

Humanity

The ICC, Dominic Ongwen, and the Politics of Truth

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The trial of former Lord's Resistance Army commander Dominic Ongwen at the International Criminal Court has thrown into relief the difficulties of seeking truth through international criminal trials. The ICC prosecution has constructed a series of narratives in order to establish the legitimacy of Ongwen's trial, narratives that seek to put forth a certain truth about Ongwen, the war, and his arrest. Each of these narratives, however, is threatened with rupture by contradictory facts and counter-narratives from both inside and outside the courtroom.¹ This signals the basic dilemma of all transitional justice processes: the very institutions meant to establish the truth about collective violence also create the conditions and incentives for contrasting narratives based upon other truths but also claiming the mantle of justice. International criminal trials cannot help but create the opportunities for their own rupture.

In the Ongwen case, there are three distinct narratives that the prosecution depends upon for the legitimacy of the trial, all of which are under threat. The first prosecution narrative represents Ongwen's arrest and delivery to The Hague as being an instance of the enforcement of international criminal law. Bensouda's statement following Ongwen's arrest epitomized this narrative: Ongwen's "transfer to the Court's custody sends a firm and unequivocal message that no matter how long it will take, the Office of the Prosecutor will not stop until the perpetrators of the most serious crimes of concern to the international community are prosecuted and face justice for their heinous crimes," she declared, and she was "grateful for the persistent efforts of the Government of Uganda, the Government of the Central African Republic, the Uganda People's Defence Force, the African Union Regional Task Force" in apprehending him. Bensouda tells a compelling narrative of the triumph of international criminal law: Regional cooperation by states dedicated to ending impunity and protecting victims, a collective humanitarian effort, has provided the chance for victims to see justice. A firm line is drawn between the inhumanity of Ongwen's criminal violence and the humanitarian, law-enforcing violence of the international coalition that captured him.

This narrative, repeated endlessly in the days following Ongwen's capture, hid a more uncomfortable reality. The forces that were in fact most responsible for Ongwen's capture were not mentioned by Bensouda—they were U.S. Special Forces and Seleka, a CAR rebel group. U.S. Special Forces have been deployed throughout the region as part of the U.S. government's militarization of the continent under AFRICOM; Seleka is itself subject to an ongoing ICC investigation for many of the same crimes that the LRA stands accused of. Their presence scandalizes the division between the humanitarian violence of law enforcement and the inhuman violence of atrocity so much that they had to be erased from Bensouda's statement. But even the groups Bensouda did mention occupy an ambiguous status with relation to human rights, as the Ugandan military has itself been blamed for extensive looting and abuses in CAR. To complicate

matters further, Seleka demanded the \$5 million dollar bounty had been offered for Ongwen's capture by the U.S. government as part of its "Rewards for Justice" program.

This contingent alignment of self-interested violence, militarization, and even atrocity that led to Ongwen's "arrest" had to be purified by the prosecution and re-interpreted as humanitarian, law-enforcing violence. And so Bensouda and the ICC's network of publicists spun a myth asserting the truth of global law enforcement out of a context where, in Bensouda's words, "the atrocities are endless." Of course, this need for purification is not unique to Ongwen's capture: the ICC's reliance on a NATO bombing campaign in Libya is perhaps the most glaring example. But these complications were easily dealt in Ongwen's case by spiriting him away on a plane to the Hague, the idea of multilateral humanitarian cooperation cemented as conventional wisdom. Once at the ICC, dressed in a dark blue suit and flanked by two solicitous police officers, headphones on and computer monitors surrounding him, the context from which Ongwen had been recently extracted was able to be forgotten—but other questions were not so easily left behind.

The second and third prosecution narratives concerned the legitimacy of the LRA's political agenda and the nature of the Ugandan government's violence. When the ICC first got involved in northern Uganda in the mid-2000s, there was already a firmly established discourse on the conflict: the LRA was, in a word, "bizarre," and LRA violence defied understanding, while the Ugandan government was portrayed as waging a desperate struggle against the LRA in a well-intentioned, though short-handed, effort to protect civilians. And so the government's violent counterinsurgency was cast unambiguously as humanitarian and rational, the LRA's violence as inhuman and beyond comprehension.

This narrative of an evil LRA and a good Ugandan government was instrumental to the massive regime of Western intervention into the conflict. It also suited the Ugandan government fine: being a favorite of foreign donors and an enthusiastic participant in the U.S. War on Terror, Uganda used the narrative of a terrorist LRA without a political agenda as an excuse for refusing peace talks, for securing Western support, and for pursuing an endless "military solution." The narrative even allowed the government to forcibly displace the entire civilian population of Acholiland—over a million people—into internment camps, which led to a massive humanitarian crisis. Uganda's Western donors, instead of denouncing this war crime, were complicit with it as they remained silent and managed the camps on behalf of the government.

And so, when the ICC intervened in Uganda over ten years ago, it made its move based upon this narrative. The government effectively became a partner in the investigation against the LRA, not itself a possible perpetrator of crimes. Meanwhile, the LRA was denounced as a "criminal organization" with no political agenda by then Chief Prosecutor Luis Moreno-Ocampo.

At Ongwen's confirmation of charges hearing in January 2016, however, the prosecution's story had changed. The prosecution had reversed its portrayal of the LRA and now insisted categorically that the LRA always had a clear political agenda, a firm organization and hierarchy, and a strategic rationality to its violence: it "aimed to overthrow the government of Yoweri Museveni, the president of Uganda, then as now." No mention was made, as it had been a decade earlier, of the Ten Commandments or Kony's spirits. Instead, because the prosecution is seeking to convict Ongwen under the doctrine of command responsibility, because war crimes require a

real war and not irrational violence, and because crimes against humanity need to be “part of a widespread or systematic attack,” the prosecution has had to turn the LRA into a regular rebel group with a regular political agenda. Today, it is the defense that argues that the LRA had no agenda, that it was entirely under the religious control of Kony, that it had no real organization and no chain of command, and that it was little more than a criminal gang, all in an effort to absolve Ongwen of responsibility for war crimes.

The irony of this new alignment is that, during the war, the argument that the LRA had a political agenda that needed to be taken seriously was heard mostly among peace activists and some academics, the very group that largely *opposed* the ICC’s prosecution of the LRA leadership on the grounds that it would ruin the chances for peace. Today, the ICC prosecution has adopted the position of the very people who fought against the court’s intervention, while the defense proclaims the political bankruptcy of the LRA, employing the discourse that played such a destructive role during the war and legitimated the ICC’s original involvement.

While the prosecution’s portrayal of the LRA has changed, its partnership with the government, and the legitimacy it implicitly grants to government violence, has not. During Ongwen’s hearing, the prosecution appeared to go out of its way to establish the government’s innocence without the defense even raising government crimes as an issue. And, as the prosecution’s presentation of evidence made clear, substantial Ugandan government support has been indispensable to building the ICC’s case against the LRA. The prosecution continues to represent the Ugandan government as waging a justified counterinsurgency against tough odds, the same dominant narrative proclaimed by the government and Western donors during the war.

But these two portrayals by the prosecution—of a political LRA and an innocent government—do not fit together so neatly. For, by granting a coherent political agenda to the LRA, the prosecution raises—and then has to ignore—uncomfortable questions that unsettle the image of a righteous Ugandan government that the prosecution depends upon. For instance, where did the LRA’s anti-government agenda come from? To what extent did it resonate with the Acholi population and reflect widespread grievances? What role did government violence against civilians play in shaping those grievances? Why did the government not provide effective protection to the camps? And, if the Ugandan government is also responsible for crimes, what does that mean for the prosecution’s reliance upon the Ugandan government’s support and cooperation in Ongwen’s trial?

Raising these questions would threaten the prosecution’s narrative and its case against Ongwen. However, it is difficult for the defense to do so and present a counter-narrative of legitimate grievances against the government because of its own reliance on a narrative that presents the LRA as a criminal gang forced or brainwashed into meaningless violence by Joseph Kony, a narrative that gives credence to the prosecution’s representation of the Ugandan government as waging a justified struggle against terrorism. In the absence of being able to assert a coherent counter-narrative, the defense may be left only with a more radical option for asserting an alternative narrative: through the performative dismantling or sabotaging of the trial itself. This “trial of rupture” strategy would seek to establish a narrative that does not necessarily absolve Ongwen, but that places his violence in the context of the violence and crimes committed by those putting on and benefiting from the trial—the Ugandan government, Western supporters of

Uganda's counterinsurgency and military expansion, even the ICC itself. Taken furthest, the strategy of subverting the legitimacy of the trial would lead to tactics of refusal, silence, disruption, and open confrontation within the courtroom and outside it—perhaps even by throwing rocks at ICC vehicles, as happened a number of times in the early days of the ICC's intervention in Uganda in a rejection of the ICC's tight complicity with the Ugandan government and military. And so, if any challenge is to come to the prosecution's narrative, it may have to come from outside the courtroom, [which I deal with in the next post.]

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Notes

- ¹ This essay draws on Adam Branch, “Dominic Ongwen on Trial: The ICC’s African Dilemmas,” *International Journal of Transitional Justice* 11 (2017): 30-49.