundations.org/fact-sheets/trial-bosco-ntaganda-icc> (accessed October 23, 2017).

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² "The Prosecutor v. Bosco Ntaganda: Alleged crimes (non-exhaustive list)," International Criminal Court. <https://www.icccpi.int/drc/ntaganda/pages/alleged-crimes.aspx> (accessed October 19, 2017).

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ "The Prosecutor v. Bosco Ntaganda: Alleged crimes (non-exhaustive list)," International Criminal Court. <https://www.icccpi.int/drc/ntaganda/pages/alleged-crimes.aspx> (accessed October 19, 2017).

Prosecution:

*“Bosco Ntaganda is charged pursuant to different modes of liability: direct perpetration, indirect co-perpetration (article 25(3)(a) of the Statute); ordering, inducing (article 25(3)(b) of the Statute); any other contribution to the commission or attempted commission of crimes (article 25(3)(d) of the Statute); or as a military commander for crimes committed by his subordinates (article 28(a) of the Statute).”*¹⁸⁶

On 2 September 2015, Bosco Ntaganda’s trial opened before Trial Chamber VI.¹⁸⁷ The prosecution began presenting its evidence on 15 September 2015.¹⁸⁸ The Court has granted 2149 victims the right to participate in the Ntaganda trial.¹⁸⁹ They are represented by legal representatives Sarah Pellet and Dmytro Suprun.¹⁹⁰ In his opening speech, Ntaganda pled “not guilty” to all charges.¹⁹¹

Application of International Criminal Law

Legal Documents

The ICC Pre-Trial Chamber I issued two warrants of arrest for Ntaganda.¹⁹² The first was issued under seal on 22 August 2016, and later unsealed on 28 April 2008.¹⁹³ Pre-Trial Chamber II issued the second warrant of arrest on 13 July 2012.¹⁹⁴ Ntaganda evaded arrest from the time his first warrant was issued in 2006 until 22 March 2013, when he voluntarily surrendered to the ICC’s custody.¹⁹⁵ Ntaganda’s first arrest warrant was issued under reasonable grounds to believe that Ntaganda used his position of power as Deputy Chief of General Staff for Military Operations within the FPLC to actively implement an organizational policy to forcibly conscript child soldiers under the age of fifteen to partake in hostilities.¹⁹⁶

Crimes of War

Article 8 of the Rome Statute defines war crimes as “grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts ‘not of an international character’ listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale.”¹⁹⁷

On 3 January 2017, Trial Chamber VI confirmed its jurisdiction over Counts 6 and 9 (war crimes of rape and sexual slavery of child soldiers), rejecting the Defense’s challenge.¹⁹⁸ The defense claimed that the two counts in question, war crimes of rape and sexual slavery of child soldiers, were not within the Court’s jurisdiction, as according to Common Article 3 of the Geneva Conventions of 1949, “war crimes may not be committed by members of an armed

¹⁸⁶ Ibid.

¹⁸⁷ “Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda,” International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ “Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda,” International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁹¹ “DR Congo's Bosco Ntaganda pleads not guilty at ICC trial,” BBC News, 2 September 2015. <http://www.bbc.com/news/world-africa-34122613> (accessed October 16, 2017).

¹⁹² “Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda,” International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ “Situation in the Democratic Republic of Congo: The Prosecutor v. Bosco Ntaganda,” International Criminal Court, January 2017. <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf> (Accessed October 22, 2017).

¹⁹⁶ “Bosco Ntaganda: Background,” International Justice Monitor. <https://www.ijmonitor.org/bosco-ntaganda-background/> (accessed October 16, 2017).

¹⁹⁷ International Criminal Court, The Rome Statute of the International Criminal Court, 17 July 1998.

¹⁹⁸ “Ntaganda case: ICC Trial Chamber VI rejects challenge to jurisdiction over two war crimes counts,” International Criminal Court, 4 January 2017. <https://www.icc-cpi.int/Pages/item.aspx?name=PR1267> (accessed October 21, 2017).

force against members of the same armed force.”¹⁹⁹ According to the defense, Counts 6 and 9 were perpetrated by and against members of the same armed force, and therefore did not fall within the subject matter jurisdiction of the Court.²⁰⁰ On the other hand, as argued by the Prosecution, Article 8(2)(e)(vi) of the Rome Statute provides “that the ICC has jurisdiction over war crimes of rape and sexual slavery in the context of non-international armed conflict as well as war crimes of other types of sexual violence, including those that violate Common Article 3 of the Geneva Conventions.”²⁰¹

After examining both the Prosecution’s and the Defense’s arguments, ICC Trial Chamber VI found:

*Limiting the scope of protection in the manner proposed by the Defense is contrary to the rationale of international humanitarian law, which aims to mitigate the suffering resulting from armed conflict. Members of the same armed force are not as such excluded as potential victims of the war crimes of rape and sexual slavery, whether as a result of the way these crimes have been incorporated in the Rome Statute, or on the basis of the framework of international humanitarian law, or international law more generally. There is never a justification to engage in sexual violence against any person and such conduct [rape and sexual slavery] is prohibited at all times, both in times of peace and during armed conflicts, and against all persons, irrespective of any legal status.*²⁰²

Current Situation of the Case

“Seeing Bosco Ntaganda in the docket sends a powerful message to others implicated in grave abuses in Congo that one day they too may be brought to justice,” said Geraldine Mattioli-Zeltner, international justice advocacy director at Human Rights Watch.²⁰³ Having referred itself to the ICC in 2004, the DRC government has been mostly cooperative with the ICC investigation inside its borders.²⁰⁴ In 2015, the State adopted a bill integrating Rome Statute crimes with Congolese criminal law, furthering the State’s cooperation with the ICC.²⁰⁵ The law entered into force in January 2016, thereby amending DRC’s military and criminal codes to include Rome Statute crimes and general principles of law, as well as establishing the competence of civilian criminal courts for all cases of genocide and crimes against humanity.²⁰⁶ Not only this, but the DRC has also continued to enforce the ICC’s sentences imposed upon rebel leaders Thomas Lubanga and Germain Katanga.²⁰⁷

The decision by ICC Trial Chamber VI to uphold its jurisdiction over Counts 6 and 9 (war crimes of rape and sexual slavery of child soldiers) marks the first time the ICC has considered whether sexual and gender-based crimes against one’s own troops may be considered war crimes.²⁰⁸ As such, the Court’s findings for Counts 6 and 9 will play a significant role in shaping future international criminal law, especially as it pertains to the Rome Statute’s

¹⁹⁹ “ICC Asserts Jurisdiction over Rape, Sexual Slavery Charges against Ntaganda,” International Justice Resource Center, 17 January 2017. <http://www.ijrcenter.org/2017/01/17/icc-asserts-jurisdiction-over-rape-sexual-slavery-charges-againstntaganda/> (accessed October 21, 2017).

²⁰⁰ “Ntaganda case: ICC Trial Chamber VI rejects challenge to jurisdiction over two war crimes counts,” International Criminal Court, 4 January 2017. <https://www.icc-cpi.int/Pages/item.aspx?name=PR1267> (accessed October 21, 2017).

²⁰¹ “ICC Asserts Jurisdiction over Rape, Sexual Slavery Charges against Ntaganda,” International Justice Resource Center, 17 January 2017. <http://www.ijrcenter.org/2017/01/17/icc-asserts-jurisdiction-over-rape-sexual-slavery-charges-againstntaganda/> (accessed October 21, 2017).

²⁰² “Ntaganda case: ICC Trial Chamber VI rejects challenge to jurisdiction over two war crimes counts,” International Criminal Court, 4 January 2017. <https://www.icc-cpi.int/Pages/item.aspx?name=PR1267> (accessed October 21, 2017).

²⁰³ ‘ICC: Trial of Bosco Ntaganda for Congo Crimes – Hague Prosecutor, National Courts Should Close “Impunity Gap”,’ Human Rights Watch, 1 September 2015. <https://www.hrw.org/news/2015/09/01/icc-trial-bosco-ntaganda-congocrimes> (accessed October 16, 2017).

²⁰⁴ “Democratic Republic of Congo,” Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ “Democratic Republic of Congo,” Coalition for the International Criminal Court, <http://www.coalitionfortheicc.org/country/democratic-republic-congo> (accessed October 21, 2017).

²⁰⁸ “ICC Asserts Jurisdiction over Rape, Sexual Slavery Charges against Ntaganda,” International Justice Resource Center, 17 January 2017. <http://www.ijrcenter.org/2017/01/17/icc-asserts-jurisdiction-over-rape-sexual-slavery-charges-againstntaganda/> (accessed October 21, 2017).

application of Common Article 3 of the Geneva Conventions and the types of acts considered under the definition of war crimes.²⁰⁹

Committee Directive

While this guide provides a background of Bosco Ntaganda's case, delegates should utilize additional resources in order to determine evidence and the application of international law, as well as to understand their respective roles in the case. For this reason, it is imperative for delegates to thoroughly study and be able to apply the various articles of the Rome Statute, Geneva Conventions of 12 August 1949, and all other related legal documents and UN treaties pertaining to the case. The Prosecutor retains the burden of proving, without reasonable doubt, all elements of crimes against humanity and crimes of war were present in order for the Court to convict the accused. Likewise, the Defense Counsel must be able to maintain the general rights of the defendant. Although the case against Bosco Ntaganda already contributes to the jurisprudence on sexual and gender-based war crimes, in the final decision, the Judge will need to determine the limits of the law while also determining the status of child soldiers who were victims of sexual crimes while actively partaking in hostilities. The Prosecutor, the Defense Counsel, and the Victim's Advocate will all play an integral role in influencing the Court's final decision.

In determining responsibility, delegates must be answer the following non-exhaustive list of questions: Is Bosco Ntaganda, directly or indirectly, guilty of the acts he is accused of committing? Was he personally responsible for implementing and enforcing a policy to recruit and enlist children under age 15 to take part in fighting? Did he intend for child soldiers to be sexually assaulted and used for sexual slavery? If no, was he aware these acts were being committed under his leadership? Were the violent attacks under his leadership between 2002 and 2003 widespread or systematic? In what ways do the Protocols of the Geneva Conventions support the Prosecutor's charges? In what ways do the Protocols of the Geneva Conventions support the Defense's points? What other treaties and case studies not previously listed could be referenced to support either side of this case?

²⁰⁹ Ibid.

Case III: ICC v. Laurent Gbagbo and Charles Blé Goudé

****For simulation purposes under this committee, the Court will only hold proceedings on Laurent Gbagbo's current case situation. ****

Introduction

The Ivory Coast, officially the Republic of Côte d'Ivoire, is a West African state bordered by Liberia, Guinea, Mali, Burkina Faso, and Ghana, with coastline along the Gulf of Guinea.²¹⁰ It is a democratic republic ruled by a freely elected government with an estimated population of over 22 million.²¹¹ French and Portuguese merchants searching for ivory originally named the region Ivory Coast for its abundance of the natural resource.²¹² The successful exportation of cocoa (as the top producer world-wide) and coffee was a major factor in its sustainability, allowing the country to achieve prosperity and social development.²¹³

When commodity prices fell in the 1980s, Côte d'Ivoire began facing serious economic and social problems.²¹⁴ The ensuing electoral crisis towards the end of the Houphouët-Boigny's presidency ultimately steered the Member State directly into two civil wars.²¹⁵ Following the death of President Houphouët-Boigny in December 1993, the Member State plunged into a protracted power struggle that spawned intense political instability.²¹⁶ His successor, President Henri Konan Bedie, faced massive discontent from citizens as government corruption and mismanagement began to drive steep reductions in foreign aid.²¹⁷ In December 1999, Bedie was overthrown by a bloodless military coup led by General Robert Guéi, who promised to hold open elections the following year.²¹⁸ The events leading up to the electoral crisis in the Ivory Coast would leave a devastating impact on the security and sustainability of the Member State for decades to come.²¹⁹

Political Context in Côte d'Ivoire

Violence erupted in and around Abidjan in the five months following Côte d'Ivoire's 2010 disputed presidential election.²²⁰ Incumbent president Laurent Gbagbo challenged the outcome in favor of his rival Allasane Ouattara and refused to cede power.²²¹ A Constitutional Council decision declaring Ouattara the victor sparked political and ethnic violence in and around the capital Abidjan.²²² Ensuing violence resulted in at least 3,000 dead, several thousand injured, missing and raped, and over 100,000 displaced.²²³

In August 2002, President Gbagbo formed a de facto government of national unity that included the Rally of the Republicans (RDR) party.²²⁴ Under the new Gbagbo regime, the exclusion of northerners in the government and the

²¹⁰ The World Bank, "Data: Côte d'Ivoire," 2014, <http://data.worldbank.org/country/cote-divoire> (accessed November 28, 2014).

²¹¹ Ibid.

²¹² GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ United Nations Security Council, Twenty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, (accessed December 2, 2017).

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ BBC News Africa, "Robert Guéi: Deposed ruler," 20 October 2000, <http://news.bbc.co.uk/2/hi/africa/930254.stm> (accessed November 25, 2014)

²¹⁹ Insight on Conflict, "Ivory Coast: Conflict Profile," December 2017, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed December 3, 2017).

²²⁰ Ibid.

²²¹ Ibid.

²²² Insight on Conflict, "Ivory Coast: Conflict Profile," December 2017, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed December 3, 2017).

²²³ Ibid.

²²⁴ United Nations Mission in Côte d'Ivoire, "Background (from the first Report of the Secretary-General on Côte d'Ivoire, S/2003/374)," (accessed October 29, 2017).

security sector triggered increased grievances and feelings of marginalization among these groups.²²⁵ By the end of September 2002, the Ivory Coast was in a full-fledged civil war, split between the rebel group Forces Nouvelles de Côte d'Ivoire (New Forces of Ivory Coast) (FN) led by Guillaume Soro in the north, and the government in the south.²²⁶ A series of peace initiatives were adopted over a period of five years, but failed to resolve the conflict.²²⁷ After many attempts at the peace table, an agreement was finally reached in March 2007 between Gbagbo and Soro with the signing of the Ouagadougou Political Agreement (OPA).²²⁸ The two agreed to reunite the country by holding elections and integrating rebel forces into the national armed forces; although, the election was delayed until 2010.²²⁹

The presidential elections were intended to bring stability to the Member State.²³⁰ On 31 October 2010, more than 4.8 million people turned out to vote, including a high turnout of women.^{231 232} The presidential elections were held in a generally peaceful and orderly manner, nevertheless, violence quickly broke out when Gbagbo refused to hand over power to Alassane Ouattara, who was recognized by the international community as the winner of the election.²³³ Gbagbo refused to accept the results of the Independent Electoral Commission (CEI) on allegations of voter fraud and intimidation.²³⁴ The unrest quickly spread to the countryside, as Gbagbo used military and security forces to terrorize the supporters of Ouattara.²³⁵ The mounting violence forced the United Nations to continue peacekeeping operations, despite attempts by Gbagbo to oust them.²³⁶ His wife, Simone Gbagbo, became increasingly involved in the conflict, encouraging and sanctioning her husband's supporters to attack the opposition, often through escalating violence.²³⁷ In March 2011, the Security Council imposed harsh sanctions on Gbagbo, identifying him as the primary aggressor in the crisis.²³⁸ What became known as the Second Ivorian Civil War (2010-2011) ended with the arrest of Laurent Gbagbo and his wife, Simone Gbagbo.²³⁹

The ICC prosecutor alleges that former Côte d'Ivoire president Laurent Gbagbo and his inner circle, including youth leader Charles Blé Goudé, created and executed a plan to hold on to power after losing the 2010 presidential election by encouraging attacks on supporters of rival Alassane Ouattara.^{240 241} Simone Gbagbo, Côte d'Ivoire's former first lady, is also implicated in the alleged criminal scheme.²⁴² As founder and chair of the Panafrican Congress of the Young Patriots (COJEP) youth movement, Blé Goudé was a minister for youth in the Gbagbo government.²⁴³ Blé Goudé allegedly converted the COJEP into a pro-Gbagbo militia group.²⁴⁴ Gbagbo was arrested and transferred to

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ United Nations Mission in Côte d'Ivoire, "Background (from the first Report of the Secretary-General on Côte d'Ivoire, S/2003/374)," (accessed October 29, 2017).

²²⁸ GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

²³² Ibid.

²³³ Ibid.

²³⁴ Insight on Conflict, "Ivory Coast: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed October 29, 2014).

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Human Rights Watch, They Killed Them Like It Was Nothing, 5 October 2011, <http://www.hrw.org/reports/2011/10/05/they-killed-them-it-was-nothing> (accessed December 3, 2017).

²³⁸ United Nations Security Council, S/RES/1975, *Côte d'Ivoire*, 30 March 2011. (accessed October 29, 2017).

²³⁹ Ibid.

²⁴⁰ GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

²⁴¹ Ibid.

²⁴² United Nations Peacekeeping Missions, "United Nations Operation in Cote d'Ivoire," <http://www.un.org/en/peacekeeping/missions/unoci/index.shtml> (accessed December 3, 2017).

²⁴³ Ibid.

²⁴⁴ Ibid.

the ICC in 2011.²⁴⁵ Three years later, Blé Goudé was arrested and surrendered to the ICC in 2014.²⁴⁶ Their joint trial opened on 28 January 2016.²⁴⁷

ICC Investigations and Findings

ICC Involvement

In April 2003, the Republic of Côte d'Ivoire declared that it accepted the jurisdiction of the International Criminal Court "for the purposes of identifying, investigating and trying the perpetrators and accomplices of acts committed on Ivorian territory since the events of 19 September 2002."²⁴⁸ The Presidency of Côte d'Ivoire reconfirmed this acceptance in December 2010 and May 2011.²⁴⁹

On 3 October 2011, Pre-Trial Chamber III determined that there were potential case scenarios that would be admissible in the Côte d'Ivoire situation and granted the prosecutor's request to open an investigation.²⁵⁰ Later that month, the prosecutor requested the chamber to issue an arrest warrant against Laurent Gbagbo.²⁵¹ Pre-Trial Chamber III also issued arrest warrants against Simone Gbagbo and Charles Blé Goudé, both of whom have been charged with crimes related to the post-electoral violence.²⁵²

The prosecutor limited the investigation to crimes committed from 28 November 2010 onwards.²⁵³ The Pre-Trial Chamber also requested that the prosecutor submit a report with information on possible crimes committed between 2002 and 2010, which the prosecutor submitted on November 3, 2011.²⁵⁴ The Pre-Trial chamber decided to expand its authorization for the investigation in the Côte d'Ivoire situation to include Rome Statute crimes allegedly committed between 19 September 2002 and 28 November 2010.²⁵⁵

Court Jurisdiction

Pre-Trial Chamber III found that there were reasonable grounds to believe Gbagbo is responsible for crimes against humanity committed from December 2010 to April 2011 in the violent aftermath of Ivorian presidential elections.²⁵⁶ In a separate decision, the Chamber found that there were reasonable grounds to believe that as previously mentioned, Blé Goudé was a member of Gbagbo's inner circle who discussed and coordinated the implementation of a common plan resulting in the alleged crimes against humanity during the post-electoral violence.²⁵⁷ The chamber found that it was necessary to arrest Gbagbo and Blé Goudé to make sure that they would appear before the

²⁴⁵ United Nations Peacekeeping Missions, "United Nations Operation in Cote d'Ivoire,"

<http://www.un.org/en/peacekeeping/missions/unoci/index.shtml> (accessed December 3, 2017).

²⁴⁶ Insight on Conflict, "Ivory Coast: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on December 3, 2017).

²⁴⁷ "Laurent Gbagbo and Charles Blé Goudé Case". Coalition for the International Criminal Court. <http://www.coalitionfortheicc.org/cases/laurent-gbagbo-and-charles-ble-goude> (accessed December 3, 2017).

²⁴⁸ Ibid.

²⁴⁹ International Criminal Court Pre-Trial Chamber I, *Case Information Sheet: Simone Gbagbo*, 15 December 2014. (accessed December 3, 2017).

²⁵⁰ "The Trial of Laurent Gbagbo and Charles Blé Goudé at the ICC." Open Society Justice Initiative. January 2016. <https://www.opensocietyfoundations.org/sites/default/files/briefing-gbagbo-FINAL-20160121%20%281%29.pdf> (accessed October 29, 2017).

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ "The Trial of Laurent Gbagbo and Charles Blé Goudé at the ICC." Open Society Justice Initiative. January 2016. <https://www.opensocietyfoundations.org/sites/default/files/briefing-gbagbo-FINAL-20160121%20%281%29.pdf> (accessed October 29, 2017).

²⁵⁴ International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed December 3, 2017).

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed December 3, 2017).

ICC and ensure that they would not use their political clout or economic resources to obstruct the investigation.²⁵⁸ The chamber also considered that their arrests were necessary to prevent further crimes from being committed.²⁵⁹

On 12 December 2012, the ICC Appeals Chamber confirmed the Court's jurisdiction over violent events that followed the Member State's disputed 2010 elections.²⁶⁰ In doing so, the Chamber unanimously dismissed Mr. Gbagbo's appeal against a PTC I decision on 15 August 2012, which challenged the Court's jurisdiction.²⁶¹ Mr. Gbagbo had appealed on the basis that the ICC's jurisdiction, which is based on a 2003 declaration by Côte d'Ivoire, pertained only to events in 2002 and 2003, and not to those allegedly committed by Mr. Gbagbo in 2010 and 2011.²⁶²

Charges Against the Accused

Gbagbo and Blé Goudé are charged with four counts of crimes against humanity, including murder, rape, and other inhumane acts, or—in the alternative—attempted murder and persecution.²⁶³ The accused allegedly committed these crimes during post-electoral violence in Côte d'Ivoire between December 16, 2010 and April 12, 2011.²⁶⁴

The views and concerns of 726 victims who applied to participate in the proceedings are to be presented throughout the trial.²⁶⁵ This was the first investigation opened while a Member State had accepted the Court's jurisdiction (under article 12 (3) of the Rome Statute) but was not yet a State Party.²⁶⁶

Current Situation of the Case

In its March 2014 decision, the trial chamber emphasized that there is no statutory obligation to conduct reviews of detention once a trial commences, pursuant to Article 60(3).²⁶⁷ Yet, Article 60(2) allows the accused to apply for interim release.²⁶⁸ After a legal digression on relevant provisions in the ICC statute, rules, and regulations, the judges concluded that while in principle they were not opposed to Gbagbo's release, "the circumstances are not conducive to it."²⁶⁹ The accused is required to be present for the trial hearings held in The Hague, and the Chamber's main perplexity was "how Mr. Gbagbo would still be able to attend his trial if released in another country."²⁷⁰ Given the unrealistic scenario of his release, Trial Chamber I decided that Laurent Gbagbo shall remain in custody.²⁷¹

Presiding Judge Cuno Tarfusser issued a dissenting opinion in which he discussed the compliance of the ICC with international human rights.²⁷² Under Article 21 of the Rome Statute, the court is prescribed to interpret and apply law "consistent with internationally recognized human rights."²⁷³ Judge Tarfusser questioned if the lack of positive obligations under Article 60(3) to conduct reviews of detention does not contrast the ruling of the European Court of

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ BBC News Africa, "Robert Guei: Deposed ruler," 20 October 2000, <http://news.bbc.co.uk/2/hi/africa/930254.stm> (accessed November 25, 2014)

²⁶¹ Ibid.

²⁶² "The Trial of Laurent Gbagbo and Charles Blé Goudé at the ICC." Open Society Justice Initiative. January 2016. <https://www.opensocietyfoundations.org/sites/default/files/briefing-gbagbo-FINAL-20160121%20%281%29.pdf> (accessed December 3, 2017).

²⁶³ United Nations Peacekeeping Missions, "MINUCI: United Nations Mission in Côte d'Ivoire," <http://www.un.org/en/peacekeeping/missions/past/minuci/index.html> (accessed December 5, 2017).

²⁶⁴ International Justice Monitor "Laurent Koudou Gbagbo & Charles Blé Goudé. <https://www.ijmonitor.org/laurent-koudou-gbagbo-charles-ble-goude-background/> (accessed December 5, 2017).

²⁶⁵ Ibid.

²⁶⁶ Côte d'Ivoire. Situation in the Republic of Côte d'Ivoire. <https://www.icc-cpi.int/cdi> (accessed December 5, 2017).

²⁶⁷ United Nations Peacekeeping Missions, "UNOCI: United Nations Operation in Côte d'Ivoire," <http://www.un.org/en/peacekeeping/missions/unoci/index.shtml> (accessed December 5, 2017).

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed December 4, 2017).

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

Human Rights (ECtHR) according to which courts “are under an obligation to review the continued detention of persons pending trial with a view to ensuring release when circumstances no longer justify continued deprivation of liberty.”²⁷⁴ The case reflects an increasing trend in international and domestic criminal law to engage with human rights law when addressing the rights and detention regimes of the accused and condemned.²⁷⁵ While in some cases society calls for the justice system to deny the respectful end that the accused themselves denied to others, judges have to operate based on the law.²⁷⁶

Committee Directive

Delegates are responsible for understanding their respective roles in the case of Laurent Gbagbo, including the measures that may be taken during the Trial Chamber proceedings in accordance with the Rome Statute. While this guide presents the background of the case, delegates should use additional resources to determine the evidence and application of international law. While the burden of proof rests upon the Prosecutor, the Defense Council is equally responsible for ensuring the general rights of the defendants, enshrined in Article 67 of the Rome Statute and supplemented by provisions of the Rules of Procedure and Evidence and the Regulations of the Court. Likewise, as the legal representative for the victims, the Victim’s Advocate must speak on behalf of the victims by telling their stories (presented as written statements), and establish the damage, loss or injury as a result of the actions by the defendants. While the Victim’s Advocate may essentially help the Prosecutor’s case, victims and their counsels do not necessarily focus on bringing elements to prove the guilt/innocence of an accused. The primary purpose is to provide victims the opportunity to state what happened to them (in this simulation, through the Victim’s Advocate).

The Court will only be able to convict the accused in the event that the Prosecutor can prove beyond reasonable doubt that all elements of the crimes against humanity were present. The Trial Chamber may enter a judgment of acquittal on some or all charges, if, at the end of the Prosecution’s case, there is insufficient evidence to sustain a conviction on individual responsibility. Though not an exhaustive list, delegates must answer the following questions in establishing individual responsibility: Did an attack directed against a civilian population involving the multiple commission of acts occur? Is Mr. Gbagbo individually responsible for the acts he is accused of committing? Did he indirectly commit acts of murder and/or persecution? If so, did he have intent to commit the acts; was he aware that the acts were committed as part of a widespread or systematic attack? Were the victims of crimes against humanity non-combatants targeted because of some underlying civilian character? Factors to consider when determining whether an attack is “widespread or systematic” include the number of criminal acts and victims, the means and methods used in the attack, the existence of criminal patterns, and the existence of a plan or policy targeting the civilian population. Furthermore, where the crime is one that was an intended outcome of the joint criminal enterprise, the prosecution must establish that the accused shared with the person who personally perpetrated the crime the state of mind required for that crime. If the defendants are convicted, the Judges will be responsible for determining punishment and deciding on reparations to the victims.

²⁷⁴ Insight on Conflict, “Ivory Coast: Conflict Profile,” March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on December 4, 2017).

²⁷⁵ Ibid.

²⁷⁶ Ibid.

Technical Appendix Guide

Case I: Situation in Uganda (The Prosecutor v. Dominic Ongwen)

United Nations Treaty Collection, <https://treaties.un.org/Pages/SearchResults.aspx?flag=Treaty&tab=UNTS> (accessed January 9, 2018).

This link will direct delegates to Additional Protocols I through III of the *Geneva Conventions of 12 August 1949*. Accessing the conventions through the United Nations' Treaty Collection allows the ability to quickly access all three additional protocols in their unaltered forms. While it is important to fully understand all three, it is imperative that delegates be able to apply and utilize Additional Protocol II and its use in the case against Dominic Ongwen.

Human Rights Watch. Q&A on the LRA Commander Dominic Ongwen and the ICC. December 5, 2016, <https://www.hrw.org/news/2016/12/05/questions-and-answers-lra-commander-dominic-ongwen-and-icc> (accessed December 5, 2017).

This resource is helpful to answer the any questions regarding the case and provides a political context of the case as well. Delegates should only use this as a guide to have a better idea of the case. This should be taken into consideration as the first resource to read when understanding the case.

Adam Branch, "Dominic Ongwen on Trial: The ICC's African Dilemma", 22 December 2016, <https://www.repository.cam.ac.uk/handle/1810/269976> (accessed December 5, 2017).

Official paper written by Adam Branch to the International Journal of Transitional Justice providing an excellent explanation of the African dilemmas. Additionally, he highlights the importance of enforcing international law in Uganda in order to reduce the violation of human rights cases. The narrative includes LRA's political agenda and how they mind-shape their soldiers mind in order to achieve their goals. This paper is an interesting read for delegates to have a better idea of how the LRA or rebel's organization in Africa works and how they are driven to continue the violation of human rights.

4GenderJustice First ICC Trial in the Uganda Situation, 5 December 2016, <http://www.4genderjustice.org/pub/First-ICC-Trial-in-Uganda-Situation-Statement.pdf> (accessed December 6, 2017).

This report provides a background guide for the delegates to understand why this is such an important case in the ICC. This report will further explain the perspective of the violations of human rights, specifically on women. The research was conducted by a local women network for advocacy in Uganda with the hope that the trial will bring hope to victims and survivors that justice and accountability still prevail. Delegates could use this document to see the case verdict from another perspective.

JusticeHub, "Why is the Uganda Situation at the ICC?", 17 November 2015, <https://justicehub.org/article/why-uganda-situation-icc> (accessed December 6, 2017).

This is an interactive way for delegates to further understand the case. Furthermore, with this interactive thinking map, delegates would be able to connect all the important members, organizations or factors of the case together and understand the defendant's point of view.

Case II: ICC v. Bosco Ntaganda (Democratic Republic of the Congo)

'Ntaganda Case', *International Criminal Court*, <https://www.icc-cpi.int/drc/ntaganda> (accessed January 8, 2018).

Coming directly from the International Criminal Court, this website should be one of the main resources utilized by delegates. It provides links to various aspects of the case. Some of these links include transcripts from each session and court records in their entirety – sources that are likely unable to be sourced elsewhere but could provide key insights and information to adequately prepare delegates in all aspects of acting as the Prosecutor, the Defense, and the Judge. Also included are recent news releases from the ICC and short information sheets to attain a quicker, broader overview of the case.

Tamm, Henning, 'UPC in Ituri: The External Militarization of Local Politics in North-eastern Congo', *Rift Valley Institute*, 2013 <http://riftvalley.net/publication/upc-ituri#.Wi21pEqnHIU> (accessed December 6, 2017). The Ituri district northern Democratic Republic of Congo (DRC) has suffered some of the worst violence of the Congo wars. This report analyzes the factors that helped create, and later broke apart, the Union des Patriotes Congolais (UPC), one of Ituri's most powerful armed groups. Delegates should use this source to gain a more in-depth understanding of the UPC's rise to power.

'DRC: Witness Accounts of Massacres and other Abuses by the UPC and their Allies', *Human Rights Watch*, 2015 <https://www.hrw.org/news/2015/09/03/drc-witness-accounts-massacres-and-other-abuses-upc-and-their-allies> (accessed December 6, 2017).

This article features witness accounts of alleged crimes committed by Bosco Ntaganda's forces in 2002. Some of these accounts include intentional extermination of Lendu people, destruction of property, murder, and forced displacement. This is a great resource for delegates to learn about a few of the numerous first-hand accounts discussed in the Court regarding the UPC's violence and especially acts committed under Ntaganda's command.

'Bosco Ntaganda', *International Justice Monitor*. <https://www.ijmonitor.org/bosco-ntaganda-timeline/> (accessed December 6, 2017).

This website provides a timeline from when the DRC ratified the Rome Statute in 2000 until the commencement of Ntaganda's trial in 2015. Delegates can use this to gain a better understanding of the key actions taken by the ICC and Bosco Ntaganda in the time it took for him to be in custody at the Hague and for his trial to begin.

'Ntaganda trials will focus on sexual violence', *The East African*, 2015, <http://www.theeastafrican.co.ke/news/Ntaganda-trials-will-focus-on-sexual-violence-/2558-27749803r3imvz/index.html> (accessed December 6, 2017).

This article focuses on the expected focus of ICC prosecutors when trying Ntaganda. According to the article, Ntaganda's trial could be the first time a commander has been charged with rape and sexual slavery against children within his own militia group.

Case III: ICC v. Laurent Gbagbo and Charles Blé Goudé

Amnesty International Côte D'Ivoire Mission Report <http://www.amnesty.org/en/library/asset/AFR31/001/2011/en/0e4b411c-047a-4a71-8901-da5c50edf80b/afr310012011en.pdf> (accessed December 6, 2017).

This report sets out some of the key findings of the recent Amnesty International research mission to Côte d'Ivoire where they investigated ongoing human rights violations connected with the disputed November 2010 presidential election. Documented violations include extra-judicial executions, ill treatment, arbitrary detention, disappearances and sexual violence including rape.

United Nations Human Rights Council, *Report of the independent, international commission of inquiry on Côte d'Ivoire*, 6 June 2011. http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1328.pdf. (accessed December 6, 2017).

In 2011, the United Nations Human Rights Council dispatched an independent international commission of inquiry to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of November 2010. This is a great resource for delegates in understanding the case and the violation of human rights and international humanitarian law during the period under consideration.

Human Rights Watch, *A Long Way from Reconciliation: Abusive Military Crackdown in Response to Security Threats in Côte d'Ivoire*, 19 November 2012. <http://www.hrw.org/sites/default/files/reports/cotedivoire1112webwcover.pdf>. (accessed December 6, 2017).

This report details the brutal crackdown that followed a series of violent attacks on military installations around the country in August that were allegedly committed by militants loyal to former President Laurent Gbagbo. It recalls the grave crimes committed during the 2010-2011 post-election crisis. The report is based on a three-week mission to Abidjan in late August and early September, during the height of the military crackdown. Delegates should use this source in determining evidence against Gbagbo and in deciding appropriate reparations for the victims if he is convicted.

Human Rights Watch, "They Killed Them Like It was Nothing: The Need for Justice for Côte d'Ivoire's Post-Election Crimes," 5 October 2011. http://www.hrw.org/sites/default/files/reports/cdi1011webwcover_0.pdf (accessed December 6, 2017).

This report highlights the war crimes and crimes against humanity committed by forces under both Gbagbo and Ouattara. It documents the human rights abuses that took place from November 2010, when Gbagbo lost an election and refused to yield power, through June 2011. The report also explores the accountability efforts of the Ouattara government to date, including charges brought by the civilian or military prosecutor against at least 118 members of the former Gbagbo camp.