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THE PROSECUTION v. DOMINIC ONGWEN

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Background:

Dominic Ongwen was born in Northern Uganda in 1975, but in 1987 he was kidnapped by the Lord's Resistance Army (LRA) to become one of its child soldiers². This rebel group was born between the Acholi people of the Northern region of Uganda who had suffered tremendous abuses of the central government between 1970 and 1980³. As a result, Joseph Kony established the LRA in 1987 to overthrow the Ugandan President at that time, Yoweri Museveni, and install a religious state based on Kony's interpretation of the biblical rules of the Ten Commandments⁴.

The Human Rights Watch's database attested that between 1987 and 2006 at least 20,000 Ugandan children were abducted, over 1.9 million people were displaced from their homes into camps and tens of thousands of Ugandan civilians died due to the

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Source:

Africanews

<https://www.africanews.com/2021/05/06/dominic-ongwen-sentenced-to-25-years-of-imprisonment/>

² Dominic Ongwen - from child abductee to LRA rebel commander. BCC. Available at: <https://www.bbc.com/news/world-africa-30709581>

³ Q&A on Joseph Kony and the Lord's Resistance Army. Human Rights Watch. Available at: <https://www.hrw.org/news/2012/03/21/qa-joseph-kony-and-lords-resistance-army#1>

⁴ Ibid, parag. 04.

activities of LRA⁵. The abduction of children was one of the main characteristics of this group due to the facility in manipulating and employing them in military training to make them future combatants⁶.

Dominic Ongwen was one of LRA's victims. It took him off from his parents when he was 14 years old and witnessed several demonstrations of violence and cruelty. A psychiatrist of the International Criminal Court (ICC) described that shortly after Ongwen's abduction, in 1988, he tried to flee from the LRA's camp with other three children, but they failed and were brought back to the camp. As punishment, LRA's officers forced him to skin alive one of the other children as a warning⁷.

After years serving as a child soldier, Dominic Ongwen eventually became one of the most important leaders of LRA. During the early 2000s, he committed 61 crimes, including crimes against humanity, such as slavery enforcement, murder, torture, sexual slavery, forced marriage and the rape of seven women who were abducted and placed into his household, in addition to numerous war crimes⁸.

Overview Timeline of the Key case Dates⁹:

<i>First warrant of arrest</i>	<i>Voluntary surrender</i>	<i>Initial ICC Appearance</i>	<i>Trial opening</i>	<i>Closing statement</i>	<i>Judgment</i>	<i>Sentence</i>	<i>Appeals Request</i>
8 July 2005	16 January 2015	26 January 2015	6 december 2016	12 March 2020	4 February 2021	6 May 2021	21 May 2021

As Uganda had ratified the Rome Statute on 14th July 2002, the Ugandan government referred the situation concerning the Lord's Resistance Army to the Prosecutor of the International Criminal Court¹⁰, who began an investigation in the Northern part of Uganda in 2004. In 2005, the Pre-trial of the ICC issued an arrest warrant against five

⁵ Ibid, parag. 10.

⁶ Q&A on Joseph Kony and the Lord's Resistance Army. Human Rights Watch.

⁷ Dominic Ongwen - from child abductee to LRA rebel commander. BBC.

⁸ LRA commander Dominic Ongwen sentenced to 25 years in prison. Aljazeera. Available at: <https://www.aljazeera.com/news/2021/5/6/lra-commander-dominic-ongwen-faces-war-crimes-sentence>

⁹ Ongwen case. Available at: <https://www.icc-cpi.int/uganda/ongwen>.

¹⁰ President of Uganda refers the situation concerning the Lord's Resistance Army (LRA) to the ICC. International Criminal Court. Available at: https://www.icc-cpi.int/pages/item.aspx?name=president%20of%20uganda%20refers%20situation%20concerning%20the%20lord_s%20resistance%20army%20_lra_%20to%20the%20icc

suspects of committing ICC's jurisdiction crimes, including Dominic, under article 58 of the Rome Statute. Despite the ICC's cooperation with other States to arrest, detain and surrender Dominic Ongwen, such as the Republic of Sudan, it could arrest him only in 2015 through cooperation with the US forces. A few months later, he was transferred to the custody of the ICC¹¹.

Jurisdiction of the ICC

Once Uganda had ratified the Rome Statute, it automatically accepted ICC's jurisdiction. Thus, Uganda may refer cases of crimes that fall within the jurisdiction of the Court, i.e. as crimes against humanity, war crimes, crimes of aggression and genocide, committed on or after 1 July 2002, to the prosecutor. In that sense, Uganda's president communicated Dominic's crimes to the ICC.

The International Criminal Court is an international tribunal responsible for investigating, prosecuting and judging individuals, not States. However, the Court does not have an army or other sort of enforcement resources to arrest the suspects. For that reason, it depends on the military forces and internal resources of States to arrest perpetrators¹². It happened in Ongwen's case, as the cooperation between the ICC, the USA's forces and the MINUSCA¹³ resulted in Ongwen's arrest and late prosecution and judgment.

When it comes to his 61 crimes, most of them were war crimes. These crimes are violations of the Geneva Conventions that occurred during armed conflicts and include the use of child soldiers, for example. International Human Rights law declares 15 as the minimum age for military recruitment¹⁴. It means that people recruited below this age are classified as child soldiers¹⁵. The International Humanitarian Law both in its treaty and by customary form bans this practice¹⁶.

Regarding his crimes against humanity, the Rome Statute define these crimes as "*serious violations committed as part of a large-scale attack against any civilian population*"¹⁷. They can take the form of numerous violations, such as massive rapes, torture and forced enslavement. Dominic Ongwen was responsible for abducting thousands of children and transforming girls into sex slaves for years, which are basis for the charges against him.

Legal issues

¹¹ Dominic Ongwen transferred to The Hague. ICC. Available at: <https://www.icc-cpi.int/pages/item.aspx?name=pr1084>

¹² How the Court Works. ICC. Available at: <https://www.icc-cpi.int/about/how-the-court-works>.

¹³ Mandated to protect civilians and support transition processes in the Central African Republic.

¹⁴ "*States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities*". Art. 38 of the Convention on the Rights of the Child.

¹⁵ Child Recruitment and Use. Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Available at: <https://childrenandarmedconflict.un.org/six-grave-violations/child-soldiers/#:~:text=Human%20rights%20law%20declares%2018,by%20the%20International%20Criminal%20Court>

¹⁶ Ibid, parag. 11.

¹⁷ How the Court Works, parag. 02.

The Chambers of the ICC found Dominic Ongwen guilty for committing 61 crimes, including crimes against humanity and war crimes, against internally displaced persons camps (“IDP camps”) and Pajule, Odek, Lukodi, Abok tribes in Northern Uganda¹⁸. In addition to that, Dominic’s charges also encompass sexual and gender-based crimes as well as conscripting and using child soldiers in hostilities¹⁹. Along that, Dominic has been charged with eight modes of liability, which means that he is defendant that executed the highest number of crimes in ICC’s history²⁰.

One of the most interesting aspects of this case is how the presence of mitigating circumstances influenced the final judgment of the Chambers of the Court. Since the beginning of the judgment, the judges accorded among themselves to understand his abduction at a very young age and the context of cruelty and violence in which the defendant had been exposed at LRA for his childhood and adulthood as reasons to mitigate the final punishment of each one of the 61 criminal sentences²¹.

On the other hand, the Court concluded that the defendant’s intention to attack internally displaced person camps was an aggravating circumstance because his attacks were motivated by political grounds, as the people in these camps were associated with the Government of Uganda, and thus considered enemies²². Moreover, the Court understood that the gender-based crimes and the crimes of abducting and using very young individuals as soldiers both represented aggravating aspects because they were respectively motivated by discrimination against women and because young victims were defenceless²³.

Judgment

On 4th February 2021, the Trial Chamber IX of the ICC found Dominic Ongwen guilty for the crimes listed above. The Chamber convicted him to 25 years of imprisonment as a joint sentence for all the 61 crimes committed between 1 July 2002 and 31 December 2005²⁴.

The judges decided this sentence after a thorough assessment of the case, which included the mitigating and aggravating circumstances, the various testimonies of the victims and defence. Firstly, the judges started to examine the defence’s arguments in favour of Dominic’s mitigating circumstances. In addition to his early abduction, his

¹⁸ Case information sheet. International Criminal Court. Available at: <https://www.icc-cpi.int/CasInformationSheets/ongwenEng.pdf>

¹⁹ Ibid, parag. 03.

²⁰ The Trial of Dominic Ongwen at the ICC: The Judgment. Open Society Initiative. Available at: <https://www.justiceinitiative.org/uploads/78c13cde-48e0-4ae4-9d6f-58e459998313/briefing-paper-dominic-ongwen-trial-judgment-20210202.pdf>

²¹ Ongwen sentence summary. International Criminal Court. Available at: <https://www.icc-cpi.int/itemsDocuments/210506-ongwen-sentence-summary-eng.pdf>

²² Ibid, p.05.

²³ Ibid, p.05.

²⁴ Case information sheet. International Criminal Court. Pg. 03.

lawyers claimed two other reasons that justified Dominic's crimes. The first one is Dominic's substantially diminished mental capacity and the other is his duress²⁵.

The Court rejected both allegations. Based on reliable medical evidence and on the overwhelming testimonies of people who spent time with him, the Court explained that he was in full possession of his mental faculties and exercised his role as commander effectively²⁶. Furthermore, the judges stressed that poor mental capacity can be applied as a mitigating circumstance in exceptional cases, which was not the case of Dominic²⁷.

Before understanding the Court's examination over Dominic's duress, it is necessary to understand what it means. According to the Cornell Law school, duress happens "*when a person makes unlawful threats or otherwise engages in coercive behaviour that cause another person to commit acts that the other person would otherwise not commit*"²⁸. The Court stated that Dominic Ongwen did not suffer any threat of imminent death or imminent or continuing serious bodily harm to himself or another person at the time of the crimes²⁹. It shows that he committed all crimes on purpose. Furthermore, he was an independent member of LRA, which means that he executed all those crimes because intended to, and not because he was following somebody else's orders.

When it comes to the victims' claims, one of them was the request for life-imprisonment punishment against Dominic Ongwen³⁰. Given the extreme brutality of Dominic's crimes and the fact that he committed them voluntarily and intended the results, the Court could admit this claim. Nevertheless, the Rome Statute requests the Court also to consider the "individual circumstances of the convicted person"³¹. The judges acknowledged that Dominic's abduction eliminated all his possibilities to a better future and placed him in a harsh environment where he experienced immense emotional and physical suffering³². This background contributed for him to reproduce the violent behaviour later.

Although his abduction does not justify the illegality of his acts, it cannot amount to life imprisonment either. Dominic's background does not allow this sort of punishment, as it would prevent him from rebuilding his life in a healthier and safer environment after fully responding to his crimes. This is why the Chamber has decided not to sentence Dominic Ongwen to the – exceptional – penalty of life imprisonment.

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²⁵ Ongwen sentence summary. International Criminal Court. Pg. 03

²⁶ Ibid, Pg.04

²⁷ Ibid, Pg. 04

²⁸ Legal information institute. Available at: <https://www.law.cornell.edu/wex/duress>

²⁹ Ibid, Pg. 04

³⁰ Ibid, Pg. 08

³¹ Ibid, Pg. 09

³² Ibid, Pg. 11

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