
Deconstructing the Complexities of Violence

Uganda and the Case against Dominic Ongwen

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3.1 Introduction

On February 4, 2021, the trial chambers of the International Criminal Court (ICC) delivered a landmark judgment in the trial of Dominic Ongwen for 70 counts of crimes against humanity and war crimes allegedly committed in Northern Uganda after July 1, 2002. This judgment was a watershed moment in international criminal justice, especially in its quest to hold accountable child soldiers for crimes they might have committed for which they are equally victims. Dominic Ongwen's trial at the international criminal court is morally complex, riddled with paradoxes, evoking strong emotive responses from the same constituents the international criminal justice appeals to and represents.

Dominic Ongwen was abducted on his way to school by the Lord's Resistance Army (LRA) when he was ten years old, by most estimates. He was trained and armed as a "child soldier" to launch an insurgency against the Ugandan Government and he quickly rose through the ranks, becoming the second in command. During his trial, he was presented in a logic of extremes – for the prosecution, he was portrayed as a murderer and rapist, a fearless terrorist and senior commander in the LRA, who was powerful, proud, happily "gratifying his desires" in the bush, and fully responsible for the crimes he was charged with (*Prosecutor v. Dominic Ongwen [Prosecution Opening Statement]* 2016). For the defense, he was represented as a child soldier who was abducted, victimized, orphaned, imprisoned, initiated, indoctrinated, and incorporated into the LRA and held spellbound by the spirits called upon by the LRA headman Joseph Kony, therefore making him a madman with suicidal tendencies (*Prosecutor v. Dominic Ongwen [Defence Opening Statement]* 2018). While spirituality claims have been raised in the past in

international criminal trials and addressed while determining individual criminal responsibility, the Dominic Ongwen trial is unique in the way that spiritual cosmology occupies the most prominent role in the history of international criminal justice (Nistor et al. 2020, 2).

Dominic Ongwen represents the complex status of thousands of child soldiers in different conflict zones who were “forcibly” abducted or who “willingly” joined armed militias or insurgent groups and eventually assumed command positions as adults, eventually committing the same international crimes of which they were once victims. Nonetheless, his predicament raises troubling international criminal justice questions and reveals that, while child soldiers could engage in the victimization of others, their victim’s status *is not* and *should not* be diminished by these acts. Determining the moral and legal threshold when a victim becomes a perpetrator, or when innocence transforms into culpability, is ambiguous and problematic.

At the core of the argument in this chapter is the confrontation of some of the complexities and tensions surrounding the constructions of the victim/perpetrator dyad within the field of international criminal justice with a focus on Dominic Ongwen and the situation in Northern Uganda. In so doing, the chapter assumes a dual focus: The construction of blame and blamelessness regarding victim and perpetrators of child soldiering as well as the moral complexities concerning the victim/perpetrator divide. In relation to the former, we demonstrate there is a deep discord between much of the *constructed* identities of child soldiers (as victims or perpetrators) and the *actual* identities and lived experiences of child soldiers (both as victims and perpetrators). It will also briefly explore the use of spiritual cosmologies to rectify injustice by both the ICC and the members of the communities in which Dominic Ongwen and the LRA wreaked havoc.

In exploring these issues, we will argue that the discourses on “blame” and the associated notions of “innocence”/“good” and “guilt”/“evil” shapes and informs respective hierarchies of victimhood that are culled through “legitimate” and illegitimate measures. Both the victim/perpetrator categories themselves and the dichotomous nature of them produce a “hierarchy of blame” which cannot easily accommodate “deviant” victims or “vulnerable” perpetrators such as girl child soldiers or children born in captivity who lie in the middle ground between the polarities of the accepted victim and perpetrator status. We argue that the fundamental relationality between victimhood and perpetrator status leads us to a sometimes functional and sometimes highly volatile effort at a definition

that pushes analysts to want to parse distinctions. For example, if we can only know who victims are by knowing who perpetrators are and vice versa, then a certain circularity is involved. This circularity suggests that the dichotomy is much more central to the enigma of international criminal justice than is commonly thought.

3.2 The Construction of the Victim–Perpetrator Dichotomy

The legal status of individuals and the extent to which they are subjects of international law has been a contested issue. This can be traced to the eighteenth-century positivist school, whose ideas dominated international law and firmly held the view that international law only governs relations between states and sovereigns, with individuals at best third-party beneficiaries (Ratner and Abrams 2009, 4). However, this traditional view has undergone significant changes with the increasing visibility of the fragmentation of international law. It is now generally accepted that individuals are “limited” subjects with rights and corresponding duties, and protecting victims and punishing perpetrators are now construed as integral elements of the international criminal law regime (Findlay 2009). The Rome Statute of the ICC typifies this paradigm shift. Due to this paradigm shift, it is paramount to explore the way international legal orders construct the person of a “victim” and “perpetrator” as legal entities.

Centrally located in international law is a productive power of discourses, which establishes a version of social reality as an objective truth from international processes and practices, which also has a repressive side (Clarke 2009), as it entails the simultaneous marginalization of alternative meanings. The position of a “victim” or “perpetrator,” for instance, are discursive categories which offer individuals the opportunity to identify with a place in the social structure that tells them who they are and what they can do. Subjects then constitute themselves if and when they “step into” and identify with the positions carved out by a discourse (Epstein 2008, 93–95). However, beyond the discursive, these categories are propelled and concretized through political, legal, economic, and emotive processes that are key to understanding¹ the performative and didactic acts performed by international criminal trials.

1 See Brunnée and Toope (2010) and Clarke (2019).

International law characterizes a “victim” as a helpless individual who possesses human rights and the “perpetrator” as a person who is criminally accountable for breaches of international law, rules, and principles. These two legal persons are continuously projected as autonomous individuals; however, the narrative also grounds them as members of groups that international criminal norms seek to protect or punish. The normative tension that arises between individual and collective forms of legal rights and responsibility is resolved in international law by reconstituting the idea of a legal person (that is a victim or a perpetrator) through a conception of the universal community of humans. It has been argued that the idea of a “legal person” relies on the idea of “humanity” to hide the problematic conceptual basis of the rights and duties of victims and perpetrators in international law (Campbell 2011, 326).

Arguably, the conception of a legal person in international law implies that it “is the formal subject of rights and duties: a legal idea or construct not to be mistaken for the real natural being” (Naffine 2009, 1). Therefore, it is imperative to locate the constitution of the victim and perpetrator as entities to which international law attributes rights and duties to understand their construction.

Over the centuries, the image of a legal person, be it a perpetrator or a victim, in international law has been cast in problematic ways by recognizing certain persons as existing in legal relationships of rights and duties to other persons (as individuals or members of groups) and excluding others. Historically, the legal person of a victim is traditionally cast as that of an alien who has been subjected to abuses in a foreign land and who needs his sovereign to demand reparation on his behalf for these abuses.² Further constructions of a “victim” include those of a slave or ethnic minorities in the east in the nineteenth-century legal scholarship, combatants during World War I, civilians during World War II, and generally certain individuals as victims of war crimes and crimes against humanity under the current international law framework.

In this evolving construct, the doctrine of individual criminal responsibility establishes a relationship of legal obligation and benefit between the perpetrator and the victim. The victim possesses legal rights (such as the right to dignity, right to a fair trial, right to sexual autonomy, and so on), while the perpetrator bears legal duties (such as compliance with binding

2 See Partsch (1995); and “The only notable exception to this general pattern concerned attempts to abolish slavery, which were based on an abhorre.”

international rules).³ In this way, legal rules and practices *construct* relationships between legal persons and symbolize particular forms of intersubjective relations (Campbell 2011). They do not reflect the actuality of social relations. Rather, they epitomize ideas of subjectivity and intersubjectivity, in the sense that they *represent* social subjects and relations in legal form. In this approach, international criminal law is a representation of social relations between (individual and collective) legal persons. It determines which social relations will be legal (and which will be illegal), which persons will be legal subjects (and which will not), and which social relationships will be legal relationships (and which will not) (Campbell 2011).

Identifying the conceptual basis for the construction of victims and perpetrators, in the context of massive violence in Northern Uganda, requires closer engagement with both the international legal principles and prosecutorial practices that are key elements of this process of constitution.

3.3 Constructing the Perpetrator in the Context of the Conflict in Northern Uganda

The problematic delineation of a perpetrator comes to an acute relevance in Northern Uganda where minors have been used to inflict massive violence and constructing those minors as perpetrators in strict legal terms. While child soldiering is a global problem, its manifestations in third world countries such as Uganda have been endemic, complex, and devastating, and offences perpetrated by and against child soldiers have been litigated in both international and internationalized courtrooms. To date, only a few minors have been prosecuted due to the problem of determining the age when tribunals and courts should start investigating, charging and prosecuting, and holding accountable minors for international crimes.

The LRA is notorious for recruiting and using child soldiers to wage a campaign of violence against the Government of Uganda, particularly in Northern Uganda, and, to this day, child soldiers form an integral part of the LRA (United Nations Human Rights Office of the High Commissioner and Uganda Human Rights Commission 2011, 44). The LRA is an insurgent group that has been involved in a brutal cycle of

3 When these rights and duties are directly enforceable under international law can be considered as separate issues (Clapham 2010, 25).

violence against the Government of Uganda and the Uganda Army since 1987 (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). The LRA is known for cutting off the ears, lips, and noses of civilians (*Prosecutor v. Ongwen – Confirmation of Charges* 2015) and more than 2.8 million people have been displaced due to LRA attacks (Worden 2008). In 2018, a survey of war-affected youth was conducted in Northern Uganda, more than one-third of male youth and one-fifth of female youth in Northern Uganda reported abduction by the LRA (United Nations Human Rights Office of the High Commissioner and Uganda Human Rights Commission 2011); and, as of 2015, more than 60,000 children had been forcefully abducted and conscripted into the LRA (Refugee Law Project 2015, 3). Dominic Ongwen was one of these abductees.

The depiction of Dominic Ongwen as a fearless and ruthless commander of the LRA was not represented as being disputable during his confirmation of charges hearing at the International Criminal Court. Rather, the prosecutors presented to the judges the chronology of violent attacks he led resulting in thousands of murders, rapes, and other atrocious crimes (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). It was also alleged that Ongwen engaged in the practice of abducting children, supervising their military training, and deploying LRA units that included children under the age of 15 (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). In contrast, determining his status has involved arguing that he was embedded in a system whose principle is “kill to survive.” For instance, Anthony Akol, who was a former LRA abductee, testified that within the LRA one simply had to obey orders or get killed (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). After abduction, children went through initiation rituals which included beatings, long marches, and being forced to kill relatives; others were made to taste or roll in blood or eat while sitting on dead bodies (Baines 2009, 170). These rituals were intended to disorient and brainwash new abductees into obedience, and a former LRA abductee reported being in a “confused state” for a week after being forced to cut his sister (Schauer and Elbert 2010, 321–322, 330).

As is clear in the literature, the complexities of Dominic Ongwen, like most LRA abductees, contradict the binary nature of the perpetrator typology in international legal principles on which the ICC indictment is based, that focuses on Dominic Ongwen’s individual criminal responsibility, liability, and his agentic role in causing mass violence, and this typology largely ignores the circumstances surrounding his abduction, indoctrination, and victimization in the process.

The liability of individuals, such as Dominic Ongwen, for despicable conduct toward other human beings, is not a new phenomenon in the domestic criminal justice system. However, the hegemonic nature of states under international law shielded individuals from criminal liability until the ashes of World War II⁴ prompted the reconsideration of individuals as perpetrators of war crimes. Only states could be held responsible in international law and the responsibility of individuals was viewed as a matter of domestic law, even if at times the state could be obliged under international law to enforce such individual responsibility under domestic law. The unity of the state in international law mandated such a solution, and the whole international law system hinged on such a fundamental tenet (Kaufmann 1935, 398). In the same vein, individuals acting under the authority of a state could not be held personally accountable. This principle, characterized as a “principle of public law sanctioned by the usages of all civilized nations” by the US Secretary of State Webster in 1841 during the *McLeod* case, remained a leading reference for shielding from judicial scrutiny states’ organs acting under color of authority (Jennings 1938). In fact, the International Criminal Tribunal for the Former Yugoslavia (ICTY) said in *Blaskic*, “. . . under international law States could not be subject to sanctions akin to those provided for in national criminal justice systems.”⁵ And for centuries there has been an elusive “search” for the “perpetrators” of international crimes.

Due to the nature of international crimes, it is very difficult to distinguish between the numerous participants and label their responsibility accurately. A similar characteristic of the participants of international crimes in comparison to its domestic counterpart is the collective aspects for both the perpetrator and the victims (Akhavan 1998; Fletcher 2002; Fletcher and Weinstein 2002). While the perpetrator of a crime against humanity or international crime is individually culpable, they invariably commit this crime on behalf of or in furtherance of a collective criminal project, whether of a state or some other authority (Sloane 2007). The hypothetical figure of the lone *Génocidaires* rarely exists in practice: The perpetrator is part of, and acts within, a social structure that influences his conduct, in conjunction with other people (Sloane 2007). Similarly, the victims of international crimes are mostly chosen not based on their

4 Some commentators would argue that it was earlier.

5 *Prosecutor v. Tihomir Blaskic*, IT-95-14-T, Final Judgment March 3, 2000. See also ILC Draft Articles, Second Reading (1999).

individual characteristic, but because of their actual or perceived membership of a collective (Drumbl 2005, 571).

For instance, genocide is defined as performing certain acts such as killing or causing serious harm, “with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such” (78 UNTS 277, UN 1948, Article 2). International crimes are also collective in the sense that they are committed with the consciousness on the part of the individual perpetrator that he is part of a common project. While it would be far-fetched to say that there is a “corporate *mens rea*” (Sloane 2007, 58) at work in all international crimes, what can hardly be disputed is that crimes such as crimes against humanity that are committed as a systematic and widespread attack against a civilian population cannot be understood solely in terms of the mental state of each perpetrator. Rather, one must address the social structures and group solidarity that render them possible, as reflected in the intent requirement of international crimes – whether that is based on fear of violence, ethnic hatred, or religious intolerance (Osiel 2009).

A further distinctive aspect of international crimes is that the individual crimes do not deviate from, but conform to, the prevailing social norm (Fletcher 2002, 1541; Tallgren 2002, 575). In this sense, they are indeed “crimes of obedience,” as coined by Kelman: They are acts carried out under explicit instructions from makers of official policy, or at least in an environment in which they are sponsored, expected, or tolerated by them, and which are considered illegal or immoral by the larger community (Kelman 2009, 26, 27). Mark Drumbl uses the terminology of *jus cogen* norms and the basic conception of human decency when speaking of this larger community (Drumbl 2005, 567). This is regardless of whether the crimes are also committed for personal motives or with zeal (Akhavan 2001, 7; Kelman 2009, 27).

No doubt, the perpetrator of an international crime acts within a moral and cultural universe where his actions correspond to the values of the group to which he belongs. He may conceive himself as being in the right and working to prevent injustice, or even in self-defense (Alvarez 1999, 396–397; Drumbl 2000, 1221, 1243, 1245). The victims are transformed into the guilty parties, and the group dynamic is reinforced by a myth of ethnic, religious, racial, or national superiority that is under threat from the victims (Alvarez 1999; Drumbl 2005; Tallgren 2002). This internal constitution of a perpetrator takes place through an active process of identification: “an identity requires an individual actively embracing it. It demands active recognition on behalf

of the individual” (Epstein 2008, 169). Identification in the context of international crimes occurs through the act of articulation, that is, where a perpetrator participates in a series of activities ranging from formulation of a plan, deciding on the mode of its execution, setting up a framework to achieve the intended outcome, and ordering subordinates to ensure its implementation.

This identification process was aptly captured in the judgment of the Nuremberg International Military Tribunal (IMT): “International law violations are not committed by abstract entities but by individuals acting for the state.”⁶ As a result, the IMT Charter provided for individual criminal responsibility for violations of the laws and customs of war, as well as other egregious acts in connection with the war under the rubric of “crimes against humanity.”⁷

In the global construction of perpetrator in the international criminal law regime, the individual criminal responsibility incurred by the perpetrator can be traced to the prohibition of the criminal conduct such as war crimes, crimes against humanity, and acts of genocide, and the inherent authority of International Criminal Law to punish the perpetrator of these crimes, thereby constituting a direct relationship between international law and the individual (Morris and Scharf 1995, 92). Under contemporary international criminal law, the “foundation of criminal responsibility is the principle of personal culpability.”⁸ It has been argued that this “personal culpability” principle draws upon two related notions and presupposes the idea that a person cannot be held criminally liable for acts: (1) perpetrated by other persons or (2) for which s/he did not have the requisite state of intention (Antonio 2003, 136).

Also, the construction of a perpetrator in international law projects a person to be an autonomous individual, whose liability for their actions derives not from their ethical or social relationship to others but from their individual will to action.⁹ This model of individual criminality is

6 “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced” (*Trials of the Major War Criminals before the International Military Tribunal, Nuremberg, 1947*, at 223).

7 IMT Charter, Art. 6(a).

8 Judgment, *Prosecutor v. Tadic*, Case No. IT-94-1-T, ICTY, Appeals Chamber, 1999, para 186

9 This Kantian model of autonomy has been subjected to numerous feminist critiques, most notably those relational critiques drawing upon the work of Carol Gilligan. For an overview of notably these debates, see Graycar and Morgan (1990, 194–195).

reflected in the principle of *nulla poena sine culpa*: that “nobody may be held criminally responsible for acts or transactions in which they have not personally engaged or in some other way participated.”¹⁰ Therefore, to become a perpetrator of international crimes, the individual must consciously will the criminal action. This assumption is reflected both in the *mens rea* requirements of the criminal offences, as well as the incapacity defenses.¹¹ This model of the autonomous moral agent as the subject of criminal liability links the juridical person and the “Kantian, retributive philosophy of punishment” (Norrie 2000, 3). In this Kantian model, the perpetrator’s intentional commission of a wrongful act ties together legal and moral liability.

While there is a presumption in international law that the perpetrator is an autonomous individual who is solely responsible for his/her actions, the individual or collective nature of the legal person of a perpetrator has been a contentious issue (Drumbl 2005). As early as 1942, Kelsen identified the relationship between individual and collective responsibility as a key dilemma in the punishment of war criminals. For him, the doctrinal and normative issues turned on whether individuals could be criminally liable under a legal order founded on the authority of the State, and hence upon the collective responsibility of its members (Kelsen 1943, 534).

However, developments in international law emphasized individual rather than collective criminal liability. For instance, the Genocide Convention imposes responsibility only on individuals, and not on political organizations or other non-natural persons, with the possible exception of states. Also, in 1994, the United Nations Secretary-General’s report on the establishment of the ICTY described the principle of individual criminal responsibility as an “important element” of its competence *ratione personae* and rejected the Nuremberg notion of collective criminal liability based on group membership.¹²

It can be argued that the footprints of collective criminal responsibility have not been totally wiped out from the doctrine and prosecutorial practices of international law. International criminal law does recognize notions of conspiracy, complicity to commit genocide (Van der Wilt

10 Judgment, *Prosecutor v. Tadic*, Case No. IT-94-1-T, ICTY, Appeals Chamber, 1999, para 186.

11 For a discussion of the general principles of the two main categories of excuses under international criminal law: Incapacity and absence of criminal intent, such as duress, see Antonio, *supra* note 34 at 224.

12 UN Doc. S/25704 (May 3, 1993), Report of the Secretary-General pursuant to paragraph 2 of resolution 808 of the Security Council.

2007, 95), co-operation, command theory, and joint criminal enterprise, thereby inculcating individuals who may not have served as the immediate perpetrators of the crimes. As noted by the ICTY in the *Tadic* Appeal Judgment: “most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality.”¹³ The doctrine of joint criminal enterprise, in particular, has been subject to much criticism for introducing a form of collective criminal responsibility and for failing to adequately ascribe the individual responsibility of the accused (Badar 2006; Haan 2005). The construct of these collective modes of participation has been highly contested and remains contentious.

Furthermore, in constructing the perpetrator, international law utilizes the concepts of “human” and “humanity” in framing the perpetrator as an autonomous, willing, and rational actor who can distinguish between right and wrong and posit that a perpetrator of international crimes is an immoral person who chooses to act wrongfully. This was aptly described by Justice Jackson with the argument that: “It is not because they yielded to the normal frailties of human beings that we accuse them. It is their abnormal and inhuman conduct which brings them to this bar.”¹⁴

Subsequent judgments of the International Criminal Tribunals have utilized the concept of humanity in describing the perpetrators’ actions as “inhuman” and “evil.” Constructing the perpetrator as inhuman provides a means of separating the actions of the perpetrator from the values of their society and thereby prevents that sociality from being classified in terms of collective guilt (Norrie 2008). Punishing the perpetrator is therefore based on the idea of “humanity” shared by all people that transcend geographical boundaries or limitations. Grotius argued that the enemy of all mankind “has renounced the ties and laws of nature [and] are subject to attack and punishment by anyone with an interest in maintaining those ties” (Greene 2008, 695). The echoes of this conception of the enemy who has renounced their ties to the community of all persons can be heard in the model doctrine of universal jurisdiction, whereby States are “authorized to prosecute and punish, on behalf of the whole international community” international crimes “with a view to safeguarding *universal values*” (Antonio 2003, 284–285). The perpetrator

13 *Tadic case*, at para 191.

14 Justice Robert Jackson Judgment, *Trial of the Major War Criminals before the International Military Tribunal*, Nürnberg, IMT, November 14, 1945–October 1946, V. 1 (1947).

is then constructed and projected as breaching the fundamental obligations owed to all humanity, in that his criminal actions repudiate the universal social contract between all humans.

Paradoxically, a perpetrator is constructed as inhuman in terms of his capacity for evil while at the same time cast as a human in terms of being an autonomous and willing agent who can be held responsible for his actions (Arendt 1963). International law resolves this problematic position of the perpetrator by reinscribing them within the universal community of mankind. International law constitutes the perpetrator's action as inhuman, but the perpetrator is not thereby rendered an exception to the international legal regime. Rather, international law's system of punishment is designed precisely "to rehabilitate the person/perpetrator, remove the infection of inhumanity, and heal the body politic by reintegrating the perpetrator through the performance of a (period of) punishment" (Anonymous, cited in Campbell 2011). However, this reintegrative resolution of the inhumanity of the perpetrator's actions operates not just by subjecting the individual lawlessness of the perpetrator to rule of law. Instead, it invokes universal ethical norms of all humanity to replace group violence within the legal regulation and to recreate the sociality destroyed by that violence (Campbell 2004).

From the foregoing analysis of the difficulties in constructing the perpetrator in international law, it is glaringly obvious that there are deeper conceptual problems with the different notions of the perpetrator, especially that of child soldiering which Dominic Ongwen typifies. For instance, Kantian "orthodox subjectivism" separates individuals from "the broader social and moral context within the law" (Norrie 2000). Subsequently, the principles of international law separate the responsibility of the perpetrator from the social context of their action and agency. However, maintaining the separation between legal responsibility and social realities in the context of international crimes, especially in the situation in Northern Uganda, which usually involves collective norms and actions, is very difficult to sustain, and this is the core of the dilemma in constructing a victim or a perpetrator in societies emerging from deep complexities of armed conflicts, and massive violations of human rights, such as Uganda.

Most commentators and those victimized by violence in Northern Uganda have strongly argued that child soldiers like Dominic Ongwen who commit extraordinary international crimes are forced by commanders and, hence, operate under extreme duress. They insist that they are incapacitated by use of narcotics and alcohol; they are brainwashed and

(re)socialized by the endemic violence that swallowed them, and they are plagued by the fears of brutal punishment. Therefore, moral responsibility for committing these grievous crimes should be excused (Drumbl 2012, 15). While such claims of duress might be true, Benjamin Gumpert, the Senior Trial Lawyer prosecuting Dominic Ongwen at the ICC, argued that Dominic Ongwen having suffered victimization in the past is not a justification or an excuse to victimize others and that the ICC should rather focus on if he is guilty of the serious crimes he committed as an adult in Northern Uganda, instead of focusing on the morality of Dominic Ongwen's goodness or badness and if he deserves sympathy or not. This (re)casting of Dominic Ongwen as a perpetrator symbolizes international criminal justice representational iconography of guilty or not guilty, and finality.

Notwithstanding how international criminal law frames a victim or a perpetrator, our research has shown that Ugandans seriously wrestle with Dominic Ongwen's dual victim/perpetrator status, leading to initial debates on whether he should be prosecuted or not, and if convicting him for the alleged crimes will produce meaningful justice to the people in Northern Uganda who have experienced mass violence at the hands of the LRA.¹⁵ The stakes are very high for both the affected constituents and for the legitimacy of the international criminal justice project. On one hand, some Ugandans have argued that the LRA leadership, particularly Joseph Kony, who ordered Ongwen's abduction, should be responsible for Ongwen's crimes and that the ICC should devote its energy and resources in prosecuting Joseph Kony, and set Dominic Ongwen free. On the other hand, some Ugandans argued that Dominic Ongwen, like other abductees, reached an adult age where he ought to have made a decision to quit the LRA and he must be held accountable for the crimes he committed as an adult (Refugee Law Project 2015, 6). This re-echoes the ICC key motif for seeking to hold Dominic Ongwen individually accountable. Indeed, the Trial Chamber of the International Criminal Court in her judgment rejected the idea that Dominic Ongwen suffered from a mental defect which made it difficult for him to quit the LRA. Instead, the Trial Chambers held that Dominic Ongwen was a methodical commander who could have escaped from the LRA if he wanted, but he chose not to do so (*The Prosecutor v. Dominic Ongwen [Trial Judgment]* 2021).

15 (Refugee Law Project 2015). Also see Stauffer's (2020) arguments on this issue and also Baines (2008).

The underlying assumption of the doctrine of responsibility in international law is that the responsible agent is free, committing a deed without restraint or compulsion, knowingly, and deliberately. The ICC charges against Dominic Ongwen therefore focus on his individual criminal responsibility, distinct from that of his Commander – Joseph Kony. Attributing responsibility for crime becomes difficult in situations in which the actions normally known to be a crime are committed by agents whose freedom to control their actions or whose capacity to make fully informed and reasoned decisions are debatable – that is, the case with Dominic Ongwen. Generally, in cases in which serious criminal acts are committed and it can be proven that the act was unintentional or that the agent did not have the mental capacity to understand the nature and consequences of the act, the agent is often rightly exonerated or excused of responsibility because he or she lacked the necessary *mens rea* or intentionality. Intention is a key element in determining if a crime was committed or not and is the difference between charges of murder or manslaughter, or between a conviction for acting with malice, for negligent homicide, or exoneration for acting out of justified self-defense. Determining mental capacity for Dominic Ongwen in the violence committed by the LRA in Northern Uganda is problematic and the Trial Chambers of the International Criminal Court wrestled with it and found that Dominic Ongwen did not suffer a mental disease or defect. The Trial Chambers held that Dominic Ongwen was a methodological commander, with full mental capacity in place, and that the trauma he suffered when he was captured as a 9-year-old did not lead to a mental disease or defect and therefore had no lasting consequences on him (*The Prosecutor v. Dominic Ongwen (Trial Judgment)* 2021).

Furthermore, child soldiers and the contexts in which they usually operate present a challenge to conceptualizing responsibility with a number of factors that can each separately be seen to diminish individual responsibility. Coercion, a feature in the lives of a majority of child soldiers in LRA's custody, is a condition that is quite aptly regarded as diminishing or absolving personal responsibility for actions if a reasonable person could be understood to see no alternative to committing the criminal act when faced with a serious and credible threat. That has been the central argument canvassed by Dominic Ongwen's legal defense team and was rejected by the Trial Chambers of the ICC.

The fact that an act was committed as part of collective wrongdoing rather than against a backdrop of a well-ordered and peaceful environment also affects how acts of atrocity and their perpetrators ought to be

judged. Collective action seen as a diminishing factor is not grounded in general domestic criminal law principles – indeed, domestically, the fact that action is committed as part of collective wrongdoing can be considered an aggravating factor, such as in regards to gang participation – but takes on a different meaning when the collective action is widespread and systematically part of the contemporary social order. The mitigating condition of collective action, given too little attention in debates of international criminal law, is particularly significant to a discussion about child soldiers because young people, as a category, are arguably inherently more easily influenced by social norms and pressure (Fisher 2013, 63).

Given that these three factors exist in combination for many child soldiers, it is critical to discuss the personal responsibility of young contributors in the context of these heinous atrocities. This dilemma was captured in the mandate of the Special Court for Sierra Leone to try “persons most responsible.” This term is meant to include political and military leadership, as well as people selected due to “a sense of the gravity, seriousness or massive scale of the crime(s) committed.”¹⁶ The former Secretary-General of the United Nations – Kofi Annan – made it clear that the term “most responsible” need not exclude children between 15 and 18 years old, noting that the severity of the crimes they have committed qualifies them to be under the jurisdiction of the court. The Court’s jurisdiction over child soldiers was the most contentious aspect of the report. The Secretary-General recognized that “the possible prosecution of children for crimes against humanity and war crimes presents a difficult moral dilemma.”¹⁷

Despite the widespread use of child soldiering, which could be said to be a phenomenon that gained momentum in the 1970s, the issue of child soldiers, for the most part, was overlooked by the main texts in the laws of armed conflicts. The Geneva Conventions focused on children as civilians and not as combatants. While children are not specifically included in the special protection provision,¹⁸ multiple references to

16 See the Report of the Secretary General on the establishment of a Special Court for Sierra Leone, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf>, at 7, last accessed December 31, 2016.

17 Ibid.

18 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949 [Hereafter ‘Fourth Geneva Convention’], Article 16: “The wounded and the sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.”

children throughout the articles¹⁹ ensure their inclusion, however implicit. In all the Geneva Conventions, no definition of “child” or “children” is given, but in a number of articles an age limit of fifteen is specified²⁰ and the implication seems to be that for the purposes of the Convention a child is a person under fifteen years of age. Children under fifteen years of age who participate in hostilities are not necessarily “unprivileged belligerents.”²¹ Age is not the criteria used to determine their status, rather the same criteria used to determine whether any other persons are entitled to participate directly in hostilities or not. Children under the age of fifteen years are not prohibited from participating in hostilities, as are civilians²² or mercenaries,²³ although, if they fulfil the relevant criteria, children may be civilians or mercenaries or members of some other group of unprivileged belligerents, such as spies, whose activities, although not amounting to direct participation in hostilities, render them liable to punishment under the domestic law of an adverse party. However, a child cannot be punished simply for having borne arms in an international armed conflict (Happold 2005).

There seems to be an emerging international legal consensus that fifteen years is the determinative age for criminal responsibility for recruiting child soldiers, though the Rome Statute did not specifically address the culpability of child soldiers for war crimes. Pursuant to the Rome Statute of the International Criminal Court, it is a war crime for any national army or other armed groups to conscript or enlist children under the age of fifteen, or to use these children to actively participate in hostilities.²⁴ Similarly, the Statute of the Special Court for

19 Specifically Articles 14, 15, 17, 23, 24, 38, 50, 51, 82, and 89. Article 14 provides for “safe spaces” for children; Article 17 provides for the evacuation of children from war-torn areas; Article 50 provides for the proper identification of children.

20 See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

21 For a description of the distinction, see Baxter (1951) and Draper (1971).

22 Who lose their protected civilian status if they directly participate in hostilities and who may, subject to the limitations imposed on an occupying power in GC IV, be punished for doing so under that party’s municipal law.

23 Who, under Article 45 of AP I, are not granted POW status on falling into the power of an adverse party and may similarly be punished for their activities. The customary status of this provision has, however, been doubted.

24 Rome Statute of the International Criminal Court, art. 8(2)(b)(xxvi), July 17, 1998, 2187 U.N.T.S. 90. Article 8(2)(b)(xxvi), relating to international conflicts, prohibits “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.” Id. Article 8(2)(e)(vii), relating to conflicts not of an international character, prohibits “conscripting or enlisting

Sierra Leone criminalizes the recruitment of child soldiers below age fifteen.²⁵

Apart from the prosecution of Dominic Ongwen, humanitarian and human rights groups were successful in preventing the prosecution of any child soldier under age eighteen (Grossman 2007, 358). The Rome Statute does not have jurisdiction over war crimes committed by anyone under the age of eighteen years.²⁶ In Sierra Leone, where both sides to the civil war used child soldiers extensively and many of these children committed terrible war crimes, the prosecutor of the Special Court declined to prosecute any person below the age of eighteen, even though the Statute of the Special Court allows for the prosecution of persons between the ages of fifteen and eighteen years; but if the child soldiers were convicted, they could not be imprisoned.²⁷

Other than Sierra Leone, the Court of the UN Transitional Administration in East Timor (“UNTAET”) was authorized to try offences committed by minors between ages twelve and eighteen. Under the Court’s rules of criminal procedure, minors between twelve and sixteen years of age were liable to prosecution for criminal offences in accordance with UNTAET regulations on juvenile justice. However, they could only be prosecuted for the most serious offences, such as murder, rape, or a crime of violence in which serious injury is inflicted upon a victim.²⁸ Minors over sixteen years of age were subject to prosecution under adult rules of criminal procedure. However, in accordance with the CRC, this was mandated to safeguard the rights of minors

children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.” Id. art. 8(2)(e)(vii).

25 Statute of the Special Court for Sierra Leone, art. 4(c), January 16, 2002, 2178 U.N.T.S. 145. Article 4(c) prohibits “[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.”

26 Rome Statute of the International Criminal Court, art. 26, July 17, 1998, 2187 U.N.T.S. 90.

27 In testifying, Special Court Prosecutor David Crane stated, “when I was the chief prosecutor at the International War Crimes Tribunal in Sierra Leone, I chose not to prosecute child soldiers, as it is my opinion that no child under the age of 15 can commit a war crime.” Subcomm. on Int’l Hum. Rts. Of the Standing Comm. on Foreign Affairs and Int’l Development, 2d Sess., 39th Can. Parl., I (May 13, 2008), available at www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3494571&Language=E&Mode=2&Parl=39&Ses=2, last assessed December 14, 2015. In fact, he declined to prosecute anyone between fifteen and eighteen as well.

28 Transitional R. CRIM. P. § 45.1, U.N. Do. UNTAET/REG/2000/30 (September 25, 2000).

and to consider their status as juveniles in every decision made in a case.²⁹

In the domestic criminal forum, child protectionism initiatives did not gain more traction unlike in the international criminal forum. In the wake of the 9/11 attacks, the United States of America held at least twelve juveniles at Guantanamo Bay, Cuba (Worthington 2008). These twelve juveniles included Omar Khadr, a fifteen-year-old child soldier, which was widely publicized. Khadr was captured and detained as an unlawful combatant after a firefight with American troops in Afghanistan which led to the death of an American soldier. Khadr was quickly classified as an unlawful combatant, was charged with murder and attempted murder under the Military Commissions Act,³⁰ and spent nearly 13 years in detention. The Military Commissions Act provides for the death penalty in cases like that of Khadr.³¹ Since the US did not ratify the Protocols Additional I and II to the Geneva Conventions, Khadr's only legal protections were under Common Article 3 of the Conventions. Common Article 3 does not preclude the death penalty for child soldiers classified as unlawful combatants. Because Khadr is a Canadian citizen, however, the Canadian government successfully pressured the US not to pursue the death penalty in this case.³²

In 2002, the Ugandan government brought treason charges against two boys, aged fourteen and sixteen, who were members of the LRA (Human Rights Watch 2003). In a letter to the Ugandan Minister of Justice, Human Rights Watch urged that the government drop the treason charges and release the boys to a rehabilitation center (Human Rights Watch 2003). Human Rights Watch also requested that the government issue a public statement that children would not be subject to treason charges (Human Rights Watch 2003). The Ugandan government decided not to proceed in these cases, neither did the government establish a national policy. However, in 2009, the Ugandan government charged another child soldier with treason (Human Rights Watch 2009); he was a child who, according to Human Rights Watch, was abducted at

29 *Ibid.*, § 45.4

30 Military Commissions Act of 2006, Pub. L. No. 109-366, §948(a), 120 Stat. 2600, 2601 (2006).

31 *Ibid.*, § 948(d) ("A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.").

32 See Farley (2007) and Happold (2008).

age nine by the rebel forces of the Allied Democratic Front and was arrested at age fifteen (Human Rights Watch 2009).

From these discussions, acquiring the label of victim or perpetrator in international law and policy, and how and when this occurs, depends not only on the attributes of victims themselves but also on the reactions of states who might prosecute them (Holstein and Miller 1990; Rock 1994). However embedded, perceptions of the victim status of child soldiers remain somewhat contingent upon the nationality of those persons injured by their conduct. Child soldiers who commit violence – for example, terrorist attacks – against Western targets are seen less like deluded children and more like menacing adults (Drumbl 2012, 3).

3.4 Constructing the “Ideal Victim” in the Context of the Violence in Northern Uganda

The “ideal victim” is the representation of society’s view of what a victim should be. The ideal victim reflects a common conception of a person who is innocent, vulnerable, very young or a woman, and a good citizen who has been attacked by a big, bad perpetrator. The society’s construction of the “ideal victim” serves to contrast the “wicked” perpetrator who requires punishment and fits into retributive discourses, simplifying and distorting the reality of crimes where such identities do not always exist in practice (McEvoy and McConnachie 2013, 502). Furthermore, the construction of the “ideal” victim serves to present victims as passive and vulnerable (McAlinden 2014, 22). This conception robs victims of their autonomy and agency and, following Miriam Ticktin (2020), it emphasizes innocence rather than culpability.

The ideal victim construction as “innocent” is widely disseminated by the media and plays an important role in the constant staging of good against evil (Elias 1983, 1986, 1993; McShane and Williams 1992; Viano 1992). This construction has influenced not only public opinion but also the law. For instance, German victim compensation law allowed compensation only to victims of violence who had satisfactorily cooperated with the police and who had not been involved in any reprehensible activities (Tampe 1992, 188–189). The use of the victim label within conflict and post-conflict societies can perpetuate a very powerful moral conception of the victim. Participants in conflicts can portray themselves as collective victims to get recognition of the victim label and its corollary benefits of being seen as the “good guys” in the conflict who are deserving of sympathy and support, and innocent of any crime (Bar-Tal et al.

2009). There is also a danger of “moral relativism,” particularly with international crimes, whereby an individual or group blame their situation, context, or structural factors for committing such crimes, and as a result legitimize the violence committed against individuals and deny recognition of certain victims (McEvoy and McConnachie 2013, 502).

In the context of the massive violence in societies such as Northern Uganda, the baseline argument for framing child soldiers as “ideal victims” is principally based on an argument that the society failed to protect them from being abducted by the LRA, and the notion of child soldiers as victims is fundamentally dependent on the idea that children are “the weakest members of society and thus entitled for special protection”(Vaha 2008, 13). However, this is not without some controversies. Some argue that if child soldiers are not legally responsible before age 18, children are morally responsible (Vaha 2008, 18). Brocklehurst concurs, articulating that focusing on child soldiers as only victims strips them of their agency as moral and political beings (Vaha 2008, 18). Sometimes, child soldiers choose to willfully “suppress their morality to survive or gain a sense of power and control over their lives” (Baines 2009, 178). Some former child soldiers recall going on “autopilot” or “outside of their bodies” when forced to kill; others recall committing atrocities because they were curious if it would “appease spirits,” as they were told by their commanders (Baines and Ojok 2008, 15).

The innocence and the vulnerability of the child soldiers are the dominant themes in the contemporary humanitarian discourse on child soldiering and their victimhood. These contemporary social, political, and legal constructions of victimhood status of child soldiers tend to criminalize particular military campaigns. The image of the child as created and burnished by international humanitarian groups, agencies of the United Nations, and the emanating international law policies are heavily premised on the omnipresent predatory adult recruiter, and this characterization is targeted particularly at rebels and insurgents – the armed groups that are most reliant on child soldiers whose military activities are thus vilified.

In advancing this claim, it is frequently argued in a contradictory manner that children under the age of eighteen associated with rebels and insurgent groups were either abducted or conscripted through force or threats of serious imminent injury; or the child soldiers joined the insurgent groups as a means of survival; or they were born into the insurgent group. In this discourse, it is vigorously advanced that no child soldiers have the capacity to volunteer or to consent to serve with rebel or

insurgents. Child soldiers are not capable of exercising any real measure of choice about recruitment and, therefore, volunteering is merely an illusion (Hart 2006, 7).

The dominant explanatory account is that child soldiers, like Dominic Ongwen, who commit extraordinary international crimes are forced by commanders and, hence, operate under extreme duress; they are incapacitated by use of narcotics and alcohol; they are brainwashed and (re)socialized by the endemic violence that swallowed them, and they are plagued by the fears of brutal punishment. Therefore, moral responsibility should be excused for committing these grievous crimes (Drumbl 2012, 15).

The LRA is tagged as a deranged militia that steals innocent children from their families and communities. And in the hands of the LRA, abducted children are no more than “instruments of war” and “the weapon of choice” (Otunnu 1999). In this explanatory account, child soldiers are constructed as victims, albeit *faultless, passive victims*. In the barest caricature of this imagery, child soldiers or children associated with armed forces are depicted as pawns of powerful warlords. Child soldiers are constructed as “traumatized children,” “permanently scarred,” “lost young souls,” and are generally cast as wholly dependent, helpless, and victimized, therefore deserving not condemnation but our deep compassion and sympathy (Denov 2010, 8). Dominic Ongwen’s early life experience would fit this explanatory account well. He was abducted at an early age and was “brainwashed.” In the opening statement of the Prosecutor in the case against Dominic Ongwen, Ongwen was characterized as a sadistic leader of the LRA who ruthlessly implemented the rebel’s group policy of abducting children to use as labor, soldiers, or sex slaves. Of course, the “victimhood” of Ongwen was not raised by the Prosecutor in her opening statement and the Trial Chambers of the ICC in her judgment ignored his victimhood by making a clean break between his victimhood when he was abducted as a young boy and his perpetration of international crimes as an adult. In fact, the Trial Chambers recognized Dominic Ongwen’s suffering while in captivity as a child and youth but at the same glossed over the impact of captivity on him by dismissing its legal relevance, stating that “this case is about crimes committed by Dominic Ongwen as a fully responsible adult and as a commander of the LRA in his mid to late twenties” (*The Prosecutor v. Dominic Ongwen [Trial Judgment]* 2021)

The preceding narrative on child soldiering demands further interrogation. We also note that the vast majority of child soldiers are not

forcibly recruited or abducted into rebel/insurgent groups. Some child soldiers may join rebel or insurgent groups for reasons ranging from economic advancement, the pursuit of political or ideological reforms, to inclusion in occupational networks. In Liberia, children were among the first to join the armed groups and in the Palestinian intifada they have been the catalysts of violence (Cohen and Goodwin-Gill 1994, 23). The experiences of child soldiers contrast sharply with the international legal imagination as carefully crafted, packaged, and advanced by humanitarian organizations. In many interviews conducted by social scientists, former child soldiers often said that they volunteered for service, yet these statements are usually excluded by interviewers because they do not fit the pre-existing theory on child soldiering (Drumbl 2013, 133). Even the Machel report argues that not all children in combat should be seen merely as victims (Machel et al. 1996, 2). Indeed, perhaps for children, as well as adults, it may be true that the “least dangerous place to be in a war today is in the military” (Nordstrom 1992, 271).

The relatively few published studies with current and former child soldiers carried out by anthropologists in the field argue that the experience of children at war has little connection with the depictions in the humanitarian literature. For instance, Paul Richards’s interviews with male and female child combatants in Sierra Leone show that “many under-age combatants choose to fight with their eyes open, and defend their choice, sometimes proudly. Set against a background of destroyed families and failed educational systems, militia activity offers young people a chance to make their way in the world.” Krijn Peters and Paul Richards further argue that, given these circumstances, child soldiers should be seen as “rational human actors” who have a “surprisingly mature understanding of their predicament” (Peters and Richards 1998).

Despite different attempts by different interest groups to portray one or other of a few fairly uniform depictions of child soldiering, the concept and the individual experiences of child soldiers are far from being consistent or standardized. The manner of recruitment, the level of identification with the cause and the fighting group, and what it means to be a child soldier differs drastically from context to context and from individual to individual within the same environment (Fisher 2013, 18). Therefore, no simple model can account for the presence of children on the battlefield or the conditions under which they fight. The specifics of history and culture shape the lives of children and youth during peace

and war, creating many different kinds of childhood and many different kinds of child soldiers (Rosen 2005, 132).

The construct of a perpetrator and a victim in international law therefore draws from the notion of belonging to a group or acting individually and being a direct victim or indirect victim as envisaged by the institutional norms. However, these different categorizations do not resolve the deep problem that characterizes international criminal law – that of protecting victims and punishing perpetrators.

3.5 The Constructive Tension in the Victim–Perpetrator Dichotomy in Northern Uganda

In the context of mass violence, victims and perpetrators are usually framed as two completely separate and distinct groups of people. Generally, there are the victims and there are the perpetrators with no grey areas in between. Also inherent in this narrative is the assumption that both groups are homogeneous: Victims and perpetrators are referred to as if they are all the same. *The* victims and *The* perpetrators. Further, in the worst cases, the two are set up as diametrically opposed – that is, victims versus perpetrators (Borer 2003). This has especially been the case in the debate surrounding amnesty in Northern Uganda and other societies emerging from conflicts. However, what may be considered a factor of victimhood in Northern Uganda also possesses elements of perpetrator-hood, and vice-versa; the categories overlap, revealing the impossibility of distinctly framing former LRA members into the social constructs of “victim” and “perpetrator,” and these factors demonstrate the complexity of former child soldiers abducted by the LRA in Northern Uganda.

The divide between a “victim” and a “perpetrator” is sometimes blurred when individuals are forced to comply and commit certain crimes under a direct threat. For instance, new abductees of the LRA have to go through an initiation and spiritual rituals where they are forced to kill, maim, and inflict violence on a friend or family member and fellow abductees who attempted to flee (Wessells 2006, 14), to prove their loyalty to Kony and, in the process, they become desensitized to atrocities and normalize LRA’s violent tactics. The penalty for not doing so was often that they themselves were raped, mutilated, or killed. Testimonial evidence shows that many abductees who did not comply with such orders were killed. The initiation process is intended to perpetuate fear among the abductees and reinforce the importance of

obedience (Boothby 2006, 248; Schauer and Elbert 2010, 321–322). After undergoing this initiation process, some child soldiers stated how violence became “normal” and even “arousing” as they acclimated to their environment (Hermenau et al. 2013, 2).

Beyond the initiation process, abductees are equally brainwashed by the LRA to support its ideologies. Most brainwashing occurred during prayer time and is laced with references to the Holy Spirit by Joseph Kony. Most LRA members believed that Joseph Kony was possessed with evil spirits which protected him and enabled him to accurately predict the future. Since most new abductees were children, brainwashing was more effective, and unwilling abductees were transformed into eager fighters who believed that every command from Joseph Kony was divinely inspired and must be immediately obeyed.

The complexity of the victimhood or perpetrator-hood of child soldiers come to the fore when tracked by the time spent in and their dedication to an army or an insurgent group. In a survey of child soldiers abducted into Mozambique’s rebel group Renamo, all the child soldiers who had been in the rebel group for less than six months identified themselves as “victims” rather than “members” of the rebel group, whereas those who had spent more than a year with the rebel group tended to identify more with the group itself. The second group of children expressed pride in their rank and power in the rebel group (Boothby 2006, 249–250). However, the idea of a chronological progression of child soldiers from victims to perpetrators has been critiqued. Such linear progress does not fully represent the complex, intertwined, and mutually reinforcing acts of violence of which they were both victims and perpetrators (Baines 2009, 16).

A nuanced view ought to be taken to Dominic Ongwen, as the Government of Uganda and the international community failed to protect him and an estimated 60,000 others during the LRA war in Northern Uganda. Dominic Ongwen’s indoctrination and mistreatment during captivity was a punishment in itself and can be seen as double jeopardy for the ICC to further punish him after being a former child soldier (Refugee Law Project 2015, 10). Bishop Mark Baker Ochola II framed the double jeopardy argument this way: “Ongwen is a victim of circumstances; so if the world wants to punish him twice, then that is another injustice. What we know is that when LRA abducts a child, the first thing they do to that child is to destroy his/her humanity so that he/she becomes a killing machine in the hands of the LRA” (Refugee Law Project 2015, 10–11). During the sentencing hearing, Dominic Ongwen

spoke extensively for more than one hour where he gave chilling accounts of how he was made to kill people, drank human blood, was forced to commit inhumane acts while a minor, and the life changing consequence on him. Yet, the ICC judgment failed to deal with the impact of trauma and Dominic's "loss of humanity," and instead found him not to be damaged and that immediately he turned eighteen he had the agency to decide what is morally right from what is morally wrong, including choosing not to escape like other abductees (*The Prosecutor v. Dominic Ongwen [Trial Judgment]* 2021).

Most LRA abductees, including Dominic Ongwen, lived in captivity under daily threats and scare tactics and, in the process, they were transformed into unwilling perpetrators who committed crimes to live (Fox 2016, 34). While some may have chosen to be martyrs by confronting the LRA leadership or attempted to flee and sacrificed their lives for their morals, a vast majority, who are victims of constrained choices, succumbed to LRA's threats and remained behind in the jungle committing more heinous crimes (Fox 2016, 34).

The local communities in Northern Uganda affected by LRA's atrocities are also implicated in the construction of the complex victimhood and perpetrator-hood of child soldiers including Dominic Ongwen. Importantly, most of the local communities lost their children to LRA's abduction, and these children are now weaponized to harm them. Their construction of the victimhood of the abducted children constantly shifts depending on the political interest at stake. During the conflict, when the paramount need was peace, most local communities constructed LRA members solely as victims with the belief that amnesty for LRA members would lead to peace (Agger 2012, 1; Baines 2009, 10). Now in peacetime, the affected local communities offered a nuanced view on the complexity of the LRA members.

Members of local communities are conflicted on how to frame the status of children "born in the bush" or those who came of age there. Opinions are sharply divided on their victimhood or perpetrator-hood status. Some believed that this category of child soldiers are victims as their existence in the bush was through no fault of their own (Fox 2016, 49), while others are unwilling to consider the complexity of children born in the bush but firmly believe that those born in the bush are nothing but a perpetrator of the highest level because they know nothing beyond a life of violence (Fox 2016, 49).

The local construction of the victimhood or perpetrator-hood of Dominic Ongwen is complicated and reflects each community's unique

relationship to him. For instance, the community members in Lukodi – the direct targets of Ongwen’s alleged crimes – see him as a perpetrator and nothing more (Fox 2016, 51). The Lukodi community members were also promised reparations if Dominic Ongwen was convicted at the International Criminal Court. For the Lukodi community members, healing, forgiveness, and justice will be achieved if Dominic Ongwen is convicted by the ICC. Whereas, for members of the Tyena Kaya there exist personal stakes in the prosecution of Ongwen at the ICC, as many see his complexity uninhibited by a self-interested social construction (Fox 2016, 52).

In the discourse on the complexity of victimhood or perpetrator-hood of child soldiers in Northern Uganda is the invisibility of girl child soldiers. Despite their seeming invisibility, girls are currently used in fighting forces far more widely than is reported. Between 1990 and 2003, girl child soldiers were associated with fighting forces in fifty-five countries and were active in conflicts in thirty-eight countries around the globe (McKay and Mazurana 2004). While girl child soldiers appear to be present most often in armed opposition groups, paramilitaries, and militia, they are also present in government forces. These females continue to be involved in fighting in forces in Central African Republic, Chad, Colombia, Cote d’Ivoire, the Democratic Republic of the Congo, Nepal, Philippines, Sri Lanka, and Uganda (Child Soldiers International 2008). While the proportion of females in armed groups and forces varies according to geographic region, it generally ranges from 10 to 30 percent of all combatants (Bouta 2005). In recent conflicts in Africa, girls are said to have comprised 30–40 percent of all child combatants (Mazurana et al. 2002, 105).

Girl child soldiers in armed conflicts deploy a variety of strategies to protect themselves and negotiate their security while associated with fighting forces. Such strategies include the use of small arms, through “marriages” to powerful commanders, through the perpetration of severe acts of violence, or through subtle and bold acts of resistance (Denov 2004, 15). These strategies challenge the common views that female child soldiers are mere victims of conflict and instead demonstrate girl child soldiers’ unique capacity for agency, resourcefulness, and resilience. Further, because they live in a culture of violence, girl child soldiers, through a combination of indoctrination, terror, de-sensitization, and military training, often become active participants in conflicts (Denov and Maclure 2006, 73). It has been argued that girl child soldiers are sometimes simultaneously victims and perpetrator and continually drift

between committing acts of violence and being victims of violence perpetrated by others. As a result of the complexities of their experience, they sometimes embrace the power of being a perpetrator and the rewards associated with their violent actions through extreme acts of violence which seem to ensure the girl child soldiers' survival, reducing their own victimization, and at times assuring them a higher status in the military ranks (Denov 2004, 15).

Despite the historical account of girl child soldiers participating in military activities, in current discussions and analyses of armed conflicts, the invisibility of girls has remained firmly intact. Girls' experiences of war have accounted for "the smallest percentage of scholarly and popular work on social and political violence" (Nordstrom 1997, 5) and the diverse roles girls play both during and following the war have been barely acknowledged (Coulter 2008; Denov and Maclure 2006; Fox 2004; Keairns 2003; McKay and Mazurana 2004; Park 2006; Schroven 2006; Veale 2003). Indeed, officials, governments, and national and international bodies frequently cover-up, overlook, or refuse to recognize girls' presence, needs, and rights during and following armed conflicts (McKay and Mazurana 2004).

Even when girls within armed groups are analyzed, whether in the realms of academia, policy, or the media, there has been a tendency for them to be depicted predominantly as silent victims, particularly as "wives," in tangential supporting roles, and as victims of sexual slavery (Coulter 2008). While these gendered portrayals undoubtedly represent the experiences of some war-affected girls, to characterize girls solely as victims of sexual violence and/or "wives" presents a distorted picture of their lived realities. Moreover, although highlighting girls' victimization is critical to advancing the understanding of girls' experiences of armed conflicts and the profound insecurities, human rights abuses, as well as the challenges they face both during and following armed conflicts, a danger is that girls become personified as voiceless victims, often devoid of agency, moral conscience and economic potentials (Denov 2010, 13).

No doubt, the reliance on fixed imagery reveals the limitation of adequately capturing the complexity of girls' and boys' involvement in armed conflicts. Furthermore, the dynamic of abstracting children from their historical, cultural, and political location, as already inscribed within dominant ideologies and cultural representations of childhood, is unhelpfully reproduced in international law and policy discourse.

As our analysis has shown, there has been a muddying of the waters in the divide between the two concepts and we argue that the current binary divide provides critical challenges for international law scholars and

theorists. Also, these two categories of persons are highly problematic for countries that have been battered by years of armed conflicts or authoritarian regimes, and policies toward these two categories are difficult to determine and sometimes constitute constraints on the formulation and implementation of peace agreements regarding amnesty, accountability, memorialization, etc. It can be argued that the crux of divergence in peace settlements is the question of how to deal with victims and perpetrators, which is important in the negotiations leading up to a successful peace process, and international law has not offered any concrete solution other than the binary approach to the concepts.

3.6 Conclusion

The culpability of child soldiers for their actions has been highly debated: Should they be responsible or simply seen as innocent tools of their superiors. A very important question to be asked is where the line between childhood and adulthood starts and how the international criminal justice project locates that line. But it is also to what extent the responsibility of the state to protect Ongwen renders his situation one in which he has already served his punishment.

It is clear that child soldiers are problematically constructed through the logic of extremes – either as extreme victims, extreme perpetrators, or extreme heroes. This chapter has problematized the concepts of victims and perpetrators in Northern Uganda with a focus on Dominic Ongwen. No doubt, Ongwen's trial and subsequent conviction at the International Criminal Court raises vexing justice questions which we have explored in this chapter. It may be easier and more gratifying for international law criminal lawyers and scholars to think in terms of absolutes rather than in many shades of grey. However, this case study shows that most victimization, particularly the victimization of child soldiers, is rarely a simple process with only discreet, easily recognizable perpetrators and victims. The categorization of these two notions remains much more complex and contested than is typically acknowledged. In many ways, the imposition of an either/or framework can be the source of an epistemic violence that problematically rests on the ability to produce a clear victim/perpetrator dichotomy. Instead, their experiences and identities fall within the messy, ambiguous, and paradoxical zones of all three sides of that triangle, which proves to be one of the challenging aspects to contend with in rebuilding their lives after armed conflicts. Therefore, nuances and complexities must be brought to the narratives of victimization in the international criminal justice project because these narratives

matter in shaping the afterlife of violence, the world in which people must continue to live and deserve to thrive.

Crucial to this discourse is how international criminal justice produces extremely polarized outcomes depending on where one is located. Does international law need to be more nuanced to capture the complexity that is inherent in situations of political violence? If “truth” is the first casualty of war, then complexity must surely be the second (Smyth 1998, 45). Ongwen represents the complex status of many other child soldiers like him: young boys and girls who grew up in insurgent groups and assumed command positions, perpetuating the same crimes of which they are victims. Unfortunately, none of their unique statuses are recognized in current international criminal justice debates, yet they occupy a center stage in justice pursuits that, if they are excluded, might have far-reaching repercussions for the next generation of perpetrators – generations who have nothing to lose from participating in armed conflicts. Thus, recognizing their complex status opens up room for identification of others. This includes children born of rape who have been raised within insurgent groups and who are now child soldiers who carry out gruesome attacks on others.

Dominic Ongwen is not and should not be treated as a case of one person in one exceptional circumstance, but rather an illustration of the moral complexities imbued in the “victimhood” of child soldiers. In enhancing the legitimacy of the international criminal justice project, a contextual based discussion of how the victimization of child soldiers occurs will potentially reveal that victim or perpetrator status of child soldiers is not a useful organizing rubric. Rather, an approach that balances the political context of violence and failure of the state to protect its citizens alongside the agency of an individual’s acts is a more useful entry point into how we consider questions of responsibility. Ultimately, the communities in question should be central to the deliberation of categories, contexts, and moral compasses used to determine how to understand who should bear responsibility and how that should be determined. This is where international criminal law needs creative solutions that take into account the way that histories of violence are much bigger than measuring the capacity of individuals to act and their individualized culpability.

References

- Agger, K. *The End of Amnesty in Uganda: Implications for LRA Defections*. Gulu, Uganda: Enough Project, 2012.

- Akhavan, P. "Beyond impunity: Can international criminal justice prevent future atrocities?" *The American Journal of International Law* 95, 1 (2001): 7–31.
- "Justice in The Hague, peace in the former Yugoslavia." *Human Rights Quarterly* 20, 4 (1998): 737–741.
- Alvarez, J. E. "Crimes of State/crimes of hate: Lessons from Rwanda." *Yale Journal of International Law* 24, 2 (1999): 365–484.
- Antonio, C. *International Criminal Law*. Oxford: Oxford University Press, 2003.
- Arendt, H. *Eichmann in Jerusalem*. New York: Penguin, 1963.
- Badar, M. E. "'Just convict everyone!': Joint perpetration: From Tadic to Stakic and back again." *International Criminal Law Review* 6, 2 (2006): 293.
- Baines, E. K. "Complex political perpetrators: Reflections on Dominic Ongwen." *The Journal of Modern African Studies* 47, 2 (2009): 163–191.
- Baines, E. K., and B. Ojok. 2008. "Complicating victims and perpetrators in Uganda: On Dominic Ongwen." *Justice and Reconciliation Project*. Available at: www.justiceandreconciliation.org/publications/field-notes/2008/complicating-victims-and-perpetrators-in-uganda-on-dominic-ongwen-fn-vii/, last accessed March 21, 2022.
- Bar-Tal, D., Chernyak-Hai, L., Schori, N., and Gundar, A. "A sense of self-perceived collective victimhood in intractable conflicts." *International Review of the Red Cross* 91, 874 (2009): 229–258.
- Baxter, R. R. "So-called unprivileged belligerency: Spies, guerrillas, and saboteurs." *British Yearbook of International Law* 28 (1951): 323.
- Boothby, N. "What happens when child soldiers grow up? The Mozambique case study." *Intervention* 4, 3 (2006): 244–259.
- Borer, T. A. "A taxonomy of victims and perpetrators: Human rights and reconciliation in South Africa." *Human Rights Quarterly* 25, 4 (2003): 1088–1116.
- Bouta, T. *Gender and Disarmament, Demobilization and Reintegration*. The Hague, Netherlands: Clingendael Institute, 2005.
- Brunnée, J., and Toope, S. J. *Legitimacy and Legality in International Law: An Interactional Account*, Vol. 67. Cambridge: Cambridge University Press, 2010.
- Campbell, K. "The trauma of justice: Sexual violence, crimes against humanity and the International Criminal Tribunal for the former Yugoslavia." *Social & Legal Studies* 13, 3 (2004): 329–350.
- "Victims and perpetrators of international crimes: The problem of the 'legal person'." *Journal of International Humanitarian Legal Studies* 2, 2 (2011): 325–351.
- Child Soldiers International. *Global Report 2008*. 2008. Available at: www.hrw.org/legacy/pub/2008/children/Child_Soldiers_Global_Report_Summary.pdf, last accessed April 14, 2022.
- Clapham, A. "The role of the individual in international law." *European Journal of International Law* 21, 1 (2010): 25–30.

- Clarke, K. M. *Affective Justice : The International Criminal Court and the Pan-Africanist Pushback*. Durham: Duke University Press, 2019.
- Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. New York: Cambridge University Press, 2009.
- Cohen, I., and Goodwin-Gill, G. S. *Child Soldiers, the Role of Children in Armed Conflicts*. A study on behalf of the Henry Dunant Institute. Oxford: Clarendon Press, 1994.
- Coulter, C. "Female fighters in the Sierra Leone war: Challenging the assumptions?" *Feminist Review* 88, 1 (2008): 54–73.
- Denov, M. *Child Soldiers: Sierra Leone's Revolutionary United Front*. Cambridge: Cambridge University Press, 2010.
- Girls in Fighting Forces: Moving Beyond Victimhood. A Summary of the Research Findings on Girls and Armed Conflict from CIDA'S Child Protection Research Fund*, Ottawa: Canadian International Development Agency (CIDA), 2004.
- Denov, M., and Maclure, R. "Engaging the voices of girls in the aftermath of Sierra Leone's conflict: Experiences and perspectives in a culture of violence." *Anthropologica* (2006): 73–85.
- Draper, G. I. A. D. "Punishment, postgenocide: From guilt to shame to civis in Rwanda." *New York University Law Review* 75, 5 (2000): 1221.
- "The status of combatants and the question of guerilla warfare." *British Yearbook of International Law* 45 (1971): 173.
- Drumbl, M. A. "Collective violence and individual punishment: The criminality of mass atrocity." *Northwestern University Law Review* 99, 2 (2005): 539–610.
- Reimagining Child Soldiers in International Law and Policy*. Oxford: Oxford University Press, 2012.
- "Transcending victimhood: Child soldiers and restorative justice." In *Victims of International Crimes: An Interdisciplinary Discourse*, T. Bonacker and C. Stafferling, eds., 119–145. The Hague, Netherlands: T. M. C. Asser Press, 2013.
- Elias, R. *The Politics of Victimization: Victims, Victimology, and Human Rights*. New York: Oxford University Press, 1986.
- Victims of the System: Crime Victims and Compensation in American Politics and Criminal Justice*. New Brunswick, NJ: Transaction Books, 1983.
- Victims Still: The Political Manipulation of Crime Victims*. Newbury Park, CA: Sage Publications, 1993.
- Epstein, C. *The Power of Words in International Relations: Birth of an Anti-Whaling Discourse*. Cambridge, MA: MIT Press, 2008.
- Farley, S. "Juvenile enemy combatants and the juvenile death penalty in US military commissions." *Santa Clara Law Review* 47 (2007): 829.
- Findlay, M. "Activating a victim constituency in international criminal justice." *International Journal of Transitional Justice* 3, 2 (2009): 183–206.

- Fisher, K. *Transitional Justice for Child Soldiers: Accountability and Social Reconstruction in Post-Conflict Contexts*. London: Palgrave Macmillan, 2013.
- Fletcher, G. P. "The Storrs lectures: Liberals and romantics at Aar: The problem of collective guilt." *Yale Law Journal* 111 (2002): 1499–1573.
- Fletcher, L. E., and Weinstein, H. M. "Violence and social repair: Rethinking the contribution of justice to reconciliation." *Human Rights Quarterly* 24, 3 (2002): 573–639.
- Fox, K. "The complex combatant: Constructions of victimhood and perpetratorhood in Gulu District, Northern Uganda." Independent Study Project (ISP) Collection (2016): 2458.
- Fox, M.-J. "Girl soldiers: Human security and gendered insecurity." *Security Dialogue* 35, 4 (2004): 465–479.
- Graycar, R., and Morgan, J. *The Hidden Gender of Law*, Vol. 2. Annandale, NSW: Federation Press, 1990.
- Greene, J. "Hostis Humani Generis." *Critical Inquiry* 34, 4 (2008): 683–705.
- Grossman, N. "Rehabilitation or revenge: Prosecuting child soldiers for human rights violations." *Georgetown Journal of International Law* 38 (2007): 323.
- Haan, V. "The development of the concept of joint criminal enterprise at the International Criminal Tribunal for the former Yugoslavia." *International Criminal Law Review* 5, 2 (2005): 167–201.
- Happold, M. *Child Soldiers in International Law*. Manchester: Manchester University Press, 2005.
- "Child soldiers: Victims or perpetrators." *University of La Verne Law Review* 29 (2008): 56.
- Hart, J. "Saving children: What role for anthropology?" *Anthropology Today* 22, 1 (2006): 5–8.
- Hermenau, K., Hecker, T., Maedl, A., Schauer, M., and Elbert, T. "Growing up in armed groups: Trauma and aggression among child soldiers in DR Congo." *European Journal of Psychotraumatology* 4, 1 (2013): 21408.
- Holstein, J. A., and Miller, G. "Rethinking victimization: An interactional approach to victimology." *Symbolic Interaction* 13, 1 (1990): 103–122.
- Human Rights Watch. "Open secret: Illegal detention and torture by the Joint Anti-terrorism Task Force in Uganda." 2009. Available at: www.hrw.org/report/2009/04/08/open-secret-illegal-detention-and-torture-joint-anti-terrorism-task-force-uganda, last accessed March 29, 2022.
- "World report 2003: Uganda." 2003. Available at: www.hrw.org/legacy/wr2k3/africa13.html, last accessed March 29, 2022.
- International Criminal Court. *The Prosecutor v. Dominic Ongwen (Trial Judgment)*, 2021. Available at: www.icc-cpi.int/CourtRecords/CR2021_01026.PDF, last accessed March 28, 2022.
- Jennings, R. Y. "The Caroline and McLeod cases." *American Journal of International Law* 32, 1 (1938): 82–99.

- Kaufmann, E. "Règles Générales Du Droit de La Paix, (Volume 54)." In: *Collected Courses of the Hague Academy of International Law*. 1935. Available at: http://dx.doi.org/10.1163/1875-8096_pphrdc_A9789028609129_02, last accessed March 28, 2022.
- Keairns, Y. E. *The Voices of Girl Child Soldiers: Colombia*. New York: Quaker United Nations Office, 2003.
- Kelman, H. C. "The policy context of international crimes." In: A. Nollkaemper and H. van der Wilt (eds.), *System Criminality in International Law*, 26–41. Cambridge: Cambridge University Press, 2009.
- Kelsen, H. "Collective and individual responsibility in international law with particular regard to the punishment of war criminals." *California Law Review* 31, 5 (1943): 530–571.
- Machel, G., United Nations General Assembly, and UNICEF. *Impact of Armed Conflict on Children*. New York: UN, 1996.
- Mazurana, D. E., McKay, S. A., Carlson, K. C., and Kasper, J. C. "Girls in fighting forces and groups: Their recruitment, participation, demobilization, and reintegration." *Peace and Conflict: Journal of Peace Psychology* 8, 2 (2002): 97.
- McAlinden, A.-M. "Deconstructing victim and offender identities in discourses on child sexual abuse hierarchies, blame and the good/evil dialectic." *British Journal of Criminology* 54, 2 (2014): 180–198.
- McEvoy, K., and McConnachie, K. "Victims and transitional justice voice, agency and blame." *Social & Legal Studies* 22, 4 (2013): 489–513.
- McKay, S., and Mazurana, D. "Where are the girls." In: *Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives during and after War*, 14. Montréal, Québec: Rights & Democracy, 2004.
- McShane, M. D., and Williams, F. P. "Radical victimology: A critique of the concept of victim in traditional victimology." *Crime & Delinquency* 38, 2 (1992): 258–271.
- Morris, V., and Scharf, M. P. *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia (A Documentary History and Analysis)*, Vol. 1. Irvington-Hudson, NY: Transnational Publishers, Inc., 1995.
- Naffine, N. *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person*. Oxford: Hart Publishing, 2009.
- Nistor, A.-L., Merrylees, A., and Hola, B. "Spellbound at the International Criminal Court: The intersection of spiritualism & international criminal law." In J. Fraser, and B. McGonigle Leyh, *Intersections of Law and Culture at the International Criminal Court*, 147–168. Cheltenham: Edward Elgar Publishing, 2020.
- Nordstrom, C. "The backyard front." In: *The Paths to Domination, Resistance, and Terror*, C. Nordstrom and J. Martin, eds., 260–274. Berkeley: University of California Press, 1992.
- Girls and Warzones: Troubling Questions*. Uppsala: Life & Peace Institute, 1997.

- Norrie, A. W. "Justice on the slaughter-bench: The problem of war guilt in Arendt and Jaspers." *New Criminal Law Review: In International and Interdisciplinary Journal* 11, 2 (2008): 187–231.
- Punishment, Responsibility, and Justice: A Relational Critique*. Oxford: Oxford University Press, 2000.
- Osiel, M. *Making Sense of Mass Atrocity*. Cambridge: Cambridge University Press, 2009.
- Otunnu, O. A., Under-Secretary-General and Special Representative of the Secretary-General for Children and Armed Conflict. *Address at the Conference on Atrocities Prevention and Response*, Washington, DC, October 28, 1999. Available at: https://1997-2001.state.gov/global/swci/991028_otunnu_conf.html, last accessed April 14, 2022.
- Park, A. S. J. "‘Other inhumane acts’: Forced marriage, girl soldiers and the special court for Sierra Leone." *Social & Legal Studies* 15, 3 (2006): 315–337.
- Partsch, K. J. "Individuals in international law." In: *Encyclopedia of Public International Law*, Vol. 2, 957–962. Amsterdam: Elsevier, 1995.
- Peters, K., and Richards, P. "‘Why we fight’: Voices of youth combatants in Sierra Leone." *Africa* 68, 2 (1998): 183–210.
- Prosecutor v. Dominic Ongwen (Defence Opening Statement)*. International Criminal Court, 2018.
- Prosecutor v. Dominic Ongwen (Prosecution Opening Statement)*. International Criminal Court, 2016.
- Prosecutor v. Ongwen – Confirmation of Charges*. International Criminal Court, 2015, 72.
- Ratner, S. R., and Abrams, J. S. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 3rd ed. Oxford: Oxford University Press, 2009.
- Refugee Law Project. "Ongwen’s justice dilemma: Perspective from Northern Uganda." 2015. Available at: www.iccnw.org/documents/Ongwens_Justice_Dilemma.pdf, last accessed March 28, 2022.
- Rock, P. *Victimology*. Brookfield, VT: Dartmouth Aldershot, 1994.
- Rosen, D. M. *Armies of the Young: Child Soldiers in War and Terrorism*. New Brunswick, NJ: Rutgers University Press, 2005.
- Schauer, E., and Elbert, T. "The psychological impact of child soldiering." In: *Trauma Rehabilitation after War and Conflict*, 311–360. New York: Springer, 2010.
- Schroven, A. *Women after War: Gender Mainstreaming and the Social Construction of Identity in Contemporary Sierra Leone*, Vol. 94. Münster: LIT Verlag, 2006.
- Sloane, R. D. "The expressive capacity of international punishment: The limits of the national law analogy and the potential of international criminal law." *Stanford Journal of International Law* 43, 1 (2007): 06–112.

- Smyth, M. "Remembering in Northern Ireland: Victims, perpetrators and hierarchies of pain and responsibility." In: *Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition*, 31–49 Derry, Northern Ireland: INCORE/UU, 1998.
- Stauffer, J. "Law, politics, the age of responsibility, and the problem of child soldiers." *Law, Culture and the Humanities* 16, 1 (2020): 42–52.
- Tallgren, I. "The sensibility and sense of international criminal law." *European Journal of International Law* 13, 3 (2002): 561–595.
- Tampe, E. *Verbrechensopfer: Schutz, Beratung, Unterstützung*. Munich: Boorberg, 1992.
- Ticktin, M. "Innocence: Shaping the concept and pactice of humanity." In: M. Barnett (ed.), *Human Rights and Humanitarianism: Between Palliation and Transformation*, 185–202. Cambridge: Cambridge University Press, 2020.
- United Nations. "Convention on the Prevention and Punishment of the Crime of Genocide." 78 UNTS 277, 1948. Available at: www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf, last accessed March 28, 2022.
- United Nations Human Rights Office of the High Commissioner, and Uganda Human Rights Commission. "The Dust Has Not Yet Settled' Victims' Views on the Right to Remedy and Reparation – A Report from the Greater North of Uganda. Uganda, 2011.
- Vaha, M. E. "Victims or perpetrators? Child soldiers and the vacuum of responsibility." In 2nd Global International Studies Conference, University of Ljubljana, July 26, 2008.
- Van der Wilt, H. "Joint criminal enterprise possibilities and limitations." *Journal of International Criminal Justice* 5, 1 (2007): 91–108.
- Veale, A. "From child soldier to ex-fighter. Female fighters, demobilisation and reintegration in Ethiopia." *Institute for Security Studies Monographs*, no. 85 (2003), 64 p.
- Viano, E. *The News Media and Crime Victims: The Right to Know versus the Right to Privacy*. New York: Springer, 1992.
- Wessells, M.I G. *Child Soldiers: From Violence to Protection*. Cambridge, MA: Harvard University Press, 2006.
- Worden, S. *The Justice Dilemma in Uganda*. Washington: United States Institute of Peace, 2008.
- Worthington, A. *The Pentagon Can't Count: 22 Juveniles Held at Guantanamo*, November 22, 2008. Available at: www.andyworthington.co.uk/2008/11/22/the-pentagon-cant-count-22-juveniles-held-at-guantanamo/, last accessed April 14, 2022.