

# A Troubling Case: The International Trial of a Ugandan Soldier

**Trudy Govier**

As I write, Dominic Ongwen is on trial before the International Court in The Hague. Ongwen was a child soldier, then an adult soldier, and eventually a brigade commander in the Lord's Resistance Army (LRA), a brutal force that operated primarily in northern Uganda, but also in the Central African Republic (CAR), South Sudan, and the Democratic Republic of Congo. He served under Joseph Kony, who is still at large. Ongwen had apparently considered leaving the jungle and surrendering to be with family members. He changed his mind, possibly due to the likelihood of coming into the custody of the court; nonetheless he was eventually taken into custody in late 2014, and brought to The Hague after CAR and US special forces handed him over. Ongwen's trial commenced on December 6, 2016.

Ongwen's case is unusual in many ways, the most outstanding of which is that he is charged, as an alleged perpetrator, with crimes of which he was himself the victim. As a child on his way to school (estimates of his age at the time

**Apart from his victim/perpetrator status, which challenges an entrenched dichotomy, Ongwen's case illustrates many other difficulties faced by the International Criminal Court.**

vary from 9 to 14 years), Ongwen was captured by LRA warriors and taken to the jungle. There, as recounted by many former child soldiers, he would have been dominated, beaten, tortured, and commanded to perform acts of extreme cruelty on other children, on villagers attacked by the group, and even on relatives. Known as the White Ant, he survived to become an efficient and viciously cruel commander. Ongwen is both a victim and a perpetrator: many of his alleged crimes are the same ones that he suffered from and that shaped his adult life. Hundreds of victims will testify at his trial for some 70 charges of war crimes and crimes against humanity.

Apart from his victim/perpetrator status, which challenges an entrenched dichotomy, Ongwen's case illustrates many other difficulties faced by the International Criminal Court (ICC). The Court has been criticized, especially by African leaders, for its nearly exclusive focus on crimes committed in Africa. It is far away from northern Ugandan communities struggling with some success with reintegration and the

building of peace at the end of a brutal war with the LRA. Given that other leaders are dead or uncaptured and thousands of former child soldiers in the region have been reintegrated and rehabilitated, some observers regard Ongwen as having been unfairly singled out for prosecution. Problems underlying the LRA and its activities are vast in scope, and misunderstood if one concentrates on the blameworthiness of an individual. Some – notably religious leaders in northern Uganda – favour a restorative rather than a retributive approach to post-war justice and even decry ‘western’ forms of justice as inappropriate for Africa. Costs and time delays are more mundane, but still very real, issues of concern regarding the proceedings in The Hague.

I will not focus here on these serious questions regarding the role of the International Criminal Court, or even on the very pertinent matter of the nature and distinctness of retributive and restorative justice. Rather, my concern is the fact of Ongwen’s original victimhood as a young boy, his indoctrination in the ways of brutal violence, and his current status as an alleged perpetrator. We commonly think of victims as passive and innocent and of perpetrators as active and evil. We usually construct these roles in a dichotomous fashion; one person is the harmed victim and another is his harming perpetrator. It becomes confusing when the roles coexist in a single person; is that person then both active and passive, both innocent and guilty? Logically, apparent contradictions can be resolved here by referring to time frames. When those are taken into account, we realize that there are many victim/perpetrators. For example, many persons convicted as adult perpetrators of sexual abuse were themselves child victims of sexual abuse. These persons were accused and convicted as perpetrators of acts they committed as adults; they were victims of similar acts as children. There is no logical contradiction here: victims at one time, perpetrators at another. Criminal justice systems have not deemed such persons innocent as adult perpetrators on the grounds that they were innocent victims as children. Recalling such cases, Ongwen’s status as a former victim charged in

a court of law as a perpetrator is by no means unique. It is his status as a victim/perpetrator and former child soldier charged in an international criminal court that is unique.

Although communities in which terrifying amputations, rapes, kidnappings, and tortures have been waged tend to regard brutalizing children as accountable agents, child soldiers or former child soldiers are not charged for acts committed when they were under the age of 18. Such persons may be held legally responsible for the acts they commit after the age of 18. Let’s contemplate that. Say a ten-year-old is kidnapped, beaten, tortured, forced to kill friends and relatives, told he can never go home, drugged, praised for raiding and killing, and brought up for eight years in a harsh and cruel environment. He is used and exploited as a cruel weapon for adults, some of whom he has been led to believe have spiritual power over him. (Kony was believed to have spiritual power over his followers.) Such a boy has become an instrument of brutality for adults who control him. It is as though he and other children are a weapon system. They fight, they kill, and (some of them) survive. Then they turn 18. At that point – in some kind of amazing metamorphosis – these terrorized and brutalized persons emerge to become agents morally and legally responsible for their actions.

For me, there are deep worries here. To say the least, I feel concern about the sudden supposed development in such persons of a deliberative capacity and understanding of core human values. I fear that the environment of nearly their entire childhood has made them what they have become – persons skilled in and habituated to the ways of brutal violence.

Born in 1975, Ongwen is now in his forties. I fear that the childhood he experienced will have made him into a callous brute; he became such a brute to succeed and survive; he is one, because he succeeded and survived. My point here is not that such a person can never learn and change and be rehabilitated. That should not be ruled out: apparently there has been successful reintegration of many former child soldiers. It is reported that Ongwen has learned to cook and to

**[...] the adult  
Ongwen could  
have escaped or  
surrendered [...]**

read and write in English while under arrest in The Hague. The result is heartening. But the point regarding his perpetrator status is that, whatever he may become in his current

circumstances, the acts for which he is charged were committed in the harsh circumstances of his youth and early adulthood. Dominic Ongwen was arrested and charged with crimes when he was in the LRA army. My concern is that he, and the many thousands like him who will not appear in the International Court, were not persons capable of conscientious choice at the time of their brutal and violent acts.

It has been argued that the adult Ongwen could have escaped or surrendered; many did. And it has been pointed out that abducted children have some degree of agency and may make choices. In *Child Soldiers: An Ethical Perspective*, Jeff McMahan discusses warfare contexts rather than courts of law; he argues that child combatants have a diminished capacity for morally responsible agency and act in conditions that further diminish their capacity, though they have to be treated as threatening combatants when they are in battle. But McMahan is referring to acts child soldiers commit when they are children, not acts that persons trained to be child soldiers commit as adults. Erin Baines wrote of degrees of agency and responsibility in the actions of child soldiers, anticipating that legal responses would not be able to take such degrees into account. The fact of child agency is stressed by David Rosen in *Armies of the Young* and also by philosopher Diane Enns in *The Violence of Victims*. Enns emphasizes that there are victims of these victims, maintaining that the perpetrator status of the initial victims should not be ignored. Adults who develop from abducted child soldiers commit, as adults, many horrendous acts of which there are thousands of victims who should not be forgotten. Enns' view is that they should be remembered by having their perpetrators "own" their acts.

A recent philosophical account is that of Jessica Wolfendale and Matthew Talbert.

Writing in 2018 for the Stockholm Centre for the Ethics of War and Peace, these authors fear a backward slide of responsibility if persons such as Ongwen are not held accountable.

They state their problem as follows: suppose that someone who was abducted as a child soldier is not morally responsible for the acts he commits as an adult soldier. If he is not responsible for those acts, who is? One might answer: the person who abducted him. But suppose – and the supposition is no philosopher's fantasy – that that abductor, in this case Ongwen's abductor, whoever and wherever he is, was himself abducted as a child. And therefore, by parity of reasoning, that person is not responsible for his acts. Then who is? The person who abducted him? The abductor of the abductor of the abductor? We begin to flounder. Talbert and Wolfendale maintain that it would be a mistake to spread the blame around at this point. "If we start down the road of excusing perpetrators because their moral vision is impaired we may not find an obvious place to stop." In their view, we need to find a place to stop. So, the victimhood of the child does not establish, and should not be allowed to establish, the absence of blameworthiness in the adult.

That is, we need a place to stop for a system of justice based on holding individuals accountable for their actions. That system of justice must be able to hold someone accountable, meaning some individual person or persons, even if such persons have come of age in circumstances not providing for the development of conscience and moral capacities. Now I understand why people would take such a stance, but I cannot comfortably follow these authors to that point. We arrive here at deep questions about free will, moral capacity, and moral responsibility – and we arrive at those questions in a context of horrors, a context that few if any legal or philosophical commentators will have experienced. Ultimate questions about free will and conscience intersect in this context with concerns about individualism, the nature and

feasibility of restorative justice, and whether the ICC embodies 'western' justice.

And as to conscience and the law? I am not able to see a conflict here, because there is such instability both in my conscience and in my understanding of what the law would prescribe. As I am able to understand this matter, neither conscience nor the law has a clear stance on this troubling case. It is unique in coming before the international court, but there is an important sense in which it is not unique: there are potentially thousands more like it. The case is all too real, and it is profoundly disturbing. Conscience can insist that adults who murder, torture, rape, and pillage must 'own' their acts in the sense of accepting responsibility for them. Conscience can insist that of such horrors as rape, amputation, and murder, there are perpetrators, and perpetrators must be held accountable. Conscience can believe that victims deserve justice and their justice will require the punishment of perpetrators. Or, to the contrary, conscience can insist that after a childhood of brutality, a brutalized person cannot rightly be treated as a moral agent to be judged in a far-away land with customs he never experienced. And as for law?

Clearly there are warranted charges in the case and available evidence regarding dozens of serious crimes under international law. Such law is developing for good reasons and to good purposes; one can argue that appropriate proceedings should go forward to a fair verdict, likely on the evidence to be 'guilty.' The rule of law is of great importance. What does its application recommend here?

At the opening of the Ongwen trial, Prosecutor Fatsu Bensoula stated that "having suffered victimization in the past is not a justification, nor an excuse, to victimise others." I understand. As to the general point, legally and even morally, I agree. But then I am moved to question. Given the degree, duration through childhood, and seriousness of that victimization, the case of Dominic Ongwen is extreme and highly disturbing.

Both conscience and the law should be troubled. •

*Trudy Govier is a Canadian philosopher and Professor Emerita of the University of Lethbridge. Her many books and articles include A Practical Study of Argument; Forgiveness and Revenge; and Taking Wrongs Seriously.*

## No COMPROMISE.

# FREE INQUIRY

**Subscribe Today!**  
The world's largest-circulation humanist publication, FREE INQUIRY covers the world of secular humanism as no other magazine can.

Read ARTHUR CAPLAN, NAT HENTOFF, SHADIA DRURY, RUSSELL BLACKFORD, OPHELIA BENSON, GRETA CHRISTINA, and other provocative thinkers.

Founded by Paul Kurtz | Edited by Tom Flynn

**1 year (6 bi-monthly issues) US \$45.00 (incl. intl. postage)**  
MASTERCARD VISA DISCOVER AMERICAN EXPRESS ONLY

*SUBSCRIBE ONLINE FOR BIG SAVINGS!*

[https://www.secularhumanism.org/index.php/store\\_example/product/free-inquiry-magazine-outside-us](https://www.secularhumanism.org/index.php/store_example/product/free-inquiry-magazine-outside-us)

**TOLL-FREE 1-800-458-1366**  
Surface Mail: FREE INQUIRY, P.O. Box 664,  
Amherst NY 14226-0664 USA