

BRIEFING PAPER

The Trial of Dominic Ongwen at the International Criminal Court

Dominic Ongwen, alleged Brigadier General of the Lord's Resistance Army and a former child soldier, is charged with 70 counts of crimes against humanity and war crimes by the International Criminal Court. Opening statements in his trial are scheduled to begin on December 6, 2016.

The Defendant

Dominic Ongwen allegedly held the rank of Brigadier General in the Ugandan rebel group, the Lord's Resistance Army (LRA), when he surrendered himself to United States forces in the Central African Republic in January 2015. Ongwen was the Brigade Commander of the Sinia Brigade, one of four brigades of the LRA. He was abducted by the LRA in 1988 when he was 13 or 14-years old. He rose through the ranks of the rebel group, becoming one of its top leaders. According to a 2005 International Criminal Court (ICC) arrest warrant, Ongwen was a member of the "Control Altar" of the LRA, "the section representing the core LRA leadership responsible for devising and implementing LRA strategy, including standing orders to attack and brutalize civilian populations."

The trial against Dominic Ongwen marks a series of firsts. Uganda was the first country to refer a situation to the ICC. The investigation of the atrocities in northern Uganda was the first undertaken by the OTP after the court was formed in 2002. Ongwen is one of five top LRA leaders wanted by the court since 2005. He is the first of these LRA leaders to appear before the ICC.

The Charges

On March 23, 2016, Pre-Trial Chamber II [confirmed](#) all 70 counts of crimes against humanity and war crimes brought by the prosecution against Ongwen. This is the highest amount of charges an accused has faced before the ICC.

The charges are divided into six categories. Ongwen faces a total of 49 counts of crimes against humanity and war crimes for attacks on four camps against people who were displaced from their homes in northern Uganda between 2002 and 2005. The camps of internally displaced persons (IDPs) that were attacked are Abok, Lukodi, Odek, and Pajule. Ongwen is also facing charges for sexual and gender-based crimes. Under this category he is charged with 19 counts of crimes against humanity and war crimes. Additionally, he faces two counts of war crimes for the conscription and use of child soldiers.

Ongwen is charged under four modes of criminal liability. He is charged with crimes, committed or attempted directly, alone as well as jointly with other co-perpetrators (**direct individual criminal responsibility**) under Article 25(3)(a) of the Rome Statute. The prosecution also alleges that Ongwen **ordered, solicited, or induced the crimes**, a mode of liability provided for in Article 25(3)(b) of the Rome Statute. He is charged with **making other contributions to the commission or attempted commission of a crime** by a group of persons acting with a common purpose under Article 25(3)(d). Finally, he is charged under the principle of **command responsibility** of Article 28(a) as a leader of the LRA.

The prosecutor originally charged Ongwen with only three counts of crimes against humanity (murder, enslavement, and inhuman acts) and four counts of war crimes (murder, cruel treatment of civilians, intentionally attacking a civilian population, and pillaging) committed in the Lukodi IDP camp in the Gulu district of northern Uganda. On September 18, 2015, the prosecutor of the ICC [announced](#) that she would charge Ongwen with additional crimes, resulting in a total of 70 counts of war crimes and crimes against humanity.

Warrant of Arrest & Surrender

Uganda referred the case against the LRA leaders to the ICC in December 2003. In July 2004, the Office of the Prosecutor (OTP) began investigations in the Uganda situation. On July 8, 2005, ICC judges issued an arrest warrant against Ongwen and against Joseph Kony, Vincent Otti, Okot Odhiambo, and Raska Lukwiya. The arrest warrants against Joseph Kony and Vincent Otti are outstanding; the other two suspects have had their cases terminated after their deaths.

On January 6, 2015, Ongwen surrendered to American troops in the Central African Republic (CAR). He was transferred to the ICC on January 16, 2015.

Background

Soon after he seized power in a coup in 1986, Uganda's current president, Yoweri Museveni, faced rebellion from several armed groups in northern Uganda. One of the most prominent of those groups, the Holy Spirit Movement, came close to attacking Uganda's capital, Kampala, which is located in the central part of the country. In 1987, the Holy Spirit Movement dwindled when its leader, Alice Lakwena, fled Uganda to seek refuge in neighboring Kenya. Joseph Kony, a member of the Holy Spirit Movement, took the remnants of the group and formed what would later be known as the Lord's Resistance Army (LRA). Soon the LRA eclipsed the other armed groups operating in northern Uganda.

The LRA grew in size by continuously abducting children. The abducted boys were usually forced to fight or become porters while the girls were usually turned into sex slaves or forcibly married to men in the LRA. The group never held any territory but it terrorized northern Uganda through its attacks on villages and towns, and abduction of their children.

In 2002, the Ugandan government launched a major military offensive against the LRA. A consequence of the conflict was the displacement of hundreds of thousands of people from their villages and towns as civilians got caught in the fighting between the Ugandan army and the LRA. The displaced civilians ended up living in camps for several years before eventually moving back to their villages and towns.

In December 2003, Uganda referred the situation in northern Uganda to the ICC—the first situation referred to the court. In July 2004, the Office of the Prosecutor began investigations in the Uganda situation. In July 2005, Pre-Trial Chamber II issued a sealed warrant of arrest for five leaders of the LRA, including Ongwen. The warrant of arrest was unsealed in October 2005.

In 2006, the government of South Sudan, which was then an autonomous region within Sudan, initiated a peace process between the Ugandan government and the LRA. For the two or so

years the South Sudanese-led process went on, the LRA fighters were based in two camps along the border of the Democratic Republic of the Congo (DRC) and Sudan, where they were fed and sheltered. The government of South Sudan guaranteed their security through its army, the Sudanese People's Liberation Army, against attacks from the Ugandan army. The negotiating teams finalized a peace agreement but it was never signed by LRA leader Joseph Kony. He failed to show up, even though the government of South Sudan arranged several times for a secure location for him to sign the agreement.

Following the collapse of the peace process, the LRA moved out of the camps secured by the Sudanese People's Liberation Army and dispersed into the DRC, other parts of South Sudan, and CAR. It was in CAR that Dominic Ongwen surrendered to US forces in January 2015.

The Lord's Resistance Army carried out attacks in northern Uganda for more than two decades, during which the group abducted tens of thousands of children and forced them to join its ranks. At the peak of the LRA conflict in northern Uganda, between 1.1 and 2 million people were [displaced](#) from their homes. The group continues to commit crimes throughout the region, including in the DRC, South Sudan, and CAR.

Although the LRA has been the only known party to-date being investigated by the ICC for its role in the conflict in northern Uganda, human rights organizations have also [documented](#) crimes committed by the Ugandan government's military forces against civilians. This has led to [criticisms](#) by civil society in Uganda that the court has conducted a one-sided investigation.

Sexual and Gender-based Violence

Ongwen's case represents an opportunity for the OTP to implement its policy of giving particular attention to sexual and gender-based violence in its charges against suspects. The trial chamber confirmed all 19 counts of crimes against humanity and war crimes against Ongwen under the category of sexual and gender-based crimes (SGBC) that the prosecution charged.

There is a wide range of SGBC charges that will be litigated, including forced pregnancy and forced marriage – both firsts at the ICC. Unlike other international criminal tribunals, the Rome Statute specifically criminalizes forced pregnancy as a war crime and crime against humanity. Therefore, Ongwen will be the first person to be tried under international criminal law for forced pregnancy.

This case also marks the first time that the crime of forced marriage was brought and confirmed against a suspect at the ICC. While forced marriage is not specifically included in the Rome Statute, the pre-trial chamber concluded that the definition put forth by the prosecution falls within the meaning of an “other inhuman act” under Article 7(1)(k) of the Rome Statute.

Culpability of Child Soldiers

This case requires the court to confront the difficult question of how to hold to account a high-ranking member of the LRA who was also a victim of the group's abductions and forced to become a soldier. Most of the rank and file members of the LRA are or were children who have been abducted and forced to join the group and who grew up being forced to commit acts of brutal criminality.

During the confirmation of charges hearing, the defense argued that due to Ongwen's abduction at a young age he lost any sense of childhood and made decisions out of duress and fear for his life. This argument will likely be used during trial.

If Ongwen is convicted, his status as a child soldier may be considered as a mitigating circumstance for purposes of sentencing. However, his status as a commander, and the level of responsibility for the crimes this suggests, might be considered an aggravating circumstance.

Regional Crimes

The case against Ongwen also tests the ICC's geographic approach to situations and investigations. The court's approach is based on investigations limited to individual countries, whereas the LRA operates regionally, including in the DRC, South Sudan, and CAR. However, to include crimes committed in other countries, the ICC would have to formally establish jurisdiction and open investigations in each separate country, a complicated process under the ICC's Rome Statute. Although the ICC has jurisdiction in the DRC and CAR, the prosecutor has not expanded investigations in those situations to include LRA crimes. This limits the ability of the prosecutor to investigate and prosecute LRA leaders, including Ongwen, for the full extent of their crimes.

Victims' Participation

As of November 29, 2016, 4,109 victims from northern Uganda had been granted the right to participate in the ICC trial against Ongwen. This is more than double the number previously approved to participate in the confirmation of charges proceedings, and points to the significant interest in the case among victim communities from northern Uganda. According to ICC filings, approximately 2,600 victims have appointed two external lawyers, including one from Uganda, to represent them in the proceedings. According to the chamber, victims who have not made a choice about legal representation are represented by the internal ICC Office of Public Counsel for Victims.

Domestic Prosecutions

Uganda is one of the ICC State Parties that has domesticated the Rome Statute and also set up an [international crimes division](#) in its High Court to try Rome Statute offences in addition to the offences of terrorism, human trafficking, and piracy. Yet, so far, none of the LRA's top leaders have been brought before the Ugandan High Court. Although mid-level LRA commander Thomas Kwoyelo appeared before the division, his trial has stalled because of challenges relating to the application of Uganda's amnesty law. This law allows rank and file members of the LRA to rejoin society without facing any sanctions so long as they renounce their membership of the rebel group. In April 2015, the Ugandan Supreme Court [ruled](#) that Kwoyelo's trial must proceed because amnesties cannot be granted for grave crimes as recognized under international law. Three pre-trial hearings have been held this year, but it is unclear when or if the case will proceed to trial.

Timeline

1987: Joseph Kony forms the Lord's Resistance Army from the remnants of the Holy Spirit Movement that was led by Alice Lakwena.

1988: Dominic Ongwen is abducted by the LRA.

March 17, 1999: Uganda signs the Rome Statute.

June 14, 2002: Uganda ratifies the Rome Statute and becomes a party to the ICC.

December 16, 2003: Uganda refers situation in northern Uganda to the ICC.

July 29, 2004: ICC Prosecutor says there are grounds to investigate the situation in northern Uganda because the crimes committed fall within the jurisdiction of the ICC.

July 8, 2005: Pre-Trial Chamber II issues sealed warrant of arrest for five leaders of the LRA, including Dominic Ongwen.

October 13, 2005: Pre-Trial Chamber II unseals warrant of arrest against LRA leaders.

July 2006: The autonomous government of South Sudan initiates peace talks between the Ugandan government and the LRA. As the talks progress they get the backing of the United Nations.

July 11, 2007: Pre-Trial Chamber II terminates proceedings against Lukwiya following forensic confirmation of his death.

2008: Peace talks fail because LRA leader Joseph Kony does not sign the final agreement reached between LRA negotiators and the Ugandan government.

2010: Uganda domesticates the Rome Statute.

2010: The US government sends 100 Special Forces soldiers to hunt for LRA leaders who by then have dispersed to the border regions between the Central African Republic, the

Democratic Republic of Congo, and South Sudan.

November 2011: The African Union designates the LRA as a terrorist group and appoints Mr. Francisco Madeira, then Special Representative for Counter-Terrorism Cooperation and Director of the African Centre for the Study and Research on Terrorism (ACSRT), as the Special Envoy on the LRA issue.

January 16, 2015: Ongwen is surrendered to ICC custody by the Central African Republic.

January 26, 2015: Ongwen makes his initial appearance before Pre-Trial Chamber II. The Pre-Trial Chamber provisionally schedules the confirmation of charges hearing for August 24, 2015.

February 6, 2015: Pre-Trial Chamber II severs the Ongwen proceedings from the case against Joseph Kony, Vincent Otti, and Okot Odhiambo. The three other suspects have not been apprehended or have not appeared before the ICC.

September 10, 2015: Pre-Trial Chamber II terminates proceedings against Odhiambo following forensic confirmation of his death.

September 18, 2015: The prosecutor announces that she will charge Ongwen with 70 counts of war crimes and crimes against humanity.

October 28, 2015: The ICC Presidency decides that the confirmation of charges hearing will be held at the seat of the court in The Hague, the Netherlands.

January 21-27, 2016: The confirmation of charges hearing is held.

March 23, 2016: The pre-trial chamber confirms 70 charges of war crimes and crimes against humanity against Ongwen.

July 18, 2016: The trial chamber rejects requests to hold opening statements in the Ongwen trial in northern Uganda, citing security concerns and the workload of the judges hearing the case.

December 6, 2016: The trial is scheduled open in The Hague. Proceedings will commence with opening statements from the parties.

CONTACT INFO

For more information on this and other trials at the ICC, visit our trial monitoring site, www.ijmonitor.org, where you can sign up for regular updates on the progress of this trial. Follow us on Twitter: @ijmonitor and @OSFjustice

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