Introduction

Lights and Shadows of the Ongwen Case at the International Criminal Court

The Prosecutor v. Dominic Ongwen has arguably been the most complex case adjudicated at the International Criminal Court (ICC). Ongwen was the Commander of the Sinia Brigade of the Lord’s Resistance Army (LRA), responsible for a series of crimes against humanity and war crimes perpetrated after 1 July 2002 in Northern Uganda. On 8 July 2005, the ICC issued an arrest warrant, but Ongwen was captured only 10 years later, in early 2015. His trial began on 6 December 2016 at the ICC, where the Prosecution and the Defence presented their respective evidence, and the Legal Representatives of Victims, inter alia, called their witnesses to appear before the Trial Chamber IX. On 12 December 2019, the Presiding Judge declared the closure of evidence submission in the case, and three months later, between 10 and 12 March 2020, the closing statements were delivered.

On 4 February 2021, Trial Chamber IX found the defendant guilty of a total number of 61 crimes comprising crimes against humanity and war crimes, perpetrated in Northern Uganda from 1 July 2002 to 31 December 2005. Subsequently, he was sentenced to 25 years of imprisonment on 6 May 2021. These decisions have been confirmed by the ICC Appeals Chamber on 15 December 2022. Currently, Ongwen remains in the ICC detention centre until the ICC Presidency designates a state to enforce the sentence. In turn, there is an ongoing reparations stage so that victims of the atrocities that lead to the conviction of Ongwen can receive some reparations to redress the resulting harm.

The novel and problematic issues underlying the Ongwen case have attracted a large amount of attention from a wide array of actors, including policymakers, lawyers, activists, journalists, and academics. First, Ongwen was convicted of a record number of charges in the ICC’s history. Second, he was sentenced to 25 years in prison, which is the second largest prison sentence imposed by the ICC. Third, Ongwen holds a double status: a former child soldier abducted by the LRA who rose in rank to be one of the top commanders of this armed group. Fourth, this case required and enabled the ICC to engage with facts concerning diverse acts of sexual and gender-based violence, which has led to the development of novel jurisprudence. Fifth, spirituality related to duress and mental health illness were invoked by the defence as grounds for exoneration of criminal liability, which required the ICC to tackle these matters for the first time in its proceedings and jurisprudence. Sixth, there has been a strong presence of a series of cultural elements, such as the sui generis nature of the LRA led by the messianic and despotic Joseph Kony, which underlies diverse issues addressed by the ICC such as witness testimony and victim participation. Seventh, this case reveals in a particularly intense manner the tensions and dilemmas between a (‘western’-led) international criminal justice project and the potential or even advisability of local/regional transitional justice initiatives, which in turn powerfully illustrates the ongoing legitimacy crisis of the ICC. Finally, a great deal of media spotlight has been put on this case and, more broadly, on the atrocities committed by the LRA as exemplified by the documentary ‘Kony 2012’ and attention among diverse personalities (politicians, international media journalists, celebrities, etc.).


Although there have been scholarship pieces dealing with some of these issues in the Ongwen case (or more generally the Situation in Uganda at the ICC), there is arguably yet not a collective academic effort to discuss them in a systemic, interdisciplinary and multidisciplinary fashion. This double special issue draws from a selection of papers presented at a two-day conference organised in the context of the project ‘Negotiating International Criminal Law’ at the University of Jyväskylä (Finland), in which we brought together a large number of scholars whose research addressed issues arising from or related to the Ongwen case. By having the Ongwen case as a case study or ‘centre of gravity’, the authors contributing to this collection have comprehensively examined those issues listed above in the light of law, anthropology, sociology and other disciplines. We aimed that each contribution identified and discussed both the strengths and weaknesses of the ICC and other actors when dealing with relevant matters in the Ongwen case, namely, the ‘lights and shadows’ of this pivotal case.

In addition to this introduction and a conclusion piece by us (to be published in an upcoming issue of the *International Criminal Law Review*), this edited collection consists of a total of nine articles, six published in the current issue, and the other three to be published in a future issue. The first piece is titled ‘Fertile or Futile Grounds for Excluding Criminal Responsibility?’

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A Critical Analysis of the *Ongwen* Judgment in Relation to the Claim of Coercive Environment’ authored by Windell Nortje (University of the Western Cape) and Noëlle Quénivet (University of the West of England). In this article, the authors remark that: (i) the Defence focused on the coercive environment to which Ongwen was subjected from his abduction as a boy until his surrender as an adult; and (ii) the ICC rejected duress as a ground for exonerating criminal responsibility in the scenario of a past and present coercive environment. Thus, the authors discuss the manner in which the ICC interpreted and applied duress in the *Ongwen* case to then assess whether a coercive environment may be regarded as a unique defence under the Rome Statute. The article proceeds with a scrutiny of whether a coercive environment has been invoked as a defence at the national level. Finally, this contribution evidences that domestic courts have not recognised such a specific defence tailored to atrocities perpetrated in a coercive environment and concludes that the defendants cannot invoke the said defence at the ICC.

The second article is ‘Forced Marriage as the Crime Against Humanity of ‘Other Inhumane Acts’ in the International Criminal Court’s *Ongwen* Case’ by Kathleen Maloney (Lewis & Clark Law College), Melanie O’Brien (University of Western Australia), and Valerie Oosterveld (Western University). By highlighting that Ongwen was convicted of a gender-based crime that had never been adjudicated at the ICC, namely, forced marriage, this piece sustains that the judicial consideration of forced marriage in the *Ongwen* case has settled relevant supranational case law in the following manners. First, the ICC clarified the categorization of forced marriage as an ‘other inhumane act’. Second, it recognised and solidified the criminal conduct and resulting harm encapsulated by the term ‘forced marriage’, differentiating it from other crimes against humanity. Finally, the ICC confirmed that prosecution of forced marriage is consistent with the *nullum crimen sine lege* principle. The authors claim that the said outcomes will play a fundamental role in international criminal justice for forced marriage. Moreover, they argue that the next step is to add forced marriage to the catalogue of acts constitutive of crime against humanity in both the Rome Statute and the draft Crimes Against Humanity Convention.

The third article is entitled ‘The Prosecutor v Dominic Ongwen: An Examination of the Role of Traditional Justice Mechanisms in International Criminal Justice’ authored by Linda Mushoriwa (University of the Western Cape). By focusing on the ICC’s approach to the *Ongwen* case and bearing in mind that the ICC rejected to incorporate the *mato oput* traditional justice mechanism of the Acholi people of Northern Uganda, it investigates whether
traditional justice mechanisms have a place in international criminal justice settings as for the commission of international crimes. This article claims that while concerns have been raised concerning the application of traditional justice mechanisms in the aftermath of mass atrocities, the said mechanisms can still play a significant role alongside prosecutions for core international crimes at international criminal tribunals and courts, including the ICC. The author explores manners whereby traditional justice mechanisms may be incorporated into ICC proceedings. She concludes that should the Court aim to be a truly universal court as originally conceived, it must take into account the issues brought before it, particularly from the Global South and in a holistic manner.

The fourth article is ‘Proportionality and Moral Blameworthiness in Ongwen’s ICC Sentencing Decision’ by Demetra Sorvatzioti (University of Nicosia). The author provides an in-depth analysis of sentencing decisions in the Ongwen case and argues that ICC judges failed to address the defendant’s unique individual circumstances, i.e., that he was aformed abducted child soldier, and the historical and cultural context in which the crimes occurred. According to Sorvatzioti, although the ICC framework combines continental and common law features, the judges in the Ongwen case sentenced the defendant in a pure continental fashion, ignoring the principle of proportionality that should have governed sentencing determination.

The fifth piece is ‘Fighters, Not Victims: On Victimhood Recognition and Gender Representations in the Enslavement Charges in the Ongwen Case’ by Silvina Sánchez Mera (La Trobe University). The author remarks that: (i) according to the ICC’s Office of the Prosecutor (OTP) in the Ongwen case, women were abducted to become wives and men to be soldiers, women were coerced into working and men were obliged to fight; (ii) the OTP brought enslavement charges for some of these crimes. Yet, forced fighting of men was not included in. Based on a doctrinal analysis and a feminist approach, the article examines the crime of enslavement in the Ongwen case and endeavours to demonstrate how gender representations emerge when international criminal law is applied in detriment of men’s victimhood. It is sustained that the application of the law responds to gender representations in armed conflicts. Thus, male soldiers are not regarded as victims and women are continuously considered as non-fighters and victims of armed conflicts. All of this results in a reinforcement of the said representations as well as a lack of acknowledgment of victimhood for men and a reduced recognition of the experiences of women.

In the sixth article, titled ‘Constructing a sensory alternative to the Ongwen judgement’, Raghavi Viswanath (European University Institute) and Fangyi Li
(University of Edinburgh) offer a powerful and original critique of international criminal law in general and the Ongwen judgement in particular. Drawing upon socio-legal scholarship that highlight the reparative values of senses and affect for international criminal justice, the authors argue that the purely textual format of the judgment resulted in epistemic and material injuries on the victims and decontextualized evidence. In response to that, Viswanath and Li make a case for a jurisprudence of senses and show how the current toolboxes of the ICC can be channelled to reimagine judgments in order to provide direct outlets for the voices/faces of the unheard local communities and achieve a more reparative and reconstructive justice.

In the seventh article, titled ‘Culture and the Illusion of Self-Evidence: Spiritual Beliefs in the Ongwen Trial’, Adina-Loredana Nistor (University of Groningen) sheds light into the way in which culture broadly, and spiritualism in particular, were introduced and assessed by the parties during the Ongwen trial. By analysing transcripts, submissions and other trial documents, the author discusses the complications of introducing an anthropological concept into the terrain of international criminal law. In her analysis, Nistor demonstrates that in the construction of the legal truth, cultural evidence undergoes a process of rationalisation, through which beliefs turn into patterns, and then into certainties. The article poses a series of questions about the way in which culture as evidence impacts the delivery of justice in the case of international criminal proceedings.

The eighth article is ‘The Post-Ongwen Case Period and the Reconciliation Process in Northern Uganda: Local Communities as a Site of Knowledge’, by Christelle Molima (Washington and Lee University). Drawing upon a series of focus groups conducted with former abducted child soldiers and their parents in Northern Uganda, the author examines the construction of different narratives about child soldiers and ideas about human rights, before exploring how these representations may forge future transitional justice mechanisms around the world. According to the author, these narratives illustrate, for example, the different ways in which child soldiers are perceived by members of their communities: they can be either victims or perpetrators. The author concludes that, in view of these multiple forms of comprehending criminal responsibility in the context of the events in Northern Uganda, restorative peace initiatives should move away from offering a one-size-fits-all solution to all those involved in that conflict.

The final piece is ‘Children born of war: the recognition of children born of war as victims in the Ongwen case’ by Giovanna Frisso (University of Lincoln). The author investigates the manner in which the experiences of children born of war were approached in the Ongwen case by drawing special attention
to their recognition as direct victims. However, the article sustains that the recognition of children born of war as direct victims demands to translate one's moral intuition concerning the wrongful act committed against these children into an international crime under the ICC’s jurisdiction. The article further argues that, if the Rome Statute is not amended, the said process may be very difficult because tackling issues long contested in scholarship on procreative wrongfulness will be necessary.

To conclude, we would like to extend our gratitude to the journal’s editorial team, in particular to the Editor-in-Chief, Professor Caroline Fournet, for providing us with the opportunity to publish this double special issue, and for the unwavering support throughout the process of organising this collection. Our appreciation also goes to the authors, for their original and thought-provoking contributions, and to the reviewers, whose meticulous feedback enhanced the quality of the published articles. We hope that the special issue ‘Lights and Shadows of the Ongwen Case at the International Criminal Court’ will stimulate those interested in understanding this unique case and its complexities from various angles. Enjoy your reading!

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