

LEGAL ANALYSIS OF GROSS HUMAN RIGHTS VIOLATIONS IN ARMED CONFLICT: A STUDY OF INTERNATIONAL COURT DECISIONS

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Abstract

Non- international armed conflicts consistently give rise to massive and systematic human rights violations , which demand a comprehensive international legal response . The case of The Prosecutor v. Dominic Ongwen (ICC-02/04-01/15) is one of the most monumental decisions in the history of the International Criminal Court (ICC), presenting a previously untested legal dimension , particularly regarding the defendant 's dual status as a former child soldier and perpetrator of large -scale international crimes . This study aims to analyze the application of the 1998 Rome Statute and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) in qualifying gross human rights violations in the Ongwen case , as well as to examine the ICC's legal considerations in determining criminal responsibility and sentencing of the defendant . The method used is normative legal research with a statutory approach , a case approach , and a conceptual approach , based on a literature study of primary, secondary , and tertiary legal materials . The research results show that the ICC successfully qualified 62 charges of war crimes and crimes against humanity based on Article 7 and Article 8 of the Rome Statute , including the recognition of forced marriage as another inhumane act and forced pregnancy as a war crime — both of which constitute historic jurisprudential precedents. The synergy between the Rome Statute and the OPAC strengthens the prosecution of the recruitment of children under the age of 15 , although the gap in the age threshold with the OPAC creates a normative gray area . The ICC rejected the duress defense and asserted that past victim status does not eliminate criminal responsibility, as confirmed by the 2022 appeals ruling . This study recommends harmonization of the age threshold between the two instruments , the development of a reparation mechanism based on psychosocial rehabilitation , and the strengthening of national legislation in criminalizing child recruitment by non-state actors .

Keywords: International Criminal Law , War Crimes , Armed Conflict , International Criminal Court , Gross Human Rights Violations

INTRODUCTION

Armed conflicts occurring in various parts of the world consistently give rise to massive, systematic, and planned human rights violations . In the context of international law , these violations are categorized as gross human rights violations if they fulfill the elements of crimes stipulated in the 1998 Rome Statute of the International Criminal Court, which include genocide , crimes against humanity , war crimes , and the crime of aggression . The International Criminal Court (ICC), as a permanent international criminal justice institution , has jurisdiction to try individuals suspected of being responsible for these crimes . Since its establishment in 2002 , the ICC has handled dozens of cases reflecting the legal complexities of both international and non- international armed conflicts . One of the most monumental decisions in the history of the ICC is the case of The Prosecutor v. Dominic Ongwen (ICC-02/04-01/15), in which the defendant was found guilty of 62 counts of war crimes and crimes against humanity committed in the context of the armed conflict in Northern Uganda between 2002 and 2005. This case

became This is a significant milestone in the development of international criminal law, as it was the first time a former child soldier was tried and convicted by the ICC for crimes similar to those he himself experienced. The uniqueness of this case reflects the complexity of the relationship between victim and perpetrator status in the context of prolonged armed conflict . This overall context emphasizes the urgency of legally examining how the international legal framework , particularly the 1998 Rome Statute and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC), is applied in real cases involving gross human rights violations (Grey et al., 2024) .

Empirically , the ICC's ruling in the Ongwen case offers a number of significant and unprecedented legal findings in the history of international criminal justice . The ICC for the first time successfully proved and prosecuted the crime of forced pregnancy as a war crime and a crime against humanity , thus opening a new historic jurisprudential precedent . In addition , the ICC also recognized and strengthened the jurisprudence related to forced marriage as a form of other inhumane acts in the category of crimes against humanity , a development that had not previously been thoroughly tested before the ICC (Maloney et al., 2023) . This case also emphasized the application of the Optional Protocol to the CRC in the realm of international criminal responsibility by imposing penalties for the act of recruiting and using children under the age of 15 in active armed activities .

The Panel of Judges also determined that the defendant's background as a former child soldier could be considered a mitigating circumstance , although this did not eliminate his criminal responsibility entirely . The appeal decision in December 2022 then upheld the entire verdict and sentence , and emphasized that no defense based on duress can absolve a defendant from criminal responsibility for the crimes he was proven to have committed . The Ongwen case thus reflects the increasingly profound evolution of ICC jurisprudence in responding to the complexity of gross human rights violations involving actors with dual status (Muharremi, 2023) .

Although the Ongwen case has received considerable academic attention , there is a research gap that still needs to be filled critically and systematically . The majority of existing studies tend to examine this case from a single perspective , focusing either on the gender -based dimensions of crimes or on the issue of child soldiers . However, rarely does both analyze them simultaneously and in an integrated manner within the framework of the 1998 Rome Statute and the OPAC. Existing studies have also not thoroughly analyzed how judges balance the dual status of the accused as both victim and perpetrator within the applicable international criminal law framework (Benyera, 2023) . Furthermore , there has not been much comprehensive analysis of the implications of the Ongwen decision for the development of ICC jurisprudence regarding sentencing , taking into account individual factors of the perpetrator , including mental health conditions and background (Chifflet & Freckelton, 2022) . Furthermore , an analytical perspective that integrates two international legal instruments simultaneously to assess a single case of gross human rights violations is needed . simultaneously remains a relatively underexplored area in the academic literature . This study aims to fill this gap by conducting a systematic , in-depth , and integrated legal analysis of the application of the 1998 Rome Statute with the OPAC in the case of The Prosecutor v. Dominic Ongwen (Muharremi, 2023) .

The novelty of this research lies in its attempt to conduct an integrated legal analysis that connects the 1998 Rome Statute and the Optional Protocol to the CRC on the Involvement of

Children in Armed Conflict as two complementary regulatory instruments in assessing gross human rights violations in the Ongwen case . This research does not merely describe the legal facts , but rather critically analyzes how the two instruments interact in ICC judicial practice and provide a comprehensive protection framework for victims of armed conflict . Moreover , this research seeks to construct the legal implications of the decision on the development of international criminal law in general , particularly with regard to the protection of children 's rights and the resolution of gender- based crimes in the context of armed conflict involving non - state armed groups .

Based on this background , this study formulates two main problems as follows . First , how is the application of the 1998 Rome Statute and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in the case of The Prosecutor v. Dominic Ongwen (ICC-02/04-01/15) to the category of gross human rights violations that occurred in the armed conflict in Northern Uganda? Second , how is the legal consideration of the International Criminal Court in determining criminal responsibility and sentencing of Dominic Ongwen related to his dual status as a former child victim of the military and a perpetrator of serious crimes ?

In line with the formulation of the problem above , this study has two main objectives . First , to analyze and explain the application of the Rome Statute of 1998 and the OPAC in qualifying gross human rights violations committed by Dominic Ongwen in the context of the armed conflict in Northern Uganda as decided by the ICC. Second , to examine and evaluate the basis of the ICC's legal considerations in determining criminal responsibility and sentencing decisions against Dominic Ongwen who has dual status as a victim and perpetrator of international crimes .

This research is expected to provide dual benefits , both theoretically and practically . Theoretically , this research is expected to contribute to the development of the treasury of international criminal law , particularly in understanding the application of international legal instruments in dealing with war crimes and crimes against humanity involving actors with complex legal status . This research is also expected to be a useful academic reference for researchers , academics , and law students who study international humanitarian law and human rights . Practically , the findings of this research are expected to provide input for policy makers , international legal practitioners , and authorized institutions in efforts to enforce international law and protect children 's rights in situations of armed conflict , as mandated by the applicable international legal framework .

METHOD

This study uses a qualitative research method with a normative legal research approach based on library research . The normative legal method was chosen because this study aims to examine, analyze , and evaluate the legal norms contained in applicable international legal instruments , not to measure social facts empirically . From a legal perspective , the normative method positions law as a system of norms that can be studied doctrinally through applicable legal principles , rules , and logic (Nurhayati et al., 2021) . This approach is considered most appropriate because the problem being studied centers on the application of the international legal framework to legal facts that have been judicially decided by the International Criminal Court .

This research uses three types of approaches simultaneously. First, the statute approach, which systematically examines the 1998 Rome Statute and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) as the main legal sources. Second, the case approach, which analyzes the ICC decision in the case of *The Prosecutor v. Dominic Ongwen* (ICC-02/04-01/15) along with its appeal decision as the main object of study. Third, the conceptual approach, which examines the relevant doctrines, principles, and concepts of international criminal law, including the concepts of criminal responsibility, punishment, and child protection in armed conflict.

The research materials used are divided into three categories. Primary legal materials include the 1998 Rome Statute, OPAC, ICC decision -02/04-01/15 (Trial Judgment 2021 and Appeal Judgment 2022), and the 1989 Convention on the Rights of the Child. Secondary legal materials include reputable indexed international law journals published between 2021 and the present, including works by Grey et al., Maloney et al., and Muharremi (Grey et al., 2024). Tertiary legal materials include legal dictionaries, legal encyclopedias, and official reports from international legal institutions. All legal materials were collected through documentation study techniques and an inventory of relevant literature sources, then analyzed qualitatively using description, interpretation, and legal argumentation techniques. This descriptive-analytical legal research ensures that every conclusion drawn is based on coherent legal logic and can be scientifically justified (Disemadi & Kang, 2021).

DISCUSSION

The Application of the Rome Statute 1998 and the OPAC in the Case of The Prosecutor v. Dominic Ongwen to the Category of Gross Human Rights Violations in the Armed Conflict in Northern Uganda

Qualification of War Crimes and Crimes against Humanity Under the 1998 Rome Statute in the Ongwen Case

The case of *The Prosecutor v. Dominic Ongwen* marks a significant milestone in international criminal law jurisprudence, particularly in terms of qualifying acts into the category of crimes regulated by the 1998 Rome Statute. The ICC Panel of Judges in its decision declared Ongwen guilty of 62 charges including murder, torture, sexual slavery, rape, as well as forced pregnancy and forced marriage. All of these legal qualifications are based on Article 7 paragraph (1) of the Rome Statute concerning crimes against humanity, which requires a widespread or systematic attack on the civilian population. The Lord's Resistance Army (LRA) attacks on refugee camps in Pajule, Odek, Lukodi, and Abok were proven to fulfill these contextual elements, because they were not sporadic actions but rather manifestations of a systematically structured organizational policy. This legal construction is in line with the view that international court mechanisms require a solid jurisdictional basis before imposing sanctions for gross human rights violations (Sirtufillaeli et al., 2023).

One of the most important jurisprudential contributions of this decision is the recognition of forced marriage as another inhumane act based on Article 7 paragraph (1) letter (k) of the Rome Statute. Previously, similar acts were only categorized as part of sexual slavery. However, the ICC emphasized that forced status as a "commander's wife" causes social, psychological, and identity losses that are independent and not accommodated in the construction of conventional sexual crimes (Bintang et al., 2025). Likewise, forced pregnancy is explicitly qualified through

Article 7 paragraph (2) letter (f) . In the dimension of war crimes , the ICC applies Article 8 paragraph (2) letters (c) and (e) considering the non - international nature of the Northern Uganda conflict . This approach broadens the scope of the international legal response to the damage caused by armed conflict , including the establishment of a more comprehensive reparations mechanism for victims (Killian, 2021) .

Application of OPAC in Prosecuting the Recruitment and Use of Children Under 15 Years of Age as a War Crime

The aspect of child soldier recruitment in the Ongwen case reveals the normative tension between two interrelated international legal instruments . The 1998 Rome Statute , through Article 8 paragraph (2) letter (e) number (vii), criminalizes the recruitment and use of children under the age of 15 in non - international armed conflicts . Meanwhile , the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), through Article 4 paragraph (1), absolutely prohibits non -state armed groups from recruiting individuals under the age of 18. This age gap creates a gray area between standards of criminal responsibility and standards for the protection of children's human rights . However , the ICC does not view these two instruments as mutually negating norms , but rather uses the OPAC as an interpretative tool that strengthens the overall goal of child protection . This shows that the enforcement of international humanitarian law requires synergy between various existing legal instruments .

Evidence at trial demonstrated that the LRA methodically abducted children , trained them as combatants , couriers , and scouts , and actively integrated them into combat operations . The ICC concluded that all elements of the charge under Article 8 paragraph (2) letter (e) number (vii) of the Rome Statute were met (Schmitt et al., 2021) . Furthermore , Article 4 paragraph (2) of the OPAC, which requires states parties to criminalize child recruitment by non-state groups , also strengthened the Prosecutor's legal argument . The Ongwen decision contributed significantly to strengthening child protection in armed conflict by affirming that the practice of child recruitment constitutes a serious violation that gives rise to international criminal responsibility , while also clarifying the limits of the ICC's authority in investigating violations committed by non -state actors (Oktariawan, 2021) .

The ICC's Legal Considerations in Determining Criminal Responsibility and Sentencing Dominic Ongwen Are Linked to His Dual Status as Both Victim and Perpetrator

The ICC's Considerations in Determining Ongwen's Criminal Responsibility : Rejection of the Duress Defense and the Defendant's Dual Status

The most complex legal issue in Ongwen's case is the paradox of the defendant's identity as a former child soldier who later became a perpetrator of large -scale international crimes . The defense team argued that Ongwen's actions must be understood in the context of structural coercion and the trauma he experienced since his abduction at the age of nine . However , the ICC rejected this argument based on Article 31 paragraph (1) letter (d) of the Rome Statute , which requires an imminent and real threat of death at the time of the act . The Panel of Judges found that during the period of the indictment (2002–2005), Ongwen had held a senior LRA commander position with full authority , independent decision -making capacity , and effective control over his forces . These conditions are fundamentally different from the situation of lower- ranking LRA members or recent abductees . This approach emphasizes that international

criminal responsibility cannot be absolved solely on the basis of past victimization if the perpetrator has full free will capacity (Melander et al ., 2021) .

Ongwen's criminal liability was further constructed through Article 25 paragraph (3) letter (a) of the Rome Statute concerning direct and indirect perpetrators , as well as Article 28 paragraph (1) concerning command responsibility. The mens rea element based on Article 30 paragraph (1) was declared fulfilled because it was proven that Ongwen acted with full knowledge and conscious will . The ICC also implicitly considered Article 6 paragraph (3) of the OPAC which recognizes children recruited unlawfully as victims entitled to rehabilitation (ICC, 2021) . However , the court clearly distinguished between Ongwen's condition as a child and his responsibilities as an adult holding a commanding position , thus creating an important precedent that past victim status does not automatically eliminate future criminal accountability (Kilikily, 2025) .

Sentencing Considerations : Balance between Aggravating Factors , Mitigating Factors , and Implications of Appeal Decisions 2022

In the sentencing phase , the ICC faces the challenge of balancing the severity of the crime with the complexity of the defendant's background . The aggravating factors considered under Rule 145(2)(b) of the Rules of Procedure and Evidence include the large number of victims , the 3.5-year duration of the crime , the systematic nature of the attack on the civilian population , the organized use of sexual violence , and the exploitation of children in military operations . On the other hand , the mitigating factor recognized by the ICC is Ongwen 's experience as a victim of kidnapping and recruitment of child soldiers , guided by the spirit of protection as contained in Articles 1 and 4 of the OPAC. Based on these considerations and referring to Articles 76–78 of the Rome Statute , the ICC sentenced him to 25 years in prison . This figure reflects the court's efforts to reconcile two fundamental principles : justice for the victim and recognition of the complexity of the defendant's life history , without making either one the sole determinant of the sentence (Novifajri, 2024) .

The December 2022 appeal decision issued by the ICC Appeals Chamber upheld all findings of guilt and the sentence imposed on Ongwen , while strengthening the legal interpretation of Articles 25, 28, 30, and 31 of the Rome Statute . The jurisprudential implications of this appeal decision are very significant : first , it confirms that past victimization does not automatically eliminate international criminal responsibility ; second , it demonstrates that modern international law is able to accommodate the complexity of a person's dual identity as both victim and perpetrator without sacrificing the interests of justice ; third , it reinforces that child protection as regulated by the OPAC must go hand in hand with the principle of criminal accountability . Thus , the Ongwen case has become a primary reference for the development of international criminal law involving perpetrators with a background of victimization in armed conflict (Bayuaji et al., 2023) .

CONCLUSION

The case of *The Prosecutor v . Dominic Ongwen* demonstrates that the 1998 Rome Statute comprehensively qualifies gross human rights violations through Articles 7 and 8, including recognizing forced marriage as another inhumane act and expanding the dimensions of war crimes in non- international conflicts . The synergy between the Rome Statute and the OPAC strengthens the protection of children from forced recruitment , although the gap between the

15 and 18 age thresholds creates a normative gray area that has not been fully resolved . The ICC firmly rejected the duress defense and emphasized that dual status as both victim and perpetrator does not eliminate international criminal responsibility , as confirmed in the 2022 appeals decision . Implicatively , this decision strengthens the jurisprudence that criminal accountability and recognition of past victimization can go hand in hand . The limitation of this study lies in its focus on a single case , so generalizations to other armed conflicts require methodological caution .

Based on the research findings , there are several recommendations that need to be considered. First , the international community needs to encourage harmonization of the age threshold between the Rome Statute and the OPAC in order to close the normative gap that has the potential to weaken the protection of children in armed conflict. Second, the reparation mechanism for victims who are also perpetrators needs to be developed in a more structured manner within the ICC legal framework , taking into account the dimensions of psychosocial rehabilitation as mandated by Article 6 paragraph (3) of the OPAC . Third , states parties need to strengthen national legislation in implementing the obligation to criminalize child recruitment by non-state actors . For further research , it is recommended to conduct a comparative study between the Ongwen case and other child soldier cases before the ICC and ad hoc international tribunals , in order to produce a more representative analysis and contribute to the development of international criminal law in a more systematic manner .

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