International Criminal Court (ICC):

Case 1: ICC V. Omar Hassan Ahmad Al Bashir

Brief Description of the case:

On the 14th of July 2008, the International Criminal Court (ICC) sought an arrest warrant against Omar Hassan Ahmad Al Bashir, the former President of Sudan. The arrest warrant was based on allegations of his involvement in genocide, crimes against humanity, and war crimes in Darfur. The ICC argues that he is responsible for orchestrating widespread violence against large civilian populations and targeting ethnic groups such as Fur, Masalit, and Zaghawa, using his role as president to carry out widespread ethnic cleansing. The arrest warrants were issued in 2009 and 2010, making him the first head of state to be indicted by the ICC.

History of the Case:

The year 2003 marks the start of the Darfur conflict, where rebel groups believed that the Sudanese government was responsible for political and economic marginalization and opposed the Sudanese government. As a response to the rebel groups, the Sudanese government, under the alleged orders of Al Bashir, supported and coordinated with militias in the region known as the Janjaweed to suppress the rebellion.

These militias that were allegedly supported by the government at the time carried out widespread attacks on villages, which resulted in mass killings, displacement, and destruction of property, leading to a long-lasting conflict also known as the Darfur Conflict. In 2005, the United Nations Security Council referred the Darfur conflict to the ICC through resolution 1593, which granted the ICC jurisdiction over all crimes committed during the conflict, where investigations led to arrest warrants against Al Bashir. However, despite the warrants for his arrest, Al Bashir remained president for many years to follow, raising concerns about the enforcement of international law until he was removed from the presidency in 2019.

Facts of the Case:

Both parties in the case present legal and factual arguments on the Darfur conflict. Counsels present evidence of attacks in Darfur, government involvement with militias, and facts on the humanitarian impact left by the conflict.

Possible Arguments for Prosecution:

The prosecution may argue that Omar al-Bashir unlawfully used his power as president to coordinate campaigns of violence and carry out widespread ethnic cleansing in the Darfur region. They may claim that his actions were systematic and intentional, constituting genocide as they were carried out with the intent to destroy.

The prosecution may also argue that Al-Bashir abused his power as president by gaining full control over Sudanese forces and militias to commit acts of genocide, placing full responsibility on him and the acts of murder, extermination, rape, and forced displacement by his soldiers.

Possible Arguments for Defence:

The defence may counter the prosecution's argument by claiming that the ICC lacks jurisdiction, as Sudan is not a party to the Rome Statute, and the ICC is unable to prosecute on charges of genocide. Additionally, arguing that as head of state, Al Bashir should have been entitled to immunity under international law, preventing his prosecution.

The defence is also able to argue that since the Darfur conflict was a complex civil war and not deliberate violent campaigns, military actions taken were responses to rebel insurgencies, and not direct threats or attempts at genocide and violence.

Conclusion:

In conclusion, the ICC's case against Omar Hassan Ahmad Al Bashir is one of many controversial cases, as it sheds light on challenges that arise when prosecuting political leaders such as Omar Hassan Ahmad Al Bashir and how political power can often interfere with international justice.

Although arrest warrants remain in place, Al Bashir has not been transferred to ICC custody, raising questions about state cooperation on the limits of international jurisdiction, and the balance between political sovereignty and accountability for major crimes.

Case 2: **ICC V. Dominic Ongwen**

Brief Description of the Case:

Dominic Ongwen's case was brought to the ICC on the 16th of December 2016 on the grounds of war crimes and crimes against humanity. Ongwen was being prosecuted for his alleged actions as a former commander in the Lord's Resistance Army (LRA) for 70 counts of war crimes and widespread atrocities in northern Uganda from 2002 to 2005. These actions included murder, torture, enslavement, rape, sexual slavery, forced marriage, and forced recruitment of children into the LRA. The prosecution maintains that he orchestrated and ordered these brutal attacks in Northern Uganda, particularly in relation to IDP (internally displaced persons) populations.

History of the Case:

While Ongwen was prosecuted for his alleged involvement in the LRA's atrocities in 2016, the conflict with the LRA began in the late 1980s under the leadership of Joseph Kony, who led a violent insurgency against the Ugandan government. The LRA became known for its widespread human rights abuses, particularly the abduction of children to force them to serve as soldiers in the LRA, one of these abductees being Dominic Ongwen himself.

Ongwen was abducted by the LRA at the young age of around 9 or 10, where he was trained by the group to serve as part of their army. Over time, Ongwen didn't remain merely a member of the group, but rose in the ranks of the group, ultimately becoming a brigade commander.

In 2005, the International Criminal Court issued an arrest warrant under the authority of the Rome Statute for the top-ranking LRA leaders at the time, including Dominic Ongwen. Following the arrest warrant, Ongwen evaded arrest for years until surrendering to the Central African Republic's authorities in 2015, where he was subsequently transferred to ICC custody.

Facts of the Case:

Both sides present facts on Ongwen's involvement in the LRA, particularly the extent of his involvement in attacks on civilian camps, including Odek, Abok, Lukodi, and Pajule.

Possible Arguments for Prosecution:

The prosecution may argue that crimes committed by him and the LRA should fall under his responsibility, regardless of his past as a victim of abduction, as he actively chose to remain a participant in the LRA and participate in their crimes. They argue that Ongwen exercised his authority over his troops, directly orchestrating and executing attacks and crimes by the LRA.

It is alleged that Ongwen was responsible for systematic and widespread abuses, including ordering killings, overseeing sexual slavery practices, and forcibly recruiting children into the LRA. The prosecution maintains that his high-ranking position demonstrates intent, control, and full awareness of his actions.

Additionally, Ongwen must face legal responsibility for his actions and be tried as an adult, as he continuously and consciously chose to continue exercising his authority and committing crimes into adulthood.

Possible arguments for defence:

The defence may argue that Ongwen's crimes and involvement in the LRA can be justified by his past as a child abductee, arguing that he was a victim of extreme indoctrination, manipulation, and psychological trauma from a very young age. They argue that this exposure caused long-lasting psychological effects and trauma and severely limited his ability to exercise free will.

Additionally, the defence may argue that Ongwen acted under extreme duress rather than free will, as he was under extreme pressure and faced the consequences of punishment or death if he were to disobey orders from the LRA especially as, following his abduction, he occupied a low position within the LRA's hierarchical system.

Lastly, the defence may also prove their point by raising questions about morality and responsibility, suggesting that Ongwen's case is far from traditional, as Ongwen has been shaped by long-lasting abuse and manipulation.

Conclusion:

In conclusion, the case of the ICC V. Dominic Ongwen raises questions regarding whether legal action should be based on morality or jurisdiction in unusual circumstances.

Overall, in February of 2021, the court found Ongwen guilty of 61 counts of war crimes and crimes against humanity and was sentenced to 25 years in prison in May 2021. The case stands as a landmark case in international law regarding accountability in situations that don't merely follow conventional forms of justice, particularly when cases include child soldiers and mass atrocities.