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**UNIVERSITIES NETWORK FOR CHILDREN IN ARMED CONFLICT
ADVANCED TRAINING COURSE
INTERNATIONAL CRIMINAL JURISDICTION INVOLVING CHILDREN IN ARMED
CONFLICT
Procedural and deontological profiles concerning the role of lawyers
June 8th, 2022 - October 20th, 2022**

**ANALYSIS OF ICC CASE LAW
6 October 2022**

*The below material is provided to prepare for the session.
Please review said material and focus on the questions which will be discussed during the session.*



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1. The first ICC conviction for the crime of forced pregnancy and the recognition of the crime of forced marriage as another inhuman act

The Prosecutor v. Dominic Ongwen



Summary of the case

Soon after President Museveni seized power in 1986, the conflict in northern Uganda began. The Holy Spirit Movement, established under the leadership of Alice Lakwena, was one of the most prominent rebel groups and came close to attacking Uganda's capital. In 1987, after the spirit leader of the group fled to neighbouring Kenya, Joseph Kony formed the Lord's Resistance Army (LRA) from the remnants of the Holy Spirit Movement. Under Kony's leadership, the LRA eclipsed the other rebel groups operating in northern Uganda and became one of Africa's most brutal militia forces. The LRA used children as a vital resource, continuously abducting children to join their ranks. The boys were usually forced to fight while the girls were usually turned into sex slaves or forced to marry men in the LRA (they became known as "*bush wives*"). It is estimated that the LRA had abducted approximately 25.000 children and youth into its ranks.

On 16 December 2003, the Government of Uganda referred the situation concerning northern Uganda to the then ICC Prosecutor.

In 2005, the Pre-Trial Chamber issued arrest warrants under seal for Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. On 29 January 2015, the non-redacted warrant of arrest for Mr Ongwen was rendered public. Said warrant of arrest



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contained only the charge related to the attack in Lukodi. Following his surrender, the Prosecutor brought additional charges against Mr Ongwen (including crimes committed against children and SGBC).

On 21 January 2015, Mr Ongwen was transferred to the ICC. The charges against him were confirmed on 23 March 2016 and the trial commenced on 6 December 2016.

Trial Chamber IX delivered its [judgment](#) on 4 February 2021. The Chamber found Mr Ongwen, as Brigade Commander of the Sinia Brigade of the Lord's Resistance Army (LRA), guilty for a total of 61 crimes comprising crimes against humanity and war crimes, committed in northern Uganda between 1 July 2002 and 31 December 2005. In particular, the Chamber declared the accused guilty of:

- attacks against the civilian population, murder, attempted murder, torture, enslavement, outrages upon personal dignity, pillaging, destruction of property and persecution committed in the context of four specified attacks on the Internally Displaced Persons camps ("IDP camps") in Pajule (10 October 2003), Odek (29 April 2004), Lukodi (on or about 19 May 2004) and Abok (8 June 2004);
- sexual and gender based crimes, namely, forced marriage, torture, rape, sexual slavery, enslavement, forced pregnancy and outrages upon personal dignity committed against seven women (whose names and individual stories are specified in the judgment) who were abducted and placed into the accused household;
- a number of further sexual and gender based crimes committed by the accused against girls and women within the Sinia brigade, namely forced marriage, torture, rape, sexual slavery and enslavement; and
- the crime of conscripting children under the age of 15 into the Sinia brigade and using them to participate actively in hostilities.

The Trial Chamber [concluded that](#):

- ✓ The crimes were committed in the context of the armed rebellion of the LRA against the Government of Uganda. The LRA, including Mr Ongwen, perceived as associated with the government of Uganda, and thus as the enemy, the civilians living in northern Uganda, in particular the ones living in IDP camps;
- ✓ Throughout the period of the charges, the LRA killed and injured a large number of civilians in numerous attacks against IDP camps and other civilian locations in northern Uganda;
- ✓ The LRA abducted and conscripted a large number of children under the age of 15 into the armed group and used them to participate actively in hostilities;
- ✓ The LRA abducted and enslaved a large number of female civilians. They were then used as sexual slaves and so-called 'wives', and as domestic servants.



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- ✓ While acknowledging that Mr Ongwen was himself abducted, the Chamber stressed that the case was about crimes committed by the accused as a fully responsible adult and as a commander of the LRA in his mid to late twenties. During the period relevant to the charges, Dominic Ongwen made a steep rise in the hierarchy of the LRA, from battalion commander to commander of the Sinia Brigade in the rank of brigadier. Altogether, at the time relevant to the charges, Sinia brigade included several hundred soldiers who were under the command of Dominic Ongwen.
- ✓ Mr Ongwen perpetrated sexual and gender based crimes directly against the seven identified women so-called 'wives' 'distributed' to him;
- ✓ Mr Ongwen, together with Joseph Kony and the Sinia brigade leadership engaged in a coordinated and methodical effort to commit sexual and gender based crimes against women and girls in the Sinia brigade. In the process they relied on the LRA soldiers under their control. LRA-fighters abducted women and girls in northern Uganda and forced them to serve in the Sinia brigade as so-called 'wives' of members of Sinia brigade, and as domestic servants. The abuse of women and girls in the LRA were truly systemic and institutional. This included forced marriage, sexual violence and forced pregnancy as well.
- ✓ Sinia soldiers, in execution of orders of Joseph Kony, Dominic Ongwen and the Sinia brigade leadership, abducted innumerable children under 15 years of age in northern Uganda and forced them to serve as Sinia fighters.
- ✓ Mr Ongwen is fully responsible for all the crimes for which he has been declared guilty. He was in full possession of his mental abilities throughout the period of the crimes. No mental disease or defect was not proven. Mr Ongwen did not commit the crimes under duress.

On 6 May 2021, Trial Chamber IX [sentenced](#) Mr. Ongwen to 25 years' of imprisonment. The period of his detention of more than 6 years will be deducted from the total time of imprisonment imposed on him.

The appeal against the verdict and the sentence is pending before the Appeals Chamber.

See the *Case Information Sheet/Fiche d'information sur l'affaire* available in [EN](#) and [FR](#).



Legal questions¹

1. *Sexual and gender-based crimes*

- Which are the constitutive elements of the crimes of rape, sexual violence, sexual slavery, forced marriage and forced pregnancy?
- What does the idea of 'reproductive autonomy' express?
- The Chamber convicted Mr Ongwen of the crime of forced marriage as another inhuman act under article 7(1)(k) of the Statute. How the Chamber arrived at that finding?
- What does the Chamber conclude is the defining feature of the crime of forced marriage? How does the Chamber argue that it is different from sexual slavery?
- Is the doctrine (and little jurisprudence available) unanimous in the qualification of forced marriage as another inhuman act?
- What is your opinion about the qualification of the crime of forced marriage?
- In your opinion, would acts such a genital mutilation fall under the definition of 'torture', of 'rape, sexual slavery...', or 'other inhuman treatment'? Does the qualification potentially bear any greater significance in terms of sexual and gender based crimes and narratives, and for transitional justice?
- What is the difference between 'forced impregnation' and 'forced pregnancy', and which legal basis take them directly or indirectly into consideration?

2. *Defences argued by the accused*

- Which defences were presented by the accused?
- How the Chamber assessed said defences?
- How would it be possible, in general and in your opinion, to prove in court that the accused was effectively acting under a local cultural belief that the commander has spiritual powers?
 - Should such an evidence be given, how should the circumstance be evaluated in terms of criminal liability?

3. *Issues related to criminal liability*

- How the Chamber assessed the circumstance that the accused was himself abducted and became a child soldier?
- Is there any possibility under the Rome Statute to replace a term of imprisonment with other local justice mechanisms?

¹ Read the Trial Judgment to answer the questions.



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- a. May traditional justice system still find an application to aspects other than the punishment *stricto sensu*, or would that amount to a violation of the *ne bis in idem* principle?
- Under which conditions a person may be criminally liable for conducts perpetrated by other and when does the chain of command responsibility break?

Further analysis

- C. APTEL, [Children and Accountability for International Crimes: the contribution of the International Criminal Courts](#), UNICEF Innocenti Research Centre, 2010
- N. QUÉNIVET, [Does and Should International Law Prohibit the Prosecution of Children for War Crimes](#), in EJIL Vol. 28 no. 2, 2017
- Derluyn, Vandenhole, Parmentier, Mels, [Victims and/or perpetrators? Towards an interdisciplinary dialogue on child soldiers](#), BMC International Health and Human Rights, 2015
- R. Grey, [The ICC's First 'Forced Pregnancy' Case in Historical Perspective](#), Journal of International Criminal Justice, Volume 15, Issue 5, December 2017, pages 905–930
- See also the Amici Curiae filed in the appeal of Mr Ongwen against the verdict and the sentence, available on the ICC website.