



# ***Trafficking of children as a form of enslavement***

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***Trafficking of children as a form of enslavement  
constituting a crime against humanity in violation  
of Articles 7(1)(c) and 7(2)(c) of the Rome Statute.***

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# THB AS ENSLAVEMENT

- Art. 7.1 of the ICC Statute includes **enslavement** among the acts that if committed as part of a widespread and systematic attack directed against the civilian population, with knowledge of the attack, would constitute a **crime against humanity**.
- Art. 7.2 of the ICC Statute defines enslavement as follows:
- «"Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of **trafficking in persons**, in particular women and children» .

# THB AS ENSLAVEMENT

- «**Article 7 (1) (c)**  
**Crime against humanity of enslavement**
- **Elements of Crimes**
- The perpetrator exercised **any or all of the powers attaching to the right of ownership** over one or more persons, such as by **purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.** **11**
- The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.»
- **Footnote 11:** «It is understood that such deprivation of liberty may, in some circumstances, include exacting **forced labour** or otherwise **reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.** It is also understood that the conduct described in this element includes **trafficking in persons, in particular women and children.**»

# THB AS ENSLAVEMENT

- Article 1 of the **1926 Slavery Convention** defines **slavery**.
- «*Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*».

# THB AS ENSLAVEMENT

- According to Article 1 of the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, States Parties have to adopt all the measures to abolish “**progressively and as soon as possible**” the following practices:
  - **debt bondage**;
  - **serfdom**;
  - and any other institution or practice whereby a **woman or a child may be transferred by a person to another in servile status.**

# THB AS ENSLAVEMENT

- **Debt Bondage** is “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”
- **Serfdom** is “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change its status”.

# THB AS ENSLAVEMENT

- Any *institution* or *practice* affecting **WOMEN**, whereby:
  - (i) A woman, without the right to refuse, is *promised or given in marriage* on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group;
  - or (ii) The husband of a woman, his family, or his clan, has *the right to transfer* her to another person for value received or otherwise;
  - or (iii) A woman on the death of her husband is liable to be *inherited* by another person;
- Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, **whether for reward or not**, with a view to the ***exploitation of the child or young person or of his labour***".

# THB AS ENSLAVEMENT

- According to Article 3.(c) of the U.N. Trafficking Protocol, **child trafficking** is:
  - *“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation».*
- Article 3.(a) clarifies that: «**Exploitation** shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs».

# THB AS ENSLAVEMENT

- **A. Gallagher:** «The Statute does not concern itself at all with the definition of trafficking. Rather, it foresees that the (undefined) act of trafficking in persons can be a *vehicle* for the exercise of a power attaching to the right of ownership of the kind required to constitute enslavement».
- **J. Allain:** «The Statute acknowledges that slavery is one but possible component part of the definition of trafficking».

# THB AS ENSLAVEMENT

- In *The Prosecutor v. Kunarac*, the Appeals Chamber of the International Criminal Tribunal for Ex-Yugoslavia (ICTY) claims ‘that the traditional concept of slavery, as defined in the 1926 Slavery Convention and often referred to as “chattel slavery”, has evolved to encompass various **contemporary forms of slavery** which are also based on the exercise of any or all of the powers attaching to the right of ownership. In the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with “chattel slavery”, but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of “chattel slavery” but the difference is one of degree. The Appeals Chamber considers that, at the time relevant to the alleged crimes, **these contemporary forms of slavery formed part of enslavement as a crime against humanity under customary international law (§ 117)».**

# THB AS ENSLAVEMENT

- The Appeals Chamber of the ICTY added that: "The Appeals Chamber considers that the question **whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement** identified by the Trial Chamber. These factors include the **“control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour”**. ... Consequently, **it is not possible exhaustively to enumerate all of the contemporary forms of slavery** which are comprehended in the expansion of the original idea» (§119).

# THB AS ENSLAVEMENT

- **Enslavement** versus **sexual slavery**
- **ICC, Trial Chamber IX, The Prosecutor v. Dominic Ongwen (2021):**
- «enslavement as a crime against humanity is in the abstract entirely encompassed within sexual slavery. In other words, **sexual slavery, as a crime against humanity, is a specific form of enslavement, qualified by the additional fact that the victim is *also* caused to engage in at least one act of a sexual nature.** Thus, concurrence of these crimes is not permissible.» (§ 3051).

# THB AS ENSLAVEMENT

- In 2021 Ongwen's Defence filed its **appeal** briefs against the conviction and the sentence, respectively.
- **Amicus curiae submitted by the UN Special Rapporteur on Trafficking in Persons, especially women and Children**
  - Trafficking in persons is an international crime *per se*;
  - Non-prosecution for trafficking victims;
  - Human trafficking and physical and mental disabilities.
- **Office of the Prosecutor's response**
  - Trafficking in persons is not an international crime *per se*;
  - Observations on non-prosecution are misplaced in this case.



**THANK YOU!**

**QUESTIONS?**