

1. Case I - Situation in Uganda - Advocate for the Defense

a. Statement of Facts

Of the five individuals named in the original indictment in the Situation in Uganda case, two have been confirmed dead, and three remain to be tried before the court. Of the three, Vincent Otti is at large but believed dead, Joseph Kony is at large, and Dominic Ongwen, having surrendered himself, is the only suspect being tried before the Court at this time.¹

Dominic Ongwen did not voluntarily join the Lord's Resistance Army (LRA). He was abducted at the age of 10 by LRA forces, and raised within the organization, in an environment where questioning LRA doctrine or refusing orders would have meant grievous bodily harm or death. He rose rapidly within the organization, to brigade command by his late 20s. He was reportedly the only commander of the LRA to oppose the execution of former fellow defendant and commander Vincent Otti. He is accused of, while in command of the Sinia Brigade of the LRA, committing numerous war crimes, crimes against humanity, crimes against civilians, and sexual and gender-based crimes, including rape and sexual enslavement.²

b. Application of Criminal Law

Article 31 of the Rome Statute of the International Criminal Court (ICC) outlines the grounds for excluding criminal responsibility in a given case. Articles 31.1a and 1d, 31.3, and Article 21 as referenced in Article 31.3 are the relevant law.

Article 31.1 (a) covers incapacity resulting from a mental disease or defect. This should be interpreted to include purely psychological disorders resulting from an upbringing in a violent and chaotic environment absent normal instruction in moral norms, *i.e.* Dominic Ongwen's adolescent life as an abducted child soldier of the LRA

Article 31.1 (d) covers incapacity resulting from duress. As the execution of Vincent Otti shows, even commanders of the LRA were clearly at risk of life if they defied or even displeased the overall commander, Joseph Kony. While Ongwen may not have completely satisfied all elements required in 31.1 (d), it should be taken into consideration as a mitigating factor.

Article 31.3 allows the Court to consider other grounds for excluding responsibility if such grounds are found in law admissible under Article 21. Article 21 permits the Court to consider not only its statutes but also relevant international treaties and national law, especially the law of the nation where the crime was committed. Uganda in 2000 enacted a general amnesty for LRA fighters. Considering the court has not prosecuted any members of the Ugandan government or armed forces for alleged crimes, considering further the thus far inconsistent application of justice to former LRA fighters, and considering finally the fact that Ongwen was ultimately forced to join the LRA, the Court should consider the amnesty in determining Ongwen's culpability for his alleged crimes.³

c. Request of the Court

The Advocate for the Defense requests the Court find Dominic Ongwen not guilty by reason of exclusion of criminal responsibility. The Advocate further requests Ongwen be evaluated by a psychological professional and provided with treatment resources and with reintegration funds as provided for in the 2000 amnesty law.

¹ <https://www.icc-cpi.int/uganda>

² <http://www.bbc.com/news/world-africa-30709581>

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<https://www.justiceinfo.net/en/justice-reconciliation/33820-uganda-s-amnesty-law-and-the-peace-justice-dilemma.html>

2. Case II - ICC vs. Bosco Ntaganda - Judge

a. Statement of Facts

Bosco Ntaganda is the alleged Deputy Chief of Staff and commander of operations of the Union des Patriotes Congolais/Force Patriotiques pour la Liberation du Congo (UPC/FPLC). He is charged with war crimes and crimes against humanity both as a commander of forces having committed such crimes and as a person having committed such crimes. All crimes committed are alleged to have been committed in the Ituri region in 2002/2003.⁴

b. Application of Criminal Law

The elements of responsibility as a commander for war crimes and crimes against humanity are: that the commander knew or should have known the crimes were or were about to be committed, and that the commander failed to take all reasonable measures to prevent the crimes or to prosecute the perpetrators. Criminal responsibility as a person is presumed unless excluded under Article 31.

The elements of murder and attempted murder are: as a war crime, that a person was killed who was taking no part in hostilities or was *hors de combat* (incapacitated or surrendered), and that the perpetrator was aware of that status; as a crime against humanity, that the conduct was knowingly carried out as part of a widespread or systematic attack on a civilian population. The elements of attacking civilians are an attack knowingly directed at a civilian population not part of hostilities.

The elements of rape are: as a war crime, penetration of the body of the victim or perpetrator with a sexual organ or penetration of the anal or genital opening with any object or part of the body by coercion or threat of coercion or in a situation where the victim was unable to reasonably give consent or in a coercive environment, during an armed conflict. As a crime against humanity, the same directed against a civilian population. The elements of sexual slavery are exercise of the rights of ownership over another person who was thereby caused to enter into one or more acts of a sexual nature.

The elements of pillaging are appropriating property without consent during an armed conflict for personal (non-military) use. The elements of attacking protected objects are a deliberate attack on a place dedicated to religion, education, art, science, or charitable purposes which was not a military objective. The elements of destroying the enemy's property are seizure of property belonging to a hostile party which was protected under the international law of armed conflict and not militarily necessary.

The elements of enlistment of child soldiers under the age of 15 and their use in hostilities are that the perpetrator was aware they were under the age of 15 and deliberately used them in armed conflict. The elements of persecution are severe deprivation of fundamental rights on account of the victim's membership in a targeted group or identity as part of a widespread or systematic attack on a civilian population. The elements of forcible transfer of population are coercive movement of persons without ground under international law who were lawfully present at their former location.⁵

c. Request of the Court

The Judge expects the Prosecution to prove the elements of each crime as laid out above, and the Defense to rebut such proof. The Judge expects the Advocates to lay out the harm suffered and recommend remedial measures. The case will be decided based on whether satisfactory evidence is submitted to decide (1) whether all elements of each crime were satisfied and (2) if such crimes are proven, whether the defendants were criminally responsible for the alleged acts.

⁴ <https://www.icc-cpi.int/drc/ntaganda/pages/alleged-crimes.aspx>

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<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

3. Case III - ICC vs. Laurent Gbagbo and Charles Blé Goudé - Prosecutor

a. Statement of Facts

Laurent Gbagbo is the former President of Côte d'Ivoire. Charles Blé Goudé was the youth minister in the Gbagbo government and head of a pro-Gbagbo youth militia⁶. In 2010, the country held its first election in 10 years. The first round failed to produce a winner, and the election headed to a runoff between President Gbagbo and opposition leader Alassane Ouattara. After the country's civil war (2002-2003) few combatants had been disarmed, and tension was high as the vote split on ethnic and regional lines.

International observers declared Ouattara the winner of the runoff, but Gbagbo refused to cede power. During a four month standoff, the military forces used live ammunition to disperse protesters, fired artillery at random into neighbourhoods seen as supporting Ouattara because of their ethnic character⁷. Women who were believed to support Ouattara were abducted, imprisoned, and gang-raped by security forces. The government armed its supporters, and state-owned media outlets called for violence against Muslims and other groups believed to support Ouattara, comparing them to "rats" and "culled birds" and "exhorting followers to set up roadblocks and 'denounce foreigners'"⁸. These calls were immediately followed by widespread and brutal violence. The violence ended only after pro-Ouattara forces, with the assistance of UN and French forces, launched an offensive and took control of the country, committing significant retaliatory violence in the process.

b. Application of Criminal Law

The defendants stand before the court accused of four crimes against humanity: "murder, rape, other inhumane acts or - in the alternative - attempted murder, and persecution"⁹. The defendants are alleged to be either individually responsible for these acts, or responsible for ordering them, soliciting them, or inducing them.

All four crimes, to qualify as crimes against humanity, require that they be carried out as part of a "widespread or systematic attack directed against a civilian population"¹⁰. The attacks against civilians by government forces were manifestly widespread and systematic, and included all elements of murder, rape, attempted murder and persecution, as they were targeted according to ethnic origin and political affiliation.

Both Laurent Gbagbo and Charles Blé Goudé ordered, solicited, and induced the above mentioned acts. President Gbagbo was the Commander-in-Chief of the Ivorian military, and held control of state media outlets throughout the crisis. By ordering the commission of violent acts and the dissemination of messages to incite his supporters to violence, Gbagbo was complicit in brutal acts against minorities, women, and children. Goudé, as a member of Gbagbo's "inner circle", collaborated in the ordering and commission of these acts, and in his capacity as a militia commander further directly ordered and incited acts of violence against the civilian population. The evidence presented will show that Gbagbo and Goudé were not merely aware of but also complicit in deliberate, target, and widespread violence against civilian populations for the purpose of attempting to preserve the Gbagbo regime.

c. Request of the Court

The Prosecutor requests that the Court convict Laurent Gbagbo and Charles Blé Goudé of four counts of crimes against humanity- murder, rape, other inhumane acts or - in the alternative - attempted murder, and persecution.

⁶ <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-29-01-2016>

⁷ <http://www.bbc.com/news/world-africa-11916590>

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<https://www.hrw.org/report/2011/10/05/they-killed-them-it-was-nothing/need-justice-cote-divoires-post-election-crimes>

⁹ <https://www.icc-cpi.int/cdi/gbagbo-goude/pages/alleged-crimes.aspx>

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<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>