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**SUPPLEMENT TO DIGEST ON
INTERNATIONAL CRIMINAL COURT
INVESTIGATIONS IN AFRICA**

African Affairs Committee

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INTRODUCTION

The African Affairs Committee previously issued a report titled, “Digest on International Criminal Court Investigations in Africa.” Initially issued in August 2014, it was updated and reissued in May 2016, and reported on cases in the Democratic Republic of Congo, Darfur (Sudan), Kenya, Central African Republic, and Mali. Since then, the International Criminal Court (ICC) has opened investigations and initiated cases in other African countries. This Supplement to the ICC Digest focuses on cases brought in Libya and Uganda—including the history of civil strife in those countries, how the ICC came to be involved, and the current status of those cases.

Our hope is that the ICC Digest and this Supplement will provide insight into the civil wars taking place in and among these nations and contribute to the international community’s understanding of the complex factors that have contributed to the current state of affairs in these countries, as well as the important, although at times limited, role that the International Criminal Court has and can continue to play in trying to bring justice and lasting peace to the region.

African Affairs Committee
Victoria Safran and Melanie Claassen, Co-Chairs

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INTERNATIONAL CRIMINAL COURT PROCEEDINGS REGARDING LIBYA

By Elizabeth Barad

I. INTRODUCTION

Libya did not sign the Rome Statute, and therefore did not accede to the jurisdiction of the International Criminal Court (the “ICC”).¹ But the United Nations Security Council (the “UNSC”) referred the situation in Libya to the ICC on February 26, 2011 pursuant to Security Council Resolution 1970.² It was the second time that a situation was referred to the Court by the UNSC under its Chapter VII authority, and the first time such a resolution was passed unanimously. The formal investigation into the situation in Libya was opened by the ICC on March 3, 2011.

The situation in Libya is the ICC’s sixth investigation. Three arrest warrants were issued on June 27, 2011 in this investigation against Muammar Gaddafi (“Gaddafi”), Saif Al-Islam Gaddafi (“Saif al-Islam”) and Abdullah Al-Senussi (“Al-Senussi”).³ The fourth warrant was issued on April 18, 2013, and unsealed on April 24, 2017, in the investigation on Al-Tuhamay Mohammed Khaled (“Khaled”).⁴

II. BACKGROUND ON LIBYA DURING THE GADDAFI ERA

Col. Muammar Gaddafi deposed King Idris in 1969 in a bloodless military coup, and pursued a pan-Arab agenda by attempting to form mergers with several Arab countries. He also introduced socialism by nationalizing most economic activity, including the oil industry.⁵ The Libyan Revolutionary Council (“RCC”), headed by Gaddafi, abolished the constitution and established the new Libyan Arab Republic, which was changed in 1977 to the Great Socialist People’s Libyan Arab Jamahiyra.⁶ In connection with that name change, Gaddafi declared a “people’s revolution,” and set up “revolutionary committees.” Four years prior, in 1973, he declared a “cultural revolution,” which included the formation of “people’s committees” in schools, hospitals, universities, workplaces and administrative districts.⁷

In 1980, Libyan troops, which had occupied the Aozou Strip since 1973, intervened in the civil war in northern Chad. After a judgment by the International Court of Justice in 1994,

¹ Coalition of the International Criminal Court, Middle East and North Africa, available at <http://www.iccnw.org?mod=region&idureg=13>.

² Coalition of the International Criminal Court, Cases & Situations-Libya, available at <http://www.iccnw.org?mod=libya>.

³ *Id.*

⁴ ICC Case Information Sheet, *The Prosecutor v. Al-Tuhamay Mohammed Khaley*, April 27, 2017, available at <https://www.icc-cpi.int/libya/khaled/Documents/KhaledEng.pdf>.

⁵ BBC News, *Libya profile-Timeline*, April 20, 2016, available at <http://www.bbc.com/news/world-africa-13755445>.

⁶ GlobalEdge, *Libya History*, available at <http://globaledge.msu.edu/countries/libya/history>.

⁷ *See supra* n. 5.

Libya withdrew troops from Chad and the dispute between the countries was settled.⁸ Libya returned the Aozou Strip to Chad in 1994.

Confrontation with the U.S. began in 1981, when the U.S. shot down two Libyan aircraft over what the U.S. considered to be international waters in the Gulf of Sirte, but which Libya claimed unilaterally as its territorial waters. Thereafter, in 1986, the U.S. bombed Libyan military facilities and residential areas of Tripoli and Benghazi, including Gaddafi's house, killing 101 people. The U.S. said the raids were in response to Libyan involvement in the bombing of a Berlin disco frequented by U.S. military personnel.⁹ Libya later agreed to pay \$35 million to compensate victims of the Berlin bombing.

In 1988, Libyan agents blew up an airliner which was carrying a number of American citizens over the Scottish town of Lockerbie. The U.N. imposed sanctions on Libya in 1992 in an effort to force it to hand over for trial two of its citizens suspected of involvement in the blowing up of the PanAm plane over Lockerbie; and in 2001, a Special Scottish court in the Netherlands found one of the two Libyans accused of the bombing, Ali Mohamed al-Megrahi, guilty and sentenced him to life imprisonment. His co-accused was found not guilty and freed. Al-Megrahi was released from prison in August 2009 on humanitarian grounds, and returned to Libya where he received a hero's welcome, causing a storm of controversy.¹⁰ In 2003, Libya signed a deal worth \$2.7 billion to compensate families of the Lockerbie bombing and took responsibility for the bombing in a letter to the UNSC, which subsequently voted to lift the sanctions against Libya. Libya also said it would abandon programs to develop weapons of mass destruction. But, when Libya was elected to chair the U.N. Human Rights Commission in January 2003, the U.S. and human rights groups opposed it.¹¹

In 2006, the U.S. said it was restoring full diplomatic relations with Libya; and, in 2008, Libya took over the one-month rotating presidency of the UNSC in "a step back to respectability after decades as a pariah of the West."¹² In August of that year, Libya and the U.S. signed an agreement committing each side to compensate all victims of bombing attacks on the other's citizens. Later that year, U.S. Secretary of State Condoleezza Rice visited Libya, and said relations between the two countries had entered a new phase. And in 2009, Gaddafi was elected chair of the African Union and declared his ambition to establish a "United States of Africa."¹³

An anti-Gaddafi uprising began in February 2011 that was inspired by revolts in other Arab countries, e.g. "the Arab Spring." One month later, the UNSC authorized a no-fly zone over Libya and air strikes to protect civilians, over which NATO assumed command and bombed

⁸ Case Concerning The Territorial Dispute (Libyan Arab J'amahirya/Chad) Judgment of February 3, 1994, available at <http://www.icj-cij.org/en/case/83/judgments>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

the Libyan capital.¹⁴ In July 2011, the International Contact Group on Libya formally recognized the main opposition group, the National Transitional Council (“NTC”), as the legitimate government of Libya. In August, Gaddafi went into hiding after rebels swarmed his fortress compound in Tripoli; and in October, Gaddafi was captured and killed as rebels took his hometown, Sirte. Gaddafi’s death and the capture of Sirte marked the end of the Libyan Arab Jamahiriya. In November, the last key Gaddafi family member, Saif al-Islam was captured by members of a revolutionary militia.¹⁵

III. THE DEFENDANTS

A. Muammar Gaddafi

Gaddafi was indicted on June 27, 2011 on two counts of crimes against humanity regarding the situation in Libya. As the leader of the revolution and commander of the armed forces of Libya, he allegedly planned a policy of oppression of popular uprisings in the early weeks of the Libyan civil war.¹⁶ He allegedly ordered Libyan state security forces to use all necessary means to quell public protests against his government. Government-organized militias, acting under Gaddafi’s orders, allegedly murdered hundreds of civilians and committed inhuman acts that severely deprived the civilian population of its fundamental rights. Since Gaddafi was killed in Sirte on October 20, 2011, the Court terminated proceedings against him on November 22, 2011.¹⁷

B. Saif al-Islam Gaddafi

Saif al-Islam was indicted on June 27, 2011. The warrant issued by the ICC alleged that Saif al-Islam exercised control over crucial parts of the state apparatus and had the powers of a *de facto* Prime Minister; committed crimes against humanity, including murder and persecution of civilians through the state apparatus and security forces; and planned a policy of oppression, in conjunction with Gaddafi, for security forces to violently quell all public protests against Gaddafi’s government. In November 2011, Saif-al-Islam was detained by members of a revolutionary militia and taken to the city of Zintan.¹⁸

In 2012, Libyan authorities stated their intention to delay trying Saif al-Islam in Libya in light of the militia’s demand that he be tried in Zintan.¹⁹ However, on December 10, 2014, the

¹⁴ France 24, *NATO jets launch strikes on Tripoli targets*, May 5, 2011, available at <http://www.france24.com/en/20110510-tripoli-nato-heavy-overnight-bombardment-gaddafi-compound-state-media-libya>.

¹⁵ See *supra* n. 5.

¹⁶ *The Prosecutor v. Muammar Mohammed Abu Minvar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Case No. ICC-01/11-01/11, Warrant of Arrest, June 27, 2011.

¹⁷ *The Prosecutor v. Muammar Mohammed Abu Minvar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Case No. ICC-01/11-01/11, Decision to Terminate the case against Muammar Mohammed Abu Minvar Gaddafi, November 22, 2011.

¹⁸ Al Jazeera English, *Saif-al-Islam Gaddafi arrested in Libya*, November 19, 2011, available at <http://www.aljazeera.com/news/middleeast/2011/11/20111119111936535209.html>.

¹⁹ BBC News, *Libya court postpones Saif al-Islam Gaddafi trial*, September 10, 2012, available at <http://www.bbc.com/news/world-africa-19551566>.

Pre-Trial Chamber of the ICC found Libya in non-compliance of its order to transfer Saif al-Islam to the ICC and referred the matter to the UNSC.²⁰ The Appeals Chamber affirmed and, therefore, the original ICC request for Saif al-Islam's arrest and surrender to the Court remained in effect. Further complicating the matter, Saif al-Islam was held by the Zintan militia, which refused to transfer him to the ICC or to hand him over to any Libyan authority.²¹ Ultimately, he was sentenced to death by a court in Tripoli in a mass trial of former regime figures. However, there was uncertainty about whether the sentence would be carried out, as the militia in Zintan that was holding Saif al-Islam was opposed to Libya Dawn, the militia coalition in control of Tripoli.²²

The African Court on Human and People's Rights (AfCHPR) held that Libya violated the rights to liberty and fair trial by holding Saif al-Islam in secret detention since 2011.²³ The Court determined that Libya violated its international obligations under the African Charter on Human and People's Rights, which secures the fundamental rights to liberty and to have one's cause heard. Libya did not participate, resulting in a judgment by default against Libya.

It has been reliably reported that Saif al-Islam is at large in Libya after being released from death row.²⁴ His lawyer said Saif al-Islam's sentence had been quashed by Libya's new UN-backed government (although not verified), and said he would apply to the ICC to drop the charges since, under Article 20 of the Rome Statute, a suspect cannot be tried twice for the same crimes.²⁵ However, under Article 20(3)(b), this limitation does not apply if the proceedings in the other court "were not conducted in accordance with the norms of due process recognized by international law."²⁶ Therefore, Saif al-Islam is still subject to a warrant issued by the ICC to face charges for crimes against humanity and murder for his role during the Libyan uprising in 2011 and could potentially be arrested if he tried to travel.²⁷

²⁰ *The Prosecutor v. Saif Al-Islam & Abdullah Al-Senussi*, Case No. ICC-01/11-01/11, Pre-Trial Chamber I, Decision on The Non-Compliance by Libya with Requests for Cooperation by the Court and Referring the Matter to the United Nations Security Council, December 10, 2014.

²¹ Colin Freeman, *Saif Gaddafi Asks for Trial to be Heard in Zintan rather than Tripoli*, The Telegraph, Sept. 21, 2015.

²² Chris Stephen, *Gaddafi's son Saif al-Islam sentenced to death by court in Libya*, The Guardian, July 28, 2015, available at <https://www.theguardian.com/world/2015/jul/28/saif-al-islam-sentenced-death-by-court-in-libya-gaddafi-son>.

²³ International Justice Resource Center, *AFCHPR: Gaddafi's Son's Rights Violated by Secret Detention in Libya*, June 22, 2016, available at <http://www.ijrcenter.org/2016/06/22/afchpr-gaddafis-sons-rights-violated-by-secret-detention-in-libya/>.

²⁴ Raf Sanchez, *Gaddafi's son Saif al-Islam at large in Libya after being released from death row, lawyer says*, The Telegraph, July 7, 2016, available at <http://www.telegraph.co.uk/news/2016/07/07/gaddafis-son-saif-al-islam-released-from-death-row-in-libya/>.

²⁵ Chris Stephen, *Gaddafi son Saif al-Islam 'freed after death sentence quashed'*, The Guardian, July 7, 2016, available at <https://www.theguardian.com/world/2016/jul/07/gaddafi-son-saif-al-islam-freed-after-death-sentence-quashed>.

²⁶ Rome Statute of the International Criminal Court, Done at Rome on 17 July 1998 (U.N. Doc. A/CONF.183/10), available at http://legal.un.org/icc/statute/99_corr/cstatute.htm.

²⁷ See *supra* n. 24 at 3.

C. Abdullah al-Senussi

The ICC issued a warrant of arrest for Abdullah al-Senussi on June 27, 2011, alleging that he committed crimes against humanity when he served as a Colonel in the Libyan Armed Forces and head of Military Intelligence and persecuted civilians through the state apparatus and security forces in February 2011.²⁸ The ICC Pre-Trial Chamber I ruled that al-Senussi could be tried in Libya, finding that Libya was prosecuting the same case as the ICC and that domestic authorities were able to conduct the domestic proceedings.²⁹ The Appeals Chamber affirmed this finding.³⁰ As a result, “proceedings against al-Senussi before the ICC came to an end on July 24, 2014 when the Appeals Chamber confirmed Pre-Trial Chamber I’s decision declaring the case inadmissible before the ICC.”³¹ In July 2015, al-Senussi was condemned to death by a firing squad after being tried with 36 other Gaddafi-era officials.³² The death sentence still needs to be confirmed by the Supreme Court. As of the date of this report, al-Senussi remains in prison.³³

Despite the Libyan government’s assurances that it could conduct a fair trial, many believe al-Senussi’s trial was tainted by political unrest in the country. Indeed, no witnesses or evidence were presented in court.³⁴ When the ICC ruled that Libya could try al-Senussi, there were only initial indications that his trial might face fairness challenges. The ICC did not reach specific issues, such as al-Senussi’s inability to call witnesses, finding such considerations speculative. Now that the trial is over, however, it plainly was riddled with fairness issues, and the death penalty was imposed on al-Senussi. The Rome Statute does not preclude judges from ruling a case inadmissible at the ICC because it imposes the death penalty—the ICC does not use the death penalty, and most States Parties to the Rome Statute oppose the death penalty. It is argued that the ICC’s Office of the Prosecutor should move to reopen admissibility in the case.³⁵ The British lawyers for al-Senussi have already petitioned the ICC to change the earlier decision that Libya is a competent place to try him.³⁶

²⁸ See *supra* n. 16.

²⁹ *The Prosecutor v. Saif Al-Islam & Abdullah Al-Senussi*, Case No. ICC-01/11-01/11, Pre-Trial Chamber I, Decision on the Admissibility of the Case Against Abdullah Al-Senussi, paragraphs 311-312, Oct. 11, 2013.

³⁰ *The Prosecutor v. Saif Al-Islam & Abdullah Al-Senussi*, Case No. ICC-01/11-01/11, Appeals Chamber, Judgment on the Appeal of Mr. Abdullah Al-Senussi Against the Decision of Pre-Trial Chamber I of October 11, 2013.

³¹ Situation in the Libya Arab Jamahiriya, Case No. ICC-01/11 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0111/Pages/situation%20index.aspx.

³² BBC News, *Profile: al-Senussi*, October 16, 2015, available at <http://www.bbc.com/news/world-middle-east-17414121>.

³³ See *supra* n. 25 at 2.

³⁴ See *supra* n. 29 at 2.

³⁵ Jennifer Trahan, *Rethinking the Death Penalty and Complementarity*, IntLawGrlls, July 9, 2016, available at <https://ilg2.org/2016/07/09/rethinking-the-death-penalty-and-complementarity/>.

³⁶ See *supra* n. 25 at 4.

D. Al-Tuhamy Mohammed Khaled

The ICC issued a warrant of arrest for Khaled on April 18, 2013; it was unsealed on April 24, 2017.³⁷ Pre-Trial Chamber I found that there were reasonable grounds to believe Al-Tuhamy Mohamed Khaled was criminally responsible for three charges of war crimes and four crimes against humanity. Khaled was the head of the Internal Security Agency (ISA), and between February 15 and August 24, 2011, Pre-Trial Chamber I found that there were reasonable grounds to believe that members of the ISA arrested and detained persons perceived to be opponents of the Gaddafi regime, who were subjected to various forms of mistreatment in various locations in Libya, and that Khaled had the authority to torture political prisoners.

Mr. Khaled was born in Libya's Jansour area in 1942,³⁸ west of Tripoli. He was also alleged to be the former Lieutenant General of the Libyan army.

IV. CONCLUSION

The ICC indicted and issued warrants not only for the leader of Libya, but for three top perpetrators of crimes against humanity, i.e. Gaddafi's son, Saif al-Islam, who was seen as his father's heir, Abdullah al-Senussi, who committed crimes against humanity when he was a Colonel in the Libyan Armed Forces and head of Military Intelligence, and Al-Tuhamy Mohamed Khaled, who was Libya's former security chief. Unfortunately, none of the indictments resulted in a trial.

Gaddafi was killed; and his son was never transferred to the ICC, as was ordered by the ICC Pre-Trial Chamber and affirmed by the Appeals Court. The Rome Statute, article 87 (7) permits the Court to make a finding of non-cooperation and refer the matter to the UNSC, which responded with Resolution 2238 which called upon Libya to cooperate fully with the ICC. However, Saif al-Islam remained held by militiamen in Zintan, and not by government authorities, and he was tried and sentenced to death in absentia by a court in Tripoli. Now that the death sentence has been quashed, a reported amnesty has been granted and he has been released from the house arrest in the town of Zintan where he had been held for five years, the ICC's original indictment and warrant against Saif al-Islam remains in effect. Al-Senussi was also sentenced to death by the Tripoli court. The death sentence is not an available punishment before the ICC, and the ICC has no competence to impose such a penalty. But the ICC ruled that al-Senussi could be tried in Libya since its domestic courts were willing and able to try the accused on the same charges for which he was indicted at the ICC. In so finding, the ICC viewed specific fairness issues, such as whether the accused would be able to call witnesses, as too speculative and did not make particularized findings as to such issues. Despite the Libyan government's assurances that it could conduct a fair trial, however, no witnesses or evidence were presented in court. Al-Tuhamy Mohamed Khalef's whereabouts are unknown, and he remains at large.³⁹ He possesses at least ten passports and numerous identities.

³⁷ Al Jazeera, ICC unseals warrant for Libya's Gaddafi-era official, April 25, 2017, available at <http://www.aljazeera.com/news/2017/04/icc-unseals-warrant-libya-gaddafi-era-official-170425142925312.html>.

³⁸ The New Arab, International Criminal Court chasing fugitive Gaddafi-era security chief, April 25, 2017, <https://www.alaraby.co.uk/english/news/2017/4/25/international-criminal-court-chasing-fugitive-gaddafi-era-%20security-chief>.

³⁹ See *supra* n. 38.

Therefore, despite time and effort spent by the ICC, in light of deteriorating events in Libya, the indictments brought by the ICC against Saif al-Islam, al-Senussi and Al-Tuhamey Khaled prove fruitless. However, in areas of political turmoil and where crimes against humanity are committed, it is important for international justice and due process that the ICC prosecute and, where possible, bring to trial the leading perpetrators of such crimes, including heads of state.

INTERNATIONAL CRIMINAL COURT PROCEEDINGS REGARDING UGANDA: JOSEPH KONY AND THE LORD'S RESISTANCE ARMY

By Victoria L. Safran

I. INTRODUCTION

In 2003, Uganda requested that the ICC initiate an investigation into the activities of the Lord's Resistance Army ("LRA") in Uganda. Uganda's request is significant in that it represents the first time that a state has asked the ICC to begin an investigation. The ICC's investigation led to the issuance of arrest warrants against the LRA's notorious leader, Joseph Kony, and four of his commanders. Currently, only one case, against Dominic Ongwen, is proceeding. Over eleven years after the arrest warrant against him was issued, Kony remains at large. The other three commanders all are believed to have died.

II. BACKGROUND

The Lord's Resistance Army ("LRA"), led by Joseph Kony, began in the mid-1980s as a Ugandan rebel force.¹ At the outset, fighting occurred primarily in Northern Uganda. The LRA initially targeted government troops, but then also turned against civilians when the government sent in civilian defense troops to combat it.² The LRA evolved into an organization of fighters pillaging parts of Uganda, The Democratic Republic of Congo, Central African Republic and South Sudan.³ The LRA has been described as a "cult like rebel group."⁴ Kony, a self-described Prophet, has been the LRA's leader since its inception. Kony claims to speak directly to God.⁵ He has said his mission is to cleanse his people, the Acholi, and has explained that it is necessary to kill them because they have failed to support his cause.⁶ At various times in the past, it has also been suggested that the LRA's mission was to overthrow President Museveni, or to rule Uganda in accordance with the Bible's Ten Commandments.⁷ Some have questioned Kony's religious motives by noting that the conflict brought practical benefits to Kony and his top leaders, including material comforts and a harem of young wives whom they captured and enslaved. It has also been argued that the LRA's fighting has continued simply because the risks of surrendering have become too great.⁸

¹ James C. McKinley, Jr., "Uganda's Christian Rebels Revive War in North," NEW YORK TIMES (April 1, 1996) <http://www.nytimes.com/1996/04/01/world/uganda-s-christian-rebels-revive-war-in-north.html>.

² Martin Plaut, "Profile: Uganda's LRA Rebels," BBC NEWS (Feb. 4, 2004) <http://news.bbc.co.uk/2/hi/africa/3462901.stm>.

³ "The Rebel Group, the LRA," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/the-lra/>.

⁴ *Supra* n. 1

⁵ *Id.*

⁶ *Supra* n. 2

⁷ *Supra* n. 1

⁸ *Supra* n. 2

The LRA turned to abducting children to fill the ranks of its army when it lost regional support.⁹ The LRA reportedly has abducted over 30,000 children,¹⁰ many of whom were forced to kill their own parents so they would have no one but the LRA to support them. The LRA has used children as expendable forces, often not even giving them guns to fight with.¹¹ They are known for their tactics of ambushing villages, murdering, torturing and mutilating citizens, raping women and abducting teenage girls and boys to become fighters or sexual slaves.¹² At the height of the conflict in 2005, over 1.8 million Ugandans had been forced to leave their homes and enter government camps for internally-displaced persons (“IDPs”).¹³ The LRA has been responsible for over 100,000 deaths during the course of the conflict.¹⁴

The LRA left Uganda in 2006 when the Juba Peace Talks, aimed at ending the conflict, began.¹⁵ In 2006, the LRA and Ugandan government signed a Cessation of Hostilities, which led to two years of peace negotiations; in the end, however, Kony repeatedly failed to show up to sign the Final Peace Agreement.¹⁶ After it became clear that Kony did not intend to sign the peace agreement, a number of African states, with United States’ support, launched a coordinated offensive against the LRA called Operation Lightning Thunder, but Kony received advanced notice of it and the operation failed. Kony retaliated by attacking villages in the Congo, killing 865 citizens and abducting over 160.

Today the LRA operates in a greatly weakened state in the Central African Republic, the Democratic Republic of Congo and South Sudan. The LRA’s forces have been reduced to an estimated few hundred, and since 2012, many of its prominent commanders have been killed, captured or forced to surrender.¹⁷ The LRA is now fractured into small groups. Much of their activity has focused on survival tactics, with raids to obtain food and supplies and poaching to raise revenue. Some commanders appear to be operating independently of Kony. Still, the LRA

⁹ "The Rebel Group, the LRA," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/the-lra/>.

¹⁰ "The Warlord, Joseph Kony," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/kony/>; Monica Mark, Joseph Kony Child Soldier Returns to Terrorised Boyhood Village, THE GUARDIAN (July 22, 2013) <https://www.theguardian.com/world/2013/jul/23/joseph-kony-child-soldier-return-uganda-lra>.

¹¹ *Supra* n. 2

¹² *Supra* n. 1 and n. 2. See "Court Moves Against Uganda Rebels," BBC NEWS (Oct. 7, 2005) <http://news.bbc.co.uk/2/hi/africa/4317852.stm>.

¹³ William Spindler, "UNHCR Closes Chapter on Uganda's Internally Displaced People," UNHCR (Jan. 6, 2012) <http://www.unhcr.org/en-us/news/briefing/2012/1/4f06e2a79/unhcr-closes-chapter-ugandas-internally-displaced-people.html>.

¹⁴ The Resolve LRA Crisis Initiative, "The LRA Crisis, Key Statistics," RESOLVE.ORG <http://www.theresolve.org/the-lra-crisis/key-statistics/>.

¹⁵ "The Rebel Group, the LRA," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/the-lra/>.

¹⁶ "The History of the War," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/history/>.

¹⁷ Paul Rogan and Lisa Dougan, "Joseph Kony's LRA is Still Abducting Children, Even After CAR Votes for Peace," NEWSWEEK (March 6, 2016) <http://www.newsweek.com/joseph-kony-lords-resistance-army-child-soldiers-433360>.

unpredictably launches attacks against civilians, and has continued to present a grave danger. In 2015, LRA forces were reported to have abducted over 600 people in 203 attacks; about 485 of these abductions occurred in the Congo. In early 2016, in a sharp escalation of violence in CAR, LRA reportedly abducted over 200 civilians in two months, more than had been abducted in CAR the entire year of 2015.¹⁸ The poaching of ivory by the LRA has also been an issue of great international concern.¹⁹

III. ICC PROCEEDINGS

On December 16, 2003, Uganda referred the situation to the ICC.²⁰ This marked the first time that a state itself had asked the ICC to investigate a matter.²¹

A. The ICC Investigation

The ICC investigation has focused on war crimes and crimes against humanity committed in the armed conflict primarily between the Lord's Resistance Army and Ugandan government authorities in Northern Uganda since July 1, 2002, when the Rome Statute entered into force.²²

In a press release issued in January 2004, the ICC Office of the Prosecutor stated that “[a] key issue will be locating and arresting the LRA leadership.” It noted that “[m]any members of the LRA are themselves victims having been abducted and brutalized by the LRA leadership” and that the future stability of Northern Uganda depended upon the reintegration of these victims into Ugandan society.²³

B. The ICC Allegations Against Kony and LRA Leaders

On July 18, 2005, the ICC's Pre-Trial Chamber issued the first warrants of arrests, under seal, against LRA leaders. The warrants were unsealed on October 13, 2005. The warrants were for Kony and four of his commanders, Dominic Ongwen, Raska Lukwiya, Okot Odhiambo and

¹⁸The Resolve LRA Crisis Initiative and Invisible Children, “LRA Crisis Tracker: The State of the LRA in 2016,” THE RESOLVE (March 2016) <http://www.theresolve.org/wp-content/uploads/2016/03/The-State-of-the-LRA-2016-Final.pdf>.

¹⁹Rick Gladstone, “US Broadens Sanctions on Joseph Kony and His Group,” NEW YORK TIMES (March 8, 2016) https://www.nytimes.com/2016/03/09/world/africa/us-broadens-sanctions-on-joseph-kony-and-his-group.html?rref=collection%2Ftimestopic%2FLord%27s%20Resistance%20Army&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=1a.

²⁰“Statement of the Prosecutor of the ICC, Fatou Bensouda, at a press conference in Uganda: justice will ultimately be dispensed for LRA crimes,” ICC (Feb. 27, 2016) <https://www.icc-cpi.int/Pages/item.aspx?name=160401-otp-stat>.

²¹“Court Moves Against Uganda Rebels,” BBC NEWS (Oct. 7, 2005) <http://news.bbc.co.uk/2/hi/africa/4317852.stm>.

²²“Uganda: Situation in Uganda, ICC-02/04,” ICC.ORG <https://www.icc-cpi.int/uganda>.

²³Press Release, “President of Uganda Refers Situation Concerning Lord's Resistance Army (LRA) to International Criminal Court,” ICC (Jan. 29, 2004) <http://www.un.org/press/en/2004/afr821.doc.htm>.

Vicent Otti.²⁴ Lukwiya was killed in combat with Ugandan forces in August 2006, and the ICC terminated proceedings against him in July 2007.²⁵ Otti was reportedly killed on Kony's command after he expressed support for the position that Kony should sign a peace treaty.²⁶ The ICC proceedings against him, however, have not been officially terminated. Odhiambo is believed to have died in December 2013 from wounds sustained in fighting against Ugandan forces,²⁷ and the ICC terminated proceedings against him on September 10, 2015.²⁸ Dominic Ongwen, surrendered to the ICC. Joseph Kony remains at large.

Kony is charged with a total of 33 counts—12 counts of crimes against humanity, including murder, enslavement, sexual enslavement, rape and other inhumane acts, and 21 counts of war crimes, including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape and forced enlistment of children.²⁹

The ICC Prosecutor alleges that the LRA carried out an insurgency against the Government of Uganda and the Ugandan Army (aka Uganda's People's Defence Force) and local defense units from July 2002 to 2004. Attacks were directed against the Ugandan Army, local defense units and civilian populations. The ICC Prosecutor alleges that the LRA engaged in a cycle of violence and pattern of "brutalization" of civilians by acts including murder, abduction, sexual enslavement, mutilation, mass burnings of houses and looting of camp settlements." The LRA is also alleged to have abducted civilians, including children, and to have forcibly recruited them as LRA fighters, porters and sex slaves.³⁰

The ICC alleges that the LRA was organized in a military-type hierarchy and operating as an army. Kony was at the head as Chairman and Commander-in-Chief, with Vincent Otti below him, as Vice-Chairman and Second-in-Command, followed by the Army Commander (a post at one point held by Lukwiya), then three senior posts of Deputy Army Commander (at various points held by Lukwiya and Odhiambo), Brigade General and Division Commander, and then four Commanders of equal rank, each of whom led one of the LRA's four brigades—named

²⁴ Press Release, "Warrant of Arrest Unsealed Against Five LRA Commanders," ICC (Oct. 14, 2005). <https://www.icc-cpi.int/pages/item.aspx?name=warrant+of+arrest+unsealed+against+five+lra+commanders>.

²⁵ "Decision to Terminate the Proceedings Against Raska Lukwiya," Pre-Trial Chamber II, ICC-02/04-01/05-248 (July 11, 2007) <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/04-01/05-248>.

²⁶ "The Rebel Group, the LRA," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/the-lra/>. See also Noel Mwakugi, "Obituary: LRA Deputy Vincent Otti," BBC (Jan. 23, 2008) <http://news.bbc.co.uk/2/hi/africa/7083311.stm>.

²⁷ "The Rebel Group, the LRA," INVISIBLE CHILDREN (2014) <https://invisiblechildren.com/challenge/the-lra/>

²⁸ "Decision Terminating Proceedings Against Okot Odhiambo," Pre-Trial Chamber II, ICC-02/04-01/05-431 (Sept. 10, 2015) <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/04-01/05-431>.

²⁹ *Supra* n. 24

³⁰ "Alleged Crimes," Uganda, The Prosecutor v. Joseph Kony, et al., ICC.ORG <https://www.icc-cpi.int/uganda/kony/pages/alleged-crimes.aspx>.

Stockree (at one point held by Odhiambo), Sinia (at one point held by Ongwen), Trinkle (also at one point held by Odhiambo) and Gilva.³¹

Kony, Otti and other senior LRA commanders allegedly formed the LRA's "Control Altar," the LRA core leadership responsible for devising and implementing strategy, including standing orders to attack and brutalize civilian populations.³²

C. The Severed Case Against Dominic Ongwen

Dominic Ongwen surrendered to the ICC on January 16, 2015 and was transferred to the Court's custody on January 21, 2015. On February 16, 2016, the case against Ongwen was severed from the case against Kony and the others.³³

Ongwen was recruited as a child soldier by the LRA when he was just 10 years old. He grew up to be one of the LRA's most feared leaders. His case presents a special challenge for the ICC as he is both an alleged perpetrator of brutal crimes and a victim of the LRA.³⁴

On March 3, 2016, the Pre-Trial Chamber II confirmed the 70 charges brought against Ongwen, as the former Commander in the Sinia Brigade of the LRA, and committed him to trial. The specific charges against Ongwen concern alleged war crimes and crimes against humanity committed during LRA attacks in 2003 and 2004, and sexual and gender-based crimes, crimes of conscription, and the use of children under 15 years of age in hostilities in Northern Uganda from 2002 through 2005.³⁵

In April 2016, the ICC Prosecutor, Fatou Bensouda, released a message urging LRA fighters to defect from the LRA and return home. The Prosecutor stated that the ICC had received information that Kony and top commanders continued to mislead LRA fighters by telling them that if they surrendered and tried to return home, they would be imprisoned like Ongwen, or even tortured or killed by the ICC. The Prosecutor assured the fighters that these statements were false. The Prosecutor further urged Kony to surrender, and sought help from anyone with information as to Kony's whereabouts.³⁶

³¹ *Id.* See "The Investigation in Northern Uganda," ICC OTP Press Conference, ICC (Oct. 14, 2005). https://www.icc-cpi.int/NR/rdonlyres/2919856F-03E0-403F-A1A8-D61D4F350A20/277306/Uganda_PPpresentation6.pdf.

³² *Id.*

³³ "Decision Severing the Case Against Dominic Ongwen," Pre-Trial Chamber II, ICC-02/04-01/05-424 (Feb. 16, 2016). <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/04-01/05-424>.

³⁴ "LRA Commander Dominic Ongwen Appears Before ICC in The Hague," BBC NEWS (Jan. 26, 2015) <http://www.bbc.com/news/world-africa-30976818>.

³⁵ Press Release, "Ongwen case: Trial to open on 6 December 2016," ICC (May 30, 2016). <https://www.icc-cpi.int/Pages/item.aspx?name=pr1216>.

³⁶ "Message from the Prosecutor of the International Criminal Court, Fatou Bensouda, calling for defection by LRA fighters," ICC (April 1, 2016) <https://www.icc-cpi.int/Pages/item.aspx?name=160401-otp-stat>.

In May 2016, Trial Chamber IX scheduled the trial against Ongwen. The trial chamber heard opening statements on December 6, 2016, and the presentation of evidence by the prosecution commenced on January 16, 2017. The next session is planned for January 15, 2018.³⁷

IV. CONCLUSION

The ICC proceedings with respect to the activities of the LRA are significant because Uganda itself requested that the ICC investigate, which mitigates the frequent criticism that the ICC unfairly targets Africans. As the situation currently stands, however, only the case of Dominic Ongwen is going forward. The case presents troubling issues of criminal responsibility for the ICC, and for the world, as to how to mete out justice in a case where an individual, abducted as a child and indoctrinated by a violent rebel group to serve as a child soldier, grows up to be one of the most feared leaders of that group and commits heinous crimes. Meanwhile, the LRA's leader, Joseph Kony, remains in hiding, and the manhunt for him continues. If Kony is captured and brought to justice, the ICC could achieve an exceptional measure of success.

³⁷ The Prosecutor v. Dominic Ongwen, ICC-02/03-01/15, <https://www.icc-cpi.int/uganda/ongwen>.