



Dominic Ongwen: LRA Victim or Perpetrator?

By Tom Maliti



All sides involved in the International Criminal Court (ICC) trial of Dominic Ongwen agreed that he did not voluntarily join the Lord’s Resistance Army (LRA) and that he was subjected to the group’s violent initiation rituals to force him to submit to the LRA.

What they disagreed on is whether Ongwen’s brutal induction into the LRA meant that he was himself a victim throughout the 27 years he was a member of the LRA, that he was always submissive and incapable of making his own decisions, including whether to escape the group.

Ongwen’s trial covered only a fraction of the time he was with the LRA— the period between 1 July 2002 and 31 December 2005. In 2002, Ongwen was 24 years old, well past the age of 15 years, the upper limit for him to be classified as a child soldier under the Rome Statute, the ICC’s founding law.

Ongwen’s lawyers advanced the “once a victim, always a victim” [argument](#). The prosecution [disagreed](#), pointing to the testimony of multiple former LRA members who, just like Ongwen, were abducted and forced to join the group but later chose to escape the LRA despite the threat of death if they were recaptured. Lawyers representing the victims said their clients had shared a similar a experience of their LRA superiors “[beating the civilian](#)” out of them but they later chose to leave the group at great risk to themselves.

The three judges of Trial Chamber IX agreed with the arguments of the prosecution and the victims’

lawyers when they unanimously convicted Ongwen of 61 counts of war crimes and crimes against humanity on February 4 this year.

Presiding Judge Bertram Schmitt and Judges Péter Kovács and Raul C. Pangalangan also considered similar arguments when determining what sentence to give Ongwen. They sentenced him to 25 years imprisonment in a [2-1 decision](#) issued on May 6.

The duress defence

In their 1,077-page [judgement](#), Judges Schmitt, Kovács and Pangalangan explained why they concluded that when Ongwen committed the crimes he was charged with he was not under “a threat of imminent death” nor was he under threat of “continuing bodily harm.” These are the two elements Ongwen’s lawyers needed to demonstrate in their argument that their client was under duress when he committed the crimes he was charged with.

“In fact, based on the above, the Chamber finds that Dominic Ongwen was not in a situation of complete subordination vis-à-vis [LRA leader] Joseph Kony. The evidence indicates that in the period of the charges, Dominic Ongwen did not face any prospective punishment by death or serious bodily harm when he disobeyed Joseph Kony. Dominic Ongwen also had a realistic possibility of leaving the LRA, which he did not pursue. Rather he rose in rank and position, including during the period of the charges,” said the judges.

The judges further addressed the issue of Ongwen being a victim because of his abduction when he was nine years old and concluded,

“The Chamber has duly considered the above facts underlying these submissions [by the defence]. In addition, and while acknowledging that indeed Dominic Ongwen had been abducted at a young age by the LRA, the Chamber notes that Dominic Ongwen committed the relevant crimes when he was an adult and, importantly, that, in any case, the fact of having been (or being) a victim of a crime does not constitute, in and of itself, a justification of any sort for the commission of similar or other crimes.”

Dominic Ongwen also had a realistic possibility of leaving the LRA, which he did not pursue.

One reason the judges reached the conclusions they did about Ongwen was that dozens of witnesses who testified before them described having suffered similar experiences to what Ongwen underwent in the LRA. They testified about their abduction at a young age. They testified about their brutal initiation into the LRA. They testified about their constant fear of being killed on suspicion of wanting to escape but, in many cases, they overcame that fear or resigned themselves to the possibility of being killed and chose to escape anyway.

In their majority decision on Ongwen’s sentencing, Judges Schmitt and Kovács said they took into account Ongwen’s abduction by the LRA when he was nine years old and what he went through as a child. They said they weighed that against the gravity of the crimes for which they convicted Ongwen. Judge Pangalangan said he agreed with their reasoning regarding Ongwen’s sentencing but he disagreed with the sentence itself. In a partially dissenting opinion, Judge Pangalangan said he would have sentenced Ongwen to 30 years in prison. All the judges were agreed, however, that they would not sentence Ongwen to life imprisonment as the lawyers for the victims had asked.

Ongwen's age

Another issue Judges Schmitt, Kovács and Pangalangan determined in their February 4 judgment was Ongwen's age and the year he was abducted. After analysing the different testimonies placed before them, the judges concluded that Ongwen was abducted in 1987 and that he was nine years old at the time.

The judges decided to make a determination on Ongwen's age and the year he was abducted because, as Ongwen's case proceeded, different people gave Ongwen a different age at the time of his abduction. They included Ongwen himself who said he was 14 years old when he was abducted. He said this on the first day he appeared before the ICC in January 2015.

In 1987, when Ongwen was abducted on his way to school, the LRA was known as the Holy Spirit Mobile Forces before it later changed its name to the Lord's Resistance Army. In the period during which he committed the crimes for which he was convicted and sentenced, Ongwen was a commander with the LRA's Sinia Brigade. Between 2002 and 2005, Ongwen was first commander of the Oka battalion of Sinia Brigade and was later promoted to other command positions before being named overall brigade commander.

The crimes

The crimes for which Ongwen was convicted and sentenced include his role in attacks on four camps for internally displaced people in the Gulu and Lira districts of northern Uganda. Ongwen was also convicted of murder, persecution, pillaging, torture and attacking civilians in the Pajule, Odek, Lukodi, and Abok IDP camps. The attack on Pajule took place on 10 October 2003, the Odek attack on 29 April 2004, Lukodi on 19 May 2004 and Abok on 8 June 2004. These IDP camps and others in northern Uganda have since been closed and the people have returned to their villages, especially after the LRA left northern Uganda as part of the Juba-mediated peace process that ran from 2006 to 2008.

Ongwen was also convicted on 11 counts of sexual and gender-based crimes he committed himself. These include forcefully marrying five women identified in the verdict by their pseudonyms P-099, P-101, P-214, P-226 and P-227. Other sexual and gender-based crimes for which Ongwen was convicted include rape, torture, sexual slavery, enslavement and forced pregnancy. He was convicted of committing these crimes against seven women.

The former commander in the LRA's Sinia brigade was also convicted of indirectly committing sexual and gender-based crimes against other women. Ongwen was also convicted of two counts of conscripting children under the age of 15 into the LRA and using them to participate in attacks.

Ongwen's conviction on 61 counts of war crimes and crimes against humanity is a record at the ICC. It is unlikely that Ongwen would be holding such a record had he not surrendered himself in January 2015. The ICC issued an arrest warrant in July 2005 but Ongwen evaded capture for close to 10 years. By the time he surrendered himself to a rebel group in the Central African Republic in January 2015, there had been an unsuccessful multinational effort in that country to capture Kony and other LRA commanders. So, what led to Ongwen's surrender in January 2015? Ongwen did not testify during his trial so the reasons for his surrender remain unclear.

A prosecutor comes calling

But how did the northern Uganda conflict that Ongwen was part of end up at the ICC? The obvious answer would be that in December 2003 Uganda asked the ICC to investigate the atrocities

committed in the region. This was the first such request to be received at the ICC after it began work in July 2002. The request led the Office of the Prosecutor (OTP) to investigate the atrocities in northern Uganda and request judges to issue an arrest warrant for five LRA commanders, including Ongwen. The arrest warrant was issued in July 2005 and, almost 10 years later, Ongwen surrendered to a rebel group in the Central African Republic and was later handed over to the ICC in January 2015.

However, it turns out that the ICC's involvement in Uganda was not that straightforward. Uganda did not simply seek the ICC's intervention—the official ICC line on the issue. On the contrary, the ICC's first prosecutor, Luis Moreno Ocampo, actively encouraged Ugandan President Yoweri Museveni to seek the ICC's intervention in northern Uganda. The mid-2003 discussion between Moreno Ocampo and Museveni did not seal the deal; Museveni referred the matter to the Ministries of Justice and Defence and there was debate on the pros and cons before Uganda sent the ICC a referral request.

According to Phil Clark in his 2018 book *Distant Justice*, Phil Clark says that it is Moreno Ocampo who first broached the subject. In short, Moreno Ocampo did what in legal circles is sometimes referred to as ambulance chasing.

According to Clark, Moreno Ocampo reached out to the Ugandan government in London in May 2003. He based his information on an interview with an unnamed Ministry of Defence official that corroborated a 27 July 2009 report in *The EastAfrican*.

At the time Moreno Ocampo made that initial approach to the Ugandan government, the ICC was almost a year old and it had no case to its name.

In his book, *Distant Justice*, Clark argues that the Office of the Prosecutor actively pursuing cases in the early days of the court underlined, “a view within the Court—and particularly within the OTP—that, as a new global institution with substantial financial and diplomatic backing from State Parties, it needed to open investigations and prosecutions quickly to be seen as a legitimate actor on the world stage.”

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This is echoed by an unnamed ICC official Clark interviewed in 2006. “What use is a court without cases? We wanted to hit the ground running and show the world that we're a force to be reckoned with,” the official told Clark.

When Moreno Ocampo initiated discussions with Uganda on a possible referral, he found a government thinking through what the court meant for world politics. Lucien Tibaruha, Uganda's Solicitor-General of at the time, told Clark in a March 2006 interview that after Moreno Ocampo got in touch with Museveni, the issue of an ICC referral was passed on to both the Ministry of Justice and the Ministry of Defence. Tibaruha told Clark that it was the Ministry of Defence (MoD) that followed up on the issue with the ICC.

“They started talking to the Court and they kept us informed. MoD is in charge of day-to-day ICC affairs. . . . In our referral we told the ICC the LRA is out of reach by the Ugandan government. We asked the Court to go get them. It's clear we're unable to prosecute the LRA because they're currently outside the jurisdiction of Uganda,” Tibaruha told Clark.

A Ministry of Defence official who spoke to Clark on condition of anonymity gave him a similar account of how Moreno Ocampo initiated the discussions with Uganda.

“In all truth, it was a blessing because we’d tried everything against the LRA—[peace] talks, military operations, amnesties. We needed a new approach and here was something new, something unexpected,” the Ministry of Defence official told Clark in August 2011.

The Ministry of Defence official also told Clark that Museveni thought going the ICC route, “would be a good way to get rid of Kony and the [other LRA leaders] but he wanted to know what we in [in MoD] thought.”

“We said it was the right approach but some in the government, like the Ministry of Justice, weren’t so sure. They thought the ICC could be turned around and used against the UPDF (Uganda People’s Defence Force). . . . Ultimately, the President agreed with us,” said the Ministry of Defence official.

What former Ugandan Solicitor-General Lucien Tibaruha told Clark about the military taking the lead in dealing with the ICC was in evidence during Ongwen’s trial. To corroborate witness testimony against Ongwen, the prosecution relied on Ugandan intelligence and police intercepts of LRA radio communications.

The UPDF and the Internal Security Organisation (ISO) recorded their intercepts of LRA radio communications. The UPDF and ISO members who were assigned to intercept LRA radio communications also took notes at the same time as they were recording the broadcasts. Separately, members of the Ugandan police force took notes of LRA radio communications they intercepted but they did not record those broadcasts. During Ongwen’s trial, it emerged that the UPDF had been [intercepting LRA radio communications since 1995](#) and the [ISO since 2000](#).

In total, the prosecution disclosed 600 cassettes of recordings of intercepted LRA radio communications and 22,000 pages of notes and other material related to those intercepts.

During the conflict in northern Uganda between the LRA and government forces, LRA commanders talked to each other and to their superiors via two-day radio. Former LRA radio operators who testified during Ongwen’s trial said some of the radios they used had been seized during attacks on the compounds of aid agencies working in northern Uganda.

The former LRA radio operators also said they used a cipher to communicate sensitive information over radio because they were aware that Ugandan security agencies were listening in on their conversations. They said the cipher changed regularly.

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In addition to the cassettes and other material the Ugandan government handed over to the OTP, eight members of Uganda’s intelligence agency, military, and police testified during Ongwen’s trial. Four of them told the court about their routine as they intercepted LRA communications and described the cipher the LRA used while communicating sensitive information over radio. They said they learnt about the cipher from notebooks and materials seized by the Ugandan military during attacks on LRA positions.

Among the Ugandan military officers who [testified](#) was the top lawyer for military intelligence, Lieutenant Colonel Timothy Nabaassa Kanyogonya. He told the court that the different intercept programmes had not been started with the aim of building a court case, but rather to aid the military

in its fight against the LRA. Kanyogonya did say, however, that over time they also investigated LRA commanders and gathered evidence on 15 of them, including Ongwen. He said this evidence was handed over to the ICC.

Other LRA atrocities

Ongwen's trial was limited to a three-and-a-half-year period and to attacks on four places in the districts of Gulu and Lira. His trial did not cover the span of the 20 years during which the Lord's Resistance Army killed, brutalised and abducted tens of thousands of people in northern Uganda.

But it is easy to think Ongwen was being tried for all the atrocities committed in the name of the LRA. After all, three of the senior LRA commanders indicted by the ICC together with Ongwen are dead. The fourth—long-time LRA leader Joseph Kony—has evaded arrest to date despite a six-year multinational hunt for him and other remnants of the LRA in the remote areas of Central African Republic, Congo and South Sudan.

Outside the ICC, it is only in Uganda where a former LRA commander, Thomas Kwoyelo, is on trial. The proceedings against Kwoyelo began in 2011 at the High Court and his trial is ongoing.

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Apart from the court cases, an amnesty programme for former rebels has also been in effect in Uganda and from the time the amnesty law came into force in 2000, more than 13,000 former LRA members have been given amnesty for their roles in the rebel group. Most were rank-and-file LRA members and, like Ongwen, a number were former senior or mid-ranking LRA members who were either his superiors or were his equals between 2002 and 2005. Some of them testified during Ongwen's trial.

During the period between 2002 and 2005 when Ongwen committed the crimes for which he was convicted by the ICC, foreign news agencies regularly quoted 20,000 as the number of children abducted by the LRA, an estimate that was attributed to the United Nations Children's Fund.

Going by that estimate and subtracting from it the number of former LRA members granted amnesty by the Ugandan government, this means that as many as 7,000 people are unaccounted for in the northern Uganda conflict. How many of these are people who were killed during the 20-year conflict in northern Uganda? How many of them are people who survived the conflict but have not been able to return to their families?

These are not just academic questions. A clansman of Ongwen's who was abducted together with him testified about these issues during the trial. Joe Kakanyero [told the court](#) that throughout the 27 years Ongwen was with the LRA the family was never sure whether he was alive or dead. Kakanyero, who testified for the defence, said it was only when they saw Ongwen on television making his first appearance at the ICC that they knew for sure he was alive and where he was.

Ongwen has been tried, convicted and sentenced and his family knows he is at the ICC Detention Centre. Thousands of survivors of the 20-year northern Uganda conflict do not know whether their sister or brother, mother or father, aunt or uncle is alive or dead.

Tom Maliti covered Dominic Ongwen's trial for the [International Justice Monitor](#) from when it opened in December 2016 to when the judgment was issued in February this year.

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