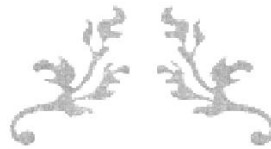


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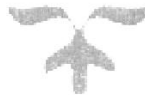
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Document ID : UGA-D26-0015-1812



Where does conviction and sentencing of Dominic Ongwen Leave the Acholi Society?

Snippets in deciphering the contradiction in the understanding of traditional Justice in Acholi in relation to the ICC judgment and eventual conviction of Dominic Ongwen



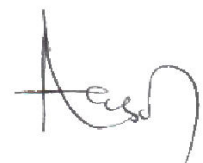
ICC

has.

This paper is intended to elicit an opinion on the ramifications of the judgement and subsequent sentencing of Dominic Ongwen one of the five persons from among the LRA indicted by the ICC for war crimes. This follows a judgment passed by the ICC on 4th February 2021, that found Dominic Ongwen guilty of 61 of the 70 counts he was charged with. Being born of Acholi, bred and nurtured in the tradition of Acholi people, studied sociology and history, further studied conflict management and peace studies and much later governance and ethics, worked all my professional life during and after the conflict in Acholi and currently engaged as the Prime Minister of Ker Kwaro Acholi (KKA) the cultural institution of the people of Acholi. I feel competent and obliged to comment and make prepositions now that the case is drawing to an end where we have reached a point of securing a judgement and subsequently sentencing. As The gist of this statement is drawn from my understanding of the Acholi traditional systems, norms values and practices and also a substantial knowledge of the recent history and the different time spans that characterised the area

To my understanding, the judgement that convicted Dominic Ongwen was expected given the fact that the crimes stated actually occurred and that Dominic Ongwen was associated with the LRA and is presumed to have committed the crimes in issue. The time frame adopted by the ICC between 2002-2005, a period when Dominic Ongwen was a top commander, made the conviction even less surprising. That said, we find it important to weigh on the ramifications of the judgment and subsequent sentencing.

I do recognize the ICC as a multi-lateral institution established to dispense justice for war crimes around the world, upon which member nations sign up to. In our observation and outlook, the ICC bears both strengths and weaknesses. Its strength lies on its reliance on globally accepted legal standards and practices that define formal justice. Its weakness lies in its inability to contend with intricate, complex local realities and facts existing among distinct identities of the different societies it interacts with. It sets its own parameters, limits and boundaries and goes by them while dispensing justice. Like many formal justice institutions, the ICC path to securing justice and accountability for victims of crimes against humanity has apparent variation in definition and understanding between how the formal systems and informal local systems do define and understand justice and accountability. The reliance on logical inferences to come to conclusions



sometimes becomes the bone of contention in the final dispensation of justice as many alternative facts lie elsewhere in the unconventional realms of human understanding for instance the influence of spirituality and divine intervention in the commission of war crimes and in the quest for justice and accountability respectively.

It is my contention that justice ought to be meaningful and wholesome. I believe that justice is a breathing organ of society that is continuously evolving and prolific cases as that of Dominic Ongwen provide a unique opportunity to enrich the culture of justice for the greater good of humanity. This opinion reiterates the above guiding principles and is not intended to undermine the processes and decisions of the ICC, including that on the judgment and sentencing of Dominic Ongwen. Specific to the case of Dominic Ongwen, I observed that the timeline adopted by the ICC starts from the earliest allowed time frame by the Rome Statute to the last days of the war (2002-2005). While the 2002 barrier has always been a weakness to ICC barring them from bringing to justice acts of gross human rights violations before 2002, it was a clearly a strength on the prosecutor's side in this particular matter if the intent was to convict the suspect. In the given time frame, the case against the now convict was so notoriously strong, while the same timeframe made it difficult to waver the momentum of the case towards the defense. However, now that the conviction has been made, it is an opportunity for all parties to leave behind any 'winner takes all' positions and balance the scales with other similarly important considerations that are vital to forge the path towards healing and reconciliation of the affected community.

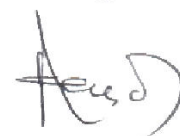
For Dominic Ongwen's case, I start by asking very basic questions, "How did Dominic Ongwen find himself where he was, doing what he did, the way he did?", "Could he have done anything differently under the same context and circumstances?", "Or else, did he have a choice?", "What were the circumstances that lent themselves to provide the opportunity for the actions that today Dominic Ongwen has to account for?", "Was Dominic Ongwen responsible for the existence of those circumstances?", "Given the fact that grave injustices were committed for well-over 20 years in many places within a specific context, can the ICC processes atone the injustices within the context it sets itself to act and would it be considered accepted by the afflicted and affected?", "Who defines justice and using what parameters?", "Can one cry more than the bereaved and be believed to be

genuine by those actually bereaved?”, “Finally, what next?”, “Who is responsible and with what resources and capacity?” Asking all these questions and many more, I find itself having to contend with more questions than answers.

Today the judgment provides answers that seems skewed towards achieving ICC’s primary intent, to punish Dominic Ongwen as a deterrent lesson to those who intend to commit similar offences all over the world. In fact, I believe that the deterrent value was achieved in the conviction. Unfortunately, in Acholi this intent provides a very narrow understanding of justice and accountability because it does not transcend boundaries towards the repair and recovery of their torn society or aid in the processes of reconciliation. Further, I want to believe that as humanity’s fountain of justice, the ICC intends to transcend from the ‘carrot and stick’ stage of justice to explore the deeper quests around post-war justice. In fact, it is my intuition that the handling of the post Dominic Ongwen conviction provides a massive opportunity for the ICC to inculcate rich working methods that incorporate an understanding of the diversities involved in a particular case. The end product will ultimately be wholesome and sustainable justice in conflict and post-conflict through cultivating a culture of peace while negating the culture of impunity.

It is my hope that while the prosecution strategy is limited to four major counts and a three-year timeline, the ICC, like us, accepts that there was a wide range of issues not considered that would have otherwise been material to achieving justice and that could be considered during the sentencing and beyond. It is that seemingly small window of light that could be most important sense of reprieve to the Acholi in the Dominic Ongwen Case.

The case of Dominic Ongwen remains a very small microcosm of what happened to the people in Acholi over the 20 years of conflict. Projecting it as a total reflection of justice and accountability for what happened in Acholi in totality is fallacious. Going forward, we need to collectively appreciate the grand scheme of issues over the years and proportionately consider the circumstances around Dominic Ongwen, looking at his commissions and omissions while acknowledging that what he is accused of simultaneously intertwines with the disposition of the wider conflict in Acholi and in the Ugandan society. Ultimately, it is important to identify opportunities for the wider goal of meaningful and wholesome justice, accountability and finally and more important the cause for reconciliation. A brief



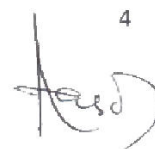
reference into the historical context and understanding of the nature of the conflict may shed some light in improving the contextual understanding of the conflict.

The history and nature of crimes against humanity in Acholi

The Acholi people have suffered various forms of crimes against humanity over the last few centuries, from the times of migration, where brutality and conflict were characteristic to the times of slave trade, where Acholi was an epicenter of slave trading epitomized by the existence of slave trade posts all over the place to the times of colonialism, where the people were brutalized for noncompliance to British colonial rule, as was the case in Guruguru massacre in Lamogi, to the period of Idi Amin, where they suffered state inspired violence to purge them for political reason and to the years of the rebellion in both the hands of the National Resistance Army (NRA) and the LRA. Through this chronology of tribulations, the Acholi people worked through by building resilience using time tested traditional systems to secure normalcy, reconciliation, justice and accountability. Like precedents enhance conventional courts' dispensations, traditional justice in Acholi through the times, evolved into a very powerful, efficient and indispensable tool of the Acholi society and is still in use to-date.

The latest conflict in Acholi in the 80's, 90's and 2000's changed in form, content and objective over and over through the more than two decades it lasted. The causes of the initial rebellion were not the reasons for its persistence and end. Prior to the emergence of the LRA, there were other fighting groups that had fought with the government and had either compromised for peace or were defeated. Each of these fighting groups had their own reasons for why they fought. The first rebellion against the new NRA government which came in 1986 was the Uganda People's Democratic Front/ Army (UPDF/A), it fought a more conventional war and had conventional reasons for fighting. Their grievances emanated from the fact that being largely ex-government soldiers defeated by the NRM/A in 1986 after the overthrow of Gen Tito Okello Lutwa's regime, they were facing persecution, harassment and sometimes killed. They claimed they had no choice but to fight back. They later sued for peace and many were integrated in the new national army (NRA/UPDF).

As the initial rebellion was collapsing, a new rebel outfit, The Holy Spirit Movement (HSM), under a charismatic woman Alice Lakwena emerged. Her movement

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followed a pseudo-religious doctrine that incorporated aspects of Christianity and African spirituality. In their fighting, they used prayers, smeared themselves with shea butter oil to make them invincible from bullets and also used stones that they claimed would explode when thrown at the enemy. In conventional context, the HSM did not execute a political war against the Government of Uganda but a war to cleanse Acholi and Uganda of the evil lot they had become and rule based on the Ten Commandments of the Bible. They fought through Eastern Uganda until they were defeated right at the gates of Kampala in Jinja. The HSM built their ranks through voluntary conscription partially because of the charisma of Alice Lakwena, the leader, and partially because of residual disquiet of the community for the new leadership for the country.

After HSM defeat, Alice Lakwena fled into exile in Kenya and the HSM faded out. It should be noted that the HSM's actions were highly influenced by spiritual beliefs and practices. These spiritual elements were believed to shift from one person to another depending on the efficacy of that individual in serving it. After the collapse of the HSM, Alice Lakwena's father Severino Lukoya attempted to salvage his daughter's fighting group and philosophy but did not make any headway. His movement was quickly dealt with and died out. As the HSM was dying out, a new outfit under Joseph Kony, a cousin to Alice Lakwena, emerged. He took over the disoriented remnant fighters of the HSM and formed a new fighting group based on the similar principles as the HSM though with a different approach. The new fighting group that later became known as the LRA rekindled all efforts of war in Acholi. However, at this time, the Acholi people had lost interest in any form of insurrection against the government or any other form of fighting. The zeal towards voluntary conscription by the community had also faded out. The people became less cooperative with the LRA and most times reported them to government. In response, the LRA adopted a radical change in executing their operations where they began targeting civilian population with extreme brutality, killing, maiming, plundering, pillaging and abducting people.

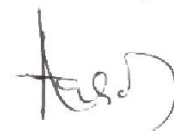
For conscription, they began to forcefully abduct people to boost their ranks. Initially they abducted predominantly adults but the adults quickly found ways of escaping and were difficult to indoctrinate and manage. They slowly began abducting more children who never escaped and could quickly be indoctrinated and trained to become effective and efficient operators. This is where Dominic



Ongwen finds himself amongst the LRA, abducted as a child, indoctrinated and trained to execute with brute efficiency and effectiveness the operations of the LRA. Many of the likes of Dominic Ongwen came of age knowing nothing but the culture of violence propagated in the principles and mentality of the LRA. This was reinforced by a spiritual belief as the bonding factor that tied every single LRA in a communion led by Joseph Kony, the LRA leader. Any breaches were severely punished not only based on the LRA code but also by that of the spirits that superintended over the LRA. The spirits through Joseph Kony determined almost everything that happened. This spiritual awe endeared many of the fighters to the LRA and their leaders Joseph Kony including Dominic Ongwen and many others. These facts have been corroborated by many ex LRA fighters and people associated with them in whatever way.

A traditional interpretation of the emergence of spiritual elements driving the conflict hold it that because of the numerous instance blood had been shed under different circumstances and no effort were being made to cleanse Acholi of the evil shedding of blood had unleashed on the land leaving evil spirits roaming the area seeking revenge. The collapse of societal systems and protection mechanisms provided an easy entry point for the evil spirits to find mediums (agents) within society and in this case Alice Lakwena and Joseph Kony to seek revenge by unleashing terror. It is a widely known fact that the evil spirits were evident especially in Joseph Kony as those close to him witnessed him speaking in different foreign languages as he communicated with the spirits, getting instructions. It is stated that most violent episodes occurred after communicating with the spirits.

Around 1993/1994, the Sudan factor, a new dimension to the war emerged. This undermined all efforts towards peace, gravitated violence against the population and prolonged the war. The then Sudan government began providing the LRA with massive all round support that included new military material and training, reinforced the ideology of violence against the civilian population, provided rearguard spaces for training, recuperation, medical treatment, indoctrination and a new objective to the war, to punish through retaliation the Uganda government for what it considered Uganda government's support to Sudan People's Liberation Movement/Army (SPLM/A), a rebel movement fighting the Government of Sudan. The LRA were re-energized and became more effective and efficient in committing violence. A new aspect of the violence was a directive by the Government of Sudan



intended to discredit the Ugandan Government as not protecting its citizens and henceforth lose support of the population. The Sudan Government thus began calling the shots for what the LRA did in Uganda. Was Dominic Ongwen following these orders? This is for us all to speculate, but the fact is that a new intent emerged that gravitated the already bad situation of the civilian population in Acholi.

As to why Dominic didn't take chances to abandon rebellion is also left to speculation. To me through my interactions with many ex-LRA fighters and other individuals, a number of reasons can be attributed to why he took long. I will anticipate a few reasons based on accounts and reports drawn to our attention. The LRA was a very well structured pseudo-military organization, with a strict command system, structure and mode of operation laced with serious consequences for any breach. Dominic Ongwen, having assumed a position of significance and responsibility, was constantly in the eye of the organization. Any sense of intent to breach any prescribed code on his part would quickly be noticed and he would face the repercussions. Many senior commanders of the LRA are known to have been killed for have been or suspected to have been involved in attempted breaches. The second inhibiting factor also drawn from accounts of many ex LRA fighters was the ICC indictment itself. It is widely said that the LRA indictees were unsure of what to expect of the ICC processes. They were sure they would never be treated fairly if they came before the ICC court given the widely held view on the LRA now from the global community. The third aspect is a bunch of LRA collaborators and conflict entrepreneurs, who stood to lose if the LRA crumbled because its leadership, heeded to the call for peace. These, together with many other reasons, could have made it difficult for the likes of Dominic Ongwen to easily abandon insurgency. Much as I could have said these are speculations, they are relatively accurate based on account relayed by ex-LRA fighters I interacted with.

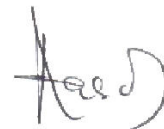
As the conflict persisted with no solutions in sight for the belligerents, Government of Uganda and the LRA, military means was the primary strategy aimed at resolving the conflict. However, no significant headway was made in resolving the conflict using this military approach. The community and civil society including religious leaders, caught in the middle increasingly began to pursue for dialogue as the only other alternative. Using traditional principles and other forms of alternative dispute resolution methods, they put more pressure on both sides to end conflict. This



became a great rallying ground to secure peace, justice and accountability. Their efforts yielded significant results as the Government of Uganda ceded ground in its approach and strategy and allowed for pardoning all ex-fighters of the LRA who abandoned insurgency and later formalized this through enacting the Amnesty Law that allowed for the establishment of the Amnesty Commission to process returnees. Together, these alternative actors commissioned a number of initiatives to bring peace and secure accountability. Many ex-LRA fighters headed their call, abandoned insurgency, were processed and reinserted in the community after going through a series of traditional rites and rituals. The case for restorative justice became more manifest. The later actions of the community, civil society and religious leaders was to pursue peaceful means to end the conflict and to secure justice and accountability using restorative justice that promoted reconciliation. Fortunately, the Acholi traditional justice had in place elaborate traditional justice that could be relied on. Thousands of ex-LRA fighters who in one way or another abandoned rebellion were processed through this method and resettled back in the community. It is important to highlight some critical elements of the Acholi traditional justice mechanism so widely spoken of.

Basic understanding of traditional Justice in Acholi

The principles of restorative justice, the foundation of Acholi traditional justice mechanism, are deeply embedded in the way of life of the Acholi people as is the case in most African societies. Traditional justice pursues justice and accountability at three levels; the physical/material level, the psychological level and the spiritual/divine level. Across the three levels it is almost unheard of for one to evade justice and accountability because where physically and psychologically justice and accountability fails, the ultimate power, spiritual or divine intervention is evoked. The almighty overseer (jok jok mamalo) through the ancestors (Kwaro) pursue the cause for justice and accountability mainly through spiritual inferences. There is no room for manipulation as the divine beings are omnipotent and all present and aware. Consequences are dire and go out to affect the whole network of relations around who is considered a wrong doer. Traditional justice hinges on the principles of collective responsibility, collective guilt, collective punishment. It is the consequences that the Acholi live to fear most. In relation to Dominic Ongwen, by the fact that he could be responsible for certain crimes as prescribed, in Acholi his



network of relations are as guilty as him and is suffering the inability to perform reconciliatory rites and rituals to restore normal relations.

Upholding truth at all moments is the guiding principle in the pursuit for justice and accountability in Acholi. It is considered that once truth is void, then justice and accountability is equally void. One is expected to stand by the truth even if threatened by death. Arguments without the foundation of truth is meaningless. It is considered that regardless of the breaches to society one commits, such an individual is given a second chance to become a useful member of the community once again. The experience with ex-LRA fighters says a lot about this point. A number of them, including those that held senior positions, were successfully re-integrated and perform various useful roles in society. Some are leaders, others are farmers, others are pastor, etc.

The highest traditional judicial authority in Acholi is the All Mighty God (*Jok Jok Mamalo*) who at all times superintends over his beings. The All Mighty God acts through ancestors (*Kwaro*) who exists across the different structure of our society, at clan (*Kaka*), extended family or sub clan (*Dogala*) and at family (*ot*) level. This hierarchical structure hinges on three attributes that support it; 1) physical attributes land, water, animals, mountains, forests 2) Relationship- how people relate to everything, 3) identity- set of norms, values and practices that make up Acholi. Tying all these is a divine cord that at every moment must be in intact and in harmony with all aspects of the societal structure. Any harm or breach on the divine cord constitutes a divine breach (*Kii*). This means if you harm or cause to harm any part of society or any attribute that supports it, you commit a divine breach and therefore must act in a way to repair the breach or else face serious consequences or punishments that occur in different forms of affliction. The process of repairing the breaches are embedded in the reconciliation processes Acholi is well known for. It constitutes the processes of dialogues, rites and rituals and communion. It is the foundation of reconciliation in traditional justice. Further, securing justice and accountability in Acholi is not a human but a divine function. People are mere facilitators and all processes and decisions must receive a divine endorsement. The questions that lingers in the minds of many is will the ICC processes and decisions get a divine endorsement? My contention is yes if some aspects of traditional justice is allowed to proceed alongside the ICC processes as



in the Ugandan case great compromises to legal positions like pardons and amnesty, had to be made for the sake of peace.

It is therefore unsurprising that a big part of the Acholi society contends that Dominic Ongwen's case could have been amply dealt with within Acholi traditional system and that would have been considered resolute justice and accountability by the community like many of his former colleagues. I do vouch for a situation that provides for a win-win situation for the two justice mechanisms. As a proponent of Acholi heritage, am not pleading to exonerate Dominic Ongwen if he is culpable but pleading that the sanctity of viable Acholi institutions, norms values and practices be considered to broaden the cause for justice for the people of Acholi. The Dominic Ongwen's case should provide an impetus of coming to closure of many cases in Acholi allowing for time to conduct some of the traditional processes of closure. In Acholi, last funeral rites is the most important rite of passage for the dead. It is also the final rite of closure when all issues regarding the dead has been dealt with. Many of the LRA victims cannot have their last funeral rites conducted, thus, coming to closure.

In many parts of the world traditional justice is still applied. Subjecting Dominic Ongwen to traditional justice of the Acholi people would not be absolutely out of order. Traditional justice will not be unique only to the Dominic Ongwen case. For example, the celebrated Gacaca traditional processes in Rwanda was able to bring to justice and accountability perpetrators of genocide. In South Africa, the integration of restorative justice after apartheid was able to strengthen the cause for healing and repair of the South African society. Under no certain circumstances would the Acholi traditional justice system have been unable to deal with the case of Dominic Ongwen. To sum it up, value-laden traditional justice processes have been able to bring to closure many cases of crimes against humanity in various contexts in Africa. Dominic Ongwen is therefore no exception. The times Dominic Ongwen has been in incarceration in Acholi can be considered justice delayed and thus justice denied. The court in sentencing should take this into account.

A meaningful way forward

The indifference to the judgment among Acholi people and lack of excitement to the general community is telling. Though affected, the broader multitude of the people feel distanced from the outcome of the ICC processes. A number of reasons



can be attributed to this. To my understanding, the narrow boundaries of the case leave out the vast multitude of the questions of justice and accountability. The question of the years considered, the geographical coverage, definition of victims, the length of the trail, the lack of consideration of local processes all muzzle up the excitement around the judgment. In the paradigm of most of the victims, the ICC processes, professional terminologies and by extension, the over 1000-page judgment are all but mysterious and distant concepts they will never comprehend within this mortal experience. Their mortal experience interacts mostly with the Acholi dialect, beliefs, norms, customs and they are housed in the customary lands of their ancestors and therefore justice can only make sense within this way of life.

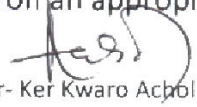
The guiding question then becomes, in the reality of the conviction, which we don't seek to reverse, what more can be done to salvage meaning to the affected out of the 5-year pursuit of justice by the ICC? For the case of Dominic Ongwen, the ultimate sense of justice will only come and be meaningful when he goes through traditional atonement as animated above. The structure of traditional justice in Acholi is very elaborate. The pursuit for justice and accountability in Acholi transcends human conception. The influence of outsiders or outside systems bear very little meaning in the lives of traditional Acholi. For there being no way out, they will accept whatever outcomes are derived from externalities, but they will eventually dig deep in their own systems to satisfy themselves that justice is done. It is up to the judges to understand this because this is what a people profess. The fact that people today are taught, coached and sometimes paid to understand and argue justice differently only serves to tear societies apart in the pursuit of global standards for justice. The truth is the world cannot be the same because realities and histories are different and these are important in considering the cause for justice. To reconcile these parallels, a deliberate and constructive engagement ought to be initiated on possible intersections with the common end of full and meaningful atonement.

The other key issue is that the people have waited for so long, including Dominic's own family and relatives, who in the event of guilt continue to suffer physical, psychological and divine punishment all in the name of collective guilt. Unfortunately, if Dominic Ongwen is incarcerated for a long period of time without traditional justice mechanisms performed, they will continue to suffer as a collective punishment until traditional atonement is performed. All this is while



many of his former colleagues, many of whom committed worse atrocities are living peaceful and productive lives with their families having atoned their misdeeds. On whether Dominic Ongwen can be subjected to Acholi traditional justice and is accepted as justice in Acholi. The simple answer is yes because this system has processed a multitude of ex-fighters, some previously with senior positions, who are now settled and are useful members of the community.

Finally, I recognize that the ICC bears the mandate to pass whatever judgment or sentence based on the Rome Statute, to which Uganda is a signatory. Despite this, I expect that in the sentencing considerations are made taking into account many of the unorthodox and unconventional circumstances that made the conflict extremely complex. Omitting such considerations in the sentencing to the people affected leaves us with only a half understanding of what went on. To bring to light some of these complexities it is important to understand a few facets of the conflict in Acholi. I believe the above analogy and the extension of our committed availability can go a long way in helping the ICC contextualize the complexities as it deliberates on an appropriate sentence for Dominic Ongwen.

Olaa Ambrose 
Prime Minister- Ker Kwaro Acholi.
(+256)772459444. olaaambrose@gmail.com