

Ongwen: Voices beyond the Court Room

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'What is important is that victims need to stay central to the issues of justice'- Solomy Awidi (1:18:23)

For many Ugandans, February 4, 2021, will be forever etched in their minds. The International Criminal Court (ICC, the court) delivered its long awaited verdict of Dominic Ongwen, a former Lord's Resistance Army (LRA) commander, on charges of war crimes and crimes against humanity. This judgment is notable as a crucial step on the path to achieving justice and accountability for the atrocities committed by the LRA. Ongwen was convicted by the ICC of 61 counts of war crimes and crimes against humanity, consisting of crimes of sexual and gender-based violence, including the first indictment for forced marriage, and conscripting and using child soldiers in hostilities.

Following the judgment, the Refugee Law Project (RLP) in conjunction with its partners, Conjugal Slavery in War (CSiW) project and others, held an intervention, on the 23rd of February, 2021, to discuss the *Ugandan Perspectives on the ICC decision in the Dominic Ongwen case*. The intervention adopted a conversation style format amongst the RLP, its partners, activists, interested commentators and attendees, and victim-survivors, which included Grace Acan, Vincent Oyet, and Alex Odong. The conversation elicited a wide range of interesting issues and questions from participants and I would like to reflect on the following two aspects of the conversations:

Expectations of Victim-Survivors

Priscilla Aling, who works with the ICC legal representative of the victim-survivors, started off the conversation on the need to manage the expectations of the victims. Drawing from her experience working with victim-survivors during the trial, she described the value of victim participation in the ICC trial, she emphasized that one of the pillars to building legal participation lay in identifying the needs of victim-survivors beyond prosecutorial justice. Justice in court she alluded provides an opportunity to capture issues that previously were overlooked in the narrative, such as recognizing male victims of sexual and gender-based violence and ensuring that a human face is presented at the trial by incorporating the testimony of victim-survivors in the prosecution of Ongwen.

Her discussion also touched on the line between "evidence and impact" and reiterated the "other side" of justice which requires recognition for the psychological, and other needs of victim-survivors. – Priscilla's emphasis on victims needs, provided a perfect segue for Grace Acan, in recounting what the impact of the verdict was to her personally, to ask an important question: What will the ICC do in places where people are suffering? (22:02)

The shape of reparations and building a formidable transitional justice framework

As the conversation proceeded from the impact of the verdict, it naturally progressed to the next logical and important post-judgment issue - reparations. In response to what reparations look like to her, Grace Acan (46:00) described taking a holistic approach to providing reparations that cover psychological support, medical provision, compensation and reconciliation for victims and affected communities. A position Priscilla (34:00) supports to the extent that whatever form of reparation is adopted has to be malleable to cover a variety of victim-survivors. The discussions on reparations highlighted the issue of funding and the limitation on resources.

Scott Bartell (41:27) speaking on the ICC Trust Fund, provided a background on the work of the Trust Fund in Uganda, stating that about 56,000 people have benefited from the resources provided thus far, pending the final decision on reparations by the court; some of the services provided included reconstructive surgery, psychological support, economic programs in the areas of agriculture and skills training. He reinforced the Trust Fund's work with partners such as RLP and their commitment to continue to do so for future reparations programs. On the broader issue of reparation, both Luke Moffet and Chris Dolan drew attention to the issue of funding and the fact that the Trust Fund relies on international donors, some of which are member states. This reliance on donors, they noted, raised a number of questions such as what gets funded; how funds are implemented in line with policy, and what are the foreseeable delays in having to put funding processes in place.

The above discussions on reparation, a holistic approach to reparation and funding led to further discussion on the work required in building a holistic Transitional Justice Framework. Chris Dolan (1:05:12), on the issue of building a holistic transitional justice framework, noted that beyond the role of the ICC, and the importance of funding, Civil Society Organizations (CSO) were vital to building a social justice framework that captured and addressed the needs of the victim-survivors outside of the court. Annie Bunting (1:00:13) underscores this vital role of Non-Governmental Organizations (NGOs) and CSOs in her statement on the broad strategies that were employed by NGOs and CSOs in bringing attention to victim-survivors and their causes in the Ongwen case. In the concluding part of the session, Chris Dolan stressed the need for intervention forums like this one to narrow the issues that require attention.

The discussion on the role the ICC plays in seeking justice is an important one, not only in respect to managing the expectations of the victims, but because it speaks directly to the form of panacea prosecutorial justice provides. Also canvassed within this conversation is the view that the ICC verdict does not compensate for the suffering of the victims, and this view is neither wrong nor right. I find that the ICC judgment, though comprehensive, has left a gap in the conversation on what justice represents for victim-survivors. Admittedly, international criminal law is more committed to providing legal justice, and even though we can acknowledge the space that the ICC provides as an arena for norm change, we are reminded that its limitation lies within the criminal nature of the court. In other words, the primary purpose of criminal adjudication is retributive justice as a deterrent to future offenders and not necessarily reformation of the accused. We see this reflected in the missed opportunity of the court to adequately canvass the victim-perpetrator argument in the case of Ongwen. In its address of Ongwen's abduction as a child, and the defense's argument that Ongwen was under duress, the

court discounted the value Ongwen's childhood experience brought to his actions as an adult. The court held that victimhood does not justify becoming a perpetrator. The court's position on the victim-perpetrator relationship is important given that it is a dominant issue surrounding accountability of perpetrators who were child soldiers themselves.

While some people have heralded the decision of the court in achieving justice, others have decried it on its failing to acknowledge the weight that should have been ascribed to his conscription as a child soldier. The argument is that there are other perpetrators in the same position as Ongwen who are currently settled and rehabilitated within the community. My reflection will not wade into the debate of the correctness of the judgment but will like to respond to limits of prosecutorial justice. In my opinion, prosecutorial justice deals with the actions of the accused. The experiences of the victim-survivors are crucial, and the court is applauded for putting them center stage in reading its judgment, however, in defining what justice means, the criminal procedure provides justice within the ambits recognized within the law which primarily comprises punishment to the offender and monetary compensation as a remedy. Annie Bunting (57:40) aptly captures the response to this when she notes that there will be gaps in legal processes and jurisprudence. What is essential is judgments like Ongwen's provide a springboard to debate and discuss the nuances of such judgments. Debates that arise from prosecutorial judgments cast light on who and what is being marginalized in legal process outcomes. Given the limitations of prosecutorial justice, the value in social justice is greatly emphasized. The inclusion of every socio-economic, psycho-social and reparative need that is key to victim-survivors makes social justice an essential component to the wholistic reparative approach Grace touches upon. From her view, she speaks to the fact that social justice works towards addressing the harms and sufferings of victims with an aim to repairing lives. In this case, justice to victim-survivors would mean repairing lives, beyond catching offenders.

This brings me to the salient conversation on what a formidable transitional justice and reparation framework looks like. Rosemary Mcarthy (55:00) spoke to the trauma that victim-survivors suffer several years after their experiences as a call towards constant engagement with victim-survivors in framing transitional justice and reparation programs. Drawing a parallel to the reparations' framework in Sierra-Leonne, she stated that this engagement still requires ongoing work with the victim-survivors. The value in her statement is that-transitional justice and reparations take time-it is not a one-time event. Given the position that reparations is not a one-time event, I will start by commending the harmonizing approach towards reparation that Priscilla mentioned will be brought before the court for its consideration. Beyond the proposed harmonized approach, it would be beneficial to also bring the continued need to re-evaluate the changing forms of reparations that may be required past a one-time funding payment. Such attention will adequately capture the ways reparations can take different forms and values for different people.

To attempt an answer to what constitutes an adequate transitional justice and reparations framework, I will look to the comments of Grace, Priscilla, and all the wonderful speakers. My response is that a formidable Transitional Justice and Reparations Framework is one that *"...responds to victims' rights and addresses the ongoing needs of victims resulting from those violations.....If measures are to be effective and able to address the worst consequences of the violations, the participation of victims and victims' groups in the design and implementation of reparations is critical"* (ICTJ 2021). This will require several roundtables and interventions. It will require negotiation, it will require more domestic engagement with the Ugandan government.

It will require more listening and working with victim-survivors. It will require conversation within the international community; with donors; but it will ensure that the voices and concerns of victim-survivors remain central to the conversations. This framework, I find, will also impact the conversations on funding, another central issue to reparations. I cannot deny the problems that arise when there is a conflict between what the international community wants to fund and what the victims may need. However, the hope is that in continued conversation, there will arise ways to mobilize donors within a robust transitional justice policy that provides for the needs of victim-survivors. The efficacy of this will be seen.

The conversation does not end here. It is comforting to know that this is just the first part in many conversations to come that will delve into the salient issues that need attention (Chris Dolan, 1:15:30). Beyond the judgment, and more importantly, in continued conversation and future action, is the issue of what justice looks like for the victims. The reactions to the judgment have shown us that the image of justice takes different shapes for different people. What then becomes important? The intervention by RLP, CSiW, and all the other partners show us the importance of having conversations that break down the issues. At the end of it all, whether the focus is on the ICC judgment or on building a responsive transitional justice and reparations framework, what is essential is that victims-survivors' voices need to guide the conversation on what is important, and in the words of Grace Acan in closing “.....*there is so much to talk about*’ (1:17:05).