The Prosecution of a Child Victim and Brutal Warlord: The Competing Narrative of Dominic Ongwen

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In 2007, UNICEF estimated that there were more than 250,000 children serving as child soldiers globally. The phenomenon of the child soldier defies criminal law’s binary characterisation of ‘innocent’ and ‘guilty’, and challenges prevailing moral prescriptions of ‘good’ and ‘evil’. The child soldier manifests as both ‘victim’ and ‘perpetrator’. This paper examines the effects of child soldiering on agency, and questions whether former child soldiers ought to be prosecuted for crimes committed in the continuity of their forced conscription. The case study focuses on former Lord’s Resistance Army’s (LRA) Commander, Dominic Ongwen. This article analyses the competing narratives of Ongwen as victim and as perpetrator before the International Criminal Court (ICC). The paper goes on to investigate how the Pre-Trial Chamber’s subscription to the ‘perpetrator’ narrative may jeopardise international norms aimed at protecting child soldiers, and dually how its acknowledgment of agency in the Ongwen case sets a strong message against impunity.
Introduction

He loved hunting birds... He would make a hole in a papaya fruit and use it to draw the birds... then he’d give the birds to the other children.1

This is how Madeline Akot remembers her nephew, Dominic Ongwen. It is a fond memory of a man said to be responsible for the deaths of more than 345 civilians in 2009 during the Makambo Massacre in Congo.2 Madeline’s memory of Ongwen is of a time shortly before he was abducted by the Lord’s Resistance Army (LRA) while on his way to school at only 10 years old. Like many LRA abductees, Ongwen was taught to kill, maim, and to fight against the Museveni Government.3 He was set apart from other abductees for his efficiency and loyalty, leading to his rapid promotion within

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the ranks of the LRA. In 2005, the International Criminal Court (ICC) issued arrest warrants for five of the top LRA commanders, including Joseph Kony, Vincent Otti, and Dominic Ongwen. On 26 January 2015, Ongwen appeared before the ICC for the first time.

Ongwen is the first person charged before the ICC with crimes he suffered himself as a child. He is a complex political victim, one who ‘participated in acts that victimise others, even themselves’.4 He complicates the simplistic narrative of the victim as ‘pure’ and ‘innocent’, and the perpetrator as ‘evil’ and ‘guilty’.5 As the Kemetic proverb expresses: ‘The tyrant is only the slave turned inside out.’ This paper seeks to explore the competing narratives of Dominic Ongwen’s case, his agency, and his prosecution before the ICC despite his status as a former child soldier. The first section of this paper looks at the different narratives of Ongwen’s case before the ICC and the dilemmas of the Court in subscribing to one narrative, with his monolithic status as a perpetrator neglecting to account for the effects of child soldiering on individual agency. The second section will discuss the defence of duress, determining Ongwen’s eligibility for duress by examining his agency. His entry into the LRA, the conditions he was subjected to and his actions within the ranks of the LRA will be considered in determining his eligibility for the defence. The final section concludes the discussion with a reflection on whether the ICC is correct to prosecute Ongwen despite his troubled history, and what can be learned from this case going forward.

5 Ibid.
I. Ongwen’s Charges before the ICC

On 23 March 2016, the Pre-Trial Chamber II (Chamber) confirmed 70 charges of crimes against humanity and war crimes against Ongwen for crimes allegedly committed between 2002 and 2005, including: murder, conscription, the use of child soldiers under the age of 15, and sexual and gender-based crimes, including forced marriage, rape, and sexual slavery.\(^6\)

The Defence presented two main arguments to undermine Ongwen’s criminal responsibility. They first argued that Ongwen remained a child soldier until the day he left the LRA in January 2015 because his early abduction, indoctrination, and his upbringing in an ‘environment of ruthlessness and duress’ disconnected him from the ‘social construct of normal society in Northern Uganda’, thereby suggesting that he failed to reach the mental maturity of an adult. Thus, they argued Ongwen should be excluded from any individual criminal responsibility considering he benefits from the legal protection afforded to child soldiers under international law.\(^7\) The fact that Ongwen was once a victim was not dismissed by the Prosecution; initially, Prosecutor, Benjamin Gumpert voiced his sympathy for Dominic Ongwen:

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\(^6\) Decision on the confirmation of charges against Dominic Ongwen, Pre-Trial Chamber II, ICC-02/04-01/15 (23 March 2016) (Pre-Trial Chamber decision) <https://www.icc-cpi.int/CourtRecords/CR2016_02331.PDF> accessed 30 December 2017.

He himself, therefore, must have gone through the trauma of separation from his family, brutalisation by his captors and initiation into the violence... It may, therefore be as much sorrow as in anger that some of the accusations that the Prosecution brings against Dominic Ongwen are heard.8

Gumpert’s sympathy for Ongwen was short-lived. Referring to an episode where Ongwen spread false information on Mega FM, a local radio station in Gulu, claiming that he would release his soldiers, Gumpert noted, ‘Now [that] people are happy with what they heard over Mega FM, he will shock them by starting to kill civilians seriously’.9 He went on to claim that this representation of Ongwen was reflective of his true state of mind. Gumpert explained why Ongwen should be held accountable despite his troubled history:

The phenomenon of the perpetrator-victim is not restricted to international courts ... it’s familiar in all criminal jurisdictions. Drug dealers rarely boast serene, untroubled childhoods ... But this is no reason to expect that crimes can be committed with impunity ... Each human being must be taken to be endowed with moral responsibility for their actions. We have a choice

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9 Ibid 21.
... and when that choice is to kill, to rape, and to enslave, we must expect to be held to account.10

The second argument raised the defence of duress under Article 31(1)(d) of the Rome Statute (Statute). The Defence argued Ongwen did not voluntarily commit the alleged crimes, with his actions having been the result of the forced adaptation to the LRA’s brutal environment and indoctrination. The Defence claimed Ongwen’s experience in the LRA was instinctive in that his survival depended solely on his compliance with the organisational rules under Kony’s leadership. It was argued that Ongwen could not then be held responsible as he could not have controlled the ‘ruthless environment’ he had been raised in since childhood.11 To counter this narrative, the Prosecution highlighted the organised and hierarchical structure of the LRA, and specifically, how Ongwen ascended the ranks of the LRA through his own initiative. The Prosecution emphasised Ongwen’s growth in power and authority with every promotion, and his use of that authority to ‘carry out operations and gain praise from the leader of the LRA’.12 Paolina Massidda, principal counsel of the ICC’s Office of Public Counsel for Victims, further undermined the Defence’s ‘victim’ narrative by describing intercepted radio communications in which Ongwen’s laughter could be heard following an atrocity. Massidda noted that his laughter represented ‘not the state of mind of somebody under duress, rather, […] the state of mind of somebody who is enjoying and proud of what he is doing’.13

11 Defence Brief (n 7) 50–57.
12 Prosecution Transcript (n 8) 53.
The Chamber dismissed both Defence arguments. It was held the first argument that Ongwen remained a child soldier until the moment he surrendered was without legal basis; the Chamber did not elaborate further. For the argument of duress, the Chamber held that there was no evidence indicating Dominic Ongwen faced any threats of imminent death or serious bodily harm, as Ongwen’s stay in the LRA, understood to be the source of the threat, was not beyond his control, citing that LRA escapes were not rare. The Chamber also held the Defence failed to demonstrate the necessity and reasonableness of Ongwen’s actions in order to avoid the supposed threat. Notably, the Chamber commented that ‘if... Dominic Ongwen could not have avoided accepting ... forced wives, he could have avoided raping them... he could have reduced the brutality of sexual abuse.’

The two narratives of the case put before Chamber were significantly at odds. The Defence’s portrayal of Ongwen was contemplated with an understanding of his forced adaptation to circumstances beyond his control. On the contrary, the Prosecution’s portrayal of Ongwen was of someone endowed with agency, one capable of making moral choices despite his upbringing in a brutal environment.

The Chamber appeared to have adopted the Prosecution’s narrative of Ongwen’s case, viewing him as a rational individual who acted on his own initiative, with little reference to his abduction or childhood in the LRA. Despite the gravity of Ongwen’s alleged atrocities, he was a victim

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14 Pre-Trial Chamber decision (n 6) [150–154].
15 Ibid 155.
prior to becoming a perpetrator; his entry into the LRA was involuntary, and he is arguably a product of the ruthless system forced upon him. In dismissing his victimhood in the assessment of his ‘agency’, the Chamber effectively rendered inadmissible any protections afforded to child soldiers in the Ongwen case. Ongwen was instead viewed as a voluntary member of the LRA, with an explicit focus on his conduct as an adult.

In the Lubanga judgment, the Trial Chamber acknowledged that child soldiers’ ‘experiences can hamper children’s healthy development and their ability to function fully even once the violence had ceased’. They also recognized that the ‘response to war-related trauma by... child soldiers... is complex and frequently leads to severe forms of multiple psychological disorders’, with the child soldiers often having ‘little skills to handle life without violence’. The effects of child soldiering in Lubanga were contemplated with continuity over time. In contrast, the effects of child soldiering were discontinued in the Ongwen case, implying somehow that the psychological effects of child soldiering had either stopped or had become negligible once Ongwen became an adult. As the Defence put it, ‘the crime of conscription of child soldiers is a continuous crime. It is inapposite to suggest that this crime ended the moment Dominic became 15 and has no impact’.

The complexities of child soldiering remain ‘a poorly understood scourge particularly susceptible to simplistic

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16 Prosecutor v Thomas Lubanga Dyilo, Decision on Sentence pursuant to Article 76 of the Statute, (Judgment) ICC-01/04-01/06 (10 July 2012) 39.
17 Ibid 40–41.
18 Defence Brief (n 7) [46].
thinking... entangled in the binary reductionism of criminal law’s categorisation of pure victim and ugly perpetrator.’19 Thus, as the Ongwen case progressed to the Trial Chamber, it is crucial for the ICC to develop a standard for the defence of duress and to answer to uncertainties including: to what extent and under what circumstances should the impact of child soldiering be considered to have continued into adulthood? Should the duress defence be a mitigating factor or an exonerating defence for former child soldiers?

II. The Defence of Duress

Perhaps the most influential case regarding duress was the *Erdemovic* case, in which the Appeals Chamber of the ICTY rejected duress as a complete defence for the murder of civilians to ‘assert an absolute moral postulate... for the implementation of international humanitarian law.’20 The decision was not unanimous, with Judge Cassese dissenting to develop a four-part test for duress to constitute a complete defence.21 Cassese’s opinion has heavily influenced the drafters of the Rome Statute, particularly with the adoption of duress as a complete defence under Article 31(1)(d) of the Statute with a similar test as that identified by Cassese. For Ongwen to successfully raise the defence of duress under the Rome Statute, he must satisfy three requirements:

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20 *Prosecutor v Erdemovic* (Joint Separate Opinion of Judge McDonald and Judge Vohrah) Case No. ICTY-96-22-S (7 October 1997) 83.
21 *Prosecutor v Erdemovic* (Separate and Dissenting Opinion of Judge Cassese) ICTY-96-22-S (7 October 1997) (Cassese’s Opinion) 16.
1) Threat of imminent death or serious bodily harm;
2) The acts are necessary and reasonable to avoid the threat; and
3) No intention to cause a greater harm than the one sought to be avoided.22

i. **Threat of Imminent Death or Serious Bodily Harm**

Ongwen must first demonstrate that he was under a threat of imminent death or serious bodily harm against himself or another person at the time the alleged crimes took place. This encompasses continuing threats. The threat must be real and not merely believed to exist by Ongwen only.23 In determining this, the environment Ongwen was subjected to in the LRA must surely be examined.

The LRA came into being under the leadership of Joseph Kony, aiming to topple the Museveni government and to rule Uganda under the Biblical Ten Commandments. Notorious for its abduction of children, the LRA seeks to raise ruthless fighters indoctrinated with loyalty to the cause, relying on the malleability of a young child’s morality.24 Once abducted, the children are made to forget their previous lives, reminded that escape is impossible, and raised to accept LRA beliefs and values. To inculcate loyalty, Ongwen was put in the home of Vincent Otti, LRA’s current Deputy Leader, who was at the time an LRA Commander.25 Like other abductees, Ongwen was forced to undergo brutal training to ‘initiate’

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25 Baines (n 3) 7.
him into the LRA. His initiation included hard labour, long marches, frequent canings, beatings, and cleansing rituals which would entail blood tasting and rolling in the blood of the dead. Any violations of the LRA rules resulted in beatings or even death. Abductees were forced to witness and participate in beatings and killings of persons, usually of those who attempted to or were suspected of trying to escape. Displays of remorse or discontent with the LRA were cause for suspicion, and were punishable in the same way. This indoctrination of fear and violence sent a clear message as to how escapees would be punished.

An abductee described the torture experienced by escape suspects:

What they do first is, when you are still new, beat you about 500 times... Then they force you to watch terrible things... One of us was brought in front of us and killed there so that we could see... They force us to do it... anyone among you who tries to escape will be killed the same way... this might be the first time you see a person getting killed, this will traumatise you and make you very afraid.

High-ranked combatants were also subject to threats of death or serious bodily harm. While the death of Vincent Otti has yet to be confirmed by the ICC, the Prosecution formally

26 Ibid.
27 Ibid 8.
28 Ibid.
acknowledged his death in her opening statement in Ongwen’s trial. This is consistent with the Vice-President of South Sudan Riek Machar’s testimony and witness statements before the ICC that Otti, along with three other LRA members, had been shot as ‘they were alleged to have been interested in escaping’.

These testimonies illustrate that orders from Kony constituted law, and were to be followed regardless of rank. Indeed, rank may be seen as mere survivability. As an abductee, Ongwen had been subjected to the brutal indoctrination and initiation training under the constant threat of death or serious injury. There is a strong case to suggest that these threats continued throughout his promotions within the LRA, up to and including his time as a Commander.

ii. Necessity and Reasonableness

In establishing duress, Ongwen must further demonstrate that his actions were necessary to avoid the aforementioned threat, and that a ‘reasonable person’ in his position would have succumbed to and made the coerced decisions as he had done. The Prosecution’s narrative holds that Ongwen had ample opportunity to desert the LRA, in that he could have

32 Werle (n 23) 206.
'order[ed] his troops to lay down arms and go home... after all... he didn’t have to fear the... brutal canings or peremptory executions he himself ordered.'

Though it may be true that Ongwen possessed more authority relative to his comrades, any perceived opportunity to desert the LRA is certainly more complex than is presented by the Prosecution. As a child abductee, Thomas Kwoyelo shared a similar experience to Ongwen; he rose to the rank of an LRA Colonel before being captured by the Ugandan forces in 2009. Kwoyelo’s account of his experience in the LRA, even within his ranks, was likened to the relationship of a dog to its master. He recalled:

My master was Kony and everything I did came from Kony; the attacks, the ambushes, the abductions. When he tells you, ‘ambush a car there and come back with twenty-five new recruits’, you do it because otherwise he will kill you.

Even as Kwoyelo rose through the ranks, he noted that an escape was not simple. High-ranked LRA combatants are more valuable insofar as they hold a greater degree of knowledge about the organisation; they are in effect a liability to the LRA in the event of desertion or capture. As such, they are often subject to stricter surveillance and are always accompanied by fighters, strictly spied upon by Kony. Kwoyelo described his situation as being ‘caught up between two deaths’ – either death in the bush or death trying to

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33 Prosecution Transcript (n 8) 21.
34 Asmakopoulus (n 29) 49.
35 Ibid.
36 Ibid 32.
escape.\textsuperscript{37} It was also common for Kony to personally guard commanders’ ‘wives’ and children to discourage desertion. An LRA escapee recalled her conversation with Ongwen after he was injured in 2002, saying that ‘he felt very bad because the rebels threatened to kill him if he escapes; they also [told him]... his homestead would be burnt down.’\textsuperscript{38} Even if Ongwen had the opportunity to escape, it is not unfeasible that he may have feared for the safety of his families or community. Indeed, LRA revenge attacks are common. This fear of retaliation is evidenced in victim testimonies:

...many abductees are very afraid for the revenge they [the LRA] take on your family when you escape. They keep records of all the abductees and their clans and go back to your community to kill for example your father as a punishment.\textsuperscript{39}

If I plan to escape, they will come to my village and kill many people to revenge. So what will my community think of me? “You escaped from the LRA and see what happened to us!” You know what negative consequences there can be for you or for your village once you escape.\textsuperscript{40}

The narrative that Ongwen ought to have escaped is evidently an oversimplification. His continued stay in the LRA and his willingness to kill, as highlighted by the Prosecution, may well have been a forced adaptation for survival in a brutal environment. Michael Wessells, a psychosocial and child protection practitioner at Columbia

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\textsuperscript{37} Ibid 49. \\
\textsuperscript{38} Baines (n 3) 14. \\
\textsuperscript{39} Asmakopoulos (n 29) 50. \\
\textsuperscript{40} Ibid 33.
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University, has commented that child soldiers either ‘play stupid’ or ‘play smart’, and demonstrate their willingness to kill to avoid being killed and to secure better security, food, and quality of life in the ‘bush’. 41 Although Ongwen may have ‘played smart’ and adopted the ‘bush mentality’ in his attempt to survive his brutal environment, it cannot be assumed that Ongwen genuinely embraced the LRA ideology in doing so. It may well be that Ongwen involuntary suppressed his moral sensibilities to create the illusion of assimilation in the LRA ideology. The distinction between these narratives ought to be a fundamental consideration in the determination of duress.

The Prosecution in Lubanga recognised that in reality, child soldiers have no free will – indeed, ‘the oppressive environment deprived freedom of choice’.42 The same can be said for Ongwen.43 While other strategies may certainly have existed in surviving the LRA, Ongwen may have regarded the ‘play smart’ strategy as the most reliable and realistic. In such an approach, it had been necessary for him to adhere to the LRA ideology, to adopt the ‘bush mentality’, and to demonstrate a willingness to kill in order to guarantee his own safety, his families’, and that of his community.

According to Cassese, in assessing the reasonableness of one’s actions, ‘the various ranks of the military or civilian

41 Baines (n 3) 10.
43 Baines (n 3) 10.
hierarchy’ must be taken into account.44 Thus, Ongwen may be judged according to the standard of his rank as an LRA Commander.45 As a commander possesses more authority and assumes greater risk, Ongwen would need to demonstrate a higher level of resistance and acceptance of risk. This is challenging, as Ongwen was abducted against his will, indoctrinated and terrorised by constant threats. The structure of the LRA is different to that of a traditional military, as high-ranked combatants enjoyed little autonomy in the hierarchal structure – the punishment for non-compliance to Kony’s laws would be death regardless of title. While it is yet to be determined by the ICC, it is worthwhile noting that Ongwen ought to be considered a member of both the military and civilian hierarchies in the unique context of the LRA, given his involuntarily conscription and an overwhelming amount of psychosocial evidence concerning the absence of child soldiers’ agency.

The assumption for the defence of duress is that, ‘the ordinary person is too weak to refuse an order if there is a risk that he will be killed’.46 The Einsatzgruppen case and Cassese’s opinion suggest that in assessing the reasonableness of one’s actions, one does not need to ‘perform acts of martyrdom’ by sacrificing his life to avert the threat.47 The ICC should as such be cautious in applying the standard of the reasonable man to Ongwen’s case. Setting too high a standard for Ongwen would mean that the Court expects the ordinary and reasonable person to perform heroic

44 Werle (n 23) 209.
45 Cassese’s Opinion (n 21) 45.
47 Cassese’s Opinion (n 21) 37, 47.
acts. Such an approach would be fundamentally at odds with the purpose of the defence of duress. The Court ought to adopt a humane and realistic approach in assessing Ongwen according to the standard of the reasonable man. In doing so, it would need to contextualise his rank in the LRA and the agency of the child soldier such as to avoid imputing an expectation of heroism in the defence of duress.

iii. Proportionality of Harms

The final requirement for establishing duress is likely to be the most difficult for Ongwen to satisfy, as it requires that he demonstrate that he did not intend to cause greater harm than what he sought to avoid. This requires a proportionality test where the crimes committed must be deemed ‘the lesser of two evils’. If Erdemovic had been tried before the ICC, it is unlikely he would have satisfied this requirement as the murder of approximately seventy Muslim men is unlikely to constitute a greater harm than his own death. Similarly, in Ongwen’s case, the sheer number of civilian deaths from the attacks on the Pajule, Odek, Abok and Lukodi IDP camps is unlikely to constitute an intention to cause lesser harm. This is problematic, as satisfying the proportionality test would require a judge to balance Ongwen’s life against the lives of others, posing serious philosophical, moral, and legal challenges. As Judge Cassese pointed out, ‘how can a judge satisfy himself that the death of one person is the lesser evil that the death of another?’

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48 Ibid 16.
50 Cassese’s Opinion (n 21) 42.
Judge Cassese did, however, point out that in an event where ‘there is a high probability that the person under duress will not be able to save the lives of the victims whatever he does, then duress may succeed as a defence’.51 As discussed earlier, it is understood that Kony’s authority was absolute. If Ongwen is able to demonstrate that the attacks would have been carried out with or without him, as is likely the case, he may satisfy the proportionality test. Ongwen may argue that the brutal environment and the sheer number of abducted children in the LRA meant that if he refused to carry out the attacks, other abductees would have assumed his position and carried out the attacks. This would align with the position of several scholars, who attribute Ongwen’s rise in the LRA ranks to him simply outliving his superiors.52 For instance, the deaths of Ongwen’s superiors, including Brig. Charles Tabuley, Brig. Tolbert Yardin Nyeko, Brig. Acel Calo Apar, and Brig. John Matata, created a vacuum in field operations, which in turn forced Kony to promote Ongwen to fill the void.53 As of 2004, according to the UN Office for the Coordination of Humanitarian Affairs (UNOCHO), the LRA had abducted approximately 30,000 children since the 1980s.54 With this number of recruits at his disposal, it would not be inconceivable for Kony to simply replace Ongwen with someone who, like him, would succumb to the pressures of the LRA environment and carry out attacks as and when they are ordered.

51 Ibid.
52 Baines (n 3) 13.
53 Ibid.
All the same, there are aggravating factors in Ongwen’s case that certain work against his interest in claiming duress – namely, the signature brutality of his attacks, his participation in the planning of attacks at ‘Control Altar’, and his general conduct, particularly in his proposal to attack the Lagile camp in April 2003 through his own initiative.55 Witnesses have consistently described Ongwen as a champion of the LRA’s murderous campaigns. One witness claimed Ongwen stated that the LRA must attack and kill civilians in camps because they supported the Ugandan government and not Kony.56 Another witness claimed that Ongwen called for the killings of religious leaders who urged the LRA to enter into peace negotiations with the government, and that the LRA should, ‘sing one funeral song and kill all of the Chiefs and delegation that went there [to meet Kony for peace talks]’.57 Certainly, these testimonies are potent illustrations of a malicious intent to kill civilians. Ongwen may be seen to have failed to use all his powers to stop the attacks, and may further be found to have instigated them of his own volition.

The Trial Chamber is therefore likely to claim it would be too speculative to assert the victims would have died anyway, as Ongwen was a vocal supporter and was involved in the proposal and planning of the attacks. If Ongwen could not have prevented the attacks, he should not have, through his own initiative, participated in the planning and carrying out of the attacks. Without Ongwen’s proactive input, it could be reasonably understood that some of the victims would not

55 Prosecution Transcript (n 8) 28.
have been targeted and would have continued to live. As such, Ongwen may not be seen as having done all that he could to save the victims before yielding to duress.\textsuperscript{58}

It appears that Ongwen had adopted the ‘play smart’ strategy excessively, rendering the over-expression of his eagerness to be disproportionate to his survival. In this context, Ongwen may be seen as having embraced the LRA’s brutal ideology through his own initiative. His actions were aimed for him to thrive in the LRA, rather than simply to survive. His agency, though limited, should not be regarded as non-existent. By going the extra mile to plan and propose attacks and further brutalise what were already depraved attacks, Ongwen appears to have utilised whatever little agency he had to commit atrocious acts.

III. Mitigating Factors for Ongwen

The defence of duress is highly unlikely to exonerate Ongwen from his alleged crimes. With that said, the Trial Chamber may be likely to use Ongwen’s claim of duress as a mitigating factor, as was the case in the ICTY Appeals Chamber’s approach to Erdemovic. A contextualised analysis of Ongwen’s childhood and his agency would need to be the cornerstone of the Trial Chamber’s judgment. The judgment must expand and elaborate on the psychological effects of child soldiering and the extent of its effects on the agency of former child soldiers in their capacities to make decisions.

With an estimated more than 250,000 child soldiers in the world, Ongwen’s story is not an isolated tragedy. \textsuperscript{59} His

\textsuperscript{58} Cassese’s Opinion (n 21) 42.
experience is in many ways familiar to the thousands of current and former child soldiers trapped in the binary definitions of ‘victim’ and ‘perpetrator’. Despite this, our understandings of child soldiers and their individual agency remain insufficient. The Ongwen case will have an insurmountable impact on future proceedings that are likely to cement the approach to former child soldiers in international and domestic courts. This case provides an unprecedented opportunity for the ICC to develop an appropriate understanding of the effects of child soldiering and to develop a humane and realistic international standard for the defence of duress in these cases.

Conclusion

In Uganda, perspectives on justice concerning Dominic Ongwen differ drastically. One account suggests that ‘he is a victim of circumstances […] if the world wants to punish him twice, that would be injustice.’ The countervailing sentiment suggests that,

… Ongwen should also be punished severely…
If things were to be done the Acholi way, then he should also be killed! That way his family would suffer just as we have.

59 ‘Facts on Children’ (UNICEF, 2007)

60 ‘Another Injustice’ (Refugee Law Project, 15 August 2016)

61 Ibid.
There is no universal Northern Ugandan view on whether Ongwen should be prosecuted. While some view him solely as a victim, others regard him as a perpetrator, and indeed some others recognise his complex status as a political victim. Among those who recognise his special status, some prefer the local Mato Oput reconciliation mechanism, while others would prefer that Ongwen be tried before the Court with the promise of a lenient punishment. The debate largely turns on perceptions of ‘justice’, and whether justice ought to be restorative or retributive.

Prosecuting Ongwen before the ICC is a necessary step. While his agency may certainly be viewed as limited in the context of the alleged attacks, it would be incorrect to claim that he possessed no agency at all. Prosecuting Ongwen may act as a deterrent, sending a clear message to victims-turned-perpetrators that their victimhood will not excuse them from accountability for abhorrent actions. Perhaps more importantly, the ICC must use this opportunity to reiterate that the defence of duress is not intended to be used as blanket immunity for all complex political victims. The case of Dominic Ongwen serves as a moment of reflection for the world of international law, and for us all, to question the salience of the binary narratives of ‘good’ and ‘evil’, of ‘victim’ and ‘perpetrator’.

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62 Asmakopoulus (n 29) 44.
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