

The Prosecutor v. Dominic Ongwen

Update: 6 May 2021

ICC-02/04-01/15

Decision on the sentence in the Ongwen case at the ICC 6 May 2021

WHAT DID THE JUDGES DECIDE REGARDING THE SENTENCE AGAINST MR ONGWEN?

On 6 May 2021, Trial Chamber IX of the International Criminal Court ("ICC" or "Court") sentenced Dominic Ongwen to 25 years of imprisonment following the [Trial Judgment](#) in which the Chamber found him guilty for a total of 61 crimes comprising crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005.

The period of his detention between 4 January 2015 and 6 May 2021, will be deducted from the total time of imprisonment imposed on him. Under the ICC Rome Statute, after Dominic Ongwen has served two thirds of his sentence, the Court shall review the sentence to determine, in light of certain criteria, whether it should be reduced. The sentence may be appealed before the ICC Appeals Chamber by either party to the proceedings.

WHAT DID THE JUDGES TAKE INTO ACCOUNT TO PRONOUNCE THIS SENTENCE?

The Chamber highlighted that it was confronted in the present case with a unique situation. It is confronted with a perpetrator who wilfully and lucidly brought tremendous suffering upon his victims. However, it is also confronted with a perpetrator who himself had previously endured extreme suffering himself at the hands of the group of which he later became a prominent member and leader.

The Chamber decided to give certain weight in mitigation to the circumstances of Dominic Ongwen's childhood, his abduction by the Lord's Resistance Army (LRA) at a very young age and his early stay with the LRA.

The Chamber rejected the Defence's arguments, recalling its analysis of evidence in the Judgment issued on 4 February 2021, and considered that the mitigating circumstances of substantially diminished mental capacity and duress are not applicable.

The Chamber also rejected these arguments of the Defence concerning traditional justice mechanisms, noting that there exists no possibility under the Rome Statute to replace a term of imprisonment with traditional justice mechanisms, or to incorporate traditional justice mechanisms into the sentence in any other way. It also noted that Acholi traditional justice mechanisms are not in widespread use, to the extent that they would replace formal justice, and that they are reserved to members of the Acholi community, meaning that their use would mean that some victims belonging to other ethnic groups would be excluded. The Chamber emphasised that reconciliation, whatever its form, is a process in which victim participation is essential, and noted that it is clear that many victims of the crimes committed by Dominic Ongwen do not support the idea of traditional justice in the present case, and that they have also criticised the fact that submissions in this regard were made to the Chamber without consulting them.

The Chamber analysed one-by-one the gravity of each of the 61 crimes for which Dominic Ongwen was convicted, finding several aggravating circumstances applicable to some or even most crimes. Aggravating circumstances included particular cruelty, multiplicity of victims, the victims being particularly defenceless, and discrimination on political grounds and discrimination against women. The Chamber imposed individual sentences for each crime, taking the mitigating circumstances of Dominic Ongwen's childhood and abduction by the LRA into due account. The highest individual sentences were of 20 years. Other sentences pronounced for individual crimes were of 14 or 8 years of imprisonment.

In its determination of the joint sentence for all the crimes for which Dominic Ongwen was convicted, the Chamber declined to sentence Dominic Ongwen to life imprisonment, considering his individual circumstances and in order to envisage a concrete prospect for Dominic Ongwen to eventually re-build his life.

The Chamber then, by majority, decided to impose a joint sentence of 25 years of imprisonment. The Majority, composed of Judge Bertram Schmitt and Judge Péter Kovács, is of the view that this joint sentence adequately reflects the strongest condemnation by the international community of the crimes committed by Dominic Ongwen and acknowledges the great harm and suffering caused to the victims. At the same time, the Majority held that such a joint sentence acknowledges Dominic Ongwen's unique personal history and safeguards the prospect of his successful social rehabilitation and, consequently, the concrete possibility of future re-integration into society. Judge Raul Cano Pangalangan appended a partly dissenting opinion on this matter as he would have sentenced Dominic Ongwen to a total period of imprisonment of 30 years.

CAN EITHER PARTY APPEAL AGAINST THE SENTENCE AND CAN IT BE REVISED?

Yes, the Defence and the Prosecution may appeal the decision on the sentence within 30 days, on the grounds of disproportion between the crime and the sentence. Additionally, in accordance with article 110(3) of the Rome Statute, "[w]hen the person has served two thirds of the sentence; [...] the Court shall review the sentence to determine whether it should be reduced."

WHERE WILL MR ONGWEN SERVE HIS PRISON SENTENCE?

Persons convicted of crimes under the ICC's jurisdiction do not serve their sentence at the ICC Detention Centre in The Hague (The Netherlands) as the facility is not designed for long-term imprisonment. If the sentencing judgment becomes final, the ICC Presidency, having heard the views of the sentenced person, shall designate a State of enforcement from a list of States that have indicated their willingness to accept the sentenced person and have signed an agreement with the Court to that effect or pursuant to an *ad hoc* agreement with the Court. In the meantime, Mr Ongwen will remain in the ICC detention centre.

WILL VICTIMS OBTAIN REPARATIONS?

Victims before the ICC can participate during the proceedings. In this particular case, 4,095 victims were granted the right to participate in the proceedings and are represented by two teams of lawyers: a first group is represented by Counsels Joseph Akwenyu Manoba and Francisco Cox, and a second group is represented by Counsel Paolina Massidda. Independently of the participation, victims may ask for reparations in case of a conviction. In the case against Mr Ongwen, issues related to the procedure for victims' reparations will be addressed in due course.

On 6 May 2021, Trial Chamber IX also issued an order for submissions on reparations. It emphasised that the right of victims to reparations is also an essential part of the system of justice at the Court, and stated that it will push forward the reparation stage of the proceedings with vigour and the utmost care.

Reparations proceedings may run concurrently with an appeal about the guilty verdict against Mr Ongwen. However, if at the end of the appeal Mr Ongwen is found innocent, proceedings at the Court will end, including any reparation proceedings that had started. If the appeal confirms the conviction of Mr Ongwen, the reparations' phase may continue or start.

WHO ARE THE JUDGES SITTING IN THIS CASE?

Trial Chamber IX is composed of Judge Bertram Schmitt (Presiding judge), Judge Péter Kovács and Judge Raul Cano Pangalangan. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

HOW DID THE INTERNATIONAL CRIMINAL COURT COME TO UGANDA?

The Ugandan Government ratified the Rome Statute in June 2002, making it a member of a permanent institution established to investigate and prosecute the perpetrators of the most heinous crimes. The ICC does not replace national judicial systems. When national systems are unable or unwilling to genuinely investigate and prosecute such crimes, the ICC comes into play as a court of last resort. In 2004, the Ugandan Government referred the situation on its territory since 1 July 2002 to the ICC. Since then, the ICC Office of the Prosecutor has investigated alleged war crimes and crimes against humanity committed in the context of an armed conflict predominantly between the LRA and the national authorities, mainly in Northern Uganda. In 2005, a Pre-Trial Chamber issued arrest warrants for war crimes and crimes against humanity against five top LRA commanders: Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen. Raska Lukwiya and Okot Odhiambo have both been confirmed dead and the ICC Judges have terminated proceedings against them; Vincent Otti and Joseph Kony remain at large.