

# Witnessing Ongwen

## A Betrayal of Expectations?

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### ABSTRACT

The trial of Dominic Ongwen before the International Criminal Court (ICC) has been hailed as a milestone, especially because of his conviction for gender-based crimes, including forced marriage and forced pregnancy. Ongwen's conviction for those crimes was linked to harrowing testimonies of a group of women who were given to him as so-called 'wives' during his time as a commander in the Lord's Resistance Army rebel group. After a successful Article 56 application by the Office of the Prosecutor (OTP), special arrangements were made for these women to act as witnesses in advance of the trial in the Hague, and various assurances were provided to them. Based on ethnographic engagement and in-depth interviews with these witnesses, this article contributes to the literature on witnesses in international criminal trials, and the complexities of victimhood, describing their experiences of testifying, their views about justice, and their current lives. It notes the lack of adequate protection and benefits that have accrued to them. Interviews also occurred with 'wives' who testified for the Defence, whose accounts of their experiences are relatively more positive. Concerns are raised about the ICC's capacity to fulfil basic expectations of victims of the sexual crimes it successfully prosecutes.

### 1. INTRODUCTION

In 2015, 2 years before the start of the trial of Dominic Ongwen at the International Criminal Court (ICC), seven women, all of whom referred to themselves as 'Dominic's wives', were able to give expedited testimony, anonymously, from Uganda.<sup>1</sup> This unusual

<sup>1</sup> P. Bradfield, 'Preserving Vulnerable Evidence at the International Criminal Court — the Article 56 Milestone in Ongwen', 19 *International Criminal Law Review* (2019) 373–411, at 373.

process was the result of a successful Office of the Prosecutor (OTP) application relating to Article 56 of the Rome Statute, which provides for the collection of evidence 'which may not be available subsequently for the purposes of a trial'.<sup>2</sup> All the women testified about their experiences of abduction, sexual violence, and forced marriage during their time with the Lord's Resistance Army (LRA) rebel group, in northern Uganda and Sudan (now South Sudan). Testimony was taken under oath in closed session in the presence of the Single Judge of Pre-Trial Chamber II, Judge Tarfusser, and the seven women were examined and cross-examined by the counsel for the Prosecution and the Defence. This 'unprecedented' and 'extraordinary' innovation occurred well in advance of the beginning of the *Ongwen* trial, and prior to Ongwen being charged with any crimes relating to the seven women.<sup>3</sup>

The successful Article 56 litigation in *Ongwen* has been praised on several grounds. It served to benefit and protect vulnerable sexual and gender-based crime (SGBC) victims by allowing them to testify quickly and with minimal disruption to their lives. A year earlier, the Prosecutor's SGBC policy was published.<sup>4</sup> This sought to address many of the impediments to the successful prosecution of SGBC, which have long been criticized by scholars and activists.<sup>5</sup> The Article 56 litigation in the *Ongwen* trial seemed to put the ICC's new SGBC principles into practice.<sup>6</sup> It meant that the women did not have to make the long journey to The Hague leaving behind their young families. Nor did they have to cope with the stress-inducing prospect of attending the trial in person to testify about traumatic experiences of sexual violence. When Judge Tarfusser granted the Prosecution's Article 56 application, the legal decision emphasized the 'benefit' of 'not forcing them to keep reliving their victimisation for a long period of time'.<sup>7</sup> The decision also served to protect and preserve the evidence itself. The OTP had convincingly argued that there was strong potential for witness intimidation and interference, not least from local non-governmental organizations (NGOs) opposed to international criminal prosecutions, and Ongwen himself via telephone from the Detention Unit in the Hague.<sup>8</sup>

After the first two Article 56 hearings took place in September 2015, the Prosecution gave formal notice that it intended to raise the original seven counts against Ongwen, to a provisional 67, including forced marriage as an inhuman act, forced pregnancy, sexual slavery, rape, enslavement, torture, and outrages upon personal dignity.<sup>9</sup> The testimonies of all seven women were referenced widely at the confirmation of charges hearing in January 2016, and Dominic Ongwen was eventually sent forward for trial on 70 counts.<sup>10</sup>

In this article, we offer an empirical, reflective analysis of the ICC experiences of seven women given to Ongwen as 'wives' during their time in the LRA, who later participated in his trial. Five of them testified as prosecution witnesses in Article 56 hearings, and two

<sup>2</sup> *Ibid.*, at 378. See also: Art. 56(1) ICCSt. See also: Public redacted version of 'Prosecution application for the Pre-Trial Chamber to preserve evidence and take measures under article 56 of the Rome Statute', *Ongwen* (ICC-02/04-01/15-256-Red3), Trial Chamber IX, 27 May 2016 ('Prosecution application of 27 May 2016'), 2.

<sup>3</sup> Bradfield, *supra* note 1, at 373.

<sup>4</sup> An updated/renewed policy was launched as the 22nd Assembly of States Parties to the Rome Statute, on 4 December 2023.

<sup>5</sup> See e.g. R. Copelon, 'Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law', 46 *McGill Law Journal* (2000) 217–240; B. Van Schaack, 'Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson', 17 *American University Journal of Gender, Social Policy & the Law* (2009) 401–439; See also R. Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court: Practice, Progress and Potential* (Cambridge University Press, 2019).

<sup>6</sup> Bradfield, *supra* note 1, at 374.

<sup>7</sup> Decision on the 'Prosecution application for the Pre-Trial Chamber to preserve evidence and take measures under article 56 of the Rome Statute', *Ongwen* (ICC-02/04-01/15-277), Pre-Trial Chamber II, 27 July 2015, § 10; Art. 68(1) ICCSt.

<sup>8</sup> Prosecution application of 27 May 2016, *supra* note 2, §§ 7 and 8.

<sup>9</sup> Public redacted version of 'Notice of intended charges against Dominic Ongwen', *Ongwen* (ICC-02/04-01/15-305-Red3), Pre-Trial Chamber II, 18 September 2015.

<sup>10</sup> Public Redacted version of 'Decision on the confirmation of charges against Dominic Ongwen', *Ongwen* (ICC-02/04-01/15-422-Red), Pre-Trial Chamber II, 23 March 2016.

testified for the Defence. Our findings are based on our first-hand engagements with ICC personnel and the trial itself, and our long-term ethnographic research on topics of justice, accountability, and re-integration with people who returned from the LRA to communities in northern Uganda.

Our analysis bridges and contributes to two literatures that are relevant to their experiences. The first is a literature on witnesses in international criminal trials; the second is a wider debate about the complexities of victimhood in the aftermath of mass atrocities. In his seminal book on the International Criminal Tribunal for the former Yugoslavia (ICTY), Eric Stover offered the first glimpse into the world of witnesses at such an institution. He observed that there is much to learn and hoped more studies would follow, with the ‘aim of making the process of testifying in war crimes trials as safe, respectful and dignified an experience as possible’.<sup>11</sup> Twenty years on, some progress has been made. Studies offer analysis of witness experiences based on one-off semi-structured interview data, or discuss wider trends such as the smaller number of witnesses testifying at the ICC as opposed to the International Criminal Tribunal for the former Yugoslavia, the likelihood of witnesses being retraumatized by giving their testimony, problems with securing witnesses for SGBC, or the role of the so-called ‘expert’ witnesses.<sup>12</sup> Ethnographic studies, however, that situate the experience of witnesses within the entirety of their own lives, for an extended period of time, remain rare.<sup>13</sup> Few scholars have been able to work with trial witnesses as closely as Eric Stover was able to do, and understanding of the experiences of witnesses before, during, and after international criminal trials remains limited. We therefore offer a contribution to a still overlooked topic of research.

Close engagement with the experiences of seven former ‘wives’ who acted as witnesses in the *Ongwen* trial also adds to our understanding of the complex politics of victimhood in discussions about post-war justice and accountability in northern Uganda. Numerous studies of the LRA insurgency, and life after the LRA for ‘returnees’ emphasize the plight of girls and women abducted by the rebel group who had been forced into marriages and pregnancies with LRA commanders.<sup>14</sup> In human rights narratives and international law, these women are presented as a singular category, as innocent and passive ‘victims in need of rescue’.<sup>15</sup> In

<sup>11</sup> E. Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Pennsylvania Press, 2005), at xxii.

<sup>12</sup> See for example: G. Chlevickaitė, B. Hola, and C. Bijleveld, ‘Thousands on the Stand: Exploring Trends and Patterns of International Witnesses’, 32 *Leiden Journal of International Law* (2019) 819–836; S. Ngane, ‘Witnesses before the International Criminal Court’, 8 *The Law & Practice of International Courts and Tribunals* (2009) 431–457; R. Cryer, ‘A Long Way from Home: Witnesses before International Criminal Tribunals’, 4 *International Commentary on Evidence* (2007); K. King and J. Meernik, ‘The Burden of Bearing Witness: The Impact of Testifying at War Crimes Tribunals’, 63 *The Journal of Conflict Resolution*, (2019) 348–372; J. Koomen, ‘“Without These Women, the Tribunal Cannot Do Anything”: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda’, 38 *Signs* (2013) 253–277; S. Steapkoff et al., ‘Why Testify? Witnesses’ Motivations for Giving Evidence in a War Crimes Tribunal in Sierra Leone’, 8 *International Journal of Transitional Justice* (2014) 426–451; S. Cody, A. Koenig, and E. Stover, ‘Witness Testimony, Support, and Protection at the ICC’, in K.M. Clarke, A.S. Knottnerus, and E. de Volder (eds), *Africa and the ICC: Perceptions of Justice* (Cambridge University Press, 2016) 301–322; N. Eltringham, ‘Illuminating the Broader Context: Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda’, 19 *Journal of the Royal Anthropological Institute* (2013) 338–355; A. Hinton, *Expert Witness: Lessons from the Khmer Rouge Tribunal* (Cornell University Press, 2022).

<sup>13</sup> Important exceptions (although not exclusively focused on witnesses) include Tim Kelsall’s ethnographic study of the Special Court for Sierra Leone and Alexander Hinton’s ethnographic study of the Extraordinary Chambers in the Courts of Cambodia. Kelsall, for example explores, for example, how witnesses may have ‘varying ideas about morality, responsibility, evidence and truth . . .’. See T. Kelsall, *Culture Under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge University Press, 2009), at 3. See also, A. Hinton, *The Justice Façade: Trials of Transition in Cambodia* (Oxford University Press, 2018).

<sup>14</sup> See for example, T. Allen et al., ‘What Happened to Children Who Returned from the Lord’s Resistance Army in Uganda?’, 33 *Journal of Refugee Studies* (2020) 663–683; T. Allen, J. Atingo, and M. Parker, ‘Rejection and Resilience: Returning from the Lord’s Resistance Army in Northern Uganda’, 24 *Civil Wars* (2021) 357–384; M. Parker et al., ‘Legacies of Humanitarian Neglect: Long Term Experiences of Children Who Returned from the Lord’s Resistance Army in Uganda’, 15 *Conflict and Health* (2021) 1–19; E. Baines, *Buried in the Heart: Women, Complex Victimhood and the War in Northern Uganda* (Cambridge University Press, 2016); H. Porter, *After Rape: Violence, Justice and Social Harmony in Uganda* (Cambridge University Press, 2017).

<sup>15</sup> Baines, *supra* note 14, at 4.

war-affected places in northern Uganda however, perceptions are far more complex.<sup>16</sup> On return, they are commonly viewed as a source of social instability, and numerous studies have shown how forced wives, and their children born in captivity, often face rejection and stigma from families and neighbours.<sup>17</sup> Moreover, studies show how the ‘forced wife’ category is a heterogeneous one. LRA commanders often had many forced wives. The relationship between co-wives could be fraught, violent and tense, as is often the case in regular Acholi households outside of the context of the insurgency. In the LRA, ‘senior’ forced wives, were known to bully, harass, and attack ‘junior’ forced wives and these dynamics have continued upon return from the LRA.<sup>18</sup> Less understood has been the role of internationally funded ‘local’ NGOs in exacerbating these dynamics, particularly in relation to questions of accountability and justice for war crimes and crimes against humanity. Our research shows how survivor and victims organizations set up to offer support for forced wives, and their children born in captivity, are conventionally valorized as ‘good’, ‘supportive’ and ‘caring’,<sup>19</sup> but some have also engaged in exclusionary and intimidating practices designed to deter victims of SGBC from becoming prosecution witnesses and testifying before the ICC.

In what follows, we draw on work we have been doing together and separately on the LRA conflict for many years. Atingo has developed a long-term relationship with hundreds of those who spent time with the LRA, including forced ‘wives’ who acted as both prosecution and defence witnesses in the *Ongwen* trial. She was herself briefly abducted. She was one of the 139 secondary school girls taken by the LRA from their dormitory at St Mary’s College, Aboke, in October 1996. Allen has researched in the region since the 1980s. Atingo has been his close collaborator since 2004, and Macdonald since 2011. Both Allen and Macdonald provided advice to the International Criminal Court (ICC) in 2015, during the period shortly after Ongwen’s arrest, when the OTP re-opened the investigation into his crimes. Allen later acted as a trial witness for the Prosecution. Atingo has also assisted the ICC at various times, notably with respect to the translation of evidence from the Acholi language.

In what follows we mainly present first-hand accounts from the forced ‘wives’ of Ongwen who played a part in the proceedings as prosecution and defence witnesses. We comment on ways in which expectations have, or have not, been met, as well as the wider social challenges that resulted from participation in ICC proceedings. While we do not question the significance of Article 56 litigation in the *Ongwen* case, we do draw attention to how witnesses and victims themselves interpret their experiences of ICC interactions and proceedings. At the end of the second witnesses’ testimony in September 2015, Judge Tarfusser said to her:

Now it is finished. You can go home. And thank you very much for having been here. And, well, all wish you obviously all the best, and I wish you also not to have to relive again once again for another time what you have told us. Thank you very much.<sup>20</sup>

These words were of course well-meaning, but they suggest a limited understanding of the reality of these women’s lives and the constraints, difficulties, and dangers they cope with on

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*; see also J. Ocitti, M. Parker, and T. Allen, ‘Lord’s Resistance Army hierarchies survive in peace time’, Africa@LSE blog, 25 June 2019, available online at <https://blogs.lse.ac.uk/africaatlse/2019/06/25/lords-resistance-army-hierarchies-peace-time-women/> (visited 5 January 2024). ‘Senior wives’ usually refers to those who had spent longer in forced marriages, and/or were ‘favoured’ by their LRA husbands. The term ‘senior wives’ is used to refer to ‘wives’ of LRA commanders who exercised authority over ‘co-wives’ within the LRA.

<sup>19</sup> See for example, P. Schulz, E.O. Apio, and R. Oryem, ‘Love and Care in the Lord’s Resistance Army (LRA) in Northern Uganda’, 4 *Global Studies Quarterly* (2024).

<sup>20</sup> Bradfield, *supra* note 1, at 391.

a daily basis as they continue to deal with the long-standing effects and consequences of the crimes perpetrated against them during their time with the LRA.

## 2. LRA 'WIVES' IN CONTEXT

In northern Uganda, more than 50,000 people were recruited by the LRA between the late 1980s and 2004, mostly by force.<sup>21</sup> Around half of those taken were children (under 18 years old).<sup>22</sup> In May 2015, Allen, Macdonald, and another colleague, Holly Porter, were invited by the OTP to visit the ICC in The Hague, to provide expert advice on the LRA conflict. They presented details, drawn from their research, notably on sexual aspects of the LRA forced recruitment of children and young people. Amongst other key points, it was explained that a conception of rape that relied on a lack of consent was not straightforward in a context in which consent is not necessarily considered essential, and a degree of resistance to sexual intercourse by a woman is often expected.<sup>23</sup> Also, there is no specific term for 'wife' in the Acholi language. The word used, *dako*, is the term for a woman who is in a sexual union and has normally given birth. Thus, the fact that women allocated to Ongwen as an LRA commander referred to themselves as his 'wives', did not mean that they had willingly entered into a marriage with him.<sup>24</sup> They had no choice. They feared severe beatings or worse if they refused his sexual overtures, and several had harrowing accounts of sexual violence which began when they were still children. These insights informed the prosecutorial expansion of charges against Ongwen to include sexual crimes, such as forced marriage and forced pregnancy.

Another point explained to the Prosecution team was that narratives of justice and accountability had become prone to being shaped by NGOs, activists, and some researchers. After the Ugandan army crossed into Sudan (now South Sudan) in March 2002 to attack the LRA base camps, thousands of forcibly recruited people, including girls and women who had been abducted and given to LRA commanders as 'wives' were able to escape or were released. They were returned to northern Uganda by the Ugandan army. The region became a major focus of humanitarian aid agencies, and donor-funded reception centres were established in Gulu and other towns to host 'returnees', provide a degree of support, and reunite them with their families. Many girls and women came back with children. By 2006 more than 20,000 young people had passed through a reception process.<sup>25</sup>

In 2006, when Allen and Atingo were conducting research on LRA returns, we estimated that around 1000 returnees were being accommodated in reception centres.<sup>26</sup> About half were still under 18 years old when they came back.<sup>27</sup> Many were very fragile and fearful, but not all. In the 'bush', hierarchies had developed between 'senior' and 'junior' LRA 'wives', and it became clear that these hierarchies were being maintained after return.<sup>28</sup> This became a source of tension, and efforts were made by reception centre staff to separate 'senior wives'

<sup>21</sup> Allen et al., *supra* note 14.

<sup>22</sup> *Ibid.*

<sup>23</sup> These points are elaborated in detail in Porter, *supra* note 14.

<sup>24</sup> The use of the term wife for women given to LRA commanders as sexual partners is controversial. However, it is the term generally used by the women themselves in discussions about their experiences in English.

<sup>25</sup> T. Allen and M. Schomerus, *A Hard Homecoming: Lessons Learned from the Reception Center Process in Northern Uganda: An Independent Study*. United States Agency for International Development/United Nations Children's Fund (USAID/UNICEF), August 2006, available at [http://eprints.lse.ac.uk/28888/1/\\_lse.ac.uk\\_storage\\_LIBRARY\\_Secondary\\_libfile\\_shared\\_repository\\_Content\\_Schomerus%2C%20M\\_Hard%20homecoming\\_Schomerus\\_Hard%20homecoming\\_2014.pdf](http://eprints.lse.ac.uk/28888/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Schomerus%2C%20M_Hard%20homecoming_Schomerus_Hard%20homecoming_2014.pdf), (visited 15 October 2023).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, 19.

<sup>28</sup> *Ibid.*, 12, 15, 26–27, 48, 66, 91–92.

from ‘junior wives’ for the latter’s safety.<sup>29</sup> Indeed, some of the most disturbing accounts we have heard have involved violent acts being perpetrated on ‘junior wives’ by ‘senior wives’ when they were living with the LRA.<sup>30</sup>

During this time we also observed behaviour in reception centres and noted that stories about experiences with the LRA became increasingly synchronized through workshops and meetings. Returnee groups were given counselling on how to behave and what to say about their time in the LRA. This was often linked to prayer meetings, and with an emphasis on forgiveness and reconciliation, sometimes evoking traditional rituals of social reintegration.<sup>31</sup> This is a tendency that persisted after people left the reception centres, particularly among those who remained close to Gulu, the provincial capital. With respect to the returned ‘wives’, various support networks were established with aid funding. These groups continued to emphasize counselling through managed collective and individual storytelling and tended to promote consensus perspectives.

The two most active of these groups were WAN (the Women’s Advisory Network), a ‘semi-autonomous’ organization within an NGO called the Justice and Reconciliation Project (JRP), and Watye Ki Gen (We Have Hope), which was supported by World Vision.<sup>32</sup> NGOs supporting WAN and Watye Ki Gen had been involved in promoting alternative local, evangelical, or traditional forms of reconciliation, linked to amnesty procedures. They had long expressed concerns about the impact of ICC referral on peace-building in northern Uganda.<sup>33</sup>

Although most of the women who returned from the LRA with children were linked to one or more of these groups in the hope of obtaining support for things like school fees, there were tensions about who controlled the resources available, and who received benefits.<sup>34</sup> In general, it was apparent that senior ‘wives’ of senior LRA commanders were most likely to dominate and there were claims that they secured most of what was available from donors for themselves and their families, much to the resentment of others.<sup>35</sup>

On several occasions, Atingo and Allen were told by members of these groups that they were not supposed to discuss matters outside the network without the permission of those in charge. In practice, it was difficult to enforce this policy, not least because Atingo and other members of our team are well-known to most of them. However, in general, independent researchers have had restricted access to anyone who does not hold a senior position in these groups.<sup>36</sup> As a result, perspectives on life with the LRA were homogenized in reports, shaped by those living near urban locations, and mostly by people who had enjoyed a degree of power and influence within the group. The extent to which the experiences of others were being overlooked became apparent from research we started in 2013.

<sup>29</sup> Observation by TA in 2005.

<sup>30</sup> Allen et al., *supra* note 14; Ocitti, Parker and Allen, *supra* note 21.

<sup>31</sup> Allen and Schomerus, *supra* note 25, 49–55; and T. Allen, ‘The International Criminal Court and the Invention of Traditional Justice in Northern Uganda’, 107 *Politique africaine* (2007), 147–166.

<sup>32</sup> See: <https://www.justiceandreconciliation.com/about/partners-2/womens-advocacy-network/>; and <https://watyekigen.org/> (visited 8 October 2023).

<sup>33</sup> See for example, T. Raby, ‘Advocacy, the International Criminal Court and the Conflict in Northern Uganda’, Humanitarian Practice Network Magazine, Issue 36, 11 January 2007, available online at <https://odihpn.org/publication/advocacy-the-international-criminal-court-and-the-conflict-in-northern-uganda/> (visited 15 November 2023); Liu Institute for Global Issues, Gulu District NGO Forum, Ker Kwaro Acholi, ‘Roco Wat I Acoli: Restoring relationships in Acholi-land, traditional approaches to justice and reconciliation’, September 2005, available online at [http://justiceandreconciliation.com/wp-content/uploads/2005/09/JRP\\_Report\\_RocoWat.pdf](http://justiceandreconciliation.com/wp-content/uploads/2005/09/JRP_Report_RocoWat.pdf), (visited 15 November 2023); K. Anyeko, E. Amony, and A. Atim Lakor, ‘Prosecution will not Solve my Problems: Women’s Sense of Justice and Reparations after Conflict-related Sexual Violence in Northern Uganda’, Policy Brief, The University of British Columbia, Watye Ki Gen, and Kacel Watwero, Gulu, Uganda and Vancouver, Canada, February 2022, available at [https://www.mcgill.ca/rmwps/files/rmwps/final\\_justice\\_and\\_rep\\_arations\\_policy\\_brief\\_feb\\_25th\\_2022.pdf](https://www.mcgill.ca/rmwps/files/rmwps/final_justice_and_rep_arations_policy_brief_feb_25th_2022.pdf) (visited 15 November 2023).

<sup>34</sup> Allen et al., *supra* note 14.

<sup>35</sup> *Ibid.*

<sup>36</sup> Some of the publications from researchers with access to these groups have nevertheless been interesting and insightful, for example: Baines, *supra* note 14; E. Amony, *I Am Evelyn Amony: Reclaiming My Life from the Lord’s Resistance Army*, ed. by E. Baines (University of Wisconsin Press, 2015).

That year, Atingo, Allen, Macdonald, and other members of our research team were given access to 3040 files for people returning from the LRA. These had been found in poor condition in a warehouse in the oldest of the reception centres in northern Uganda, the Gulu Support the Children Organisation (GUSCO). Using these files, and the arrivals register, it was possible to search for individuals without working through WAN, *Watyé Ki Gen* or other externally funded support networks. It took months to trace people, and most had not been followed up since leaving the reception centres and returning home or relocating elsewhere. They included ‘wives’ of LRA commanders who had been abused in appalling ways, including by those commanders’ senior ‘wives’.<sup>37</sup> These contacts helped make it possible to assist the OTP in finding witnesses willing to talk about what happened to them more openly, including forced ‘wives’ of Ongwen willing to testify against him. Atingo provided the OTP with their details and contact information. An additional report was provided to the court by team member Holly Porter, drawing on her research on sexuality and violence.<sup>38</sup> The content of the report is confidential but it was a key submission in the prosecution’s successful Article 56 application.

### 3. ENGAGING WITH THE ONGWEN TRIAL

The forced ‘wives’ selected to testify as witnesses under Article 56 were mostly junior ‘wives’ who recounted dreadful incidents of abuse. A ‘senior wife’ also testified in this way — she had been punished by Ongwen for conceiving only one child — although she now regrets her involvement with the court because she feels she has not benefitted from the process. Prior to giving their testimony, these witnesses told us they had come under pressure not to, notably from more senior LRA ‘wives’ linked to WAN and *Watyé Ki Gen*. Some also recalled pressure from a ‘white lady’ who worked for an NGO linked to these groups, who advised them not to testify and ‘told us openly that Ongwen was abducted as a child, the same way we were abducted’.<sup>39</sup>

The Justice and Reconciliation Project, the NGO supporting WAN, hosted a meeting in June 2015, at which the junior ‘wives’ who had been approached by the OTP were effectively castigated, and told that they should not collaborate with the court.<sup>40</sup> During this meeting, Ongwen was able to make contact by mobile phone, from the detention unit in the Hague. He allegedly then spoke individually to each of the women present, asking them not to testify.<sup>41</sup> As noted in the Prosecution’s second Article 56 application, such meetings were:

aimed at aligning the narrative in the case against Dominic Ongwen and at suggesting that the proceedings against him were unfairly preventing his return to Uganda to support his children. This puts improper pressure on junior wives and interferes with the collection and presentation of their truthful evidence.<sup>42</sup>

Pressure from senior ‘wives’ not to testify, had both moral and practical logics. First was the argument that Ongwen had been abducted by the LRA as a child, and therefore should not

<sup>37</sup> Allen et al., *supra* note 14.

<sup>38</sup> Defence Response to the Prosecution’s Request for an Article 56 Unique Investigative Opportunity, *Ongwen* (ICC-02/04-01/15-259), Pre-Trial Chamber II, 3 July 2015, at 3. See also: Prosecution’s request to admit evidence preserved under article 56 of the Statute, *Ongwen* (ICC-02/04-01/15-464), Trial Chamber IX, 13 June 2016, 18.

<sup>39</sup> Interview, Prosecution witness, Gulu, November 2023.

<sup>40</sup> T. Maliti, ‘A former “Wife” to Ongwen Denies Influencing other Former “Wives” not to Harm Ongwen’s Case’, International Justice Monitor, 2 October 2019, available online at <https://www.ijmonitor.org/2019/10/a-former-wife-to-ongwen-denies-influencing-other-former-wives-not-to-harm-ongwens-case/> (visited November 15 2023).

<sup>41</sup> This account was told to us during several interviews, and matches the account outlined in *ibid*.

<sup>42</sup> Public redacted version of ‘Second Prosecution Application to the Pre-Trial Chamber to preserve evidence and take measures under Article 56 of the Rome Statute’, *Ongwen* (ICC-02/04-01/15-316-Red), Pre-Trial Chamber II, 23 March 2016, 34.

be prosecuted. This was linked to the view that he, like others who were forcibly recruited, was a victim deserving amnesty and compensation, because he had not been protected by the Ugandan government. Second, there were more material factors at play. Some were persuaded by Ongwen's suggestion that he needed to be allowed to return to Uganda so that he could care for all his 'wives' and his children. It was also apparent from our interviews that those former LRA 'wives' who held leadership positions in local networks perceived the willingness of these women to speak independently for the Prosecution as a threat both to their authority and potentially their livelihoods.

The pressure placed on the witnesses, prior to their giving testimony, was intense. One recalled how senior 'wives' stopped talking to her altogether. That witness still observes years later that: 'They want to carry their hierarchy from the bush to control us. Not knowing that out here things are different.'<sup>43</sup> The testimony of one witness was eventually deemed to be unreliable and was discounted, because she had been persuaded to alter her account in an unconvincing way, while another reportedly shifted from being a potential Prosecution witness to becoming a witness for the Defence.<sup>44</sup> However, seven women provided detailed and compelling evidence for the Prosecution, at some cost to themselves. They all had to distance themselves from WAN, Watye Ki Gen and other support networks whose leaderships opposed the prosecution of Ongwen. According to one, that involved a house and land originally promised by a support network being taken away from her and given to someone else.<sup>45</sup> It is not clear if this was just a punishment, or if it was motivated by rumours circulating at the time that those testifying for the Prosecution would receive payments and long-term assistance in return for their cooperation.

Frustrating many of those involved in the trial, and especially the Prosecution witnesses hoping for reparations, *Ongwen's* trial continued for years.<sup>46</sup> Closing statements were completed in March 2020. During 234 hearings, a total of 109 witnesses and experts had been called by the Prosecution, 63 by the Defence, and 7 by the Legal Representatives of the Victims. It then took almost a year for the judges to assess all the evidence, issuing their final judgment in February 2021. The verdict was damning. Trial Chamber IX found Ongwen guilty of 61 crimes, and on 6 May 2021, he was sentenced to 25 years in prison. That same day, the Trial Chamber issued an order for submissions on reparations.<sup>47</sup> In July and August 2021, the Defence filed appeal briefs against the conviction and sentence, but the Appeals Chamber upheld the Trial Chamber decisions in December 2022. Three years after the judgment, in February 2024, the court issued its largest ever reparations order with €52,429,000 awarded to 49,772 victims. This includes €52,429,000 for collective community-based reparations and €37,329,00 to fund individual symbolic awards of €750 to victims. The ICC acknowledged that Ongwen is indigent, and it is now up to the Trust Fund for Victims (TFV) to 'undergo substantial fundraising efforts' to fulfil the reparations order.<sup>48</sup> Given the scale of the task one commentator pointed out that 'it will likely take . . . a downright miracle to match the ICC reparations rhetoric to any kind of reality'.<sup>49</sup>

<sup>43</sup> Interview, Prosecution witness, Gulu, November 2023.

<sup>44</sup> Interview, OTP representative, December 2023.

<sup>45</sup> A1 interview notes, June 2023.

<sup>46</sup> ICC, 'Case Information Sheet: Situation in Uganda, *The Prosecutor v. Dominic Ongwen*', Updated December 2022, <https://www.icc-cpi.int/sites/default/files/2022-12/OngwenEng.pdf> (visited 3 January 2023).

<sup>47</sup> Order for Submissions on Reparations, *Ongwen* (ICC-02/04-01/15-1820), Trial Chamber IX, 6 May 2021, § 5.

<sup>48</sup> 'International Criminal Court's largest ever reparation order paves the way for reparation for victims of Ongwen's crimes' FIDH blog, 29 February 2024, available online at <https://www.fidh.org/en/region/Africa/uganda/international-criminal-court-s-largest-ever-reparation-order-paves> (visited 1 March 2024).

<sup>49</sup> L. Gaynor, 'The Wild Reparations Order of the ICC', justiceinfo.net blog, 29 February 2024, available online at <https://www.justiceinfo.net/en/128948-wild-reparations-order-icc.html> (visited 1 March 2024).



#### 4. REACTING TO THE VERDICT IN GULU

The judgment, like most of the trial proceedings, was telecast live to audiences in northern Uganda through screening sessions organized by the ICC field outreach office, in partnership with civil society organizations and community groups.

Atingo invited six women to her home to watch the judgment on her laptop. All had been in Ongwen's Sinia Brigade, and all had been forced into marriages with commanders. Two were forced wives of Ongwen, and witnesses who testified from Uganda: one for the Prosecution (Sara), the other for the Defence (Dorothy). Together they saw the ICC judges convict Ongwen of war crimes and crimes against humanity. Women who were given to Ongwen as 'wives' and who gave evidence against him were judged to have been raped and sexually enslaved. Moreover, the judges were explicit about Ongwen acting of his own volition. Before the judgment screening began, Atingo asked about their expectations. What did they think would happen? Most of the conversation was in the Acholi language and has been translated below (all their names have been changed):

'He is going to win', Sara said.

Grace replied: 'I don't think so. This case has taken long, which means their investigation is well done. These ICC people have been moving a lot [meaning that they have gathered a great deal of evidence].'

Dorothy, who still considers herself to be Ongwen's 'wife', was quiet and just said, "I hope for the best."

Susan then suggested that Ongwen's choices in the LRA had been limited: "He took long [with the LRA] because when you tried to escape, they would kill you."

Others responded forcefully, arguing that Ongwen himself was one of the LRA commanders who would kill those who tried to escape.

Jane observed: 'I was abducted aged seven years and was forced to bear a child at 13 years. My body has never been the same. If Ongwen is not punished, victims like me should commit suicide.'

Susan pushed back: 'I really feel for him. For me, he did a good thing. He helped me escape. Yet there are those other commanders, who were more terrible than Ongwen, and they are left to stay free.'

At this point, the screening had started, and one of the women jokingly tapped Dorothy, saying:

Look at your boss [meaning husband] he has put on weight, yet you are here growing thin every day.' Then they all laughed. 'He is enjoying life, imagine that, skinny Ongwen! I never expected he would put on weight.'

As the counts of crimes against Ongwen were listed, some shared the view that:

Everyone is looking at victims and reparation, they are not looking at Ongwen. He was abducted like us. But now why all these counts? The counts are too many . . . . It was the

responsibility of the government to protect Ongwen, but today they have turned against him. It's not fair. The government of Uganda has liability. They failed to protect all of us including Ongwen . . . . The world has failed to observe and see that Ongwen was abducted, and the government did not play their part.

Grace then commented mischievously about the images on the screen: 'Madam [referring to Atingo], the court is beautiful like this!! . . . Hhmm! . . . Odomi [meaning Dominic], who knew he would be in a white man's land? Now he is enjoying [life] with smooth skin.'

Susan, again, expressed sympathy for Ongwen: 'Why are they going for conviction? It is because they do not have anyone else to take to court. They should have focused on Kony. Now the court is dying with this one [meaning the ICC is using up its energy on someone less responsible]. They should be considerate.'

Others were happy as it became apparent that Ongwen was going to be found guilty of so many appalling crimes. Sara elaborated in this way:

If I was given [the] opportunity, I would greet [congratulate] the judge today for his ruling. This is going to make the commanders outside [still at large] panic. For me, they could take all these commanders in [ie, arrest them]. They did the same thing to us if they talk about sexual violence. Some of those commanders were the ones who gave Ongwen women. He had no opportunity to refuse, because if you are given a girl and you refuse, you would be killed.

The house was quiet when the verdict was announced, and there was deep relief on the faces of almost all of them.

Sara said, 'Finally, it has come to an end. But why have they not sentenced him? What do you think will happen? Will it be "life imprisonment?"'

Susan answered: 'Eeh! Take it slowly! Let us forgive Dominic'

Sara added: 'The counts are too many. I don't think Dominic committed all these atrocities. Anyway, a white man can investigate properly! Not like our court here that is for rich people. There is no bribe. So, I have trust in them [the ICC processes]. He is going to serve his sentence on behalf of Kony, Otti, Odhiambo, Raska Lukwiya and others [ie, the other LRA commanders, some of whom are still at large].'

Grace noted: 'The ICC did not reach some of us. How were they selecting their witnesses? I hope they picked the rightful people.'

Dorothy, one of Ongwen's 'wives', lamented: 'I am a widow! His children will never see him again. I wanted him to come back. Even if that means taking his children to him [and leaving them], for him to take care of them . . . .'

The last quotation from Dorothy captures a concern of many women forcibly impregnated during their time with the LRA. Whatever they think of Ongwen, he should be responsible for the welfare of his family, and most expect he will not be able to do that in prison.

After her visitors left, Atingo reflected on what she felt herself. She was abducted from her school dormitory by the LRA in 1996. Her future, had she survived the abduction, would have been the same as these women. She would have been raped, forced into sexual slavery, and returned home with the children of an LRA commander. But she was lucky. Atingo was released when one of her teachers followed the LRA into the bush and begged for her to be allowed to go free. It makes the stories of these women examples of what she might have been. Seeing their pain and suffering, their resilience and bravery, and their determination to survive, care for their children, and in some cases even forgive their abusers, has been very moving for Atingo. She is not sure she would have been able to forgive a man who did such terrible things to her.

## 5. EXPECTATIONS BETRAYED?

After the judgment, Atingo and Allen conducted more in-depth interviews (in 2022 and 2023) with five ‘wives’ who had acted as witnesses in the *Ongwen* trial, and two who had testified for the defence. The judgment has rightly been hailed as a huge milestone in the Prosecution of sexual and gender-based crimes as part of international crimes. For the first time, the judgment recognized the nuances and distinctive components of the crimes of forced marriage and forced pregnancy.<sup>50</sup> Article 56 litigation set another precedent for future cases, allowing for expedited and ostensibly confidential testimony to be given in order to safeguard vulnerable victims of SGBC, while also preserving their evidence. In light of the judgment, we were particularly interested to hear their reflections on how their lives had been impacted by their experience of testifying.

### A. ‘Wives’ of the Prosecution

When Allen visited the ICC soon after the Uganda referral in 2004, he asked how witnesses would be protected. He was told that a ‘bubble of protection’ would be placed around them. He pointed out it was hard to keep things secret in a context like northern Uganda, and that witness identities would become known. In response, it was suggested that they might be moved away from the region and perhaps given new identities.<sup>51</sup> No such protection had been offered or provided, and the prosecution witnesses are all potentially exposed to *Ongwen*’s relatives and LRA sympathizers. This apparent lack of consideration for their safety was reflected in the comment quoted above in 2015 by Judge Tarfusser: ‘Now it is finished. You can go home . . .’ It was also reflected arguments that had been made by the Defence in relation to the Article 56 application: that expedited testimony from Uganda did not necessarily obviate the need for complex witness protection.<sup>52</sup>

Atingo has been in regular contact with the witnesses since they testified, and a few brief enquiries in March 2022 were all that was needed to find their current whereabouts. They were mostly residing in thatched huts that would be vulnerable to attack if someone was disposed to do them harm. Four of them live close to each other, providing mutual support, having been rejected by their own families after their return from the LRA.<sup>53</sup>

We present here some of the things they have told us, editing their accounts in ways to obscure their individual identities. They are in their late 20s or 30s, and spoke to us in the Acholi language. These translations have been made by Atingo. Unsurprisingly, all of them

<sup>50</sup> K. Maloney, M. O’Brien, and V. Oosterveld, ‘Forced Marriage as the Crime against Humanity of “other inhumane acts” in the International Criminal Court’s *Ongwen* Case’, 23 *International Criminal Law Review* (2023) 1–26; R. Grey, ‘The ICC’s First “Forced Pregnancy” Case in Historical Perspective’, 15 *International Journal of Criminal Justice* (2017) 905–930.

<sup>51</sup> Discussion at ICC in The Hague, January, 2005.

<sup>52</sup> Bradfield, *supra* note 1, at 386.

<sup>53</sup> They had in fact already been interviewed by a journalist in 2021. He had published a piece mentioning their real names, something that we have avoided.

had disturbing stories about their treatment by Ongwen. They had all been abducted from their homes in northern Uganda between the ages of 9 and 13 and were compelled to allow Ongwen to have sexual intercourse with them from an early age, in one case at just 10 years old. The accounts they gave about their lives in the LRA closely matched the testimonies they gave to the ICC in 2015. Below, we focus on their experiences of acting as ICC witnesses and their views about having done so. The women commented on efforts made by local NGOs purporting to represent former wives and children born of war, including WAN and *Watye Ki Gen*, to stop them testifying in 2015. This included various threats and cuts in the support that some had received from NGOs. Nevertheless, they were determined to describe what had happened to them. As one put it, ‘I said to them, it is not a crime to tell the truth?’ Several years later, however, the overwhelming impression is one of disappointment and dejection. None of the women feel that they have benefitted from testifying in ways they had hoped, or say they were promised by the ICC. Below we recount some of their impressions at length (again, we have changed their names).

#### Lucy

I was contacted by ICC through the local staff in Gulu. I was interviewed, and my statement was recorded in one of the hotels. I was also taken to Kampala to make another statement, and stayed there for a week . . . . One time I was contacted by the Defence lawyer. He asked me why I wanted to betray my brother. I said, if he knew he was my brother why did he rape me and ruin my education. He would have considered that before abducting me. When the Prosecutor team heard about the Defence lawyer contacting me, they approached me to see if I would change my mind about my testimony, but I did not. I wanted justice and to stand for the truth . . . . My contact person with the ICC was called XXX but she died. I had a good relationship with her. She even helped me financially sometimes, using her own personal money. But, after she died, nobody from ICC contacted me to know what was going on. I really miss XXX. If she was here, I would not suffer, because she would call to check on me. Now I see many white people coming. I think they are from ICC, but they leave . . . . I hope for justice, but the law is the law (*cik dong cik*). . . . I think justice is when one has to pay or suffer for what has been done to others and be put in jail . . . . Dominic has been given a sentence, and I am happy about that. But it will not bring back what I lost . . . . Something should be done to provide compensation . . . . It makes me unhappy that [from the trial broadcast] he looks much better than he did in the bush . . . . When he comes back to Uganda, he will just walk freely on the streets . . . .

#### Mary

I gave my testimony in one of the hotels in Gulu, where it was recorded . . . . A white man asked me questions . . . . He wanted my opinion, and what I went through, to contribute to the ICC . . . . Some of the women in WAN [a Gulu-based support network dominated by former LRA ‘senior wives’] criticised us who testified for the prosecutors . . . . But I think each and everyone has their own opinion . . . . I think the judgement was fair . . . . Dominic has been put to jail, and I do not care what happens to him. My opinion has been heard . . . . However, the ICC should fulfil their promise of compensation . . . . I am not happy with the court taking my testimony and then not checking on me . . . . They had promised to support me, but I have not seen anything . . . . I was told by the court that there would be compensation but I do not know whether it will take place. I am still waiting. I have had challenges with my relationships since returning from the LRA. My family reject me, and most men look at me as being possessed with *cen* . . . . But I do not

live far from other ‘wives’ of Dominic, and we help one another . . . . Also, we want our children to know each other as brothers and sisters.

*Christine*

I was contacted by the ICC to take my testimony, which I did from hotels in Gulu . . . . A series of questions were asked by the white man and translated by an Acholi man . . . . If being visited by a white man would make you rich, I would be by now! The number of white people I have received is more than the money I get . . . . They all come to talk to me and leave . . . . After getting testimonies ICC had promised they would continue helping but I have seen nothing . . . . Other women testified as well, and those who testified for the Defence are doing much better . . . . I have had contact with Dominic’s family, and I attended the funeral when Dominic’s brother died. Other wives attended the funeral and took their children as well . . . . Those who did not testify in court are far much better and are getting benefits, including houses . . . . Justice has been done. Dominic has been given 25 years in prison . . . but I have lost trust in the ICC. I do not trust anymore what they say or whether we will get anything, because no one is communicating anything to me . . . . If I had known that it would turn out this way, I would not have given my testimony.

*Barbara*

Both the Defence and Prosecution teams wanted me to testify, which caused conflict between the two of them. In the end, I made up my mind to testify for the Prosecutor, because I recollected the beating, I received while pregnant. I felt this was the time to make Dominic know that the law exists . . . . [In the broadcast of the trial] he looks healthy . . . . Before the verdict, he rang me and asked how his children were doing. But it is better that he is far away from me . . . . Dominic might look at 25 years in prison as not being fair, but to me, the years given to him were fair, because he wasted my years in the bush. Let him also face it. . . . However, I would not give the testimony again. I did not benefit anything from it . . . . Justice is “*culu kwor*” [meaning compensation]. I have been talking to ICC but have seen nothing . . . . It is the court to decide whether I will be compensated. But I see a lot of things happening that have made me lose hope.

*Sara*

I was invited by ICC to give my testimony . . . I gave it in Kampala . . . but the only money I received was my accommodation and transport refund money . . . . I feel very bitter that ICC used me and dumped me . . . . I told them that I was really upset . . . . They went quiet and never came back to me . . . . I have no idea if there will be reparation, and I do not care whether they pay reparation or not, because I am fed up with them. They worked for their money and they have become rich but I have not . . . . I am fed up with all these white people asking me questions and I just remain poor. My condition has not changed . . . . If asked again to testify, I would not do it because ICC is full of liars. I wish I had testified for the Defence because I see how those who did are having a good time, while I just live in a grass thatched house . . . . Dominic’s family members were not happy with what I did, asking why I did that to him . . . . I testified because I wanted Dominic to pay for what he did to me . . . . But I don’t care about justice any more . . . . What matters in my life is my children . . . . Dominic is now going to serve in jail, but he should come back here to take care of his children.

The women were mainly pleased that Ongwen was convicted but they also felt they had been ‘used’ by the ICC. Whatever the precise nature of discussions regarding future reparations, the women had clear expectations of material benefits resulting from participation in the trial. They all claimed a lack of financial support, and an apparent lack of follow-up or engagement from the ICC or TFV in the previous three years. It made them feel ‘dropped’.

To make matters more difficult, a widespread perception exists, particularly amongst the local support networks and groups run by senior LRA wives that the Prosecution witnesses *have* benefitted significantly from the ICC, or will do so in the future. As a result, as one witness explained, ‘I am missing out on opportunities, because there is already that belief that I benefit so much from ICC’. Ironically, given that their testimony was so important in attaining the Ongwen conviction, the Prosecution witnesses claimed they had been deliberately excluded from consultations on the reparations they were so instrumental in securing. As recently as November 2023, the Prosecution witnesses claimed that a local organization facilitating victim consultation on reparations was not inviting them to meetings: ‘They hate the wives of Dominic that testified for the prosecutor, nobody wants to invite us because they say we refused to comply with their request not to testify’.<sup>54</sup>

Their involvement in the trial had resulted in no tangible material benefit, and was now preventing their access to wider NGO-supported funds and training for LRA returnees, as well as access to consultations on reparations. Another thread running through our discussions was despair that it was actually the Defence witnesses who had gained the most from engagement with the trial. Some of the women told us that they now wished they had acted as witnesses for the Defence. It is also interesting to note that — contrary to the intention of the Article 56 application to safeguard and protect vulnerable victims — in retrospect, some of the Prosecution witnesses now regretted giving their testimony from Uganda. They are now of the view that travelling to the Hague might have drawn more attention to their victimization and plight and increased their chances of securing compensation.

In terms of financial security, particularly in relation to the payment of school fees, some of the prosecution witnesses now believe that the most sensible strategy is to ‘cut connections with ICC’ and strengthen and consolidate their relationships with Ongwen’s family. Although this is also a risky strategy for them. The five Prosecution witnesses all attended a recent burial of Ongwen’s brother, along with their children (fathered by Ongwen). They were generally welcomed by Ongwen’s family, giving them some hope that financial and material support might be forthcoming from patrilineal relatives, *as per* Acholi custom. However, they were also concerned Ongwen’s relatives were only interested in his children, and not in them or their other offspring. They worried that Ongwen’s extended family might end up trying to claim patrilineal ownership of the children if reparations end up being allocated to family members with parental responsibility for them.

We found aspects of these interviews surprising. The claim by Prosecution witnesses that they had not been contacted by the ICC for some time, that their identities were known, and that they were living in exposed locations contradicted our expectations. Of course, it is possible that accounts of being abandoned by the ICC were exaggerated, but there is no doubt about their living circumstances, and their complaints about a lack of follow-up were consistent. We asked the witnesses for the Prosecution what they would like us to do with the information they gave us, and they were all keen that we pass their concerns on to staff at the ICC. It certainly seemed appropriate to alert the ICC to the situation, and Allen did so by email from Uganda in April 2022.

Initially, representatives from the Office of Public Counsel for Victims (OPCV) at the ICC were dismissive. It was assumed we had not spoken to the actual trial witnesses, because their roles

<sup>54</sup> Allen interview, November 2023.

and identities were supposedly confidential. When various details were shared to confirm that these were, in fact, the people we said they were, the tone became more guarded. It was suggested that we had ‘misunderstood’ the participation of victims in the proceedings.<sup>55</sup> Only victims who filed an application form with the Registry, and who had been authorized by judges to formally participate in the proceedings would be engaged by Legal Representatives of the Victims. Perhaps the witnesses (or some of them) had never filed an application to be ‘dual-status’ witnesses (e.g., witnesses formally registered as victims), and this is why they felt abandoned.<sup>56</sup>

In communications with the ICC OTP and the OPCV there remains a lack of clarity about how many of Article 56 prosecution witnesses are participating victims, registered with Legal Representatives of the Victims. After pressing further on these matters, the OPCV assured us that ‘persons concerned’ are in contact with them regularly, and that the proceedings have been explained to them several times at length in Acholi.<sup>57</sup> The OPCV additionally explained to Allen that the life conditions of the witnesses were known, and that it was hoped their situation would improve in the future, depending on the reparations order. The OPCV also noted that the witnesses may not have told us about support received through the Victim’s Trust Fund in the past and that any future conversations with the witnesses should occur with the agreement of relevant ICC staff. Subsequently, the women we interviewed were contacted by OPCV field counsel in Uganda.<sup>58</sup> They were asked how they were managing and told not to talk to ‘white people’ or researchers again, and only to official ICC personnel. Several of them immediately rang Atingo to tell her about these conversations, and to thank her for passing on their complaints.

In further exchanges with ICC representatives in November and December 2023, we were told that preserving the anonymity of the witnesses was important because disclosure could jeopardize ‘prevailing ICC protective measures’, and impact the witnesses’ ‘community relations’, or lead to ‘stigmatisation’. Yet, the reality is that the identities and residences of the witnesses for both Prosecution and Defence are locally known and are not hard to find. Observing their current livelihoods, it is hard to discern what the ICC’s protection measures might be. They are currently exposed and vulnerable and may have to deal with antipathies from Ongwen’s relatives, and others, if reparations start being made. This vulnerability shapes a shared preference for reparations in the form of land, rather than disbursement of money, which they fear could be easily taken away from them.<sup>59</sup>

### B. ‘Wives’ of the Defence

One of the points made by several of the women who testified for the Prosecution was that those who testified for the Defence had benefitted in ways that they had not. It was a source of considerable frustration for them. Interviewing the Defence witnesses largely confirmed their views. They report having had regular contact with, and some support from the Defence team since the trial. They have probably also received some funds from Ongwen’s prison wages in the Netherlands.<sup>60</sup> Both gave the impression of being relatively more prosperous than the Prosecution’s ‘wives’. Unlike the Prosecution witnesses, those testifying for the Defence have visited The Hague. Clare, was granted a conjugal visit to Ongwen, during

<sup>55</sup> Allen email communication with OPVC representative, April 2022.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> This was communicated to Atingo in telephone conversations with the witnesses in April and May, 2022.

<sup>59</sup> Allen interview notes, June 2022.

<sup>60</sup> ICC prisoners can earn wages in prison if they take part in cleaning communal areas and can send the money they earn to their families. See J. Anderson, ‘10 Things you didn’t Know about the ICC’s Detention Centre’, Justice Hub, 11 July 2018, available online at [https://medium.com/@justice\\_hub/10-things-you-didnt-know-about-the-icc-s-detention-centre-a16ca6e6aae1](https://medium.com/@justice_hub/10-things-you-didnt-know-about-the-icc-s-detention-centre-a16ca6e6aae1), (visited 3 October 2023).

which another child was conceived in his ICC detention cell. She attended our interview at a site in Gulu town, and arrived smartly dressed, and in good humour.

Dorothy is older and had been the ‘wife’ of previous LRA commanders before joining Onywen’s household. They had been killed in the fighting, and she then became Ongwen’s ‘wife’ by choice. She says he was kind to her, and she denies that he beat his other ‘wives’. She gave testimony in The Hague in September 2019. She was questioned by lead prosecutor, Benjamin Gumpert about her involvement in the meeting at the Justice and Reconciliation Programme offices in June 2015. Gumpert vigorously pursued a line of questioning that suggested she had sought to influence the other former ‘wives’ of Ongwen so as not to harm his Defence case.<sup>61</sup> She denied giving Ongwen assurances that the women present would all speak with ‘one voice’. Dorothy’s experience of being cross-examined was fraught, and questioning was interrupted by the Defence and by the judge, who expressed concern about her being drawn into providing self-incriminating evidence. Unlike the other witnesses we interviewed she has moved away from the Acholi region, and lives in relative comfort elsewhere.

### *Clare*

I was abducted in 2004 when I was 15 years old from my village . . . I was then taken to Dominic, who was the commander of the battalion. He told me I would be staying at his home. I did not know that I was going to be his wife, but after five days, he sent for me through one of his wives to go to his chambers. I found him sitting . . . He told me that I would spend the rest of the night with him. I did not resist because I was already told what would happen by other women if I tried to resist . . . After ten years, Dominic released me, saying I should come back home with my 3 children plus two other children from co-wives . . . My experience with Dominic was peaceful. Like any other commander who was given women, I was also given to him. What happened to me was not rape, because later I started liking Dominic as a husband, and he loved me and trusted me . . . I was approached by the ICC Defence lawyer to testify in court and was very much willing . . . I testified for him that all the bad things they were saying were not true . . . Also, he is the father of my children and I want to be together with him so we can raise our children together . . . I had the opportunity to be invited to the Hague by the ICC to visit Dominic, with my three children. It was great . . . I arrived in The Hague in a sleeveless shirt. Nobody told me we were going to a cold land. When we arrived at the airport, we found a white lady waiting for us. We were immediately taken to a car and later shopped for warm clothes. The Hague was a beautiful place . . . My children were taken to the kid’s park. I was shown the courtroom, and the next day I was taken to visit Dominic in his prison home. Since returning to Uganda, I have now given birth to another of his children . . . I refuse to get pregnant with another partner, and I am using family planning. I am waiting for Dominic to complete his sentence. I will go back to him. I spoke to Dominic after his verdict. He told me words of encouragement saying, his sentence would not take long—just 25 years. I have to be patient and wait for him . . . Dominic has not stopped me from finding another man, so that the family has support. He cares about me and the children . . . Justice has not been done. Dominic was abducted as a child . . . Why put him in jail? The judgement was not fair. They said he raped women, yet women are given by Kony to commanders. Why are not other commanders accountable?

<sup>61</sup> Maliti, *supra* note 40.



*Dorothy*

I was contacted by ICC . . . I opted to testify for the Defence team because I wanted justice for Dominic. He was abducted as a child and the government did not protect him. Also, Dominic is the father to my children I want him to come back and take care of them. I have been in constant contact with Dominic's lawyer. I am checked on all the time . . . I went to The Hague to testify. It was a lifetime experience, but it was terrifying being cross-examined in the dock by the lawyers . . . When Dominic comes back, he will be accepted . . .

He has many children and should come back and take care of them . . . I am not happy with the government sending Dominic to the ICC . . . He should have been given a pardon, because he was abducted like other children, and should have been protected by the government . . . My children are in school, being sponsored . . . I am not satisfied with the ICC ruling and was hurt by the outcome . . . I am not happy with the women who testified against Dominic. If we had all agreed to give testimonies for the Defence, he would have won.

## 6. CONCLUDING DISCUSSION

The conclusion to the trial proceedings in The Hague, seven years after Ongwen's arrest, opened up the possibility that victims of his crimes might now at last obtain some kind of compensation. Amongst the documents informing the reparation phase was a detailed *Amicus Curiae* brief submitted to the Judges in February 2022. It provided a range of proposals about how reparations to victims should be managed, including giving an important role to local support and grassroots networks. For example, it is suggested that 'survivor groups and local actors can be consulted . . . with a view to ensure that victims can safely come forward' to engage in a participatory and 'truly victim-centred' methodology for consultations on reparations.<sup>62</sup> It is perhaps ironic that amongst the authors are organizations that attempted to stop the key Prosecution witnesses from testifying against Ongwen, and have been consistently opposed to criminal prosecution of individuals in the LRA in general. Arguably, given the complex politics of victimhood in post-war northern Uganda, it would be problematic if they are uncritically embraced as among the local organizations representing the views of victims. This is particularly so as the TFV now moves forward with the design and implementation of a reparations plan.

At the time of finalizing this article (April 2024), the reparations order had recently been issued by the ICC. Atingo sought the views of three of Ongwen's forced 'wives' who had testified for the prosecution under Article 56. Their reactions were sobering. All three felt the €750 'symbolic' individual payment was 'too little' and could 'do nothing'.<sup>63</sup> They had hoped for a more substantial amount that would afford them some land and enough to build a house and educate their children. The women also expressed their deep concern about the fact that the money 'is not there' and must be raised. They feared they would die before the funds materialized. Echoing the sentiments of all three, one said: 'What foolery is this? If I had known, I would not even have testified'.<sup>64</sup>

<sup>62</sup> *Amicus Curiae* brief pursuant to Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence, *Ongwen* (ICC-02/04-01/15-1971), Trial Chamber IX, 4 February 2022, § 28.

<sup>63</sup> Atingo, interview, Gulu, April 2024.

<sup>64</sup> *Ibid.*

In the conclusion to his study on victim — witnesses at the ICTY, Eric Stover commented on the promise and potential of the ICC. He wrote that the ‘ICC, at least on paper, is a “victim’s court”’.<sup>65</sup> Since then, much has been written about the role and participation of victims at the ICC. In relation to the *Ongwen* trial, the OTP Article 26 Application offered clear evidence that the court — in line with the Rome Statute is willing and able to consider the ‘interests and personal circumstances’ of victim-witnesses, particularly those who are testifying in relation to SGBC. This should be welcomed. At the same time, a question that Stover raised all those years ago, about whether or not the ambitious, inclusive vision for victims of the court would be a ‘blessing or a curse’ remains pertinent today.<sup>66</sup> Our long-term research with SGBC victim-witnesses in the *Ongwen* trial shows how the Court struggles to provide protection measures in poverty stricken and conflict-affected places like northern Uganda. Moreover, in impoverished contexts such as this, the potential expectations of victim-witnesses may be expansive and the court will struggle to fulfil those expectations given its limited mandate and resources. For these women though, even basic expectations of having school fees, a modest plot of land on which to build a house and secure a degree of material and physical protection still do not appear to be forthcoming. Uncertainty about whether and how funds for the reparations order will be raised is the latest chapter in a story that — for all of Ongwen’s forced wives who testified for the prosecution — has mostly been marked by confusion, vulnerability and disappointment.

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<sup>65</sup> Stover, *supra* note 11, at 148.

<sup>66</sup> *Ibid.*

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