

Forum: *International Criminal Court (ICC)*

Issue: *The Prosecutor v. Dominic Ongwen*

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General Overview of the Case

On 16 December 2003, The Ugandan Government referred Dominic Ongwen to the International Criminal Court (ICC)'s Office of the Prosecutor. Ongwen, a commander of the Ugandan guerilla group Lord's Resistance Army (LRA), was filed under the charges of 70 war crime allegations of attacking Internally Displaced Person (IDP) camps in Northern Uganda from 1 July 2002 to 31 December 2005, including violations upon civilians, sexual and gender-based crimes, and the recruitment of child soldiers. Official court proceedings were then set in place.

As Uganda did sign the Rome Statute on 17 March 1999, it is indeed bound by the definitions of war crimes as defined in the statute. The Office of the Prosecutor, having finished its investigation, issued arrest warrants on 18 May 2005 to 5 suspects, including Ongwen. Ongwen's trial opened on 6 December 2016 after his prolonged surrender in 2015. Although the actual *The Prosecutor v. Dominic Ongwen* case already held a pre-trial admissibility hearing prior to the opening, MUN's ICC does not possess such process and therefore, it is crucial for the counsels to contend jurisdiction as a component of this trial. The complementarity principle of the ICC plays an essential role in determining whether this chamber has the grounds to try Ongwen. Although the Ugandan government's referral of Ongwen to the ICC seemingly implies the government's own concession that it does not have domestic jurisdiction to Ongwen, the paragraph 6 of its High Court Practice Directions gives the Uganda's own International Crimes Division (ICD) the competence to rule over war crimes, an ability that overlaps that of the ICC. The question then resides in whether Ongwen's referral to the ICC is a judicially constitutional measure on Uganda's part and which tribunal holds the true jurisdiction to this case.

Definition of Key Terms

International Criminal Court (ICC)

The International Criminal (ICC) investigates, warrants, and tries individuals charged with gravest crimes of concern to the international community. This may include but is not limited to genocide, war crimes, and crimes against humanity. The Court is governed by the Roman Statute and serves as the world's first permanent international criminal court. Its establishment in 2002 allowed for countries to fight impunity for the worst international crimes. In accordance with the MUN ICC, this case debates on which of the two courts Ongwen should be tried, in which one of them is the ICC.

Roman Statute

The Rome, or Roman, Statute, is the ICC's founding treaty. It was created on July 17th, 1998 and enforced on July 1, 2002. It grants the ICC jurisdiction over genocide, crimes against humanity, war crimes, and crimes of aggression. The document was signed by 139 signatories and 123 parties. Under the Roman Statute, the ICC can prosecute international crimes when states are unable or unwilling to do so. Additionally, the court only has jurisdiction over crimes that occurred in a state's territory or if crimes are committed by a state.

International Criminal Division - Uganda (ICD)

The International Crimes Division is a special Division of the High Court of Uganda. It was established in July 2008. The ICD intends to deal with crimes such as war crimes, crimes against humanity, genocide, terrorism, human trafficking, piracy and other international crimes. The court distincts from the ICC as it has the objective to implement Uganda's obligations under the Rome Statute of the ICC. The court also strives to make further provision in Uganda's law for genocide crime punishments. Laws that are applicable by the ICD include *The Constitution of the Republic of Uganda 1995*, *The Trial on Indictment Act*, *the Geneva Convention Act*, and more. Specifically in PASMUN ICC 2022, the case debates on which of the two courts Ongwen should be tried, in which one of them is the ICD.

Internally Displaced Person (IDP)

The Office of the High Commissioner for Human Rights (OHCHR) defines Internally Displaced Persons (IDPs) as "persons or groups of persons who have been forced or obliged to flee or to leave their home or places of habitual residence" due to an armed conflict, situations of generalized violence, etc. Displaced persons face significant challenges as a result of heightened vulnerability in their region of stay. The majority of Internally Displaced Persons are women and children who are at high risk of physical attacks, assaults and abduction and often deprived of basic resources. They are distinct from refugees as refugees often cross international borders while IDPs may not necessarily be crossing

borders. *The Guiding Principles on Internal Displacement (1998)* specifies the rights and laws established for internally displaced persons.

Lord's Resistance Army (LRA)

Lord's Resistance Army, or LRA, is a militant group led by Joseph Kony, a Ugandan rebel, that terrorized northern Uganda in the late 20th century. It is a Christian extremist and terrorist organization that mainly operates in Uganda and Central African Republic. Joseph Kony claims that he is the "spokesperson" of God and a spirit medium. He leads with this ideology and wishes to establish a monarchic state relying on the Ten Commandments and Acholi tradition. The Acholi people refers to Lou people that have come to northern Uganda from Bahar el Ghazal in South Sudan. The LRA was established during the Ugandan civil war with the initial purpose of establishing a multi-party democracy and Christian dominance in the region. The LRA strayed away from national visions or a shared unifying objective but instead focused on deposing Yoweri Museveni, the former Ugandan President. The LRA has been known to be one of Africa's most enduring armed groups in the past few decades.

Office of The Prosecutor (OTP)

The Office of the Prosecutor, or OTP, is one of the four organs of the ICC. It is responsible for examining situations and cases that are under ICC jurisdiction. International prosecutors are given the mandate to select situations for investigation and further evaluation. The Office of the Prosecutor is constructed of three divisions as follows: the Jurisdiction, Complementarity and Cooperative Division, Investigation Division, and the prosecution Division. The OTP began its operations under article 13th of the Roman Statute. The OTP uses preliminary examinations to determine "whether there is a reasonable basis to initiate an investigation". Then, based on the conclusions of preliminary examinations, the organization then conducts its investigations. This may include gathering evidence to identify those responsible for the crimes.

Guerilla Group

A guerilla group refers to an unofficial military group that is using physical force to reform the government by making sudden and unexpected attacks. This is usually a form of irregular warfare and is known to be aggressive and radical. Guerilla groups use their forces to fight small-scaled limited actions against conventional military forces. Guerilla tactics includes consistently shifting attack strategies and using sabotage and terrorism. A well-known example of a historical guerilla group may be the Black Liberation Army (BLA) that operated in the United States in the late 20th century.

War Crimes

The United Nations Office of Genocide Prevention and the Responsibility to Protect in accordance with the Rome Statute defines war crimes as “violations of international humanitarian law that incur individual criminal responsibility under international law”. Examples of war crimes include murder, cruel treatment and torture, taking hostages, direct attacks at civilians, exploitation of forced labor, and many more. The ICC is warranted to try individuals that are charged with war crimes.

Background Information

The Lord’s Resistance Army emerged in Uganda from its chaotic post-colonial political breakdown, taking on mostly militia tactics to destabilize the current Ugandan government’s rule. The militant group claims to act on behalf of the will of God, whose intention is voiced by LRA’s leader Joseph Kony, who wanted to replace current Ugandan rule with the Ten Commandments of Catholic Christians. Their combat methods involved many violations that could classify as war crimes or crimes against humanity according to the Rome Statute, such as recruiting and deploying child soldiers.

In response to the security threats posed by the LRA, the Ugandan government increased military measures and successfully forced the LRA to withdraw from Uganda some time between 2005 and 2006. In 2008 the International Crimes Division was formed with the purpose of domesticating the Rome Statute into crimes that could be tried within Uganda. This manifested the ICC Act of 2010, aimed at tackling remaining LRA forces by apprehending them and trialing via the ICC’s standards as it incorporates international law into Uganda’s domestic jurisdiction to try in courts.

General Argument of The Prosecutor

War Crime Charges

Given that the Office of the Prosecutor had already conducted much investigation on the matter of Dominic Ongwen’s actions, the prosecuting counsel would be able to state war crime allegations with relatively higher credibility since they represent the Office and reliability innately comes from ICC’s status as an international judicial body. While the case does pertain to Ongwen’s conduct as an LRA member, war crime charges are not the most disputed aspect of this case. Nonetheless, prosecutors would still argue that Ongwen’s actions constituted war crimes as per the definition set for in the Rome Statute. As

the Rome Statute's Article 8 includes a long list of possible offenses, Ongwen could be convicted as guilty as long as one of the definitions is attained through the prosecutor's demonstration.

However, the charge of war crimes is exemplar under certain conditions, with mental conditions laid out in Article 30 of the Rome Statute. Article 31 further listed grounds that may exclude criminal responsibility. The Prosecutor would argue that Ongwen's identity as an LRA officer indicated his commitment to a radical militant organization with clear intent of harming civilians and plunder property, which thus satisfies the conditions for Ongwen to be committed as a perpetrator.

ICC's Competence

The Prosecutor argues that the complementary principle in Article 1 of the Rome Statute allows the ICC to step in and try cases in the instance that national courts do not have the ability to do so. To do this, the Prosecutor would have to indicate how Uganda's own ICD lacks jurisdiction, most likely through the fact that Uganda itself referred Ongwen to the ICC and implying the lack of domestic judicial mechanism. Also, Prosecutors may evoke the ICC Act of 2010, where ICC is allowed to provide assistance and cooperate with Uganda, not strictly under the substitution of the ICD. The Prosecutor would contend that ICC has more eligibility to try this case as Ongwen's conduct constituted war crimes (thus corroborating the previous argument) and warrants a conviction beyond the scope of what Uganda's domestic ICD could provide.

General Argument of The Respondent

War Crime Charges

Although the Respondent stands with Dominic Ongwen, both stances on war crime allegations could be undertaken. If the Respondent was to defend Ongwen by dismissing the war crime charges, the counsel has to illustrate through extensive narrative on why Ongwen's conduct in the LRA has not attained the definition of war crimes. Factoring on the multitude of war crimes that Ongwen has been charged with, this approach will be relatively ineffective and time-consuming.

If the Respondent was to concede Ongwen's war crime charges, the whole case would then hinge upon the jurisdiction. In this scenario, the Respondent would argue that while Ongwen does possess charges of war crimes, he should not be tried in the ICC as Uganda has domestic jurisdiction by its ICD. Moreover, Ongwen's prior experience as a child soldier renders him as a victim of war crimes himself (recruitment of child soldiers). The respondents could argue that this impacted his awareness

and thus subjected him to duress. According to Article 31 of the Rome Statute, duress is a ground of which criminality can be excluded. Ongwen's capture as a child soldier in youth forced him to comply to LRA orders to avoid imminent danger, and thus his conduct was beyond his own control.

ICD's competence

The Respondent counsel contends that regardless of whether war crimes have been committed, the ICC lacks jurisdiction over Ongwen. Article 1 of the Rome Statute and its Preamble state the complementary principle, where the ICC upon the condition that there are no national courts with jurisdiction to rule over the case in question. Ongwen's residing country, Uganda, does possess an International Crimes Divisions established specifically for the purpose of trying crimes such as those enumerated in the Rome Statute. According to the ICC Act of 2010, cases disputed can be submitted regardless of whether the time frame exists before the Act went into effect, as per its application clause. This entitles the ICD to try crimes as long as it is within the scope of the Rome Statute. The Respondents could then claim that the ICC has no jurisdiction prior to ICD's own trial. Despite Uganda's referral of Ongwen to the ICC, the legality of such action can be questioned given the ICC Act and ICD's pronounced scope of jurisdiction.

Major Parties Involved and Their Positions

Uganda

The LRA terrorized northern territories of Uganda as well as neighboring nations for decades, recruiting child soldiers and causing people to mistrust the Ugandan government. Initially when the group formed, it gained popularity as many viewed the organization better than the government, however, word of the atrocities that the group committed spread around causing people to fear the government. After years of conflict, the Uganda People's Defense Force launched a military effort to expel LRA troops from Northern Uganda in 2002. After months of fighting, where thousands were displaced and hundreds of children were abducted into the LRA, the President of Uganda, Yoweri Museveni, referred the ongoing fighting with the LRA to the ICC. In the statement, the President announced that he wanted the conflict to end and offered amnesty to LRA fighters other than those with leadership positions. The Ugandan government enacted amnesty laws which encouraged many LRA fighters to return to their normal life and stated that reintegration back to life one of the government's main priorities as it is necessary in order to restore stability in Northern Uganda.

Lord's Resistance Army (LRA)

The LRA is a Christian based militant group that mainly operates in Uganda and surrounding nations in the region. The organization's numbers peaked during the 1990s after waging war against Uganda and replacing the government with one that modeled after the Ten Commandments. The group soon became infamous for their cruel strategies including recruiting child soldiers and putting them on the front lines of battles. Throughout the late 1980s to the 1990s, they terrorized communities abducting and raping those who opposed their rule and spread fear in the country causing people to view the Ugandan government as incompetent in protecting its citizens. After the years of sex trafficking and manipulating child soldiers, the LRA's rule in Uganda was brought to an end when the government was successfully able to push out the group from its borders.

Leading up to the filling of the case, the group's leader, Joseph Kony, advocated for his and his general's innocence and pushed for the warrants issued by ICC to be dropped. However, the two's relationship deteriorated soon after as Ongwen, following his arrest, proclaimed that he surrendered as he saw no future for the organization.

Timeline of Events

Date	Description of event
January 1997	The LRA raided Kitgum, causing roughly 400 deaths.
March 17, 1999	Uganda signs the Rome Statute and thereby becomes a signatory state.
December 16, 2003	Uganda refers Dominic Ongwen to the ICC.
February 21, 2004	The LRA attacks an IDP camp in northern Uganda, resulting in more than 200 deaths.
May 18, 2005	Ongwen's arrest warrant is issued by the Office of the Prosecutor.
July 2008	Uganda's ICD is formed.
May 25, 2010	Uganda passes the ICC Act.
January 16, 2015	Dominic Ongwen surrenders.

Relevant UN Resolutions, Treaties, and Events

- Rome Statute, 17th July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
- Constitution of the Republic of Uganda, 5th October 1995
- Trial on Indictments Act, 8th June 1971
- The Hague Conventions, 1899 and 1907
- The Geneva Convention Act, 1962

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Appendix or Appendices

- I. Central Intelligence Agency (CIA) World Factbook: <https://www.cia.gov/the-world-factbook/>
- II. The International Criminal Court Ongwen Case (The Prosecutor v. Dominic Ongwen) Overview: <https://www.icc-cpi.int/uganda/ongwen>
- III. The International Crimes Division of Uganda: <http://www.judiciary.go.ug/data/smenu/18/International%20Crimes%20Division.html>

IV. Roman Statute of the International Criminal Court:

[https://legal.un.org/icc/statute/english/rome_statute\(e\).pdf](https://legal.un.org/icc/statute/english/rome_statute(e).pdf)