

Will the International Criminal Court care about Ongwen's rotten childhood?

Dominic Ongwen, a Ugandan commander in the Lord's Resistance Army (LRA), made his first appearance before the International Criminal Court (ICC) on Monday for a pretrial hearing. What now? IJT asked two experts what they expected of this first ICC case against a former child soldier-turned-perpetrator.

Despite his smart suit, crisp white shirt and matching chequered tie, Ongwen looked uncomfortable and out of context in the dock at the ICC. He spent most of his life fighting in the jungle as a high-level commander in Joseph Kony's notorious LRA rebel group, waging wars of brutal terror for over three decades. Ongwen is accused of horrendous atrocities in Uganda and neighbouring countries.

Two uniformed guards helped him place his headphones and gave indication when it was time for him to stand and speak. Ongwen cast an uneasy look at the public gallery where journalists, diplomats and human rights activists sat. A victim later told IJT she quivered with shock the moment she saw him in court.

When ICC Judge Ekaterina Trendafilova sought to verify his background details, Ongwen replied politely. Some answers revealed new information. "I was born in 1975 and I was abducted in 1988. I was taken to the bush when I was 14 years old," he stated. It was long believed that Ongwen was abducted at age 10, made to watch fellow abductees be beaten, maimed and killed, then forced to become a child soldier, quickly ascending the LRA ranks.

The current ICC charges cover crimes Ongwen allegedly ordered during a 2004 attack at an undisclosed IDP camp in Uganda: crimes against humanity (murder, enslavement, inflicting serious bodily injury and suffering) and war crimes (murder, cruel treatment, attacking civilians, pillaging).

The arrest warrant dates from 2005 and does not include crimes in the Democratic Republic of Congo, Central African Republic (CAR) or South Sudan. It is possible new

charges will be added later, says Harvard professor Alex Whiting, who worked as an investigation and prosecution coordinator at the ICC from 2010 to 2013.

Boosting ICC legitimacy?

Much is still unknown about how Ongwen was captured in the CAR, held by US military advisors, handed over to African Union forces and finally the Ugandan army. Judge Trendafilova said he was transferred to ICC custody on 16 January and signed a declaration to "voluntarily" appear before the court.

Whiting has no doubt the ICC's office of the prosecutor (OTP) is "delighted" with the arrest. "One of the biggest problems of the court is apprehending fugitives. If a person like Ongwen is apprehended, this can boost the legitimacy of the court," he told IJT.

However, the LRA commander might be a more complicated suspect than hoped for. The ICC's first case against Congolese warlord Thomas Lubanga Dyilo focused solely on his recruitment and use of child soldiers. Then prosecutor Louis Moreno Ocampo spoke of "the environment of terror" to which youth were subjected when forced to become soldiers and where "the oppressive environment deprived [them] freedom of choice".

"Child soldiers were painted in the most dreadful and pained fashion," says Mark Drumbl, director of the Transnational Law Institute at Washington and Lee University. "If the former child soldier really is so devastated, then how responsible can that individual be for the most cruel of acts committed as an adult?" Drumbl hopes the Ongwen case will "unpack" the complexity of child soldiering. "It might help us transcend the binary that child soldiers all lack responsibility and that all adults are fully autonomous persons. The reality is more ambiguous."

Whiting, however, believes it "is not a big deal" that the ICC is prosecuting a former

victim. He compares it with domestic criminal cases against violent adults who were mistreated in childhood. "The fact that you were a victim is no excuse for becoming a perpetrator," he says. Still, he agrees that proving Ongwen was "coerced" to commit the crimes or "damaged" may allow his past to "count as a mitigating factor", though not hinder his prosecution.

Drumbl thinks this potential line of argument is exactly why his youth will probably play a big role. "I can readily see Ongwen's lawyer raising the issue of his entire socialization under a form of structural duress and arguing that all his horrific actions were reflexive of survival skills. That he is mentally damaged. Indeed, if you are an adult and you have spent most of your life in the LRA because you grew up in the LRA, what will that say about your psychological situation? How will the ICC assess his trauma? His rotten childhood could also be a mitigating factor in any eventual sentencing."

Plea bargain?

In statements just after his detainment in the CAR, Ongwen called on fellow rebels to follow his example, raising speculation that he turned against the LRA. "If that is true, he might reach an agreement with the OTP to plead guilty, testify against LRA commanders, accept lesser charges and be credited with a lesser sentence," Whiting posits.

Plea deals have been used at the International Criminal Tribunal for the former Yugoslavia, including for senior officials like Biljana Plavsic, part of the wartime Bosnian Serb presidency. "It would be a great thing for the ICC," says Whiting, if Ongwen pled guilty. "First of all, it is important that perpetrators take responsibility for their actions. Secondly, you can build stronger cases when insiders are willing to testify against others. And thirdly, a guilty plea saves a lot of resources."

A confirmation of charges hearing is scheduled for 24 August.

Testimonies continue in ex-first lady Simone Gbagbo's trial in Abidjan

The trial of Ivorian former first lady Simone Gbagbo and 82 co-defendants entered its fourth week of testimony in Abidjan on Monday. Gbagbo, along with former prime minister Aké N'Gbo and former president of the Ivorian Popular Front Affi N'Guessan, face charges of undermining state security through alleged involvement in atrocities that killed an estimated 3,000 after the November 2010 election.

Ivory Coast's highly contested presidential election ended in a five-month civil war between political militias when outgoing president Laurent Gbagbo, Simone Gbagbo's husband, refused to concede to current President Alassane Ouattara.

Simone Gbagbo is accused of having commanded pro-Gbagbo forces. In a separate case, she faces charges of genocide and has testified in that trial, though with no outcome yet publicized.

In Abidjan, dozens of victims flock daily to watch the "Iron Lady" on trial. "We are here to see that Mrs. Gbagbo is prosecuted for commissioning these blood crimes," said Issiaka Diaby, president of the CVCI, a local victims' group.

Political analyst Stephane Kouassi says a lack of physical evidence may present difficulties for the prosecution and fears backlash by Gbagbo supporters if the charges go unsubstantiated.

"All the accusations of her role [in the post-election violence] are going to be necessary to prove," Kouassi said. "If there is not some concrete proof, we are going to face an international problem."

In December, the International Criminal Court urged Ivory Coast to transfer Simone Gbagbo to The Hague, maintaining that her trial there would be for different crimes than in her Abidjan case. Since November 2011, Laurent Gbagbo has been in ICC custody, awaiting trial.

Rodrigue Dadje, a lawyer for Simone Gbagbo, claims his client's prosecution in Abidjan is politically motivated and he remains wary of a Ouattara-led justice system. "There is some distrust right now in this case," he said. - CR

ICC

by Samuel Egadu Okiror, Kampala

LRA commander's Hague trial sparks debate in Uganda

The handover of Dominic Ongwen, a notorious Ugandan commander in the Lord's Resistance Army (LRA), to the International Criminal Court (ICC) has raised debate on whether he should face trial or be pardoned.

Ongwen, who after being abducted into the LRA at age 14 rose in the ranks as a protégé of leader Joseph Kony, is the first indicted LRA rebel to appear before the ICC. Early this month, he was detained in the Central African Republic and now faces charges of war crimes and crimes against humanity [JT-174].

The ICC's first-ever arrest warrants were against LRA chiefs in 2005, shortly before the three-decade-long war in northern Uganda ended. It left hundreds of thousands dead, thousands abducted and forced at least 1.8 million people into IDP camps at the conflict's height.

And yet, locals do not want to see a fellow Acholi ethnic group member on trial.

"The government should stop double standards. Is it morally upright for it to support the transfer of Ongwen, an abductee forced and conscripted into LRA rebellion, to the ICC?" Polly Phillips Okin, the prime minister of Acholi Ker Kwaro, a cultural institution comprising the 55 Acholi clans, told IJT. "Why leave people like [Kenneth] Banya and [Sam] Kolo [senior LRA commanders who received amnesties following their surrender or capture] who joined the rebellion while mature, willingly, and committed heinous crimes and atrocities. What logic is it?"

Forgiveness?

Okin continued: "We have forgiven [the LRA] for the atrocities and suffering. The LRA commanders, including Kony, should be left to come back home. We see forgiveness as the best solution to end this war."

"The government hurried [Ongwen's transfer]. He asked for forgiveness and we, the people who suffered in his hands, have forgiven him," Bishop John Baptist Odama of the Acholi Religious Leaders Peace Initiative told IJT. "We believe in forgiveness and reconciliation."

Some advocate for Ongwen to receive pardon or benefit from amnesty and to undergo Mato Oput, a traditional Acholi reconciliation ceremony used after accidental or intentional killings.

The 2007-2008 Juba comprehensive peace accord between the LRA and the government also proposed traditional justice mechanisms

as a central pillar in post-war accountability processes.

"[Mato Oput's] ultimate goal is social healing and reconciliation," said Jackson Odong, a peace and conflict specialist at Makerere University's Refugee Law Project. "So, while a criminal may evade legal justice for various reasons, it is extremely difficult to do so under Mato Oput since one of the components involves acknowledgement of crimes committed and asking for pardon."

However, Joyce Freda Apio, a former Uganda and Kenya country consultant at Parliamentarians for Global Action, told IJT: "Forgiveness is a good thing only if it comes after a trial has been conducted to reunite the perpetrator with his community. But war crimes and crimes against humanity offend the international community and shock the conscience of humanity as a whole."

Protracted LRA rebellion?

Others in northern Uganda fear Ongwen's case could discourage rebel defections.

"The trial of Ongwen will jeopardize the return process of our people still in LRA captivity. When they hear that Ongwen has been taken to ICC, many will not surrender," said Okin. The Acholi minister foresees the move prolonging the rebellion, with Kony using the case as propaganda. "[Ongwen's] surrender could have been turned into a blessing to end LRA rebellion. Now that he is taken to ICC, this important opportunity is lost and closed."

Despite calls for forgiveness and homegrown justice, Kampala has stressed that Ongwen's crimes transcend Uganda. "Ongwen has to face justice at ICC for the heinous crimes that he committed when he was actively involved in combat operations against the people of Uganda, South Sudan, the Democratic Republic of Congo and the Central African Republic," said Henry Oryem, Uganda's state minister for international relations.

For President Yoweri Museveni, a vocal critic of the ICC, sending Ongwen to The Hague may also serve a political purpose [JT-173].

In the observations of Kasper Agger, a Uganda-based researcher for the Enough Project: "This [transfer] gives [the government] international credibility and they avoid a situation where Ongwen and his lawyers will leak damaging information about government atrocities during the LRA war – in a year where we have presidential elections in Uganda."

The International Court of Justice (ICJ) will rule on 3 February in a case that saw wartime foes Croatia and Serbia accuse each other of committing genocide during the 1991-1995 war in Croatia [IJT-156].

The ICJ, the United Nations' highest judicial organ that settles disputes between states, has jurisdiction in cases of genocide as per the 1948 UN Genocide Convention. However, experts believe it is unlikely the Hague-based court will rule genocide was committed on either side during the 1991-1995 Croatia conflict, as the International Criminal Tribunal for the former Yugoslavia (ICTY) has never indicted anyone for genocide in Croatia.

The last time the ICJ ruled on a genocide case – in 2007, when Bosnia accused Serbia of complicity in genocide – the court relied heavily on ICTY findings to determine that the only instance of genocide during the 1992-1995 war in Bosnia was in Srebrenica in 1995. Yet the ICJ ultimately ruled it could not be proved that the Serbian state had the intent to destroy the Srebrenica Muslims and Belgrade was not held liable.

While the ICJ is not bound by its own precedents, experts do not foresee it straying very far from them. In Croatia and Serbia, there is an immense interest in the case, with many hoping the UN court will shed light on who was the aggressor and who was the victim in the conflict. The verdict in the case in the Western Balkans will not serve as the ultimate ruling on genocide, but both parties are hoping the court will make statements about the underlying crimes that can fit their respective war narratives. - SB

Bosnia failing wartime rape victims, survey shows

Despite growing concern for and openness about wartime rapes in Bosnia, the thousands of women estimated to have been raped during the 1992-1995 conflict there are still largely neglected by the state and society, concludes a leading NGO dealing with victims.

Medica Zenica, one of two NGOs dealing with rape survivors continuously since the war, conducted a survey in 2013 and 2014, finding that Bosnia's existing institutions "do nothing for survivors". This creates a society in which wartime rape victims are stigmatized. Medica, as the organization is called for short, also found that local judiciary institutions are still not sufficiently equipped or sensitized to secure protection for witnesses who testify about rape.

Research on the long-term consequences of war rape came from in-depth interviews with 59 women whom Medica worked with since the war's end. The conclusions were presented in the report 'We are still alive! We have been harmed but we are brave and strong'. But getting a figure on the number of women raped during the Bosnian War is hard; the stigma surrounding sexual violence means few survivors talk about their trauma. Today's estimations span 20,000 to 50,000.

Claiming rights

The Association of Women Victims of War, a Sarajevo-based NGO, has a registry listing some 2,000 rape victims – only 779 of whom, however, have been officially recognized by the government and can therefore claim rights. Yet they are the exception.

Currently, the rights of wartime rape victims are recognized only by the country's Muslim Croat entity, the Federation of Bosnia and Herzegovina. Here, survivors are entitled to 270 euros a month.

Meanwhile, in Republika Srpska, where rape was committed on a massive scale during the conflict, complicated procedures prevent many from registering in the first place. To qualify for assistance as a rape victim, a person must prove being at least 60 percent disabled from sustained injuries and status as a victim must have been applied for before 2007.

Rape survivors also face serious health issues. Most of those surveyed were being treated for heart disease and hormonal imbalance. Eleven percent of interviewees suf-

fered cancer at some point. Over 55 percent were living with post-traumatic stress disorder.

"Even though it is hard to say what caused these illness, it is hard to separate the facts about the level of stress and trauma in their lives and their health," Sabiha Husic, the psychologist who runs Medica, told IJT.

One of the survey questions asked if "the pain" improved with time. Over 70 percent said it did not, adding that their war experiences still shaped their lives and relationships.

Witnesses vulnerable

The few women brave enough to testify in trials, either at the International Criminal Tribunal for the former Yugoslavia (ICTY) or before local courts, also encountered confidentiality problems.

One interviewee said that even though she was a protected witness in a case before local courts, she received the court invitation by post. After the trial, the court sent her the verdict, again by post. "What if my 14-year old child finds it and reads it, and asks: 'Mom what is this?'" she said. The Association of Women Victims of War has often dissuaded witnesses from testifying without protection.

Another interviewee said that, despite her protected status, the media publicized her name and testimony. This is common in Bosnia, which has been repeatedly urged by organizations like the OSCE and Amnesty International to improve witness protection, especially concerning sexual violence. Yet no media outlet has ever been prosecuted for outing protected rape witnesses.

According to the survey: "Survivors who testified at courts in Bosnia and Herzegovina and at the ICTY in The Hague compared their positive experiences of testifying at the ICTY with the difficulties and obstacles experienced at all levels in Bosnia and Herzegovina. The length of the legal processes of bringing perpetrators to justice, combined with negative experiences of giving testimony, affect survivors' faith and belief in the legal system and decreases their will to testify."

Medica, meanwhile, wants to set up a unique institutional network for those who testify in war crimes trials, especially rape survivors. "Women need much more support before, during and after trials to avoid endangering their personal safety and risking re-traumatization, and to enable them to feel safe, respected and empowered," the report said.

Tunisia's truth commission carries on despite red tape and insufficient funds

Since opening its doors last month, the Tunisian Truth and Dignity Commission (TDC) has received scores of people every day. Ready to file complaints, they come from all over the country, passing through the headquarters' entrance, flanked by "Be welcome!" flags in the Montplaisir business district of Tunis. The TDC is to investigate human rights violations and economics crimes allegedly committed by the Tunisian state between 1955 and 2013.

One complainant sitting in the plastic chairs of the low-ceilinged reception room where all visitors must wait is Mohamed, who did not want to give his real name. He looks tired, explaining how he had to arise in the middle of the night in Kasserine for the five-hour journey to arrive in Tunis at 9 that morning. Asked about the papers he was clutching, he said: "They are not mine. They represent five people who were political victims of the former regime."

The TDC's five offices receive, on average, "150 persons every day," said Hayat, a commission employee who helps usher the complainants. "They mainly come from Sidi Bouzid and Kasserine [key towns in the 2011 Tunisian revolution that led to the ousting of president Zine al-Abidine Ben Ali, widely seen as sparking the Arab spring]. But we don't listen to their stories, we just classify them."

Since opening on 15 December [IJT-172], the commission has received over 3,400 complaints, said Sihem Bensedrine, its

president [IJT-162]. Up to 30,000 are expected to be lodged within a year.

Funding

After a two-and-a-half-hour wait, Mohamed filed his cases and headed to his 3pm bus back to Kasserine. The complainants on whose behalf he filed will, like all the others, need to wait until a TDC investigator contacts them for hearings.

But the commission is already struggling with bureaucratic infrastructure. Earlier this month, special committees tasked with eventually transferring files to the prosecution for a full investigation were set up, but the TDC's planned regional offices had not yet opened.

Bensedrine told IJT that the commission has funding problems. The government considers the 2.5 million dinars (1.14 million euros) that it issued in 2014 a loan. Last December, the 2015 budget was voted through [IJT-172], but parliament granted only 10 million dinars (4.6 million euros), about a third of what was sought. A few days after the financial snub, Beji Caïd Essebsi – a former minister under Ben Ali, who led a virulent campaign against the TDC – was elected president. Although Nidaa Tounes, his political party, which has opposed the TDC, holds the majority in the new parliament, Bensedrine remains optimistic. Sitting behind a crisp Tunisian flag in the corner of her office at the commission, she insisted on the difference "between a candidate during his campaign and a candidate once elected".

Shaky start

The commission itself had a shaky start. In November, two members resigned and have yet to be replaced by parliament. One of them is renowned human rights activist and author Noura Borsali, who denounced the "exploitation" of the transitional justice process on her Facebook page, arguing that the president of the TDC was too close to political parties [IJT-172]. In civil society, some say Bensedrine wants revenge, being a victim of the dictatorship herself. For others, she is simply too controversial and an easy target for commission opponents.

"The TDC has political enemies, enemies

responsible for violations of human rights and enemies in the administration," said Wahid Ferchichi, who worked on Tunisia's transitional justice law and in the national independent fact-finding commission on corruption.

Ferchichi told IJT that he finds the TDC's mandate too broad, warning the commission could become "cluttered".

Besides hearing the public and investigating claims of human rights abuses and corruption, the TDC is also to issue recommendations on how stamp out corruption in the current administration and take historical record of the period 1955-2013. It has but five years to do this.

Archives

An incident underscoring the tension between the commission and Tunisia's new president was the squabble over presidential archives. On 26 December, the TDC moved to take over 20,000 boxes of papers to the National Archives, according to Bensedrine, as per a prior arrangement. But the TDC trucks were stopped by members of a trade union.

"They parked cars across the road in front of the presidential palace to keep us from moving," Bensedrine said. Negotiations about the transfer continue between the presidential palace and ministers, on one side, and the commission, on the other. "Taking the archives in the presidential palace was a strong and very symbolic act," said Ferchichi.

"We advocate for the archives to be kept in custody of a judge," said Farah Hached, president of Labo' Démocratique, an NGO focusing on the archives.

"Truth commissions and commissioners have been controversial in most countries where a transitional justice process was implemented, even in South Africa's 'model' TRC where, after several years, many citizens became fed up with it," said author and transitional justice consultant Kora Andrieu.

This is the fate of truth commissions who by their nature reveal inconvenient truths, and Tunisia will not be any different, she estimated, before adding: "The TDC cannot simply be shut down or swept out. The risk exists, however – and we have already seen it – that this commission becomes a purely symbolic mechanism for victims to tell their stories."



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