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International Criminal Court

The Situation in Uganda: Prosecutor v. Dominic Ongwen



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Julie Hermans
Raphael Ridder

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Student Officer:	Julie Hermans, Raphael Ridder
Position:	President, Vice-President

Introduction

The International Criminal Court exercises judicial power in any member states sovereign territory under the following areas of law: the crime of genocide, crimes against humanity and war crimes. The mandate of the Court is to try individuals rather than states. These individuals are alleged to be guilty of the most serious crimes of international concern; they are tried complementary to national criminal law.

Uganda signed the Rome Statute, upon which the ICC is founded, on the 17th of March 1999 and deposited its instrument of ratification of the Rome Statute on the 14th of June 2002. Less than a year later, on 16th of December 2003, the Government of Uganda referred the situation in Northern Uganda to the Office of the Prosecutor, which issued a warrant for the defendant Ugandan Dominic On Gwen's, who was born in Coorom, Kilak County, Amuru district, Northern Uganda and alleged Former Brigade Commander of the Sinia Brigade of the Lord's Resistance Army (LRA), arrest on the 13th of May 2005.

The LRA allegedly carried out an insurgency against the Government of Uganda and the Uganda People's Defence Force (UPDF) and Local Defence Units (LDUs) and against civilian populations during a period from the 1st of July 2002 to unspecified date in 2004. In order to achieve its goals, the LRA had allegedly, in said period, engaged in a cycle of violence and established a pattern of "brutalisation of civilians". Brigadier Gwen has been charged with over 70 different war crimes and crimes against humanity.

Definition of Key Terms

Crimes against Humanity

According to Article 7 of the Rome Statute the term crimes against humanity is defined as acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, such as: murder, extermination, enslavement, etc. Dominic On Gwen has been charged for over 7 different crimes against humanity.



Duress

Duress is defined, according to Article 31 paragraph 1 of the Rome Statute, as when one commits a crime resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be: made by other persons; or constituted by other circumstances beyond that person's control. This is a valid legal reason that can be used to drop all charges.

Internally Displaced Person (IDP)

An Internally Displaced Person (IDP) is defined as one who is forced to flee from their home but stays within the sovereign territory of their government of origin. Most frequent reasons include, avoiding armed conflicts, situations of generalised conflict and violation of human rights.

Insurgency

An insurgency is defined as a rebellion against an authority, recognised as such by the International Community (IC), when those taking part in the rebellion are not recognised as belligerents by the IC. The Lord's Resistance army, for example, can be classified as an insurgency.

Lord's Resistance Army (LRA)

The Lord's Resistance Army is a heterodox Christian rebel group, which was founded as the United Holy Salvation Army. It aims to create a multi-party government and rule Uganda according to the Ten Commandments. It has been accused of widespread human rights violations, including murder, abduction, mutilation, child-sex slavery and creating child soldiers. Dominic On Gwen acts as the brigadier of the LRA.

War crimes

According to article 8 of the Rome Statute war crimes is defined as firstly grave breaches of the Geneva Conventions of 12 August 1949, namely, acts such as willful killing; Torture or inhuman treatment, including biological experiments, willful causing great suffering, or serious injury to body or health, etc., against persons or property, protected under the provisions of the relevant Geneva Convention. Secondly as other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, acts such as: intentionally directing attacks against the civilian popula-



tion as such or against individual civilians not taking direct part in hostilities, Intentionally directing attacks against civilian objects, that is, objects which are not military objectives, killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion, etc. Dominic On Gwen has been charged for over 9 different war crimes.

General Overview

General information about Uganda

Economy

Uganda is rich in natural resources, with a lot of fertile land, regular rainfall and mineral deposits. It is even believed that Uganda would be capable of feeding all of Africa if it were commercially farmed. This proves the great economic potential present in Uganda. However, despite its great potential, the country is currently still considered a Less Economically Developed Country (LEDC). In 2012, 37.8% of the population, in fact, lived under 1.25 dollars each day. Its current GDP per capita is also rather low marking only 625 dollars, making it one of the poorest countries in the world.



The extreme poverty has always been a primary reason for the discontent in Uganda, sparking many conflicts.



Map of Uganda

Geography

Uganda is a country located in eastern Africa, placed west of Kenya, south of South Sudan, east of the Democratic Republic of the Congo, and north of Rwanda and Tanzania. Placed in the heart of the Great Lakes region, it is surrounded by three of them: Lake Edward, Lake Albert and Lake Victoria. Moreover, Uganda has a population of over 41 million resulting in a diverse set of ethnicities. Although the English language ties the dozens of various ethnicities together, Swahili brings unity with neighboring countries Kenya and Tanzania. Furthermore, the country is mostly plateau with a rim of mountains. Its climate is tropical and generally rainy with two dry spells: from December to February and from June to August. Kampala is Uganda’s capital with a population of over 1.5 million people. In the North of Uganda, many indigenous communities were present such as the Alcholi who strongly opposed themselves to colonial rule.



Political

Uganda achieved independence on the 9th of October 1962. To this day, Yoweri Museveni is the president of Uganda, who the Lord's Resistance Army strives to remove from power. Although Uganda possesses a stable government, the country faces many issues related to corruption. In 2016, Uganda, in fact, ranked 25 on the "corruption scale" where 0 represented the maximum level of corruption and 100 the least.

Historical Context

In the late 19th century, the British colonial enterprise in Uganda met resistance from indigenous communities, primarily the Acholi of northern Uganda. This active resistance to colonial rule made it very difficult for the British to impose civilisation on the Acholi. This was the main reason why a stigma arose that the people in the North were primitive and less evolved than the population in southern Uganda, who was more cooperative with the British. As a result of the south cooperating, in comparison with the north, southern Uganda received more economic aid and improved infrastructure. The colonial service jobs, furthermore, went to southerners. The people of the north, on the other hand, were used as labourers or even conscripted in the colonial army.

This created strong socioeconomic divisions and sparked violence between the two parts of Uganda which was further strengthened after Uganda's independence. From 1971 to 1979, during the military dictatorship of Idi Amin, the social fabric of Uganda was decimated. The situation worsened even more during the war aiming to overthrow Amin. Resultant conflicts emerged as competing parties fought to lead Uganda causing violence to only worsen. The first party that strove to fill the power vacuum left was the National Resistance Movement (NRM) led by Museveni. This political group consisted of people from the south and west of Uganda. The second party fighting for power was the Uganda People's Democratic Army (UPDA) headed by an Acholi General named Tito Okello. This party, as opposed to the first group, consisted of Acholi and other northern people.

Tensions were drastically worsened when Museveni came to power after defeating Okello in 1986. As a result, Acholi political and sectarian leaders revolted invoking Acholi nationalism and reminded the people of the marginalisation present during colonial rule. Many of the Acholi soldiers fled north to their home district along the border with Sudan, now known as South Sudan. Some of the fugitives crossed into Sudan and joined together with other opponents of Museveni to form a rebel alliance.

Brief history of the Lord's Resistance Army (LRA)



In 1986, Alice Lakwena established the Holy Spirit Movement, which was a resistance group that claimed to be inspired by the “Holy Spirt of God.” Lakwena preached that the Acholi were capable of overthrowing the government of Uganda if they followed her messages from God. However, in 1987, the Holy Spirit Movement was defeated by government troops and Alice Lakwena was forced into exile in Kenya.

Joseph Kony, born in 1961 in Odek in northern Uganda, was an alleged relative of Lakwena. Grown up in a religious family, serving as an alter boy for several years, Kony first appeared on the Ugandan national stage in 1986, as the leader of a movement he later called the United Holy Salvation Army (UHSA). He promised he would include the remnants of Alkema’s Holy Spirit Movement. By 1988, assembling troops including the remnants of the defeated UPDA, the UHSA was becoming a large and strong resistance movement. Commander Odon Latke, a remnant of the UPDA, persuaded Konya to adopt new military tactics, in contrast to the previous methods used involving depending on oil or holy water to ward off bullets and evil spirits. In this period, the UHSA changed its name to the Ugandan Peoples’ Democratic Christian Army, and in 1992 settled with the Lord’s Resistance Army, the infamous name that we know today.

Similarly, to Alice Alkema, Konya stressed that he was receiving messages directly from God proclaiming that it was his will to overthrow the government with the Ten Commandments as its constitution instead.

The LRA

The Lord’s Resistance Army (LRA), also known as the Lord’s Resistance Movement, is a rebel group and a heterodox Christian cult led by Joseph Konya, a self-declared prophet. The LRA first emerged in northern Uganda in 1986 and claimed to fight in the name of the Acholi ethnic group, a group of pastoral people in Northern Uganda, against the Ugandan president Yoder Museveni. The goals stated by this organisation included the establishment of a multi-party democracy, ruling Uganda according to the Ten Commandments and Acholi nationalism. Combining both religious mysticism with guerrilla tactics, the United States had listed the LRA as a terrorist group, accusing the group of committing many widespread human rights violations, including “murder, abduction, mutilation, child sex-slavery, and forcing children to participate in hostilities.”

The group’s strategy was to use terror to render Uganda ungovernable and it became infamous for its reliance on child soldiers abducting over 30,000 boys and girls. The children were put on the front lines of combat, even forced to kill, mutilate and rape family members, classmates, neighbors and teachers. The group further displaced almost 2 million people across northern Uganda, according to the U.S. State Department. These crimes went on for decades until the group was expelled from Uganda by the end of 2006. The group then moved freely, shifting from Uganda, to southern Sudan, to the Democratic Republic of Congo, before heading into the Central African Republic in March 2008.



Dominic On Gwen's Involvement

Dominic On Gwen was born in the northern Ugandan village of Coorom in the Amuru district. To this day, On Gwen maintains the stance that alike the thousands of other Ugandans, he too is a victim of the LRA. On Gwen was reportedly abducted and indoctrinated at the age of 10, where from then on, he rose quickly through the ranks and by his late 20s fulfilled the position of a brigadier. This means that he was one of just a couple of fighters close to leader Kony.

ICC Case: The Prosecutor v. Dominic On Gwen

At the end of 2014, On Gwen refused to obey Kony's order and answer his radio messages. He escaped a camp near Songo in Kafia Kingi and was lead to a "Seleka" rebel group. The former leader of this group reached out to a merchant in the region, who in turn called an NGO worker in Obo. The newcomer's presence soon spread to the American Special forces and as a result On Gwen was brought to Obo. Although the Seleka were initially unaware of On Gwen's true identity, it soon became known after the case became public in the media. Dominic On Gwen was then transferred successively to Ugandan national forces, the Central African Republic forces and then finally to the ICC.

On the 26th of January 2015, On Gwen made his first appearance before the ICC. On Gwen's case is very unique due to the fact that he was abducted by the LRA and forced to be a child soldier before following his path of a leader. This is therefore the first case where an inductee is charged with the same crimes as were done to him.

Alleged Crimes (Non-exhaustive list)

The ICC has stated that there are reasonable grounds to believe that Dominic On Gwen, due to his high ranking, has played an essential role in "coordinating the design and implementation of the common plan" and could therefore be prosecuted for 70 different counts of crimes against humanity and war crimes, consisting of:

For war crimes:

- Attacks against the civilian population
- Murder and attempted murder
- Rape
- Sexual slavery
- Torture cruel treatment
- Outrages upon personal dignity
- Destruction of property



- Pillaging
- The conscription and use of children under the age of 15 to participate actively in hostilities,

For crimes against humanity:

- Murder and attempted murder
- Torture
- Sexual slavery
- Rape
- Enslavement
- Forced marriage as an inhumane act
- Persecution
- Other inhumane acts.

However, taking all these charges into consideration, On Gwen refuses to plead guilty. The defendant argues that he is the victim rather than the perpetrator, that the evidence placed against him lacks credibility and how his indoctrination and trauma cannot hold him accountable for any of his actions. What remains to be seen is whether Dominic On Gwen was acting under duress as a victim or of his own free will. Duress essentially entails that the accused succumbed to pressure. This means that his actions could be acknowledged however they wouldn't be condoned. The person pleading duress agrees that he has committed a crime, however, that due to the circumstances prevalent at the time of the events, he should not be held criminally responsible. However, article 31(1)(d) encompasses a continuous threat to the defendant. What remains controversial is whether Dominic On Gwen could have escaped from Konya's orders if he had wanted to.

Major Parties Involved

African Union (AU)

The African Union (AU) has launched several initiatives against that LRA; they have taken control of the fight against the LRA by launching an initiative on the 18th of September 2012 in Nazara, South Sudan. This operation had as goal to coordinate the ongoing efforts by multiple African nations. The troops are now unified as one force under the lead of Francisco Madeira and supported by the Ugandan Defence Minister Chrispus Kiyonga.



Lord's Resistance Army (LRA)

The Lord's Resistance Army (LRA) has been waging war and committing gross human rights violations since the year of 1989. It has been supported by the Sudan government in retaliation of Ugandan support of the Sudanese rebels, however after United States' pressure Sudan cut off support to the LRA. The LRA has a notorious reputation of kidnapping children and coercing them into fighting as rebel soldiers or becoming concubines. As the year progressed, the LRA attacks spread to the Democratic Republic of Congo (DRC) and the Central African Republic (CAR). The LRA momentarily continuously moves through these three regions with their only objective being survival. They plague these regions to gather food, money or people, who could help sustain their rebellion.

Republic of Uganda

The Government of Republic of Uganda referred the situation concerning northern Uganda to the Office of the Prosecutor on the 16th of December 2003. The Uganda People's Defence Force (UPDF) has been fighting a civil war with the LRA since the 1980's. Since then the UPDF as tried many solutions to eliminate the LRA, however many have been in vain. Uganda has headed the African Union military force as recent effort to eliminate the LRA.

United States of America

The United States of America (USA) has provided much support to the Ugandan government after they declared the LRA as a terrorist group after the September 11 attacks. The USA has delivered much monetary and logistical support over the years, starting in September 2008 when US President George W. Bush signed a directive for financial and logistical support. This support continued in many forms with the las support provided by President Obama, who provided military advisors at a cost of \$4.5 million per month. The main objective of the USA being eliminating the threat posed by the LRA to civilians and regional stability.

Timeline of Key Events

Date	Event
1971-1979	Military leader Idi Amin seized power whereby hundreds of thousands die during his rule.



1986	<p>Yoder Museveni, rebel leader, seizes power, significantly improving human rights in the country.</p> <p>Holy Spirit Movement established by Alice Alkema.</p>
1987	<p>The Holy Spirit Movement was crushed by national forces.</p>
1988	<p>Konya began his own movement later known as the Lord's Resistance Army where he assembled troops in 1988 to form a strong and large resistance group.</p>
2008	<p>The Lord's Resistance Army is forced out of Uganda.</p>
2014	<p>Dominic On Gwen hands himself over to American officials.</p>

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