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Before: **Judge Bertram Schmitt, Presiding Judge**
Judge Péter Kovács
Judge Raul Cano Pangalangan

SITUATION IN UGANDA

IN THE CASE OF
THE PROSECUTOR v. DOMINIC ONGWEN

Public Document

Public redacted version of
Common Legal Representative of Victims' Closing Brief
(ICC-02/04-01/15-1720-Conf)

Source: **Office of Public Counsel for Victims**

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I. INTRODUCTION

1. The Common Legal Representative of Victims (the "CLRV") files her Closing Brief on behalf of the 1,532 Victims she represents.

2. In accordance with the spirit of the Rome Statute (the "Statute"), Victims have the right to truth and justice and the right to contribute to the search for the truth. While their interests are, to some extent, common with those of the Prosecutor, Victims undoubtedly have an independent, unique[1] role and voice in the Court's proceedings.[2]

3. In fact, their participation in the proceedings in an effective and efficient manner is a necessary mechanism to implement their right to justice.[3] Such participation can only be deemed meaningful, as opposed to purely symbolic, if Victims are entitled to positively contribute to the search for the truth – which may, in turn, eventually lead to the conviction of given individuals and the reparation of the harm caused. In this respect, any form of positive contribution from Victims appears indispensable for the accomplishment of the Court's function.[4]

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[1] See the "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo'" (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55.

[2] See *e.g.* the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6" (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January 2006, para. 51; and the "Decision on 'Prosecutor's Application to attend 12 February hearing'" (Pre-Trial Chamber II), No. ICC-02/04-01/05-155, 9 February 2007, p. 4.

[3] See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, C.H. Beck, Hart, Nomos, München, Oxford, Baden-Baden, 3rd Edition, 2016, pp. 1686 and 1698-1700. See also, *e.g.* the "Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber) No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 97; the "Decision on victims' representation and participation" (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, para. 10; the "Decision on victims' representation and participation" (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, para. 9; the "Decision on common legal representation of victims for the purpose of trial" (Trial Chamber III), No. ICC-01/05-01/08-1005, 10 November 2010, para. 9(a); and the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case", (Pre-Trial Chamber I), No. ICC-01/04-01/07-474, 15 May 2008, para. 53.

[4] See DONAT-CATTIN (D.), *idem*, p. 1687.

4. In these proceedings, Victims still wait – some since 17 years - for justice to be done. Many of them have continued to suffer the consequences of the harm inflicted upon them at the hands and at the behest of Mr Ongwen. Others have already passed away. In some cases, their relatives have been allowed to participate on their behalf in order to obtain the justice that has come too late for their deceased family members.

5. Throughout the trial, Victims have made an extensive contribution on all matters of facts and law, explained what happened to them and how the events have had an impact on their lives and their communities. Victims have also presented evidence on the extent and degree of victimisation they have suffered from.

6. This contribution has been possible through the gathering of their views and concerns. Said exercise was and is an intense task while assuming the daily legal representation in court. In order to discharge this mandate meaningfully, the CLRV was greatly assisted by a Field Counsel and travelled to Northern Uganda as often as possible whenever the proceedings allowed for it. In addition, a constant (24/7) active link with clients was maintained by the Field Counsel through phone calls and individual meetings.

7. The attempt by the CLRV to convey said views and concerns in an articulate closing brief – without misrepresenting them – is not an easy task. Indeed, the trial proceedings often gave rise to frustrations on the part of the Victims, sometimes to hopes which are difficult to convey in a legal brief. Nonetheless, the CLRV posits that the developments *infra* are the result of the trust relationship that has been built over the years with the Victims she represents. In this regard, she wishes to honour the memory of the Field Counsel who was working within the team since 2015 and passed away in December 2019. Without her invaluable contribution and assistance, it would have been impossible to fully represent the interests of the Victims in this proceedings and, more importantly, to convey their views and concerns.

8. The CLRV avers that the evidence adduced before the Chamber is such as to establish beyond reasonable doubt the responsibility of the Accused for all crimes charged. The evidence also shows that the grounds for excluding criminal responsibility put forward by the Defence are unfounded and that, at the time of the events, the Accused acted with knowledge of his wrongdoings and with carelessness towards the consequences of his acts and omissions.

9. In light of the Victims' role to contribute to the search for the truth, and given the page limit authorised for the closing brief, the CLRV will only address in the present submission the aspects of the case which are of most concern to the Victims she represents.

II. PROCEDURAL BACKGROUND

10. On 23 March 2016, Pre-Trial Chamber II issued the "Decision on the confirmation of charges against Dominic Ongwen" (the "Decision confirming the charges"), committing Mr Ongwen for trial, as the former Commander in the Sinia Brigade of the Lord's Resistance Army (the "LRA"), on 70 charges of crimes against humanity and war crimes committed in Northern Uganda between 1 July 2002 and 31 December 2005.[5]

11. On 29 March 2016, the Defence filed a Request for Leave to Appeal the Decision confirming the charges,[6] which was rejected by the Pre-Trial Chamber on

[5] See the "Decision on the confirmation of charges against Dominic Ongwen" (Pre-Trial Chamber II), No. ICC-02/04-01/15-422-Red, 23 March 2016 (the "Decision confirming the charges").
[6] See the "Defence Request for Leave to Appeal Issues in Confirmation of Charges Decision", No. ICC-02/04-01/15-423, 29 March 2016.

29 April 2016.[7] On 2 May 2016, the Presidency constituted Trial Chamber IX (the "Chamber").[8]

12. On 6 December 2016, the trial commenced.

13. The Prosecution presented its evidence between 16 January 2017 and 12 April 2018. The two teams of Legal Representatives of Victims presented their evidence in May 2018.[9] The Defence presented its evidence between 1 October 2018 and 22 November 2019. Rebuttal and rejoinder evidence was presented between 25 and 29 November 2019.[10]

14. On 23 October 2019, the Presiding Judge of the Chamber issued the Decision modifying the deadline regarding closing briefs and closing statements, ruling that any closing briefs had to be filed by 26 February 2020 and that the closing statements will commence on 10 March 2020.[11] On 4 December 2019, following a Defence's Request to reconsider and postpone the date of the closing statements,[12] the Chamber preponed the deadline for the submission of the closing briefs to 19 February 2020.[13]

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[7] See the "Decision on the Defence request for leave to appeal the decision on the confirmation of charges" (Pre-Trial Chamber II), No. ICC-02/04-01/15-428, 29 April 2016, and "Partially dissenting opinion of Judge Marc Perrin de Brichambaut", No. ICC-02/04-01/15-428-Anx-tENG.

[8] See the "Decision constituting Trial Chambers VIII and IX and referring to them the cases of The Prosecutor v. Ahmad Al Faqi Al Mahdi and The Prosecutor v. Dominic Ongwen" (Presidency), No. ICC-02/04-01/15-430, 2 May 2016.

[9] See the transcripts of the hearings held on 1, 2, 3, 4, 14, 15, 23 and 24 May 2018, respectively No. ICC-02/04-01/15-T-171-Red-ENG WT to No. ICC-02/04-01/15-T-178-ENG ET WT.

[10] See the "Decision on Requests related to the Testimony of Defence Expert Witnesses D-0041 and D-0042" (Trial Chamber IX), No. ICC-02/04-01/15-1623, 1 October 2019. See also the "Decision on Defence Request for Leave to Appeal the Decision on Requests related to the Testimony of Defence Expert Witnesses D-0041 and D-0042" (Trial Chamber IX), No. ICC-02/04-01/15-1644, 22 October 2019.

[11] See the "Modification of Deadline Regarding Closing Briefs and Setting of Dates for Closing Statements" (Trial Chamber IX, Presiding Judge), No. ICC-02/04-01/15-1645, 23 October 2019.

[12] See the "Defence Request to Change the Start Date of the Closing Statements", No. ICC-02/04-01/15-1668, 14 November 2019.

[13] See the "Decision on Defence Request to Reconsider the Date of the Closing Statements" (Trial Chamber IX, Presiding Judge), No. ICC-02/04-01/15-1691, 4 December 2019.

Finally, upon a further request by the Defence,[14] the deadline for the submission of the closing briefs was extended to 24 February 2020.[15]

15. On 12 December 2019, the Chamber declared the closure of the submission of evidence in the case.[16]

III. CONFIDENTIALITY

16. Pursuant to regulations 23*bis*(1) of the Regulations of the Court, the present brief is classified "confidential" since it contains confidential information. A public redacted version will be filed as soon as practicable.

IV. ASSESSMENT OF THE EVIDENCE

1. The evidentiary standard "beyond reasonable doubt"

17. Pursuant to article 66 of the Statute, the Accused is entitled to the benefit of the doubt. If guilt has not been proved beyond reasonable doubt at the end of the trial, in accordance with article 66(3), a conviction cannot be entered. Pursuant to article 74(2) of the Statute, the Chamber "*shall base its evaluation on the evidence and the entire proceedings*". An item of evidence submitted at trial can influence the decision of the Chamber in two different ways: (a) the item may help reaching a conclusion about the existence or non-existence of a material fact; or (b) the item may help assessing the reliability of other evidence. The CLRV submits that in its consideration of the evidence and the factual findings in the case, the Chamber should rely on the jurisprudence according to which:

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[14] See the "Defence Request for an extention of time to file Closing Briefs", No. ICC-02/04-01/15-1713, 31 January 2020.
[15] See the "Decision on Defence Request to Extend the Deadline for the Filing of the Closing Briefs" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-1715, 5 February 2020.
[16] See the "Declaration on the Closure of the Submission of Evidence" (Trial Chamber IX, Presiding Judge), No. ICC-02/04-01/15-1699, 12 December 2019.

- reasonable doubt must be based on logic and common sense; and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence;[17]

- the "*beyond reasonable doubt*" standard cannot be contested invoking frivolous doubt based on empathy or prejudice;[18]

- not each and every fact in the judgment must be proven beyond reasonable doubt, but only those on which a conviction depends, including facts constituting the elements of the crime and the modes of liability as charged;[19] or "*material facts*" as opposed to subsidiary or "*collateral facts*"[20] or other sets of facts introduced by different types of evidence;[21]

- the Trial Chamber shall not take a piecemeal approach to the assessment of the evidence; but is rather required to carry out a holistic evaluation and weighing of all the evidence taken together in relation to the fact at issue;[22]

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[17] See the "Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled 'Judgment pursuant to article 74 of the Statute'" (Appeals Chamber), No. ICC-01/04-02/12-271-Corr A, 7 April 2015 (the "*Ngudjolo* Appeal Judgment"), paras. 109 *et seq.* See also, ICTR, *Rutaganda*, Case No. ICTR-96-3-A, Judgement (Appeals Chamber), 26 May 2003, para. 488.

[18] See the *Ngudjolo* Appeal Judgment, *supra* note 17, para. 109.

[19] See the "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction" (Appeals Chamber), No. ICC-01/04-01/06-3121-Red A5, 1 December 2014 (the "*Lubanga* Appeal Judgment"), para. 22.

[20] See the "Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled 'Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court'" (Appeals Chamber), No. ICC-01/04-01/06-2205 OA15 OA16, 8 December 2009, ft 163. See also, the "Judgment on the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled 'Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons'" (Appeals Chamber), No. ICC-01/04-01/07-3363 OA13, 27 March 2013, para. 50.

[21] See the *Ngudjolo* Appeal Judgment, *supra* note 17, para. 125; and the "Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled 'Judgment pursuant to Article 74 of the Statute'" (Appeals Chamber), No. ICC-01/05-01/13-2275-Red A A2 A3 A4 A5, 8 March 2018 (the "*Bemba* et al. Appeal Judgment"), para. 868.

[22] See the *Bemba* et al. Appeal Judgment, *supra* note 22, paras. 598, 1195 and 1540. See also, the *Lubanga* Appeal Judgment, *supra* note 19, para. 22.

- inferences adverse to the accused can be entered so long as, based on the record of the case, they represent the only reasonable conclusion that could be drawn from the evidence;[23]

- the determination of whether an item of evidence is credible and reliable depends on the extent to which it is corroborated by other pieces of evidence taken cumulatively;[24]

- trauma[25] and passage of time[26] are factors that must be taken into account before rejecting the evidence of any witness on the basis of his or her inability to recount fully or adequately all details of the relevant events;[27]

- the Trial Chamber may rely on part of a witness's testimony and reject other parts;[28] and

- the fact that evidence is contested by the Defence does not mean that reasonable doubt is casted. Rather, the Chamber has the responsibility to

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[23] See the *Bemba* et al. Appeal Judgment, *supra* note 21, para. 868. See also the "Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'" (Appeals Chamber), No. ICC-02/05-01/09-73 OA, 3 February 2010, para. 33.

[24] See ICTY, *Limaj* et al., Case No. IT-03-66-A, Judgement (Appeals Chamber), 27 September 2007, para. 154 (the "*Limaj* Appeal Judgement).

[25] For witnesses who experienced great *trauma*, revisiting what happened to them is source of pain and may affect their ability to fully or adequately recount the relevant events in a judicial context. Accordingly, the evidence of vulnerable witnesses should not be rejected despite reticence or circuitousness in "*being specific as to dates, times, distances and locations, and appeared unfamiliar with the use of maps, films, photographs and other graphic representations*". See the Report of PCV-0003, "Expert Report on the Interplay of Acholi Culture with the Traumas meted out to the Acholi People of Uganda by the Lord's Resistance Army, LRA: the crimes, the harms suffered by the victims and the impacts of the crimes on the victims", UGA-PCV-0003-0046, p. 25 (the "PCV-0003 Report"). See also, ICTR, *Musema*, Case No. ICTR-96-13, Judgement and Sentence (Trial Chamber I), 27 January 2000, paras. 100 and 104.

[26] The passage of time may affect the witnesses' memories. Other individual circumstances of each witness may also affect the testimony, including the "*relationship to the Accused, the age, vulnerability, any involvement in the events under consideration, the risk of self-incrimination, sincerity, possible bias toward or against the Accused and motives for telling the truth or giving false testimony*". See the "Judgment pursuant to article 74 of the Statute" (Trial Chamber II), No. ICC-01/04-01/07-3436-tENG, 7 March 2014 (the "*Katanga* Judgment"), paras. 83 and 85.

[27] See the PCV-0003 Report, *supra* note 25, pp. 23-24.

[28] See the "Judgment pursuant to Article 74 of the Statute" (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012 (the "*Lubanga* Judgment"), para. 339; the *Katanga* Judgment, *supra* note 26, para. 84; and the "Judgment pursuant to Article 74 of the Statute" (Trial Chamber VII), No. ICC-01/05-01/13-1989-Red, 19 October 2016, paras. 202 and 204. See also, ICTY, *Haradinaj* et al., Case No. IT-04-84, Judgement (Appeals Chamber), 19 July 2010, para. 201 (the "*Haradinaj* Appeal Judgement").

resolve any inconsistencies that may arise within and/or among witnesses' testimonies.[29]

18. In relation to the issue of Defence's witnesses who may "corroborate" each other in respect of the evidence they provide, the CLRV submits that this fact is not binding on the Chamber. In the *Bemba* case, for instance, nine Defence's witnesses testified consistently that the *Mouvement de Libération du Congo* troops in the Central African Republic fell under the operational control of the Central African authorities;[30] a factual finding that in the submission of the Bemba Defence would have been exonerating. The Chamber rejected said finding addressing – on a factor-by-factor basis – the considerations that weighed against the credibility of the witnesses concerned.[31] The CLRV respectfully requests the Chamber to follow said approach and be open to reject Defence's evidence, even where various Defence's witnesses corroborate each other, on the basis of considerations such as:

- the evidence is generally evasive, lacking spontaneity, qualified,[32] defensive,[33] exaggerated[34] or implausible;[35] with responses being illogical, improbable, or contradictory;[36]
- the witness's responses were contrary to the evidence presented to him or her; but without any satisfactory explanation for such discrepancy(ies);[37]
- the evidence is internally contradictory [38] or contradicted by other evidence in the record of the case;[39]

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[29] See the *Lubanga* Appeal Judgment, *supra* note 19, para. 23, citing ICTY, *Kupreškić* et al., Case No. IT-95-16-A, Judgement (Appeals Chamber), 23 October 2001, para. 31 (the "*Kupreškić* Appeal Judgement").
[30] See the "Judgment pursuant to Article 74 of the Statute" (Trial Chamber III), No. ICC-01/05-01/08-3343, 21 March 2016 (the "*Bemba* Judgment"), para. 430.
[31] *Idem*, para. 447.
[32] *Idem*, para. 435.
[33] *Idem*, para. 352.
[34] *Idem*, para. 357.
[35] *Idem*, para. 359.
[36] *Idem*, para. 348.
[37] *Idem*, para. 438.
[38] *Idem*, para. 432.
[39] *Idem*, para. 366.

- despite abundant public information about the crimes, the witness claimed to have had no information;[40]
- the witness claimed not to have had information about issues which, actually, fell squarely within his or her alleged area of competence and knowledge;[41]
- the witness's source of knowledge was unclear and questionable.[42]

19. It is for the Chamber to determine whether the ultimate weight of all the evidence adduced is sufficient to establish beyond reasonable doubt the elements of the crimes charged and the responsibility of the accused.[43] In assessing witnesses' evidence, the Chamber needs to evaluate their credibility, the reliability of their testimonies and ultimately determine the weight to be afforded to their evidence.[44]

20. The CLRV recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.[45] A Trial Chamber may enter a conviction on the basis of a single witness, although such evidence must be assessed with the appropriate caution.[46] Insignificant discrepancies between the evidence of different witnesses or between the evidence of a particular witness in court and his or her prior statement(s) should not discredit such evidence.[47] A Chamber is also free to

[40] *Idem*, para. 350.
[41] *Idem*, para. 349.
[42] *Idem*, paras. 430 and 441.
[43] See the *Bemba* Judgment, *supra* note 30, paras. 228-230; and the *Katanga* Judgment, *supra* note 26, para. 79. See also, *e.g.*, ICTY, *Karadžić*, Case No. IT-95-5/18-T, Judgement (Trial Chamber), 24 March 2016, para. 10 (the "*Karadžić* Trial Judgment").
[44] See *e.g.*, the *Lubanga* Appeal Judgment, *supra* note 19, para. 239. See also, ICTR, *Ndahimana*, Case No. ICTR-01-68-A, Judgement (Appeals Chamber), 16 December 2013, para. 45 (the "*Ndahimana* Appeal Judgement"); and ICTR, *Ntawukulilyayo*, Case No. ICTR-05-82-A, Judgement, (Appeals Chamber) 14 December 2011, para. 21 (the "*Ntawukulilyayo* Appeal Judgement").
[45] See the *Karadžić* Trial Judgment, *supra* note 43, para. 12. See also, ICTR, *Nyiramasuhuko* et al., Case No. ICTR-98-42-A, Judgment (Appeals Chamber), 14 December 2015, para. 2063 (the "*Nyiramasuhuko* Appeal Judgement"); and the *Kupreškić* Appeal Judgement, *supra* note 29, para. 33.
[46] See, *Haradinaj* Appeal Judgement, *supra* note 28, para. 145.
[47] See the *Karadžić* Trial Judgment, *supra* note 43, para. 12.

decide not to rely on some parts of a witness's account whilst accepting other aspects of his or her evidence.[48]

21. Finally, the CLRV stresses that the information provided by victims in the application forms for participation has the sole purpose of substantiating their request to participate in the proceedings before the Court but not to give evidence on either points of fact or law in the case.[49] As such, said documents cannot be assimilated to evidence. In case of inconsistencies between the accounts of dual status individuals contained in their application forms and their statements, the CLRV recalls the distinct purposes of each process and underlines that applying to participate cannot be assimilated to giving a witness statement.

22. In this regard, victims' applications, "[u]*nlike evidence collected to support or challenge the substantive criminal charges in the case*, […] *are administrative in nature and* [...] *are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings*".[50] Therefore, the Chamber cannot rely on said documents when ruling on the innocence or guilt of the Accused.

23. The CLRV further recalls that – as general practice – victims are assisted by so-called "intermediaries" when filling in their application forms. Said intermediaries are identified at the stage of the opening of a case, or even before at the situation stage, by the Victims Participation and Reparations Section (the "VPRS") – the unit within the Registry of the Court, in charge of informing victims about their rights and assisting them should they wish to apply to participate in the proceedings.

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[48] See the *Bemba* Judgment, *supra* note 30, para. 231; the *Katanga* Judgment, *supra* note 26, para. 84. See also, ICTR, *Setako*, Case No. ICTR-04-81-A, Judgment (Appeals Chamber), para. 48; and the *Haradinaj* Appeal Judgment, *supra* note 28, para. 201.

[49] See the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case" (Pre-Trial Chamber II, Single Judge)", No. ICC-01/09-01/11-169, 8 July 2011, para. 9.

[50] See the "Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011" (Trial Chamber III), No. ICC-01/05-01/08-2012-Red, 9 February 2012, para. 100.

Intermediaries are usually members of national organisations advocating for victims' rights, known in the situation country for that reason, and assist the VPRS in approaching the affected communities and potential victims. Intermediaries receive training from the VPRS on the Court's mandate and on how to assist victims in completing application forms – which are ultimately verified by the Section before being transmitted to the relevant Chamber.[51]

24. The CLRV refers to the recent jurisprudence in the *Ntaganda* case according to which: "*The Chamber further notes that the credibility of certain witnesses who are also participating victims (dual status) has been challenged on the basis of inconsistencies between their testimony and the information provided in their victim application forms. In this regard, the Chamber notes that, with the exception of two witnesses, the dual status witnesses in this case were, as most applicants, assisted by intermediaries in completing their application forms. While certain intermediaries have received general guidance and information by the VPRS prior to assisting applicants, stressing that statements should be read back to the applicants for their acknowledgement before signing, the VPRS also emphasised the limits of the training it provided, and was not in a position to indicate whether the intermediaries did in fact read back the statements to the relevant applicants. In this regard, the Chamber also notes that a number of dual status witnesses testified that the forms had not been read back to them, and/or that the intermediaries had inaccurately recorded aspects of their statements. As such, the conditions of production of victim applications differ from those of formal witness statements, which are taken by a party, assisted by staff qualified to do so, and recorded after having been read back to the witness. Accordingly, the Chamber has generally attributed less weight to inconsistencies between a witness's testimony and a victim application, than to inconsistencies with a formal witness statement. Major identified inconsistencies have been assessed on a case-by-case basis, considering,* inter alia, *the nature and scope of the inconsistencies, the explanations provided by the witness in this regard, and the conditions of*

[51] See the "Second decision on issues related to the victims' application process" (Pre-Trial Chamber I, Single Judge), No ICC-02/11-01/11-86, 5 April 2012, para. 38.

production of the application, including, in particular, whether the form was completed with the assistance of an intermediary or individuals formally connected to the Court".[52]

25. Accordingly, the CLRV respectfully asks the Chamber to follow the same approach and notes that, where inconsistencies were detected during testimonies between the application form and the witness's statement of dual status individuals, said inconsistencies were either explained in a logical manner by the persons concerned or are otherwise understandable having in mind how the application forms were completed.[53]

26. Finally, the CLRV wishes to underline that the cultural specificities in this case also ought to be taken into account by the Chamber in its evalution and assesment of the evidence. Indeed, the vast majority of witnesses who testified at trial are of Acholi ethnicity.

2. Evaluation of the evidence in light of the Acholi culture

27. During the course of the trial, several witnesses testified about distinctive features of Acholi culture. Prof. Musisi underlined that, in the Acholi culture, people not only communicate verbally but also nonverbally, via body language and attitude in particular; he stressed that "*there are things that don't pass through the mouth*" and are considered "*unmentionables*",[54] which for instance explains the reason for not referring to ones' private parts in ordinary conversations.

28. In this regards, "[s]*exuality in the Acholi is considered natural but ritualized and private. It is necessary for the expression of love, reproduction and the propagation of the tribe. It is therefore culturally customarily highly regulated and protected. Sex is not talked about in public. Indeed words depicting sexual activity or the mentioning of sexual organs are*

[52] See the "Judgment" (Trial Chamber VI), No. ICC-01/04-02/06-2359, 8 July 2019, para. 85 and ft 346 (the "*Ntaganda* Judgment") [we underline].
[53] See, *e.g.*, P-0097 [REDACTED] (T-109, p. 32 line 7 – p. 33 line 15); and P-0187 [REDACTED] (T-165, p. 6 line 1 – p. 9 line 1).
[54] See PCV-0003 (T-177, p. 44 line 25 – p. 45 line 20).

considered taboo and 'not to pass through the mouth'. The public display of sexual tendencies or affections is not allowed in Acholi culture except in very circumscribed instances. […] *Defilement and rape is condemned".*[55]

29. As an illustration, the expert commented on the testimony of P-0396 in the following terms: "*The examiner is asking an Acholi girl from a rural area about her sexual intercourse with a man in public. She won't answer this question. Those things are unmentionables. Those words don't pass through the mouth. So she may say yes but there is difficulty. "Question*: *Can you give further information to the Court? Answer: Can you please repeat the question?" She has understood the question but she's not answering because you are telling her to discuss cultural unmentionables. She said "well, I have pain." This should not be understood in the western way. It is more than pain. You're asking about somebody's sexuality after rape and about how they forge relationships and trusts. They're not going to talk about it. You don't say these things in public and in front of elders. Sex is for bedrooms only according to African culture. So these things pose difficulties in communication*".[56] Indeed, when questioned about the first time the Accused raped her and she therefore became his "wife", P-0235 stated: "*I find it extremely embarrassing to keep on talking about these things again because I've already spoken about it and I find it embarrassing to keep on talking about it*".[57]

30. Prof. Musisi further underlined that, in addition to listening to words, one has to understand cultural metaphors and body language in order to interpret what witnesses - and in particular traumatised and vulnerable persons - are communicating.[58] Sometimes people are not allowed to keep direct eye contact and it may be considered rude or impolite to answer certain questions. In some instances,

[55] See the PCV-0003 Report, *supra* note 25, p. 20. See also the attitude of certain witnesses when questioned about intimacy, *e.g.*, P-0099 (T-14, p. 22 lines 14-17; and p. 27 lines 13-14; p. 28 line 23 – p. 29, line 8); and P-0214 (T-15, p. 25 lines 17-21).
[56] See PCV-0003 (T-177, p. 44 line 25 – p. 45 line 20).
[57] See P-0235 (T-17, p. 36 lines 1-3).
[58] See the PCV-0003 Report, *supra* note 25, p. 25.

hence, people shrug their shoulders or make noises to give answers to questions without having to use specific words.

31. The expert also noted that, at times, when prompted by a question, a witness may remain silent. This does not mean that the person is not willing to answer, or that he or she does not understand or care about the question or is simply being rude. If there had been massive deaths, people become silent and express sorrow in a silent way; in addition, an unusual environment - such as being in a courtroom - may not allow the person to communicate freely.[59] The following quote is illustrative in this regard: "*There are unmentionables for the Acholi people. If you ask a question, they seem as if they haven't quite understood. Yet, they have understood but you are mentioning or questioning something which is very difficult for them to verbalize. For example "Question: before your abduction had you killed a person? Answer: No, I never killed anyone. Question: Had you touched a dead body? Answer: No, I had not. Question: How did you feel when you were ordered to kill, touch or beat a dead body?" This question was repeated twice, while being very clear. The reason for which he is not answering is that you are telling him that "you are guilty, you killed, you did an abomination culturally." It would be difficult for him to say "yes". He would exhibit signs like not understanding of what was going on. This is an example of a silence through which the Acholi people communicate*".[60]

32. As a further illustration, P-0227 explained in the course of her testimony why she might not have told everything that happened to her in the bush to the first people who rescued her at GUSCO, and why she finally decided to tell everything to the Prosecution's investigators: "*I told* [them] *because I was telling the truth, the real truth of the events that happened to me and that is the reason why I told them, why I gave them this information*. […] *I was free to talk to them. They didn't force me and they were women like me so it was easier and I could speak with them freely. I wasn't afraid of telling them anything, any of the events that occurred to me*. […] *I didn't talk* [to the people at GUSCO] *because me I wait for--to be requested to say something. It's up to them to ask me to*

[59] See PCV-0003 (T-177, p. 33 line 12 – p. 37 line 8).
[60] *Idem*, T-177, p. 43 line 9 – p. 44 line 24, commenting on the testimony of P-0379.

tell them what they want to hear. It's not up to me to say things out of my own accord. […] *At that time I wouldn't think about those because I was getting used to normal life at home. So I would not think about talking about my experiences*".[61]

33. In this regard, Prof. Musisi explained that: "*The Acholi are traditionally a proud people who cherish their independence, uphold hard work and respect of elders, social order and morality as well as reverence to a supreme God, Nyarubanga. In the last century, the infiltration of Christianity, Islam and modern education in Acholiland were accepted by the Acholi people and added to their cultural strength by interpreting and incorporating them in Acholi traditions. Justice and fairness is a virtue in Acholi culture but inhumane cruelty and impunity is not. A fair fight is accepted in Acholi culture, but brutality with no justifiable cause is not. Collective violence (war) for a cause is acceptable, but random violence affecting the innocent is not. Being a collectivist society, as most African communities are, Acholi individualistic emotional expression is traditionally curtailed to be in keeping with the cultural preservation of a communal existence.* […] *Similarly, one's happiness or sadness must be shared by others to be fulfilled. e.g. bereavement after death of a relative, or happiness and jubilations at a child's graduation or celebrating a wedding or birth of a child etc. Extreme individualistic expression of emotions is rare and not always accepted e.g. ostracizing or rejecting a child for a wrong they did or maiming a spouse etc. Acholi culture and traditions have definite (unwritten) rules for sanctioning individual and collective expression of emotions.* […] *The acts of Kony's LRA were wrong at both the individual and collective level. They went against the Acholi traditional sense of justice and morality and became unacceptable in Acholi culture*".[62]

34. The expert added that, as a consequence, victims may feel culturally bound to not say anything and hope that their interlocutor(s) understand(s).[63] It is worth recalling that the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (the "DMS-5") also illustrates cultural differences and, for instance, notes that

[61] See P-0227 (T-11, p. 44 line 16 – p. 45 line 9; p. 46 line 15 – p. 47 line 11).
[62] See the PCV-0003 Report, *supra* note 25, pp. 16-17.
[63] See PCV-0003 (T-177, p. 37 lines 6 - 8).

uncontrollable crying and headaches are symptoms of panic attacks in some cultures, while difficulty breathing may be the primary symptom in other cultures. This dimension is included in the evaluation of the symptoms to help clinicians improving diagnosis and care to people of all backgrounds.[64]

35. Accordingly, in light of the importance culture plays, not only in the expression of symptoms, but also in the way people express themselves, share their memories and chose to show their emotions, the CLRV posits that the specific cultural dimension presented *supra* ought to be taken into account in the Chamber's assessment of the testimonies heard in the course of the trial.

V. SUBMISSIONS ON THE CRIMES CHARGED

1. The applicable law and the context in which the crimes were committed

1.1 Contextual elements of the Crimes Against Humanity

36. Articles 7(1) of the Statute sets the contextual elements of crimes against humanity as requiring "*a widespread or systematic attack directed against any civilian population, with knowledge of the attack*", while article 7(2) clarifies that "[a]*ttack directed against any civilian population"* means *"a course of conduct involving the multiple commission of acts* [referred to in the preceding paragraph] *against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack*". Article 7(3) and (6) of the Element of Crimes further indicates that "[such] *acts need not constitute a military attack. It is understood that 'policy to commit such attack' requires that the State or organization actively promote or encourage such an attack against a civilian population*. [In addition] [a] *policy which has a civilian population as the object of the attack would be implemented by State or organizational action*".

[64] See American Psychiatric Association, DSM, Educational Resources, *DSM–5* Fact Sheets, and in particular, Cultural Concepts, available on the following website: https://www.psychiatry.org/psychiatrists/practice/dsm/educational-resources/dsm-5-fact-sheets.

37. In the established jurisprudence of the Court, the requirement that the acts form part of a "*course of conduct*" means that the provision covers a series of events, while the requirement of a "*multiple commission of acts*" sets a quantitative threshold involving a certain number of conducts.[65] The term "*civilian population*" denotes a collective, as opposed to individual civilians, and the presence of certain non-civilians in its midst does not change the character of the population.[66] The requirement that the attack be directed against the civilian population means that the civilians must be the *primary* - as opposed to incidental - object of the attack.[67]

38. The course of conduct involving a multiplicity of acts must be committed "*pursuant to or in furtherance of a State or organizational policy to commit such attack*", requiring a link between the attack and the policy.[68] While a policy may consist of a pre-established design or plan, it may also crystallise as actions are undertaken by the perpetrators.[69] Such existence of a policy may be inferred from a number of factors, including: the fact that the attack was planned or directed, the existence of a recurrent pattern of violence and an underlying motivation.[70] As for an armed group rather than a State, the existence of an organisation behind the policy needs to be demonstrated.[71] An organization may simply be defined as "*an organized body of people with a particular purpose*".[72]

39. The term "*widespread*" means that the attacks in question are largescale in nature in terms of their size, frequency, seriousness and number of victims.[73] On the other hand, the term "*systematic*" reflects the organised nature of the acts of violence and the improbability of their random occurrences.[74] Moreover, the individual acts

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[65] See the *Ntaganda* Judgment, *supra* note 52, paras. 662-663, referring to other relevant jurisprudence.
[66] *Idem*, para. 667.
[67] *Idem*, para. 668.
[68] *Idem*, para. 673.
[69] *Idem*, para. 674.
[70] *Ibid.*
[71] *Idem*, para. 675.
[72] See the *Bemba* Judgment, *supra* note 30, para. 158, referring to other relevant jurisprudence.
[73] See the *Ntaganda* Judgment, *supra* note 52, para. 691.
[74] *Idem*, para. 692.

under article 7(1)(a) to (k) must be committed "*as part*" of the widespread or systematic attack directed against any civilian population and such *nexus* is determined on the basis of an objective assessment of the characteristics, aims, nature and/or consequences of the acts concerned.[75]

40. The evidence demonstrates beyond reasonable doubt that the LRA carried out a widespread or systematic attack directed against the civilian population in Northern Uganda, and in particular the Acholis, from at least 1 July 2002 to 31 December 2005.[76] During this period, the overall objective of the LRA was to overthrow the Ugandan Government through armed rebellion.[77] In order to achieve this objective and to sustain its activities, the LRA adopted a policy of launching attacks on civilians, including those living in internally displaced persons' camps (the "IDP camps").[78] These attacks were widespread, extending over a wide geographical area and a considerable period of time; and involved a large number of acts of violence victimising a large number of civilians.[79] They were also systematic since they were deliberate and planned and the ensuing violence followed a discernible pattern.[80]

41. The evidence also demonstrates beyond reasonable doubt that, as a long-term member of the LRA who held a number of commanding positions, and due to his participation in numerous LRA operations, Mr Ongwen knew that his conduct was

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[75] *Idem*, para. 696, referring to other relevant jurisprudence.
[76] See P-0009 (T-81, p. 14 lines 18 – 21); P-0067 (T-125, p. 38 lines 9-11); (P-0038 (T-117, p. 69 line 19 – p. 79 line 9); P-0144 (T-92, p. 10 line 11 – p. 16 line 5); P-0355 (T-96, p. 68 line 22 and 71 line 13); P-0359 (T-110, p. 3 line 15 – p. 35 line 21); and P-0422 (T-28, p. 52 line 1 – p. 71 line 1).
[77] See P-0038 (T-117, p. 69 line 19 – p. 79 line 9); P-0097 (T-108, p. 35 line 10 – p. 37 line 2); P-0355 (T-96, p. 68 line 22 and 71 line 13); and P-0422 (T-28, p. 52 line 1 – p. 71 line 1).
[78] See P-0097 (T-108, p. 35 line 10 – p. 40 line 17); P-0138 (T-120, p. 24 line 19 – p. 26 line 11); P-0355 (T-96, p. 68 line 22 and 71 line 13); and P-0422 (T-28, p. 52 line 1 – p. 71 line 1).
[79] See P-0038 (T-117, p. 69 line 19 – p. 78 line 9); P-0138 (T-120, p. 24 line 19 – p. 26 line 11); P-0144 (T-92, p. 10 line 11 – p. 16 line 19); P-0355 (T-96, p. 69 line 9); and P-0422 (T-28, p. 52 line 1 – p. 71 line 1).
[80] See P-0138 (T-120, p. 24 line 19 – p. 26 line 11); P-0144 (T-92, p. 10 line 11 – p. 16 line 19); P-0355 (T-96, p. 69 line 8); and P-0422 (T-28, p. 52 line 1 – p. 71 line 1).

part of this widespread or systematic attack against the civilian population pursuant to or in furtherance of the organisational policy.[81]

1.2 Contextual elements of War Crimes

42. Article 8(1) of the Statute provides for the Court's jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. For each of the crimes concerned, the following two requirements must be established: (i) the conduct took place in the context of and was associated with an armed conflict not of an international character; and (ii) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.[82]

43. The concept of armed conflict not of an international character means protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.[83] In order to distinguish it from situations of lower intensity such as internal disturbances, there must be at least two organised armed groups involved and the armed violence must reach a certain intensity.[84]

44. In order to constitute an *organised* armed group, the following characteristics are jointly determinative: (i) the existence of a command structure and headquarters; (ii) the military or operational capacity of the group that is able to define a unified military strategy, use military tactics and carry out large scale or coordinated operations; (iii) the logistical capacity, indicated by the existence of a supply chain for military equipment, as well as by the ability to move troops around and to recruit and train personnel; (iv) the existence of an internal disciplinary system; and (v) the

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[81] See P-0097 (T-108, p. 35 line 10 – p. 37 line 2); P-0231 (T-122, p. 32 line 4 – p. 37 line 11); and P-0355 (T-97, p. 41 line 17 – p. 58 line 1).
[82] See the *Ntaganda* Judgment, *supra* note 52, para. 698.
[83] *Idem*, para. 701, citing ICTY, *Tadić*, Decision on the defence motion for interlocutory appeal on jurisdiction (Appeals Chamber), Case No. IT-94-1-A, 2 October 1995, para. 70.
[84] *Idem*, para. 703.

ability to speak with one voice and the capacity of the leadership to act on behalf of its members in political negotiations and to conclude agreements, such as ceasefires or peace agreements.[85] As for the intensity of the conflict, the following characteristics are relevant: (i) the seriousness and frequency of attacks; (ii) the spread of clashes over territory; (iii) whether any ceasefire orders had been issued or ceasefires agreed to; (iv) the type and number of armed forces deployed; (v) the type of weapons used; (vi) whether the situation had attracted the attention of international organisations; (vii) whether those fighting considered themselves bound by international humanitarian law; and (viii) the effects of the violence on the civilian population, including the extent to which civilians left the relevant area, the extent of destruction and the number of persons killed.[86]

45. Moreover, for the conduct to qualify as a war crime, it must have taken place "*in the context of*" and have been "*associated with an armed conflict not of an international character*".[87] However, the perpetrator's conduct need not have taken place as part of hostilities, or at a time or place where fighting was actually taking place, but must have been closely linked to the hostilities.[88] The existence of an armed conflict must have, at a minimum, played a substantial part in the perpetrator's ability or decision or purpose and manner to commit the crime.[89] In determining whether this *nexus* has been established, the following factors may be taken into account: (i) the status of the perpetrator and victim(s), and whether they had a role in the fighting; (ii) whether the act may be said to serve the ultimate goal of a military campaign; and (iii) whether the crime is committed as part of, or in the context of, the perpetrator's official duties.[90] While the perpetrator does not need to make a legal evaluation of the nature of the existing armed conflict, he or she must have sufficient awareness of the

[85] *Idem*, para. 704.
[86] *Idem*, para. 716.
[87] *Idem*, para. 731.
[88] *Ibid.*
[89] *Idem*, para. 732.
[90] *Ibid.*

factors demonstrating the existence of armed violence of a certain level of intensity between at least two organised entities.[91]

46. The evidence demonstrates beyond reasonable doubt that, from at least 1 July 2002 to 31 December 2005, a protracted armed conflict not of an international character between the LRA and armed forces of the Government of Uganda (the "UPDF"), together with associated local armed units (the Local Defence Units (the "LDUs"), Amukas or Arrow Boys) existed in Northern Uganda.[92] Both parties were well structured, armed and carried out protracted armed violence.[93] During this time, the LRA was an organised armed group with a sufficient degree of organisation enabling it to plan and carry out military operations for a prolonged period of time.[94] This protracted armed violence, due to its intensity and its broad geographical scope, amounted to an armed conflict not of an international character.[95]

47. The evidence demonstrates beyond reasonable doubt that, having held a number of command positions, Mr Ongwen was aware of the factual circumstances that established the existence of the non-international armed conflict.[96] Consequently, his conduct took place in the context of and was associated with the armed conflict not of an international character existing in Northern Uganda during the period covered by the charges.[97]

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[91] *Idem*, para. 733.
[92] The knowledge of the conflict, the planning of attacks, the structure of the LRA can also be inferred from intercepted LRA radio communications. See P-0138 (T-120, p. 17 line 14 – p. 24 line 18); P-0359 (T-110, p. 3 line 15 – p. 35 line 21); and P-0422 (T-29, p. 72 line 1 – p. 96 line 7).
[93] See P-0016 (T-34, p. 3 line 1 – p. 7 line 21); P-0125 (T-135, p. 54 line 6 – p. 82 line 25); P-0359 (T-110, p. 3 line 15 – p. 35 line 21); and P-0422 (T-29 p. 72 line 1 – p. 96 line 7).
[94] See P-0016 (T-34, p. 3 line 1 – p. 7 line 21); P-0038 (T-116, p. 25 line 10 – p. 27 line 23); P-0125 (T-135, p. 54 line 6 – p. 82 line 25); P-0359 (T-110, p. 3 line 15 – p. 35 line 21); and P-0422 (T-29, p. 72 line 1 – p. 96 line 7).
[95] See P-0038 (T-117, p. 69 line 19 – p. 79 line 15); P-0125 (T-135, p. 54 line 6 – p. 82 line 25); P-0359 (T-110, p. 3 line 15 – p. 35 line 21); and P-0422 (T-29, p. 72 line 1 – p. 96 line 7).
[96] See P-0016 (T-34, p. 3 line 1 – p. 7 line 21); P-0097 (T-108, p. 35 line 10 – p. 37 line 2); P-0125 (T-136, p. 18 line 15 – p. 19 line 20 and p. 26 line – p. 27 line 10); P-0231 (T-122, p. 32 line 4 – p. 37 line 11); and P-0440 (T-40, p. 15 lines 15 – 25 and p. 18 line 11 – p. 20 line 8).
[97] *Ibid.*

1.3 The attack against the civilian population

48. Victims recall a particular pattern of the LRA in attacking IDP camps: the attacks were well-planned and well-executed following a standard *modus operandi* which aimed at targeting the UPDF on one side, and the civilians, on the other side. Victims also put emphasis on the brutality with which the attacks were conducted, terrorising, murdering, abducting civilians and pillaging (explaining that the LRA took everything they owned, including all goods necessary to sustain life in the difficult conditions in Northern Uganda; pans, cups and clothes, as well as livestock, constituting the key source of income of the affected communities).

49. According to Prof. Musisi, "[t]*he LRA raided villages, stole the people's food and livestock plundered villages and kidnapped children. They burnt peoples' houses/huts as well as the food granaries and left them to the mercy of the elements. They kidnapped the young boys and men and abducted the girls including school girls. Over 30,000 children were kidnapped or abducted by the LRA between 1986 and 2007 when the LRA was kicked out of Uganda and the insurgency ended*. […] *The Acholi village life and self-sustenance traditions were all lost. Farming traditions, family cohesion, culturalization, schooling and food security were all lost*".[98]

50. The CLRV submits that there is ample evidence before the Chamber supporting such a *modus operandi* of the LRA in its operations, namely the brutality of the attacks, the targeting of the civilian population, the persecution of the Acholi people, the abductions of children and adults, the pillages, the destructions of private and commercial properties, the murders and attempted murders, the tortures and cruel and inhumane treatments,[99] the enslavement of abductees; the sexual and

[98] See the PCV-0003 Report, *supra* note 25, pp. 7-8.

[99] See P-0200 (T-145, p. 10 line 21 – p. 14 line 14: "*That day it was during morning hours when somebody passed in my compound. Then I moved with my family trying to escape. Then we met with the five people, Dominic Ongwen with other boys, small boys*. […] *He banged me with a butt of a gun and beat my family members and he left them. So when we reached home, they got the 5 million in the house, which I counted on the 23rd. And they made me to carry full box of drugs, which I carried until I distributed to other group members*. […] I*n between Lwala, Abia and Lwala, we met one man who was trying to escape, so Dominic Ongwen ordered*

gender based crimes; the conscription and use in hostilities of children as young as 7 years old.[100]

51. The LRA's method of warfare has had a profound psychological impact on the local population. The rebels used extreme violence, especially against civilians, to instil fear and maintain control. The severity of attacks appeared to come in waves, with major massacres interspersed across an ongoing campaign of low-intensity with small-scale assaults. The LRA rebels mutilated, abducted children and adults, and committed rape and other acts of sexual violence against girls and women. They routinely cut off lips, ears, and breasts; gouged eyes and amputated limbs.[101] Many of these mutilations were carried out to prevent "betrayals". People were abducted to help carry looted goods - causing them psychological and physical harm such as feet, chest and back pain; when too old to stay as an abductee, they were either released after a short period or killed.[102]

52. According to the victims' accounts of events, some murders were motivated by a desire to oppress their resistance or by a simple wish to rob cattles belonging to the inhabitants of the camps. These acts were clearly intended to cause suffering and injury to members of the targeted group. Moreover, victims, including elderly, children, and handicapped, were cruelly attacked by the LRA only because of their

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the abductees to tie the hands and the legs of that man. And we pulled and he made them to pull him until the intestines come out, and the face got flat that day. So we went to Lwala. He made us to squat down, and he moved with his soldiers to Lwala Girls. Shortly I heard alarm, people shouting from school. After a short time, we saw Dominic Ongwen coming with his soldiers with the girls, and we continued. He whistled, he whistled and we moved to Abalang, Abalang, where he killed 15 people, more especially men. From Abalang, we moved to Idam-Akan. Idam-Akan, they looted, burnt houses, raped so many people. So from Idam-Akan, one girl made an alarm, one girl made an alarm, and Ongwen ordered his soldier to pierce her with a bayonet and she died from--in Idam-Akan. […] *And they moved up to Obalanga, Obalanga, they killed, raped. And they killed one head teacher of Agonga primary school. So from there we moved to Amoroto river. When we went to Amoroto, the children who didn't know how to swim all drowned in the water because we were, we were chased to cross the water*").

[100] See D-0079 was seven when he was abducted by the LRA (T-189, p. 9 line 23 – p. 10 line 1).

[101] See P-0269 (T-85, p. 26 line 16 – p. 27 line 17); and P-0250 - victim [REDACTED] (T-141, p. 27, lines 8 - 21).

[102] See HOLLANDER (T.) and GILL (B.), "Every Day the War Continues in My Body: Examining the Marked Body in Postconflict Northern Uganda", in *International Journal of Transitional Justice*, 2014, pp. 1-18.

ethnicity. Those who survived the attacks had to leave their homes, to flee and take refuge far away from their places of residence because of fear of reprisals. The victims indicate several reasons for being targeted: mainly because, as residents of the IDP camps, they were perceived as supporters of the Government; and also because they were perceived as helping the UPDF. Victims also explain that Kony and his men, including Mr Ongwen,[103] wanted to target them because they were not supporting their insurgency against President Museveni. Therefore, according to the victims, the recognition of the crime of persecution[104] in connection with the attacks is an important element shown by the evidence presented at trial.[105]

1.3.1 The attack on the Pajule IDP camp

53. The evidence demonstrates beyond reasonable doubt that, on or about 10 October 2003, the Pajule IDP camp was attacked by the rebels coming from different LRA groups.[106] Before the attack, at a "RV" - meaning a gathering place, several LRA senior officers, including Mr Ongwen, developed a plan for the attack in

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[103] See the Decision confirming the charges, *supra* note 5, paras. 65-85.

[104] Article 7(1)(h) of the Rome Statute criminalizes persecution as a crime against humanity. For the interpretation of the provision, see the *Ntaganda* Judgment, *supra* note 52, paras. 991, 993 and 994. See also, the "Decision on the confirmation of charges against Charles Blé Goudé" (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014, paras. 122 and 123 (the "*Blé Goudé* Confirmation Decision"); the "Decision on the confirmation of charges against Laurent Gbagbo" (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red, 12 June 2014, paras. 204 and 205 (the "*Gbagbo* Confirmation Decision"); the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute" (Pre-Trial Chamber II), No. ICC-01/09-01/11-373, 23 January 2012, paras. 273 and 274 (the "*Ruto* Confirmation Decision"); and the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute" (Pre-Trial Chamber II), No. ICC-01/09-02/11-382-Red, 23 January 2012, para. 283 (the "*Kenyatta* Confirmation Decision").

[105] Sound recordings of several intercepted radio communications reflect the LRA's discriminatory intent against perceived Government's supporters. See, *e.g.*, UGA-OTP-0239-0062 (enhanced, track 2, at 00:25:31 (voices have been identified by P-0059, UGA-OTP-0248-0328-R01 at 0337 [Transcript at UGA-OTP-0248-0342-R01]; and P-0003, UGA-OTP-0248-0094-R01 at 0102 [Transcript at UGA-OTP-0248-0224-R01]), UGA-OTP-0037-0314 (original). In compliance with Kony's orders, senior commanders, including the Accused, carried out attacks against the civilian population, specifically the Acholis. See, *e.g.*, UPDF logbook, UGA-OTP-0254-2982 at 3050. For the persecutory intent against Acholis, see BRANCH (A.) "Exploring the roots of LRA violence: political crisis and ethnic politics in Acholiland", in ALLEN (T.), VLASSENROOT (K.) (Eds.), *The Lord's Resistance Army: myth and reality*, Zed Books, 2010, UGA-OTP-0272-0002 at 0052-0056; and the PCV-0003 Report, *supra* note 25, p. 9.

[106] See P-0144 (T-91, p. 18 lines 14 – 22); P-0209 (T-160, p. 10 lines 3 – 13); and P-0249 (T-79, p. 9 line 12 - 24).

Wanduku.[107] In fact, Mr Ongwen gave orders to his group to choose people to go for the attack.[108] The goal of the attack was retribution against civilians who allegedly supported the Ugandan Government, as well as the pillage of goods.[109] The rebels entered the camp in groups, in particular, one group attacking the barracks of the UPDF/LDUs and another led by Mr Ongwen, jointly with another commander, attacking the civilian areas and looting the trading centre.[110] In fact, the Accused was coordinating the attack with other commanders[111] and giving orders.[112] During the attack, the LRA rebels killed, beat civilians and threatened them with violence, pillaged food and other valuables from the trading centre and burnt houses.[113] In particular, Mr Ongwen ordered the LRA rebels under his command to fire their guns, abduct civilians and pillage goods because the civilians in Pajule were supporting the Government.[114] As a result of this order, hundreds of civilians were abducted[115] and forced to carry pillaged goods as well as wounded LRA rebels.[116]

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[107] See P-0209 (T-160, p. 11 line 9 – p. 23 line 22 and T-161, p. 32 line 18 – p. 41 line 13); P-0309 (T-60, p. 42 line 23 – p. 50 line 12); P-0330 (T-51, p. 73 line 25 – p. 75 line 13); and P-0372 (T-148, p. 16 line 20 – p. 18 line 23).

[108] See P-0309 (T-60, p. 50 lines 19 – p. 51 line 3) and P-0372 (T-148, p. 17 line 17 – p. 18 line 14).

[109] See P-0009 (T-81, p. 14 lines 7 -11); P-0067 (T-125, p. 38 line 7 - 16); P-0138 (T-120, p. 56 lines 2 - 10); and P-0144 (T-91, p. 19 line 7 – p. 21 line 14).

[110] See P-0045 (T-103, p. 90 line 19 – p. 94 line 15); P-0144 (T-91, p. 25 lines 3 - 17); P-0309 (T-60, p. 52 line 13 – p. 53 line 21); and P-0372 (T-148, p. 18 lines 4 - 23).

[111] See P-0067 (T-125, p. 31 line 7 - 15); P-0250 (T-141, p. 42 line 18 – p. 44 line 9); and P-0359 (T-110, p. 38 lines 9 – 16).

[112] See P-0249 (T-79, p. 14 line 14 – p. 20 line 13); and P-0309 (T-60, p. 60 line 9 – p. 61 line 15).

[113] See D-0032 (T-201, p. 29 line 19 – p. 30 line 05); D-0068 (T-222, p. 73 line 22 – p. 74 line 5); P-0006 (T-140, p. 8 line 14 – p. 17 line 9); P-0009 (T-81, p. 12 line 1 – p. 30 line 18 and p. 75 line 13 – p. 78 line 10); P-0047 (T-114, p. 31 line 20 – p. 39 line 21); P-0067 (T-125, p. 6 line 4 – p. 29 line 14); P-0138 (T-120, p. 32 line 3-p. 49 line 25); P-0144 (T-91, p. 18 line 14 – p. 55 line 22); P-0249 (T-79, p. 9 line 12 – p. 23 line 9); P-0250 (T-141, p. 25 line 14-p. 28 line 11); P-0330 (T-52, p. 3 line 19 – p. 8 line 13); and P-0379 (T-57, p. 21 line 7 – p. 29 line. 17).

[114] See P-0009 (T-81, p. 22 lines 3 - 15, T-82, p. 76 line 17 – p. 78 line 1); P-0249 (T-79, p. 14 line 25 – p. 18 line 8); and P-0309 (T-60, p. 60 line 9 – p. 62 line 11).

[115] See P-0009 (T-81, p. 23 lines 6 - 9); P-0138 (T-120, p. 33 lines 14 - 25); P-0144 (T-91, p. 48 lines 3 - 8); P-0249 (T-79, p. 12 lines 14 - 24); P-0250 (T-141, p. 26 line 22 – p. 27 line 1); and P-0372 (T-148, p. 22 lines 23-24).

[116] See P-0006 (T-140, p. 11 line 16 – p. 12 line 5); P-0009 (T-81, p. 17 line 10 – p. 18 line 5); P-0045 (T-104, p. 5 line – p. 9 line 5); P-0067 (T-125, p. 22 line 15 – p. 23 line 13 and p. 48 lines 6 - 16); P-0081 (T-118, p. 11 line 19 – p. 12 line 12 and p. 34 line 16 – p. 35 line 3), as well as UGA-OTP-0070-0029-R01; P-0144 (T-91, p. 40 line 16 – p. 41 line 23); P-0249 (T-79, p. 18 line 24 – p. 19 line 3 and p. 35 line 16 – p. 36 line 2); P-0250 (T-141, p. 26 line 22 – p. 27 line 21); and P-0226 (T-8, p. 65 lines 7 – 14).

Some abductees were killed or beaten savagely upon Mr Ongwen's orders;[117] others were released soon after, while some young children were kept in the LRA as recruits.[118] Some abductees never returned.[119]

1.3.1.1 Alibi concerning the Pajule attack

54. In relation to this attack, the Defence raises the existence of an alibi,[120] indicating that, at the time of the attack, Mr Ongwen was under detention by the LRA (and more specifically by Otti Vincent).[121]

55. At the outset, the CLRV recalls that, in the established jurisprudence of the international courts and tribunals, an alibi is raised when the defendant is denying that he or she was in a position to commit the crime charged.[122] While the *onus* is on the Prosecution to establish beyond reasonable doubt that the facts alleged are nevertheless true,[123] the accused must still produce the evidence showing that objectively he or she was not in a position to commit the crime,[124] particularly

[117] See P-0249 (T-79, p. 33 line 8 – p. 38 line 9).
[118] See P-0009 (T-81, p. 12 line 1 – p. 16 line 5; p. 75 line 13 –p. 76 line 1); P-0067 (T-125, p. 34 line 14 – p. 38 line 1); P-0138 (T-120, p. 33 line 23 – p. 34 line 12); P-0144 (T-91, p. 48 line 7 – p. 50 line 5); P-0249 (T-79, p. 44 line 17 – p. 46 line 20); P-0309 (T-60, p. 68 line 22 – p. 71 line 6); and P-0372 (T-148, p. 22 line 23 – p. 23 line 14).
[119] See P-0006 (T-140, p. 16 line 16 – p. 17 line 9); and P-0250 (T-141, p. 26 line 22 – p. 28 line 11).
[120] See the "Defence Notification Pursuant to Rule 79(2) of the Rules of Procedure and Evidence", No. ICC-02/04-01/15-Red, 9 August 2016, para. 1.
[121] *Idem*, para. 4.
[122] See ICTR, *Kajelijeli*, Case No. ICTR-98-44A-A, Judgment (Appeals Chamber), 23 May 2005, para. 42 (the "*Kajelijeli* Appeal Judgment"). See also, ICTR, *Nchamihigo*, Case No. ICTR-2001-63-A, Judgment (Appeals Chamber), 18 March 2010, para. 92 (the "*Nchamihigo* Appeal Judgment"); and ICTY, *Popovic* et al., Case No. IT-05-88-T, Judgment (Appeals Chamber), 30 January 2015, para. 343 (the "*Popovic* Appeal Judgment").
[123] See the *Kajelijeli* Appeal Judgment, *supra* note 122, para. 42; the *Nchamihigo* Appeal Judgment, *supra* note 122, para. 92; and the *Popovic* Appeal Judgment, *supra* note 122, para. 343. See also SCSL, *Sesay*, Case No. SCSL-04-15-T, Judgment (Trial Chamber), 2 March 2009, para. 503 (the "*Sesay* Trial Judgment"). See also, ICTR, *Kamuhanda*, Case No. ICTR-99-54A-A, Judgment (Appeals Chamber), 19 September 2005, para. 167 (the "*Kamuhanda* Appeal Judgment"); the "*Limaj* Appeal Judgment", *supra* note 24, para. 63; ICTR, *Zigiranyirazo*, Case No. ICTR- 01-73-A, Judgment (Appeals Chamber), 16 November 2009, para. I7 (the "*Zigiranyirazo* Appeal Judgment"); and ICTR, *Setako*, Case No. ICTR-04-81-A, Judgment (Appeals Chamber), 28 September 2011, para. 224 (the "*Setako* Appeal Judgment").
[124] See ICTR, *Musema*, Case No. ICTR-96-13-A, Judgment (Appeals Chamber), 16 November 2001, para. 200 (the "*Musema* Appeal Judgment").

because he or she was not present at the crime scene.[125] In essence, the accused has to produce evidence establishing the alleged alibi.[126] This merely obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true,[127] and not specifically to disprove each alibi witness's testimony beyond reasonable doubt.[128]

56. The sole purpose of an alibi is to cast a reasonable doubt on the Prosecution case.[129] Therefore, an alibi needs to be reasonably possibly true to be accepted.[130] In this regard, the assessment of the evidence presented by the Defence offers two starkly differing narratives. Consequently, the inconsistency and contradictory nature of said evidence undermine the credibility of the alibi,[131] as described *infra*.

57. The first group of Defence's witnesses testified to the effect that Mr Ongwen was not at all present in Pajule during the attack. In particular, D-0025 (a former LRA member) affirmed that, on the day that the rebels were going to the camp, he met Mr Ongwen who was limping and consequently not operational.[132] Yet, neither did he witness how the LRA leaders planned the attack nor did he personally participate

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[125] See ICTR, *Kayishema* et al., Case No. ICTR-95-1-A, Judgment (Reasons) (Appeals Chamber), 1 June 2001, para. 106 (the "*Kayishema* Appeal Judgment").
[126] See ICTR, *Nahimana* et al., Case No. ICTR-99-52-A, Judgment (Appeals Chamber), 28 November 2007, para. 417 (the "*Nahimana* Appeal Judgment"); and the *Setako* Appeal Judgment, *supra* note 48, para. 224.
[127] See the *Nahimana* Appeal Judgment, *supra* note 126, para. 417. See also the *Sesay* Trial Judgment, *supra* note 123, para. 502.
[128] See the *Kajelijeli* Appeal Judgment, *supra* note 122, para. 43; and the *Limaj* Appeal Judgment, *supra* note 24, para. 63.
[129] See the *Musema* Appeal Judgment, *supra* note 124, para. 200.
[130] See the *Kamuhanda* Appeal Judgment, *supra* note 123, para. 38; the *Nchamihigo* Appeal Judgment, *supra* note 122, para. 92; the *Ndahimana* Appeal Judgment, *supra* note 44, para. 91; the *Popovic* Appeal Judgment, *supra* note 122, para. 343; the *Kayishema* Appeal Judgment, *supra* note 125, para. 113; the *Zigiranyirazo* Appeal Judgment, *supra* note 123, para. 17; and the *Sesay* Trial Judgment, *supra* note 123, para. 502. See also, MICT, *Ngirabatware*, Case No. MICT-12-29-A, Judgment (Appeals Chamber), 18 December 2014, para. 207 (the "*Ngirabatware* Appeal Judgment"); and ICTR, *Kanyarukiga*, Judgment, (Appeals Chamber) Case No. ICTR-02-78-A, 8 May 2012, para. 109 (the "*Kanyarukiga* Appeals Judgment").
[131] See the *Kanyarukiga* Appeal Judgment, *supra* note 130, paras. 136 and 138. See also, the *Sesay* Trial Judgment, *supra* note 123, para. 609; the *Limaj* Appeal Judgment, *supra* note 24, para. 68; and ICTR, *Munyakazi*, Case No. ICTR-97-36A-A, Judgment (Appeals Chamber), 28 September 2011, para. 18 (the "*Munyakazi* Appeal Judgment").
[132] See D-0025 (T-227, p. 13 lines 4 – 9).

in the attack.[133] He was only told later by others about how the attack unfolded.[134] He was ambigious when asked whether he was indeed with Mr Ongwen at the RV. He oscillated between two versions, first testifying that he "*stayed behind with those of Ongwen*" and then saying that he stayed with Mr Ongwen.[135] D-0026 (a former LRA member) simply testified that he did not see Mr Ongwen at the RV.[136] However, he did not personally witness what happened in Pajule since he stayed behind with Otti Vincent.[137] In this regard, an alibi involves two components: evidence that an individual was not at a particular place; and evidence of where that individual was located. Therefore, when evidence is adduced to show that an accused was absent from an alleged location while no evidence is adduced to demonstrate that he or she was in a different or particular location indicated with precision, this amounts only to a denial of that accused's presence during certain events, rather than a true claim of alibi.[138]

58. D-0032 (a former LRA member) simply attested that he heard on the radio that, when Kony asked if the LRA commanders joined Otti Vincent at the RV, the latter confirmed that Mr Ongwen was there with him.[139] D-0092 (a former LRA member), who did not personally participate in the attack, testified only to the effect that Mr Ongwen was walking with a stick, due to his injury, around the time of the attack.[140] This witness did not provide any evidence about the exact location of Mr Ongwen at the time of the Pajule attack. D-0119 testified only that she was told by someone that Pajule was attacked by the group led by Otti Vincent, nothing else.[141] It can be reasonably concluded that these witnesses don't have intimate knowledge

[133] See D-0025 (T-226, p. 58 line 7 – p. 64 line 17).
[134] See D-0025 (T-227, p. 25 line 3 – p. 26 line 17).
[135] See D-0025 (T-226, p. 63 lines 8 – 10 and p. 64 lines 11 – 17).
[136] See D-0026 (T-191, p. 26 lines 1 – 10 and p. 27 lines 6 - 17).
[137] *Idem,* p. 27 line 2 – 11.
[138] See the *Sesay* Trial Judgment, *supra* note 123, paras. 631 and 637.
[139] See D-0032 (T-200, p. 21 line 10 – p. 22 line 3).
[140] See D-0092 (T-208, p. 63 line 16 – p. 64 line 1).
[141] See D-0119 (T-196, p. 49 line 21 – p. 50 line 6).

about the attack in Pajule and thus their evidence has no evidentiary value for the purpose of an alibi.

59. D-0085 (a former LRA member) also testified that, while having participated in the attack, she did neither see Mr Ongwen in Pajule nor knew if he was there.[142] Since she had never met the Accused in the bush,[143] she would not have been able to recognise him in any case. D-0134 (a former LRA member) also attested that, while he equally participated in the attack, he did not recall seeing Mr Ongwen before or after the attack.[144] While this witness personally knew Mr Ongwen,[145] there were hundreds of LRA rebels gathered before the attack.[146] It is thus very unlikely that this witness would have been able to see and recognize everyone gathered at the RV. Therefore, the evidence of these witnesses is inconsequential. In any case, said evidence does not account for all the possible movements of Mr Ongwen within the geographical location in question and thus is insufficient to raise reasonable doubt in light of the Prosecution's evidence showing that the Accused was at the specific crime scene on that particular occasion.[147]

60. D-0076 (one of the abductees from Pajule who later escaped from the LRA)[148] testified that, while being held captive after the attack, he did not hear Mr Ongwen's name.[149] This witness had never met Mr Ongwen before and thus he admitted that even if the Accused would have been present during the attack, he could not have recognised him.[150] This type of evidence, having little significance,[151] fails to constitute proof in support of the alibi.[152]

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[142] See D-0085 (T-239, p. 18 lines 20 – 22).
[143] *Idem*, p. 18 lines 4 – 6.
[144] See D-0134 (T-240, p. 65 line 10 – p. 66 line 3).
[145] *Idem,* p. 69 lines 10 - 14.
[146] See D-0134 (T-241, p. 10 line 22 – p. 11 line 11).
[147] See the *Nchamihigo* Appeal Judgment, *supra* note 122, para. 112.
[148] See D-0076 (T-219, p. 10 lines 16 - 20).
[149] *Idem,* p. 21 lines 5 – 15.
[150] *Idem,* p. 34 line 24 – p. 35 line 10.
[151] See the *Limaj* Appeal Judgment, *supra* note 24, para. 68. See also, the *Nahimana* Appeal Judgment, *supra* note 126, para. 423 and the *Munyakazi* Appeal Judgment, *supra* note 131, para. 20.
[152] See the *Kayishema* Appeal Judgment, *supra* note 125, para. 123.

61. The second group of Defence's witnesses testified to the effect that Mr Ongwen was indeed present during the attack but was somehow deprived of his authority.

62. In particular, D-0056 (a former LRA member) testified that, upon arriving at the RV before the attack, he did not see Mr Ongwen among the commanders but was told that he was also there.[153] The witness also stated [REDACTED][154] without providing any detail about the meaning of this assertion. In any case, [REDACTED].[155]

63. D-0068 (a former LRA member) testified that, at the time of the attack, Mr Ongwen did not have any role because he was in the sickbay as Kony had demoted him.[156] He added that the Accused had become a regular foot soldier at the time and thus did not have any particular function.[157] Yet, the witness did not explain how he had gained knowledge of these details and his testimony lacks a proper source.[158] Consequenlty, this testimony is unpersuasive[159] when assessed against the more stringent evidence demonstrating the contrary, provided by the witnesses who had a first-hand knowledge of the attack.

64. Indeed, P-0009 (an important community leader) testified that during the attack on Pajule, he was firstly beaten and ordered to sit down by Mr Ongwen and then saw the Accused (i) being surrounded by his escorts; (ii) firing his gun and holding a radio; (iii) beating other civilians; (iv) commanding many rebels; (iv) calling the names of other LRA commanders to withdraw; and (v) giving report to

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[153] See D-0056 (T-228, p. 65 line 18 – p. 66 line 7).
[154] See D-0056 [REDACTED].
[155] [REDACTED]. In this regard, if the witness fails to elaborate on the source of the information he or she received, his or her testimony can be considered vague. See, *e.g.*, the *Nahimana* Appeal Judgment, *supra* note 126, paras. 423 and 428.
[156] See D-0068 (T-222, p. 52 line 17 – p. 53 line 6).
[157] *Ibid.*
[158] See the *Nahimana* Appeal Judgment, *supra* note 126, paras. 423 and 428.
[159] See ICTR, *Kalimanzira*, Case No. ICTR-05-88-A, Judgment (Appeals Chamber), 20 October 2010, para. 69 (the "*Kalimanzira* Appeal Judgement").

Otti Vincent and bringing the abductees to him.[160] P-0249 also testified that: (i) he firstly saw Mr Ongwen standing with some LRA soldiers in the Pajule trading centre; (ii) later, he and others were abducted by the Accused who was also giving orders to his subordinates; (iii) Mr Ongwen was wearing army fatigues and holding a stick as well as a hand-held radio; and (iv) Mr Ongwen was using the stick to point things and was giving instructions to his subordinates.[161]

65. P-0045 (a former LRA member) also testified that: [REDACTED].[162] P-0144 (a former LRA member) also attested that the group led by Mr Ongwen went to the centre to collect food and abduct civilians.[163] This witness also testified that Mr Ongwen was no longer in detention otherwise the LRA leadership would not have given him the task to go and carry out an operation.[164] P-0372 (a former LRA member) also indicated that Mr Ongwen was present during the attack, leading the part of the LRA forces.[165]

66. Thus, the suggestion that Mr Ongwen did not have any power or authority and function during the attack seems extremely implausible after careful consideration of the totality of the evidence.

67. In this regard, P-0045 testified that if a commander is imprisoned, he is removed from his brigade.[166] Yet, according to the same witness, [REDACTED].[167] P-0209 also testified that at the time of the attack, Mr Ongwen was with Vincent Otti at the Control Altar because the former was transferred there in order to help the latter with planning.[168] So, according to the same witness, Mr Ongwen was serving as an

[160] See P-0009 (T-81, p. 12 line 1 – p. 30 line 18; T-82, p. 71 line 24 – p. 81 line 9).
[161] See P-0249 (T-79, p. 12 line 12 – p. 18 line 8).
[162] See P-0045 [REDACTED].
[163] See P-0144 (T-91, p. 22 lines 10 – 22; and p. 25 lines 3 - 17).
[164] *Idem*, p. 27 lines 11 - 21.
[165] See P-0372 (T-148, p. 18 line 12 – p. 19 line 2; and p. 21 line 13 – p. 22 line 8).
[166] See P-0045 (T-104, p. 67 lines 5 – 8).
[167] [REDACTED].
[168] See P-0209 (T-160, p. 15 line 6 – p. 19 line 24).

advisor to Vincent Otti at the time.[169] Furthermore, D-0056 testified that, if someone is arrested in the LRA, said person cannot lead attacks or report missions on the radio call.[170] These testimonies show that even if Mr Ongwen was under some sort of detention at the Control Altar, he still had authority to lead one of the groups attacking the camp and pillaging the trading centre. In this regard, P-0144 testified that if a commander is in detention at the Control Altar and proves that he can perform well, then he is reinstituted back.[171] Thus, it appears from the evidence that Mr Ongwen stayed at the Control Altar until the time he was sent back to the Sinia Brigade.[172]

68. *Arguendo*, even if the Chamber finds that Mr Ongwen was not indeed present in Pajule during the attack, the Accused must still be held criminally responsible under article 25(3)(a) (indirect co-perpetration) or (b) (ordering) or (c) or (d)(i) and (ii), or article 28(a) of the Statute. Indeed, these forms of criminal liability do not require the accused to be present at the scene of the crime(s). Especially when an alibi is raised in relation to an attack, the Chamber should consider the evidence establishing the presence of the person in preparatory meetings preceding that attack,[173] and the evidence demonstrating that the accused undertook the conduct which directly led to the commission of the crimes.[174]

69. In this regard, P-0138 (a former LRA member) testified that Mr Ongwen was one of the commanders who participated in the meeting of the LRA commanders preceding the attack and who was himself selected to lead the attack.[175] P-0309 (a former escort of Mr Ongwen) also testified that the Accused was present at the

[169] *Idem,* p. 18 line 5 – p. 19 line 10.
[170] See D-0056 (T-229, p. 25 line 20 – p. 26 line 9).
[171] See P-0144 (T-91, p. 26 lines 17 – 25).
[172] *Idem,* p. 27 lines 1 - 2.
[173] See the *Ruto* Confirmation Decision, *supra* note 104, paras. 109-112.
[174] See the *Blé Goudé* Confirmation Decision, *supra* note 104, para. 50.
[175] See P-0138 (T-120, p. 37 line 12 – p. 43 line 19).

preparatory meeting of the commanders and gave orders to his group to select the rebels going for the attack.[176]

70. Indeed, eyewitnesses seeing an accused participating in the commission of the crimes is credible and important evidence when assessing an alibi.[177] In this regard, P-0067 testified that Mr Ongwen was present during the attack in Pajule and afterwards appeared alongside with other commanders while Otti Vincent was addressing the abductees.[178] This witness remembered precisely how Mr Ongwen looked, what clothes he had on and what he was carrying in his hand during the attack.[179] P-0144 (a former LRA member) testified that he personally moved with Mr Ongwen during the attack in Pajule.[180] P-0250 (also a former LRA member) affirmed that he saw the Accused being among the commanders who attacked Pajule.[181] Lastly, P-0226 – a witness who has a close personal relationship to the Accused and knows him intimately, also testified that Mr Ongwen was indeed present during the attack.[182]

71. The evidence supports the conclusion that there is no reasonable likelihood either that Mr Ongwen, at the time of the Pajule attack, was incapacitated in a way that would have prevented his contribution to the attack or that he would have been deprived of all authority particularly when the attack was planned and ordered.

72. In conclusion, the CLRV submits that the the Defence's evidence has not casted any reasonable doubt on the Prosecution's case in relation to the attack in Pajule.[183] The Prosecution's witnesses are credible and provide reliable and

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[176] See P-0309 (T-60, p. 46 line 13 – p. 51 line 18).
[177] See ICTR, *Rutaganda*, Case No. ICTR-96-3-A, Judgment (Appeals Chamber), 26 May 2003, para. 259 (the "*Rutaganda* Appeal Judgement").
[178] See P-0067 (T-125, p. 24 line 24 – p. 34 line 13).
[179] See P-0067 (T-126, p. 18 line 13 – 24.
[180] See P-0144 (T-91, p. 39 lines 12 – 22).
[181] See P-0250 (T-141, p. 41 lines 12 – 20).
[182] See P-0226 (T-9, p. 65 line 17 – p. 66 line 17). See also, *Kanyarukiga* Appeal Judgement, *supra* note 130, para. 121.
[183] See the *Musema* Appeal Judgment, *supra* note 124, para. 317.

corroborated evidence about the implication of Mr Ongwen in the attack. On the contrary, the evidence presented by the Defence in support of the alleged alibi is contradictory, imprecise and unpersuasive and it is overcome by the Prosecution's evidence as indicated *supra*.[184]

1.3.2 The attack on Odek IDP camp

73. The evidence demonstrates beyond reasonable doubt that on or about 29 April 2004, the Odek IDP camp was attacked by the LRA rebels.[185] Mr Ongwen, who was the highest ranking commander at the time,[186] joined forces with other LRA commanders and instructed the rebels under his command to conduct the attack.[187] Prior to the attack, the Accused was heard saying that the rebels should destroy Odek completely, leaving behind only bare ground.[188] The camp was targeted in order to get supplies and to attack the civilians who allegedly supported the Ugandan Government.[189] The rebels moved in groups, attacking the UPDF barracks and the civilian areas.[190] Mr Ongwen blew a whistle to start the attack but stayed behind.[191] Prior to the attack, the Accused instructed the rebels that boys and girls should be abducted but those unfit to be in the army and those who were above 18 should be killed.[192] Consequently, the rebels shot at Government soldiers and civilians alike, torched houses, abducted adults as well as children, pillaged

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[184] See the *Munyakazi* Appeal Judgment, *supra* note 131, para. 20.
[185] See P-0218 (T-90, p. 61 line 11 – p. 77 line 5, as well as UGA-OTP-0238-0720-R01, UGA-OTP-0238-0731-R01, and UGA-D26-0012-0184).
[186] See P-0264 (T-64, p. 39 lines 23 – 24); and P-0309 (T-60, p. 74 lines 13 – 16).
[187] See P-0054 (T-93, p. 18 line 20 – p. 19 line 8); P-0142 (T-70, p. 30 line 21 – p. 31 line 9); P-0245 (T-99, p. 49 line 23 – p. 52 line 23); P-0264 (T-64, p. 40 lines 2 – 16); P-0309 (T-60, p. 74 line 13 – p. 75 line 6); P-0314 (T-75, p. 2 lines 24 – 25); P-0330 (T-52, p. 13 lines 10 – 18); P-0359 (T-109, p. 61 lines 1– 7); P-0406 (T-154, p. 42 line 23 – p. 44 line 9); and P-0410 (T-151, p. 34 line 12 – p. 35 line 13).
[188] See P-0205 (T-47, p. 43 lines 9 – 19).
[189] See P-0054 (T-93, p. 16 lines 6 – p. 19 line 18); P-0142 (T-70, p. 27 line 19 – p. 28 line 7 and p. 30 line 21 – p. 31 line 9); P-0205 (T-47, p. 43 lines 14 – 19); P-0245 (T-99, p. 49 line 24 – p. 52 line 23); and P-0264 (T-64, p. 41 lines 6 – 16).
[190] See P-0054 (T-93, p. 15 lines 10 – 15 and T-94, p. 21 lines 14 – 18); P-0264 (T-64, p. 44 line 18 – p. 46 line 4); P-0309 (T-60, p. 78 lines 6 – 22); and P-0314 (T-75, p. 6 line 5 – p. 7 line 21).
[191] See P-0054 (T-93, p. 15 lines 19 – p. 23); P-0245 (T-99, p. 53 lines 1 – 7); P-0309 (T-60, p. 77 lines 1 – 7); and P-0264 (T-64, p. 46 lines 8 – p. 47 line 8).
[192] See P-0205 (T-47, p. 44 lines 3-9); P-0314 (T-75, p. 4 lines 9-12); and P-0406 (T-154, p. 43 lines 11-15).

properties and forced abductees to carry looted goods and wounded LRA rebels.[193] Many civilians, including children, were killed and some survived shootings.[194] Many others were severely beaten and injured.[195] These accounts are confirmed by the intercepted radio communications of the LRA.[196] Moreover, abducted mothers were forced to abandon their children.[197] The rebels forced a civilian to kill abductees and [REDACTED].[198] Some abductees were released after several days while number of young boys and girls were kept in the bush.[199] Some never returned.[200] Many abductees (including babies) were savagely killed or beaten.[201] After the attack, Mr Ongwen thanked his subordinates[202] and gave a report about the attack to Kony, Otti Vincent and others,[203] as confirmed by intercept evidence.[204]

1.3.3 The attack on the Lukodi IDP camp

74. The evidence demonstrates beyond reasonable doubt that, on or about 19 May 2004, the Lukodi IDP camp was attacked by the LRA rebels.[205] The goal of the attack was to punish the Acholis who allegedly supported the Ugandan Government

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[193] See P-0054 (T-93, p. 15 line 8 – p. 21 line 13); P-0142 (T-70, p. 24 line 24 – p. 4 line 20); P-0218 (T-90, p. 8 line 22 – p. 16 line 18); P-0245 (T-99, p. 49 line 15 – p. 65 line 16); P-0252 (T-87, p. 10 line 6 – p. 31 line. 16); P-0264 (T-64, p. 52 line 12 – p. 76 line 8); P-0269 (T-85, p. 34 line 19 – p. 54 line 04); P-0309 (T-60, p. 74 line 8 – p. 83 line 20); P-0314 (T-75, p. 2 line 18 – p. 18 line 7); P-0330 (T-52, p. 18 line 13 – p. 23 line 8); P-340 (T-102, p. 30 line 8 – p. 37 line 21); P-0359 (T-109, p. 59 line 14 – p. 64 line 20); P-0406 (T-154, p. 41 line 21– p. 52 line 11); and P-0410 (T-151, p. 30 line 10 – p. 50 line 4).

[194] See P-0054 (T-93, p. 20 lines 16 – 23); P-0252 (T-87, p. 30 line 24 – p. 31 line. 16); P-0264 (T-64, p. 52 line 12 – p. 60 line 21); P-0269 (T-85, p. 34 line 19 – p. 37 line 20); and P-0406 (T-154, p. 46 line 15 – p. 47 line 10).

[195] See P-0218 (T-90, p. 11 line 06 – p. 12 line 5).

[196] See P-0016 (T-32, p. 36 line 18 – p. 75 line 5).

[197] See P-0269 (T-85, p. 37 line 25 – p. 38 line 16).

[198] See P-0252 [REDACTED].

[199] See P-0245 (T-99, p. 54 line 18 – p. 55 line 3 and p. 64 line 12 – p. 65 line 16); P-0252 (T-87, p. 36 line 17 – p. 38 line 16); and P-0406 (T-154, p. 50 line 2 – p. 52 line 11).

[200] See P-0269 (T-85, p. 43 lines 11 – 22 and p. 47 lines 17 - 24).

[201] See P-0252 (T-87, p. 37 line 12 – p. 40 line 11 and p. 65 line 20 – p. 71 line 3); P-0269 (T-85, p. 43 lines 11 – 22); P-0309 (T-61, p. 11 line 11 – p. 12 line 18); P-0330 (T-52, p. 25 lines 9 – 25); and P-0410 (T-151, p. 48 line 23 – p. 50 line 15).

[202] See P-0314 (T-75, p. 17 line 2 – 8).

[203] See P-0142 (T-70, p. 41 lines 11 - 20); P-0205 (T-48, p. 5 line 14 – p. 6 line 17); and P-0309 (T-61, p. 13 line 24 – p. 14 line 4 and p. 37 lines 15 – 23).

[204] See P-0059 (T-37, p. 3 line 5 – p. 13 line 5); and P-0440 (T-40, p. 21 line 21 – p. 26 line 22).

[205] See P-0187 (T-164, p. 8 lines 7 – 9); and V-0004 (T-173, p. 13 lines 13 – 22).

and to find food.[206] Prior to the attack, Mr Ongwen adressed the rebels joined from various LRA units and warned against anybody fleeing or running away from the battle.[207] Then he ordered the rebels under his command to burn the camp and abduct people[208] and specially kill everyone[209] found there, including children, elderly and even pregnant women.[210] Indeed, he was heard saying that nobody should be left alive in Lukodi.[211] Mr Ongwen gave instructions that abductees should be killed if they try to escape.[212] Yet, Mr Ongwen did not himself go to Lukodi but stayed behind.[213] Upon arriving in the IDP camp, the LRA rebels attacked the UPDF detachment as well as the civilian areas.[214] They pillaged goods, set fire to civilian houses and properties, wounded and killed many civilians by shooting, stabbing, beating and burning them inside of their houses.[215] During the attack, the rebels abducted many civilians (including children) and forced them to carry pillaged goods.[216] Some abductees were killed savagely while others were beaten.[217] Some abducted mothers were forced to throw away their infant children in the bush.[218] Eventually, some abductees were released while some never came back.[219] At least, a

[206] See P-0018 (T-68, p. 53 line 12 – p. 60 line 18); and P-0406 (T-154, p. 52 line 24– p. 53 line 1).
[207] See P-0172 (T-113, p. 22 lines 03 - 9); P-0406 (T-154, p. 52 line 24 – p. 53 line 1); and P-0245 (T-99, p. 69 lines 10 – 14).
[208] See P-0406 (T-154, p. 53 lines 17 – 23; and p. 57 lines 13 - 17).
[209] See P-0142 (T-70, p. 46 line 12 – p. 47 line 20); and P-0410 (T-151, p. 61 lines 17 - 24).
[210] See P-0018 (T-68, p. 55 line 17 – p. 60 line 6).
[211] See P-0205 (T-47, p. 54 lines 10 – 16); and P-0410 (T-151, p. 61 lines 17 - 24).
[212] See P-0406 (T-155, p. 63 line 22 –p. 64 line 5).
[213] See P-0245 (T-99, p. 66 line 18); and P-0142 (T-70, p. 58 lines 13 - 17).
[214] See P-0018 (T-69, p. 52 line 18 – p. 54 line 10); P-0142 (T-70, p. 60 line 19 – p. 68 line 24); P-0018 (T-68, p. 51 line 24 – p. 52 line 17); and P-0205 (T-47, p. 54 line 23 – p. 55 line 23).
[215] See P-0016 (T-32, p. 76 line 1 – p. 77 line 17; and T-34, p. 11 line 13 – p. 16 line 5); P-0018 (T-69, p. 11 line 23 – p. 19 line 7 and p. 60 line 19 – p. 63 line 22); P-0024 (T-77, p. 19 line 25 – p. 43 line 17; and T-78, p. 36 line 15 – p. 60 line 8); P-0054 (T-94, p. 18 line 12 – p. 19 line 12); P-0142 (T-70, p. 61 line 20 – p. 68 line 24); P-0018 (T-68, p. 51 line 24 – p. 52 line 16); P-0205 (T-47, p. 54 line 24 – p. 60 line 9); P-0245 (T-99, p. 65 line 20 – p. 72 line 8); P-0406 (T-154, p. 55 line 19– p. 57 line 17); P-0410 (T-151, p. 58 line 19 – p. 70 line 16); V-0003 (T-172, p. 21 line 20 – p. 23 line 15 and p. 45 lines 3 – 18); and V-0004 (T-173, p. 13 line 16 – p. 21 line 7).
[216] See P-0018 (T-69, p. 15 line 15 – p. 19 line 2); P-0024 (T-77, p. 26 line 9 – p. 34 line 9); P-0142 (T-71, p. 12 lines 14 - 21); P-0245 (T-99, p. 71 line 25 – p. 74 line 3); and P-0410 (T-151, p. 67 line 6 – p. 68 line 11).
[217] See P-0018 (T-69, p. 16 lines 4 – 12); P-0024 (T-77, p. 27 line 13 – p. 30 line 6); P-0406 (T-154, p. 58 lines 5 – 21); and P-0410 (T-151, p. 67 line 6 – p. 68 line 11).
[218] See P-0024 (T-77, p. 39 line 5 – p. 43 line 17).
[219] See P-0187 (T-164, p. 37 line 19 – p. 42 line 23); and P-0205 (T-47, p. 56 line 4 – p. 57 line 17).

female [REDACTED].[220] After the attack, Mr Ongwen praised the rebels for the job well done[221] and reported the attack to the LRA leadership,[222] as confirmed by intercept evidence.[223]

1.3.4 The attack on the Abok IDP camp

75. The evidence demonstrates beyond reasonable doubt that, on or about 8 June 2004, the Abok IDP camp was attacked by the LRA rebels.[224] It was Mr Ongwen who decided to conduct the attack.[225] The Accused instructed his subordinates to loot food and to abduct people, attack the Government barracks and burn down the camp.[226] While Mr Ongwen did not personally go to Abok,[227] the rebels he sent targeted civilians and thus many got killed or injured.[228] While fighting with the Government forces, the rebels also torched civilian houses, looted properties, abducted civilians and forced them to carry the pillaged goods and injured LRA rebels into the bush.[229] During the attack, adults, as well as children were burnt in their houses.[230] Some abductees were killed or beaten severely;[231] others were forced to kill civilians while being captive in Mr Ongwen's group.[232]

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[220] See P-0187 [REDACTED].
[221] See P-0205 (T-47, p. 61 lines 11 – 19); and P-0245 (T-99, p. 72 line 9 – p. 73 line 4).
[222] See P-0205 (T-48, p. 5 line 14 – p. 6 line 6) and P-0245 (T-99, p. 73 lines 5 – 20).
[223] See P-0059 (T-36, p. 73 line 20 – p. 77 line 02); and P-0440 (T-40, p. 34 line 21 – p. 36 line 12).
[224] See P-0280 (T-83, p. 45 line 10 – p. 46 line 6); P-0286 (T-131, p. 08 line 23 – p. 12 line 16); and P-0293 (T-138, p. 15 lines 7 – 14).
[225] See P-0054 (T-93, p. 33 line 5 – p. 34 line 2); P-205 (T-47, p. 67 lines 13 – 21); P-0252 (T-87, p. 75 line 6 – p. 76 line 1); P-0330 (T-52, p. 28 line 18 – p. 29 line 17); P-0359 (T-109, p. 65 line 21 – p. 67 line 11); and P-0406 (T-154, p. 66 lines 5 – 14).
[226] See P-0406 (T-154, p. 66 lines 15 – 20); and P-0054 (T-93, p. 34 lines 11 – 14).
[227] See P-0054 (T-94, p. 26 lines 9 – 11).
[228] See P-0252 (T-87, p. 83 line 25 – p. 84 line 14 and T-89, p. 39 lines 2 – 15); P-0280 (T-83, p. 51 line 6 – p. 54 line 9); P-0286 (T-131, p. 10 line 4 – p. 12 line 16); P-0293 (T-138, p. 19 line 20 – p. 22 line 5, p. 25 line 22 – p. 27 line 4 and p. 42 lines 5 - 17); P-0304 (T-133, p. 21 line 4 – p. 24 line 19); P-0306 (T-130, p. 7 line 12 – p. 9 line 16, as well as UGA-OTP-0261-0277-R01); P-0330 (T-52, p. 32 line 20 – p. 36 line 21); and P-0359 (T-109, p. 65 line 21 – p. 67 line 11).
[229] See P-0252 (T-87, p. 73 line 17 – p. 84 line 17 and T-89, p. 36 line 24 – p. 43 line 7); P-0280 (T-83, p. 50 line 6 – p. 60 line 9); P-0286 (T-131, p. 10 line 1 – p. 34 line 17); P-0293 (T-138, p. 18 line 24 – p. 31 line 16 and p. 41 line 12 – p. 44 line 4); P-0304 (T-133, p. 7 line 13 – p. 24 line 23); P-0330 (T-52, p. 31 line 24 – p. 38 line 16); P-0054 (T-93, p. 33 line 1 – p. 36 line 17); P-0359 (T-109, p. 65 line 21 – p. 66 line 13); P-0406 (T-154, p. 68 line 18– p. 77 line 19); and V-0002 (T-171, p. 7 line 10 – p. 11 line 6).
[230] See P-0306 (T-130, p. 7 line 18 – p. 8 line 15, as well as UGA-OTP-0261-0277-R01); and P-0406 (T-154, p. 71 line 9 – p. 72 line 19).

76. The CLRV submits that the testimony of the witnesses and the documents presented about the four attacks clearly attest to a certain *modus operandi* of the LRA in systematically attacking and victimising the civilian population of Northern Uganda and particularly the Acholis perceived as not supporting the insurgency against President Museveni' s Government.

77. The evidence demonstrates beyond reasonable doubt that the Acholis constituted an ethnic group and that the common plan of the perpetrators for the crime of persecution encompassed the commission of crimes specifically against the Acholis. The LRA fighters severely deprived, contrary to international law, the civilian residing in Pajule, Lukodi, Odek and Abok of their fundamental rights to life, to liberty and security, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and the right not to be held in slavery or servitude. The co-perpetrators, including Mr Ongwen, targeted this group of civilian based on their ethnic and political ground on the assumption that the Acholis supported the Ugandan Government.

78. During the attacks the LRA rebels – under the command and/or following the orders of Mr Ongwen - systematically committed the crimes of murder and attempted murder;[233] torture;[234] cruel treatment[235] and other inhumane acts;[236]

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[231] See P-0286 (T-131, p. 25 line 4 – p. 27 line 2; and p. 55 lines 12 -18); P-0293 (T-138, p. 43 line 9 – p. 44 line 4); P-0304 (T-133, p. 19 line 14 – p. 24 line 19); and V-0002 (T-171, p. 7 line 16 – p. 8 line 12).
[232] See P-0280 (T-83, p. 74 line 25 – p. 78 line 15); and V-0002 (T-171, p. 12 line 6 – p. 13 line 17).
[233] See Article 7(1)(a) of the Elements of Crimes. For the interpretation of the provision, see the *Ntaganda* Judgment, *supra* note 52, para. 862, referring to other relevant jurisprudence.
[234] See Article 7(1)(f) and Article 8(2)(c)(i)-4 of the Elements of Crimes. For the interpretation of the provision, see the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo" (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009, paras. 193, 194, and 195 (the "*Bemba* Confirmation Decision").
[235] See Article 8 (2)(c)(i)-3 of the Elements of Crimes. For the interpretation of the provision, see "Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud" (Pre-Trial Chamber I), No. ICC-01/12-01/18-461-Corr-Red, 13 November 2019, paras. 255, 256, 257 and 259 (the "*Al Hassan* Confirmation Decision").
[236] See Article 7(1)(k) of the Elements of Crimes. For the interpretation of the provision, see the "Decision on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/07-717, 30 September 2008, paras. 451,452 and 453 (the "*Katanga and Ngudjolo* Confirmation Decision"). See the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute"

outrages upon personal dignity;[237] enslavement;[238] destruction of property[239] and pillage.[240]

79. Mr Ongwen is individually and criminally responsible for the commission of said crimes since (i) pursuant to a common plan with other LRA leaders, he undertook actions which were essential for the commission of the crimes; and (ii) he contributed to said crimes not only personally, but also through his subordinates within the meaning of article 25(3)(a), (b), (c) and (d)(i) and (ii) of the Statute, as underlined *infra*.

2. The practice of abducting girls and women and the commission of gender-based crimes within the LRA

2.1 Crimes committed under the Accused's command

80. During the decades of armed conflict in Northern Uganda, the LRA systematically abducted girls and women for the purpose of raping and forcibly marrying them to commanders and fighters, abusing them sexually and forcing them to do chores in their respective households. The victims indicate that rape, sexual violence, sexual slavery,[241] forced marriage and forced pregnancy were crimes systematically committed by the LRA rebels, including by senior commanders and notably by the Accused.[242]

(Pre-Trial Chamber II), No. ICC-01/09-02/11-382-Red, 23 January 2012, para. 269 (the "*Muthaura* Confirmation Decision") and the *Al Hassan* Confirmation Decision, *supra* note 235, paras. 251 and 252.

[237] See Article 8 (2)(c)(ii) of the Elements of Crimes. For the interpretation of the provision, see the *Katanga and Ngudjolo* Confirmation Decision, *supra* note 236, paras. 368 and 369; and the *Al Hassan* Confirmation Decision, *supra* note 235, para. 262.

[238] See Article 7(1)(c) of the Elements of Crimes. For the interpretation of the provision, see the Decision confirming the charges, *supra* note 5, paras. 36, 48, 62, 120 and 121.

[239] See Article 8(2)(e)(xii) of the Elements of Crimes. For the interpretation of the provision, see the *Ntaganda* Judgment, *supra* note 52, paras. 1152 and 1153, referring to other relevant jurisprudence.

[240] See Article 8(2)(e)(v) of the Elements of Crimes. For the interpretation of the provision, see the *Ntaganda* Judgment, *supra* note 52, para. 1028, referring to other relevant jurisprudence.

[241] See Joseph Kony and Vincent Otti Transcript from Mega FM talk-show in December 2002, UGA-OTP-0023-0011, at 0020.

[242] See the testimonies of the Accused's "wives" (P-0099, P-0101, P-0214, P-0226, P-0227, P-0235 and P-0236) who observed the relevant facts within the group in which they were confined; and the

81. As described *supra*, abductions were achieved during attacks. The majority of abducted girls were forced into marriages and given to LRA commanders and higher ranking fighters as rewards. Top commanders would describe the type of girl(s) they wanted, including age, physical appearance, and intelligence. If recent abductees matched these desired characteristics, then they were collected and distributed to the respective commanders. Girls were ordered to go to those men and become their "wives"; any resistance was futile and punishable by rape, severe beating, torture or even death.[243] Once the senior commanders selected the girl(s) they wanted, the lower-ranking fighters were given "wives" among those who remained.

82. The evidence presented at trial shows the extent of the crime. P-0099 explained how girls were selected to be distributed to officers and become their forced wives: "[T]*he leader Kony calls for an assembly. Sometimes he calls this assembly on Sundays. Then these girls are paraded, then if he decides to give an order that the girls be distributed, then that will be done so; but if he decides that the girls be sent to someone's home, then they can do that*".[244] P-0214 clarified: "*Each commander would come and point to the girl that they wanted--the girl that he wanted and the girl would be taken to his household"*.[245] As recalled by P-0226: "[The girls who were selected] *do not have a voice. If you are told go there, then you must go*. […] *If you refuse, you were either beaten or killed*. […] *Some of them were used as babysitters, others as wives. And sometimes when you're selected as a babysitter you would subsequently become a wife*. […] *The babysitters were called* ting ting".[246]

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statements of numerous other witnesses who were also present in the Sinia Brigade and able to observe this practice and the conduct of Mr Ongwen (*e.g.*, P-0142; P-0199; P-0202; P-0205; P-0233 and P-0250). See also, the records of intercepted LRA radio communications for the dates of 1 April 2003, 2 April 2003, 10 March 2004, 4 August 2004, 26 June 2005 and 10 July 2005.

[243] See the Decision confirming the charges, *supra* note 5, paras. 93-94, 136-140. See also the "Separate opinion of Judge Marc Perrin de Brichambaut", No. ICC-02/04-01/15-422-Anx-tENG, 23 March 2016.

[244] See P-0099 (T-14, p. 52 lines 17 - 20).

[245] See P-0214 (T-15, p. 13 lines 22 - 23).

[246] See P-0226 (T-8, p. 32 line 6 – p. 35 lines 11 - 19); and P-0227 (T-11, p. 10 line 16 – p. 11 line 6: "*The duties* [of ting tings] *consist of washing clothes for children and sometimes they also have to fetch water. They also carry bags in which children's clothes have been put*. […] [The normal duties of Dominic Ongwen's ting ting were] *cutting grass, fetching water and collecting firewood.* […] *The task of cooking was assigned to*

83. As far as the Accused is concerned, showing his intent to adhere to the LRA practice, P-0235 recalled: "[…] *I saw Ongwen distribute girls in Uganda and in Congo. At times he would just decide on his own and give women to soldiers who didn't have wives. Then he would inform Kony afterwards that this is what he had done*. […] [W]*hen the women are there they call the soldiers to come and choose the girls. Each one picks his and they call the soldiers to come and then they say, "Okay, this one is yours", and the person goes with the wife*".[247] She added: "[The girls] *would not be able to choose because when you are abducted you don't have--even have the feeling of staying with a man. You only keep on thinking about your home. So we would not choose the men*".[248] P-0227, P-0054, P-0097, P-0142, P-0144, P-0205, P-0233, P-0254, P-0269, P-0351, P-0352, P-0379, P-0406, P-0200, P-0314, P-0330 and D-0068 also testified about the allocation of girls by the Accused to both his "wives" (as ting tings) and junior soldiers (as forced wives) under his command.[249]

84. Witnesses also attested to the very young age of the girls abducted and married to commanders or soldiers, notably by Mr Ongwen, sometimes even against Kony's orders.[250] P-0226 stated that when she was selected by the Accused after being

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people who already […] *spent a long time at the place like* [REDACTED] *and* [REDACTED] *and it is these kind of people to whom they assigned the* [very important] *task of cooking*").

[247] See P-0235 (T-17, p. 20 line 21 – p. 21 line 1, confirming her written statement, UGA-OTP-240-0003 at para. 127; and p. 21 lines 8 - 10).

[248] See P-0235 (T-17, p. 23, lines 16 -18).

[249] See P-0227 (T-10, p. 46, lines 5-20; and p. 48, lines 15-17); P-0054 (T-93, p. 38 line 24 – p. 39 line 13); P-0097 (T-108, p. 75, lines 7-16; and pp. 22-28); P-0142 (T-71, p. 27, lines 18-23; and p. 57 line 21 – p. 58 line 3); P-0144 (T-91, pp. 65-66); P-0205 (T-47, p. 19 lines 4-11); P-0233 (T-111, pp. 54-55); P-0245 (T-98, p. 56 line 8-21; P-0264 (T-64, pp. 87-88); P-0269 (T-85, pp. 18-21); P-0351 (T-129, p. 7 line 17 – p. 9 line 1; and p. 11, lines 20-23); P-0352 - victim [REDACTED] (T-67, p. 26 line 1 – p. 32 line 9; and p. 39 line 10 – p. 40 line 13); P-0379 (T-57, pp. 14-15); P-0396 - victim [REDACTED] (T-126, pp. 63-64); P-0406 (T-154, pp. 34- 37); P-0200 (T-145, pp. 13-14; and T-146, p. 32, lines 3-16); P-0314 - victim [REDACTED] (T-74, p. 54 line 20 – p. 56 line 20); P-0330 - victim [REDACTED] (T-53, p. 33 line 25 – p. 35 line 18); and D-0068 (T-223, p. 9 line 12 – p. 16 line 4).

[250] See D-0032 (T-201, p. 42 line 10 – p. 44 line 3); D-0025 (T-226, p. 37 line 12 – p. 41 line 20); D-0024 (T-192, p. 48 line 14 – p. 51 line 19). See also, P-0245 (T-98, p. 15 line 7 – p. 19 line 10 and pp. 22-26; P-0144 (T-91, p. 66 line 15 – p. 67 line 3) and P-0200 statement, UGA-OTP-0248-0837, from page 0845 and his in-court testimony (T-146, pp. 33-34 and p. 52 lines 6-8).

smeared, she was in a group with other girls who were kidnapped and were aged between 10 and 15 years old; she was 7 years old, and the youngest.[251]

85. Studies find that, at least a quarter of all girls and women abducted for any length of time were forcibly married to members of the LRA,[252] and that half of them gave birth to children conceived during these forced relationships. Girls forced into marriage are commonly referred to as "sex slaves". This inaccurate categorization of their role within the LRA perpetuates a common misunderstanding about their experiences. While forced marriage involves rape, sexual violence and enslavement, one of the fundamental elements of the crime is the mental and moral trauma resulting from the imposition, by threat or force arising from the perpetrator's words or conduct, of a forced conjugal association and a relationship of exclusivity between the "couple"[253] - which takes an additional specific detrimental dimension in the Acholi culture. Forced marriages are coercive relationships without valid consent of the women. They have the characteristics of shared domicile, bearing of children, domestic responsibilities, exclusivity[254] and sex. The nature of these relationships forces girls to take on roles as sexual partners, mothers to the children born from these forced relationships, cooks, domestics, water collectors, porters, food producers, etc.[255] The relationships consist of a familial aspect where children are born and raised by abducted mothers and their captor husbands.[256]

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[251] See P-0226 (T-8, p. 25 lines 16-23; and p. 28 line 22 -p. 29 line 17); P-0352 (T-67, p. 17 line 24 – p. 18 line 18); and P-0138 (T-120, p. 26 line 18 – p. 28 line 8).

[252] According to the data consulted by PCV-0001 for the purpose of his Report: "*Estimates of the proportion of girls abductees that were forcibly married to members of the LRA range from 42% to 55%. Close to half of girls forced into marriage bore children*." See UGA-PCV-0001-0020, p. 4 (the "PCV-0001 Report").

[253] *Idem*, pp. 41-42.

[254] See P-0227 (T-10, p. 50 line 6 – p. 51 line 10).

[255] See the Decision confirming the charges, *supra* note 5, paras. 109, 111, 114, 116, 118, 121, 123, 136-140. See also, P-0227 (T-10, p. 43, lines 13-18; and p. 44, lines 2 - 9); and P-0269 (T-85, p. 12 lines 6-15; p. 18 line 1 – p. 19 lines 13, 20-24; p. 20 line 1 – p. 21 line 21; p. 57 line 14 – p. 58 line 4).

[256] See CARLSON (K.) & MAZURANA (D.) "Forced Marriage within the Lord's Resistance Army, Uganda", Feinstein International Center, May 2008, available on the following website: http://fic.tufts.edu/assets/Forced+Marriage+within+the+LRA-2008.pdf.

86. The consequences of the status of "wife" upon girls abducted into the LRA are complex and the practice often has a profound impact on the victims and their children. The use of the label forced "wife" causes unique psychological suffering which often leads to stigmatization and rejection of the victims by their families and communities.[257] Forced marriage also inflicts grave physical injuries and result in long-term moral and psychological suffering for the victims. The victims recall their experience as "wives" as distinct from the ones suffered as a result of other gender-based crimes. In particular, they indicate that the condition of "wife" had - and still has - serious repercussions on their possibility of restoring "normal" relationships with men and that, even if they are re-integrated in the community, they feel that said reintegration is not – to use their word – "full" and sometimes only dictated by social conventions more than by a genuine will to help them in rebuilding their lives.[258]

87. What happened to the abducted girls in the LRA not only is criminal, but run astray of their cultural landmarks. What these girls went through while in captivity remains a taboo in the families and communities; their ambiguous status once back, carrying the stamps of having been forcibly married in the bush, while no official marriage had in fact occurred according to Acholi traditions, creates various difficulties, from identity to their daily subsistence and land issues.[259] In the Acholi culture, when a woman is married, she is given a land which she never owns but she nonetheless has the right to use to cultivate food and feed the family. When a mother

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[257] See PCV-0002 (T-176, pp. 27-28: "*By definition, the so-called relationships that were assigned, forced inside the LRA were illegitimate relations as viewed by Acholi society, so they did not fulfil--they did not count as a legitimate marriage*. […] *And it basically means that the girl cannot become married, nor can she become a mother in the context of a legitimate marriage and that is what it takes to become a full woman. So this is exquisitely painful for girls in Acholi society. It means that they are trapped in a liminal space where they can't--they are not quite a girl anymore, but they are not a full woman*"; and his Report, UGA-PCV-0002-0076, p. 38 (the "PCV-0002 Report"). See also, P-0352 (T-67, p. 40 lines 14 – 19); P-0374 - victim [REDACTED] (T-150, pp. 12-17; and pp. 19-21); P-0396 (T-126, pp. 64-65; pp. 68-69; and T-127, pp. 34-36); and P-0448 (T-156, pp. 39-46).

[258] See PCV-0001 (T-175, p. 31, lines 3 – 23).

[259] In the Acholi culture, marriage occurs traditionnaly as from the age of 19. See D-0114 (T-247, p. 69 line 16 – p. 72 line 6; and p. 72 line 19 – p. 75 line 13).

comes back with children born in the bush, she will not get the land to grow crops to feed her family.

88. What these girls must have felt, abducted, far from their families, put in the midst of war, witnessing and sometimes participating in the combats and in the LRA punishments, enslaved and lost in the bush[260] – coerced, threatened, afraid, alone and afar from their family structure is tremendous. As emphasised by Prof. Musisi, "[t]*he whole social fabric is organized around the family, consisting of the young and old in an extended family system whereby strong family bonds hold together generations of the old, the matured, the youths and the children for the benefit of all. The typical Acholi family lives in a homestead called the* gang kal *with multiple huts/houses for all in an enclosure. A prospective young girl is introduced to the prospective husband through a family arrangement via her paternal aunt,* wayo*, and grandmother. After she accepts the boy, a lengthy marriage process called* nyom *is arranged where the families meet and pre-marriage negotiations are held including "getting to know each other (*luk*), the issues of bride price/dowry and the wedding ceremony itself called* nakub kub*. Food, drink and festivities are carried out including much dancing including the* Lakaraka *courtship dance. After the wedding, the girl moves to the family of the boy where she will live with her husband to start their own family. Sex with her husband is consensual. On getting pregnant, she will be excused from certain duties, fed very nutritious food and will be helped by the traditional midwife/birth attendant called the* lacele *throughout her birthing process and taught how to look after her newborn including breastfeeding. The whole community participates and celebrates in her marriage, pregnancy and birthing ceremony. The new baby is introduced to her patriarchal lineage's ancestors, the* abila*, and her family and given a name which she will keep as a member of her lineage till death. Then it will take the whole village to raise the child. This way the child will learn the Acholi ways, traditions and customs and will belong to a family and clan. There were no bastards or abandoned street children in traditional Acholiland. There were no children that lived on their own. All children were looked after*.

[260] See P-0236 (T-16, p. 20, lines 6 - 15: "*It took us two days to cross the river* [to Congo] […] [I]*t was frightening. It wasn't a very nice experience*. […] [I]*t wasn't safe*").

Kony's LRA disrupted all the above. Girls were abducted and forced into marriage to people they or their families did not know. These perpetrators were seen as having committed atrocities to their in-laws by beating, raping, stealing or even killing. It was not possible to forge family relationships with one's captors who had hurt and even killed one's family members. This was the dilemma of the girl abductees who were forced into marriage, raped daily, gotten pregnant and even given birth. There were no Acholi customary traditions to address this except to carry them through ritual ablution and cleansing rituals and ceremonies such as moyo piny *(cleansing the home of the returnee),* nyono tong gwen *(cleansing a combatant) or* moyo kum *(cleansing the body).* […] *Moreover some of these ceremonies demand that they be performed at the scene of the abominable act and with the opposite party present (the rapist or killer) in order for the reconciliation to work. Such was not possible in Kony's Acholi, leaving many culturally confused, frustrated and dismayed*".[261]

89. A significant number of girls, who were abducted and raped in the bush, came back to their communities with their children born in captivity. Many of them were - and still are - stigmatised and rejected by their community of origin. As Prof. Musisi stated: "[c]*hildren born of war waged by the LRA were not accepted readily in Acholi society as they were considered a product of pre-marital sex with no marriage and no bride price as is demanded by Acholi custom.* […] *Incest and premarital sex is taboo.* […] *The activities of Kony and the LRA which included the rape and defilement of women and girls as well as rampant sex during raids went against traditional Acholi sexual practices and customs. Such acts as the public rape of women, gang rape or their forced disrobing (nakedification) of women were highly condemned by the Acholi people as immoral, sinful and criminal*".[262] Not

[261] See the PCV-0003 Report, *supra* note 25, pp. 21-22. See also, P-0422 (T-28 p. 75 line 8 – p. 77 line 13; and p. 105 lines 2-16 and T-29, p. 102 line 24 – p. 105 line 22).
[262] See the PCV-0003 Report, *supra* note 25, pp. 20-21 and p. 31.

only do these children suffer from the complexity of their familial situation,[263] but they also suffer from health issues due to the circumstances of their birth.[264]

90. The evidence shows how difficult it was for abducted girls to come back to their families and communities and how problematic was and still is the life of children born in the bush. The words of P-0269 are illustrative in this regard: [REDACTED].[265]

91. When coming back, children born in the bush cannot have opportunities as the ones born in the community precisely because they have no lineage in the patriarchal or patrilineal society, which also implies no land.[266] Even after coming back from the bush, children – and young adults - are not able to adhere to the Acholi culture because they were not raised by the community. The traditional Acholi society is family oriented; children grow up with their whole extended family. They eventually become independent, get married, get their own land and have their own homestead. Children born in the bush lack knowledge of social behaviours; may not be respectful of the traditions and could behave aggressively because of the massive traumas they have been facing ever since they were born.[267] As a result, many resort to drugs, alcohol and violence.

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[263] See PCV-0001 (T-175, p. 28, line 22 – p. 29 line 12). See also, PCV-0002 (T-176, pp. 23; and 22-24; and PCV-0002 Report, *supra* note 257, p. 44: "*Although the mother's family could accept the child and give her the family name, the child's biological father could subsequently claim rights to the child. In such circumstances, the young mothers frequently play a key role in helping the children born in the LRA to navigate the complexities of their social position*").

[264] See PCV-0001 (T-175, p. 28, lines 3 – 16); PCV-0002 (T-176, p. 15 and his Report, *supra* note 257, pp. 17 and 23: "*During the crucial first 1000 days of life when extensive brain development and neuronal interconnections occur and when there is a high level of neuroplasticity, exposure to high levels of stress can have adverse affects on brain development. For example, high levels of stress can impair the oxytocin system that helps to regulate social memory and cognition, and enables healthy empathy and attachment.* […] *There are long-term intellectual, cognitive, emotional, social, and mood-related regulation systems that do not develop as they are supposed to*").

[265] See P-0269 [REDACTED]; and P-0006 - victim [REDACTED] (T-140, pp. 30-32).

[266] See PCV-0003 (T-177 p. 38 line 2 – p. 39 line 8, commenting on the testimony of P-0006). See also, the PCV-0003 Report, *supra* note 25, p. 17.

[267] See PCV-0003 (T-178, p. 19 line 2 – p. 20 line 21).

92. The evidence demonstrates beyond reasonable doubt that soldiers under Mr Ongwen's command committed gender based crimes against many girls and women and that the Accused gave orders and instructions for the commission of said crimes. In addition, there is ample evidence that the victims of these crimes were abducted and kept against their will in the LRA, in the midst of an armed conflict, the threats of which was known by the perpetrators and the victims themselves. There is equally substantial evidence demonstrating beyond reasonable doubt that Mr Ongwen directly committed gender based crimes against girls and women in his households.

2.2 Sexual and gender-based crimes directly committed by the Accused

93. Mr Ongwen is charged with the direct commission of a number of sexual and gender based crimes against at least seven identified women who testified before the Single Judge of the Pre-Trial Chamber in September and November 2015, in accordance with article 56 of the Statute in light of the risk that their testimony might not be subsequently available for the purposes of the trial.[268] There is no dispute among the parties as to the relevance and probative value of the written transcripts and related items of evidence used during the testimonies of the witnesses (six of whom are dual status individuals represented by the CLRV).[269]

94. P-0099 explained that, while in Sudan, the Accused had two homes, one in Jebellin 2 and one in Nisitu, where mothers with children were kept.[270] Where the witness started living, there were three homes: one used for cooking, one that

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[268] See the "Decision on the "Prosecution application for the Pre-Trial Chamber to preserve evidence and take measures under article 56 of the Rome Statute"" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-277-Red, 27 July 2015; and the "Decision on the "Second Prosecution application to the Pre-Trial Chamber to preserve evidence and take measures under article 56 of the Rome Statute" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-316-Red, 12 October 2015. See also D-0075 (T-225, p. 8 lines 17-19; and p. 41, lines 7-23); D-0068 (T-222, p. 42 line 8-21); D-0056 (T-228, p. 62 lines 19-23); D-0025 (T-226, p. 41 line 21 – p. 42 line 8); D-0013 (a wife of Mr Ongwen; T-244, p. 36 line 2 – p. 41 line 11); D-0118 (T-216, p. 32 lines 15-25); and D-0117 (T-215, p. 42, lines 14-16).

[269] Reference is to: [REDACTED] (P-0099); [REDACTED] (P-0214); [REDACTED] (P-0226); [REDACTED] (P-0227); [REDACTED] (P-0235); and [REDACTED] (P-0236).

[270] See P-0099 (T-14, p. 31, lines 2-6).

belonged to Mr Ongwen, and one where the "wives" would sleep. She explained that the "*wives took turns to sleep in* [the Accused's] *house*".[271] P-0235 stated that – when in Congo - the household was composed of three houses too: one in which the Accused would sleep, one where the kitchen was, and one where the then five girls and women in his household would sleep.[272] When in Uganda, the witnesses recall that they were not settled in one particular location but kept moving all the time;[273] they also spent some times in sickbays, when the Accused was injured.[274]

95. The testimonies of Mr Ongwen's forced wives shed light on the following common elements: they were chosen to come and live in his household; they were fairly young when they were abducted and chosen to become his "wives",[275] which invariably happened by a first act of rape committed by the Accused, followed by repeated forced sexual intercourse on a rotated basis (amongst the wives, depending on whom the Accused was calling at night); they did not have a choice, were coerced and threatened with their lives and none wanted to become his "wife"; they all started by doing some chores in the household as *ting tings*,[276] chores they continued

[271] See P-0099 (T-14, p. 31, lines 11-18).
[272] See P-0235 (T-17, from p. 28, lines 12-22).
[273] See P-0214 (T-15, p. 27, lines 12-18).
[274] See P-0214 (T-15, p. 37 line 23 – p. 38 line 16); and P-0235 (T-17, p. 39 line 24 – p. 40 line 15; p. 57 line 9 – p. 59 line 20).
[275] P-0226 believes she was 10 years old when she was abducted and forced to have sex with the Accused. See her testimony (T-8, p. 37 line 25 – p. 41 line 22; p. 54 line 8 to p. 55 line 14; p. 66, lines 5-14 and T-9, p. 7 lines 9-16 and p. 26, lines 14-23). See also, P-0101 (T-14, p. 3 lines 8-15: "*Ongwen was the worst when it came to young girls. He had sex with them at a very young age*. […] [REDACTED], *at the time that Ongwen started having sex with her was 12 years old.*"); P-0227 (T-10, p. 48 line 18 – p. 50 line 5 and T-11, p. 14 lines 12-24); P-0235 (T-17, p. 13 lines 12-21); and P-0099 (T-14, p. 24 lines 10 to 19; p. 25, lines 3 to 7). See also, the PCV-0001 Report, *supra* note 252, pp. 24-26.
[276] An important aspect of the life of the forced wives in the bush was the difficult relationships between them and with the *ting tings*. Wives exercised a certain power over *ting tings* and they would mistreat and beat them. P-0226 described the relationship between the Accused' wives as follows: "[t]*he women mistreated me because Dominic had told them, had instructed nobody to touch any of the crockery or cutlery that he used to eat with. So I was being mistreated because of that*. […] *I was the only one who was allowed to touch it and I was the only one who was allowed to use it to serve him.* […] *I would either* […] *be beaten badly or killed. And those were the consequences* [hadn't she obey]." See her testimony (T-8, p. 46 line 6 – p. 47, line 4). See also, P-0235 (T-17, p. 39 line 13 – p. 40 line 18: "[REDACTED] [the then senior wife] […] *sometimes could even beat the junior wives for some issues. So when we reached the Congo, she tried to--actually she threw something to my eyes and actually I would have lost my eyes. So when I reached the Congo I told her, "The way you used to beat me, that will no longer continue from now on."* […] [H]*e*

doing once they became "wives";[277] they were under constant guard from the Accused and/or his armed soldiers; their lives were threatened should they think of escaping and the Accused did not entertain their request to be allowed to go home;[278] they all were subjected to beatings and cruel and violent acts, either directly perpetrated by Mr Ongwen[279] or ordered by him, under his sight;[280] they were all forced to do things that they did not want, on a daily basis, namely to participate in violent acts, have repeated sexual intercourses and perform various duties in the household;[281] they were living in constant fear, thinking of home, missing their loved ones, worrying about their fate;[282] they were exposed to the dangers of attacks and combats in which the LRA engaged, and some of them sustained injuries; they all have suffered physical harm due to the crimes committed by the Accused during their captivity in his household, thereby permanently affecting their health; they all have suffered from traumatic experiences and still suffer nowadays from different types of traumas resulting from such experiences; they all gave birth to children born in the bush and fathered by the Accused, children who in turn suffered from the

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[Ongwen] *would say it and say, "This is the senior woman; therefore, she has to be respected." That's how he would say*"); and D-0049 (T-243, p. 47 line 3 – p. 48 line 15).

[277] See *e.g.*, P-0099 describing her duties while living in the Accused's household: "*We used to cook and do the laundry. If we were required to go gardening, then we would also go, we would also do that*. […] *If we are supposed to go gardening, it was Ongwen who used to give—who would give us the instructions because we would have his things that would only be used by his household. Only the people in his household would have access to those things*. […] [I]*f you did not want to do anything, you would tell them, but on the occasion that we were there we were beaten because we told* […] him [Dominic Ongwen] *that we did not want to cook and we'd also refused to go to the garden.* […] *Ongwen called his escorts and instructed them to beat us*." See her testimony (T-14, p. 40 line 4 – p. 41 line 2); and P-0214 (T-15, p. 18 lines 11-22).

[278] See P-0235 (T-17, p. 10 line 11 – p. 11 line 19).

[279] See P-0226 (T-9, p. 19 lines 11 - 21).

[280] See P-0226 (T-9, p. 5 line 8 – p. 6 line 1).

[281] See P-0226 recalling a time when "*They selected a number of girls, each girl was given a stick, you're asked to beat the soldier and once you're done you move on and the next person does the same*. […] *It was a heavy stick. I had to use both my hands.* […] *When I hit him, I got blood splattered on my clothes.* […] *Dominic, and the other commander were sitting on a chair.* […] *It was near. He said that if anyone refused to beat the soldier, then the person will be killed like the soldier*." She also specified: "*I was forced. The reason why I did accept was because I was forced to kill. I had no choice.* […] *I suppressed this memory because I was forced to kill. I was forced to kill, and I did not want to constantly think about the killing*." See her testimony (T-8, p. 62 line 8 – p. 64 line 24; and T-9, p. 60 line 19 – p. 62 line 11). Similarly, P-0235 was asked to participate in the killing of two soldiers who had tried to escape and she could not bring herself to do it. See her testimony (T-17, p. 24 line 16 – p. 25 line 20, referring to her written statement UGA-OTP-0240-0003, at para. 40).

[282] See P-0236's victim application [REDACTED], [REDACTED]. See also, P-0214 (T-15, p. 26 lines 8 - 16).

difficult conditions in the bush during their essential first years of life;[283] they all have been facing critical issues back home to reintegrate in their respective families and communities, to make a living to support their children and their own daily subsistence, to go back to their lives (let alone to try to continue their interrupted education)[284] and start rebuilding a new life for themselves and their children.

96. The account of witnesses about the first time Mr Ongwen raped them is illustrative of the fact that they could not refuse sexual intercourse with him and that he coerced them by using force and threats, at a time when, in addition, they were not feeling ready for this kind of intimacy. P-0099 explained that she did not want to have sex, but could not have refused; otherwise she would have been killed.[285] She stated: "*I told him, "You have hurt me." He didn't answer anything*".[286] The witness was abducted about seven months earlier,[287] and she was approximately 15 years old.[288] P-0214 explained: "*Ongwen took his penis and put it inside of my vagina. While he was on top of me, I had fear. I was scared as he wanted to sleep with me and I have never slept with a man before. I felt pain when he entered me. He was lying on top of me. I tried to push him away but he told me to stop. He was heavy. It did not take long. I felt him ejaculating inside me*. […] *I was crying as I was told at home that I should not sleep with a man in the bush. I was told that if I slept with a man in the bush I would not have children or the children would die.* […] [Having sex with him] *wasn't my choice*".[289] Very similar accounts were

[283] About lack of food, sleeping, sanitation, clothing and mistreatment in the bush, see P-0099 (T-14, p. 45 lines 14-24); P-0214 (T-15, p. 28 lines 4 - 22); P-0070 (T-106, p. 57 lines 2-9); P-0081 (T-118, p. 19 line 23 – p. 20 line 8); P-0275 - victim [REDACTED] (T-124, p. 16 line 22 – p. 17 line 19); P-0280 (T-84, p. 10 line 17 – p. 11 line 18); P-0286 - victim [REDACTED] - (T-131, p. 57 line 4 – p. 58 line 17); P-0314 (T-75, p. 50 lines 12 – p. 52 line 7); P-0366 - victim [REDACTED] (T-147, p. 17 lines 16-25 and p. 19 line 10 – p. 20 line 24); P-0372 (T-148, pp. 63-69); P-0410 (T-152, pp. 3-4); P-0448 (T-156, pp. 39-46); P-0172 (T-113, p. 47, lines 7-9); P-0309 (T-61, p. 58, lines 3-10); P-0330 (T-53, p. 47 lines 3-8); P-0340 (T-102, p. 50 line 19 – p. 51 line 14); and P-0410 (T-151, pp. 7-11).

[284] See P-0097 (T-108, p. 71 lines 19-22: "*In the bush there was no school, there was no form of education. What was happening there was purely walking about*").

[285] See P-0099 (T-14, p. 33, lines 18-24 and p. 36, lines 6-9).

[286] See P-0099 (T-14, p. 32 lines 24 -25).

[287] See P-0099 (T-14, p. 20 line 24 – p. 21 line 3; and p. 27 line 6 – p. 28 line 21).

[288] See P-0099 (T-14, p. 13 lines 2 to 9 and p. 41, lines 14-16).

[289] P-0214 (T-15, p. 24, line 15 – p. 25 line 21); P-0226 (T-8, p. 37 line 25 – p. 41 line 22; p. 46 line 6 – p. 47, line 4 and T-9, p. 7, lines 9-16); P-0227 (T-10, p. 38 line 10 – p. 40 line 21; p. 42, lines 1-4); P-0236 (T-16,

provided by P-0226 (she was 10 years old the first time the Accused raped her, she was not sexually mature; she was severely beaten, frightened and threatened with her life, bleeding from her vagina; she did not consider Mr Ongwen to be her husband);[290] P-0227 (she was scared and having palpitations; when the Accused raped her she was crying and screaming; he showed her his gun and she felt that her whole life was in his hands and that her whole body was being torn apart; he raped her in the vagina and in the anus; she felt excruciating pain and bled a lot);[291] P-0235 (she did not want to have a husband or give birth to a child in the bush; she was still young);[292] and P-0236 (she did not have any right; she was thinking that she would still be a virgin if she would not have been abducted).[293]

97. It can therefore be concluded that the constitutive elements of the crime of rape are met because the acts of penetration were committed under threat of force or coercion, such as that caused by the threat of violence, psychological pressure or abuse of power or, more generally, taking advantage of a coercive environment.[294]

98. The evidence demonstrates beyond reasonable doubt that Mr Ongwen directly committed the crime of rape towards at least seven identified women by inflicting them with multiple, repeated and regular acts of penetration under coercive circumstances and conditions of which the Accused was undoubtedly aware

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p. 20 line 23 – p. 21 line 21; p. 24 line 23 – p. 25 line 19; as well as p. 26, lines 17-19 and p. 42, lines 9-11); P-0235 (T-17, p. 32 line 2 – p. 36 line 14; p. 39 line 13 – p. 40 line 18).

[290] See P-0226 (T-8, p. 37 line 25 – p. 41 line 22; p. 44 line 10 – p. 45 line 22 - p. 47 lines 6-8; and T-9, p.7 lines 9-16; p. 56 lines 5-18); as well as P-0226's victim application [REDACTED], p. 3.

[291] See P-0227 (T-10, p. 38 line 10 – p. 40 line 21; p. 42, lines 1-4).

[292] See P-0235 (T-17, p. 32 line 2 – p. 36 line 14).

[293] See P-0236 (T-16, p. 20 line 23 – p. 21 line 21; p. 24 line 23 – p. 25 line 19; p. 26 lines 20-23 and lines 17-19; and p. 42 lines 9-11); and P-0200 (T-145, pp. 28 lines 10-17).

[294] See Articles 7(1)(g)-1 and 8(2)(e)(vi)-1 of the Elements of Crimes. See the *Ntaganda* Judgment, *supra* note 52, para. 934. Based on this jurisprudence, the CLRV recalls that the victim's lack of consent need not be proven; the establishment of at least one of the coercive circumstances or conditions is sufficient for penetration to amount to rape; coercive circumstances need not be evidenced by a show of physical force; threats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion; moreover, coercion may also be inherent in certain circumstances such as an armed conflict; and it must be proven that the perpetrator's conduct involved "*taking advantage*" of such a coercive environment. See the *Al Hassan* Confirmation Decision, *supra* note 235, paras. 533-542, 638, 639-643. See also, D-0074 (T-187, p. 48 lines 12 - 25); and D-0134 (T-241, p. 5 line 8 – p. 6 line 21).

and conscious based on the victims' reactions.[295] There is equally substantial evidence demonstrating that the victims were abducted and kept against their will in the LRA, in the midst of an armed conflict, the threats of which was known by the Accused and the victims themselves.

99. The evidence also demonstrates beyond reasonable doubt that Mr Ongwen committed the crime of sexual slavery by engaging in one or more acts of a sexual nature while exercising a power of ownership on his victims, who were placed in situations of enforced deprivation of liberty by the Accused.[296]

100. The evidence further demonstrates beyond reasonable doubt that Mr Ongwen committed the crime of forced marriage by imposing a so-called "marriage" on girls

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[295] See Article 8(2)(e)(vi)-1 and 2 of the Elements of Crimes, provides that for the invasion of the body of a person to constitute rape, it has to be committed under one or more of four possible circumstances: (i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person; (iii) taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent. The preparatory works of the Rome Statute demonstrate that the drafters chose not to require the Prosecution to prove the absence of consent of the victim beyond reasonable doubt, on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice. Accordingly, where "force", "threat of force or coercion", or "taking advantage of coercive environment" is proven there is no need to prove the victim's lack of consent. The lack of consent is not a legal element of the crime of rape under the Statute. See COTTIER (M.) & MZEE (S.), "Rape and other forms of sexual violence", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Observers' Notes, Article by Article, *supra* note 3, para. 690. See also, ROBINSON (D.), "Crime against Humanity of Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization, or Any Other Form of Sexual Violence of Comparable Gravity", in LEE (R.S.) (ed), The International Criminal Court: Element of Crimes and Rules of Procedure and Evidence, Transnational Publishers, Inc. New York, 2001, p. 93. See also, the *Bemba* Judgment, *supra* note 30, para. 106.

[296] See Article 7(1)(g)-2 of the Elements of Crimes. In determining whether, when engaging in one or more acts of a sexual nature, the perpetrator exercised a power of ownership over his or her victims, various factors, such as control of the victim's movements, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour and the victim's vulnerability could be considered. The exercise of the right of ownership over such victims need not entail a commercial transaction. Lastly, the imposition of "similar deprivation of liberty" may cover situations in which the victims may not have been physically confined but were otherwise unable to leave as they would have nowhere else to go and fear for their lives. See the *Ntaganda* Judgment, *supra* note 52, para. 952. For the factors considered appropriate to fill-in the elements of sexual slavery, see *Brima et al.*, SCSL-2004-16-T, Judgement (Trial Chamber), 20 June 2007, paras. 1105, 1126 and 1183 (the "AFRC Judgement"). See also the *Al Hassan* Confirmation Decision, *supra* note 235, paras. 543-551, 638 and 644-646.

and women in his household, perfectly aware of the coercitive environment and actions he was imposing on the victims. In this regard, the CLRV recalls that the Pre-Trial Chamber held for the first time before this Court that forcing another person to serve as a conjugal partner may, *per se*, amount to an act of a similar character to those explicitly enumerated by article 7(1) of the Statute, intentionally causing great suffering or serious injury to body or to mental or physical health;[297] and that the crime of forced marriage is not subsumed by the crime of sexual slavery, a finding further confirmed in the *Al Hassan* case.[298] The CLRV asks the Trial Chamber to confirm this interpretation of the law recognising that restrictions on the freedom of movement, repeated sexual abuses, forced pregnancies, or forced labours, in particular, forced performance of domestic duties, are all factors which indicate a situation of forced marriage;[299] and to recognise that the central element of the crime is the imposition of marriage on the victim, against her will, with the consequent social stigma attached to it.[300] Lastly, the victims of forced marriages suffer separate and additional harm to those of the crime of sexual slavery or other gender crimes under the Statute since this offense violates the independently recognised basic right to consensually marry and establish a family.[301]

101. The evidence also demonstrates beyond reasonable doubt that Mr Ongwen committed the crime of forced pregancy by confining girls and women he forcibly made pregnant, with the intent to carry out grave violations of international law,

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[297] See the Decision confirming the charges, *supra* note 5, paras. 87-95.
[298] See the Decision on the Defence request for leave to appeal the decision on the confirmation of charges, *supra* note 7, paras. 33-39. See also the *Al Hassan* Confirmation Decision, *supra* note 235, paras. 552-582, 638 and 647-651; and the "Judgment on the appeal of Mr Al Hassan against the decision of Pre-Trial Chamber I entitled 'Décision relative à l'exception d'irrecevabilité pour insuffisance de gravité de l'affaire soulevée par la défense'" (Appeals Chamber), No. ICC-01/12-01/18-601-Red, 19 February 2020, paras. 121-123, concerning the validity of cumulative charging.
[299] See the Decision confirming the charges, *supra* note 5, paras. 92 and 94. The element of exclusivity (between the "husband" and "wife") imposed on the victim is also a characteristic aspect of forced marriage.
[300] *Idem*, para. 93.
[301] *Idem*, para. 94.

including using them as "wives" and mothers and to rape, sexually enslave and torture them.[302]

102. Pregnancy in the bush and following forced sexual intercourses was a particularly painful experience for all of the Accused's "wives".[303] P-0236 stated: "*I gave birth to two sons with Dominic Ongwen and I am taking care of them single handedly without anyone to help me since I have no source of income because I am jobless. I feel I have lost my dignity as a woman because I was forced into sexual intercourse by a rebel and I could not do anything to defend myself that I even gave birth to two sons*".[304] P-0235 recalled: "[Becoming pregnant in the bush] *wasn't my choice*".[305] In her victim's application form, she further specified the difficult conditions of the pregnancies in the LRA captivity: "*It was a very terrible time for me as I gave birth in the bush. It was a very hard time for me as I was helped by my co-wife who was not even an expert in the field of giving birth. There was no mid-wife at that time*".[306] Despite being pregnant, the "wives" had to continue their duties and still "*had to run when* [they] *were* [REDACTED]".[307]

103. The impacts of these crimes on the life of the "wives" are tremendous. P-0269 stated: [REDACTED].[308]

104. P-0235 was more explicit in stating that: "*There is a lot of stigmatisation in the community where I live. People stigmatise me a lot because I was Dominic Ongwen's wife. They even stigmatise my children because they are Dooming Ongwen's children. People do*

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[302] See the Decision confirming the charges, *supra* note 5, para. 99. The essence of the crime is in unlawfully placing the victim in a position in which she cannot choose whether to continue the pregnancy. It is not necessary to prove that the perpetrator has a special intent with respect to the outcome of the pregnancy or that the pregnancy of the woman is in any way causally linked to her confinement.

[303] See P-0099 (T-14, p. 9 line 19; p. 42 line 8 – p. 43 line 2; p. 45 line 1 and lines 14-24; p. 47 line 14 – p. 48, line 10; p. 49 lines 15-16; p. 59 lines 21-25). See also, P-0099's victim's application form [REDACTED], p. 5; P-0214 (T-15, p. 28 lines 4 - 22; p. 29 lines 7-25; p. 30 lines 1-5; p. 34 line 12 – p. 35 line 20; p. 37 line 4 – p. 38 line 15); P-0235's victim application [REDACTED], p. 4); P-0227 (T-10, p. 43 line 19 – p. 45 line 7); and the PCV-0001 Report, *supra* note 252, pp. 23-24.

[304] See P-0236's victim application as [REDACTED], p. 1, question 2.

[305] See P-0235 (T-17, p. 38 lines 14 - 15).

[306] See P-0235's victim application [REDACTED], p. 4.

[307] See P-0214 (T-15, p. 35 lines 14 - 16).

[308] See P-0269 [REDACTED].

not understand that I was just forced by Dominic Ongwen to be his wife against my will. They talk a lot behind my back and this hurts me so much. I cannot live in the community as a normal person due to that stigmatisation. […] *Am now having three children whom I look after alone since my husband Dominic Ongwen was arrested and he is under the custody of the ICC. My children also do not study since I cannot afford to pay their school fees*".[309] Answering a question about the way her children adapted to the fact that they were born in the bush and had come back home, she mentioned: "*It was difficult. While we were in the bush they knew the people that we--we were together with. When we came back, they were afraid of people. But at the moment they are getting used to people, so it's becoming a bit better*".[310]

105. Prof. Reicherter explained the consequences of forced pregnancy in the following terms: "*Women who become pregnant following incidents of rape may face the scorn of their community*. […] *In Uganda, forced pregnancy causes the mother and child stigma in their communities. Children of forced pregnancies serve as a symbol and reminder of the history of atrocities committed by the LRA, and are therefore subjects of blame, scorn, and rejection in their communities, often being automatically labelled as a criminal, rebel, or murderer.* […] [C]*hildren born of LRA-forced pregnancies are deeply affected by their biological origins and subsequent treatment by society.* […] [C]*hildren's status as "war babies" may foster direct and indirect forms of violence by individuals, families and communities including stigma, exclusion, abandonment, and infanticide.* […] [I]*nequities* [are noted] *in relation to children's access to health, education, and employment. Questions on the legal citizenship and ethnic identities of these children have also been raised, particularly if families and communities refuse to accept these children or acknowledge their heritage*".[311]

[309] See P-0235's victim application [REDACTED], p. 5. See also, the PCV-0002 Report, *supra* note 263, pp. 49-50 and 53 and his testimony (T-176, p. 17).
[310] See P-0236 (T-16, p. 37 lines 13-15); and P-0269 (T-85, p. 64 line 10 – p. 65 line 1).
[311] See the PCV-0001 Report, *supra* note 252, p. 33.

106. The expert also added that "[a]*n additional form of stigmatization observed in the children of victims of those abducted is the naming of their children. In one study, results from a study conducted in a reception center in Gulu showed that 71 % of their sample had names that had negative connotations*. […] [T]*hese children received names with negative connotation because their names were a reminder of the suffering and their captivity. Although many reception centers changed these children's names, they carry the stigma of their name into their reintegration. The children end up isolated from other children because of their upbringing*".[312]

107. Finally, with regard to the crimes of torture,[313] enslavement[314] and outrages upon personal dignity[315] charged in the framework of sexual and gender based crimes, the CLRV submits that the evidence adduced at trial demonstrates beyond reasonable doubt that Mr Ongwen personally committed each of these crimes against the girls and the women in his household. The CLRV further submits that Mr Ongwen intentionally inflicted sever pain or suffering, both pyshical and mental, upon the girls and women in his custody and under his control (amounting to the crime of torture);[316] that Mr Ongwen exercised any or all the powers attached to the right of ownership over the girls and women in his household, by abducting them, placing them under military guard to prevent their escape, coercing them to daily chores and duties according to his needs, reducing them to a servile status

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[312] *Idem*, pp. 33-34.

[313] See Articles 7(1)(f) (including ft 14) and Article 8(2)(c)(i)-4 of the Elements of Crimes. See P-0226 (T-9, p. 19 lines 11-21; p. 5 line 8 – p. 6 line 1; p. 25 lines 16-23; and T-8, p. 52 line 1 – p. 53 line 20; p. 66 line 15 – p. 69 line 21; p. 70 lines 8-22); P-0227 (T-10, p. 37 line 17 – p. 38 line 2; p. 52 line 1 – p. 54 line 1; p. 54 line 2 – p. 55 line 15); P-0236 (T-16, p. 15 lines 1-23; p. 12 line 18 – p. 14 line 13); and P-0235 (T-17, p. 10 line 11 – p. 11 line 19; p. 41 line 13 – p. 42 line 13; p. 42 line 23 – p. 43 line 22; p. 44 lines 1-14; p. 44 line 22 – p. 45 line 6). See also P-0235's statement, UGA-OTP-0240-0003, at para. 98.

[314] See Article 7(1)(c) of the Elements of Crimes. With regard to the chores and duties the women were forced to perform on a daily basis in the Accused's household, see P-0099 (T-14, p. 40 line 4 – p. 41 line 2 and p. 58 lines 4-10); P-0214 (T-15, p. 18 lines 11-22 and p. 20 lines 3-4 and lines 10-11); P-0226 (T-9, p. 6 lines 2-9); P-0227 (T-10, p. 34 lines 14-24 and p. 36 line 19 – p. 37 line 16 and p. 38 lines 3-7); and P-0235 (T-17, p. 30 lines 7-15 and p. 36 line 15 – p. 37 line 3).

[315] See Article 8 (2)(c)(ii) of the Elements of Crimes. See P-0226 (T-8, p. 62 line 8 – p. 64, line 24; T-9, p. 60 line 19 – p. 62 line 11); and P-0235 (T-17, p. 24 line 16 – p. 25 line 20, referring to her written statement UGA-OTP-0240-0003, at para. 40).

[316] See the *Bemba* Confirmation Decision, *supra* note 234, paras. 193-195.

(amounting to the crime of enslavement);[317] and finally, that Mr Ongwen intentionally and knowingly caused, by his actions or omissions, the humiliation, degradation or violation of the personal dignity of the girls and women in his captivity (amounting to the crime of outrages upon personal dignity).[318]

108. In this regard, Prof. Reicherter explained: "*An important factor in understanding the impact of experiences of trauma, rape, and sexual assault is the developmental stage of the individual at the time of insult*. […] *As a result, trauma and rape experienced during childhood or adolescence have been shown to have more pervasive and severe consequences than adult exposure due to the negative impact on the development of cognitive and intellectual capacities, executive functioning, emotion regulation, and interpersonal skills*. […] *The injuries to cognitive, emotional, and behavioral regulatory capacities lead to lasting impairment in self-care, as well as academic and vocational performance, among other areas of difficulty. Difficulties stemming from exposure to trauma and sexual assault in childhood also correspond with lasting alterations in individuals' sense of self, as well as relationships with others*. […] [C]*hildhood exposure to abuse (including sexual abuse) has been linked with disrupted attachment, poor social skills, social isolation, difficulties with trust and security in relationships, poor interpersonal effectiveness, and heightened risk for future trauma or victimization*".[319]

109. Finally, the expert elucidated the following with regards to outcomes of trauma and sexual assault with female survivors of rape and gender based crimes perpetrated by the LRA in Uganda: "*Such findings include the presence of PTSD, depression, anxiety, and dissociation; loss of perceived control; shame; increased sexual risk/vulnerability; erosion of traditional cultural, parental, and familial protective factors; and impaired psychosocial development and functioning of children who are products of rape/forced pregnancy. The specific impacts and impairments due to rape and gender-based*

[317] See the Decision confirming the charges, *supra* note 5, paras. 36, 48, 62, 120 and 121.
[318] See the *Katanga and Ngudjolo* Confirmation Decision, *supra* note 236, paras. 368-369; the *Al Hassan* Confirmation Decision, *supra* note 235, para. 262.
[319] See the PCV-0001 Report, *supra* note 252, pp. 24-26.

violence are compounded with the distress and impairment resulting from additional traumas and insults experienced in Acholi communities in Uganda, including war and violence exposure, abduction, displacement, and societal destabilization. These multiple traumas are cumulative for individuals and communities".[320] He added that the review of the court materials in this case, including testimonies, "*shows overwhelming evidence of traumatic psychological outcomes*".[321]

3. The practice of abducting girls and boys under the age of 15 for the purpose of conscripting them and using them in hostilities

110. The LRA has also been notorious for its widespread abduction of children to serve as soldiers. Under article 8(2)(e)(vii) of the Statute, the recruitment of children under fifteen "*into armed forces or groups*" and their use in hostilities clearly extends to any armed group within the meaning of international humanitarian law.[322] The crime has a permanent or continuous character which means that the offence continues to be committed as long as the child remains in the military group.[323]

111. Given that the codification of the crime aims at protecting children under 15 years, as a particularly vulnerable group, from the inherent risks arising out of armed conflicts, in principle, all direct or indirect activities which expose the children to the

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[320] *Idem*, p. 6 and p. 9: "*The psychiatric literature predicts very poor functional outcomes for such victims of sexual assault. The resulting myriad of individual consequences includes psychiatric disorders such as posttraumatic stress disorder, depression, and anxiety. Outside of these named mental health diagnoses, individuals suffer from abject feelings of hopelessness; spiritual degradation; and heightened suspiciousness, persistent confusion, and fear*."

[321] *Idem*, p. 6.

[322] See article 8(2)(e)(vii) of the Elements of Crimes. Conscription alone is sufficient and thus it is not required that a child under 15 years of age who has been conscripted also be used to participate actively in hostilities. Conscription is a continuing crime meaning that its commission occurs for as long as the child remains part of or is associated with the armed group and until the child reaches 15 years of age. Conscription means recruitment resulting in the incorporation of a person into an armed group by compulsion or coercion. The existence of such coercion or compulsion can be established by demonstrating that a child joined the armed group due to, *inter alia*, brute force, threat of force or psychological pressure amounting to coercion. Children under the age of 15 are generally unable to give genuine and informed consent when joining in an armed group. See the *Ntaganda* Judgment, *supra* note 52, paras. 1104-1107.

[323] See the *Ntaganda* Judgment, *supra* note 52, para. 1104.

"armed conflict risks" should be covered by the active participation requirement.[324] Therefore, the practice of the Court has recognised the following acts as constituting use of children in hostilities: taking direct part in attacks, carrying equipment and belongings for superiors, including weapons, collecting firewood for the troops, collecting and disposing dead bodies, collecting and carrying pillaged goods, surveilling other abductees and protecting camp sites, being used as escorts.[325] The recent jurisprudence has also recognised the perpetration of sexual and gender based crimes, namely rape and sexual slavery committed against child soldiers by members of the recruiting group. In this regard, the Appeals Chamber confirmed that engaging in sexual violence can never be justified, irrespective of whether or not the person may be liable to be targeted and killed under international humanitarian law.[326]

112. The above mentioned activities are the kind of tasks typically described by former child soldiers when asked about their stay within the LRA which used them as a vital resource. Children were easily malleable to whatever purpose Kony and his commanders – including Mr Ongwen – wanted, and were very quick to obey orders. Former child soldiers explained that children copy exactly what they learn during

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[324] See the *Lubanga* Judgement, *supra* note 28, para. 628: "*All of these activities, which cover either direct or indirect participation, have an underlying common feature: the child concerned is, at the very least, a potential target. The decisive factor, therefore, in deciding if an "indirect" role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target*".

[325] The term using children under the age of 15 "*to participate actively in hostilities*" imports a wide interpretation to the activities and roles played by such children. In assessing whether an activity or role qualifies as "*active participation in hostilities*", it is necessary to analyse the link between the activity and any combat in which the armed group of the accused is engaged, rather than the risk posed to the child as a potential target in hostilities. The requisite proximity between the child's activities and the hostilities exists in case of, *inter alia*, gathering information, transmitting orders, transporting ammunition and foodstuff and acts of sabotage. In addition, using children under the age of 15 as personal escorts and sending them on reconnaissance missions also constitute the forms of active participation in hostilities. In case of deployment of children under the age of 15 as soldiers and their participation in combat as well as their use as military guards and bodyguards clearly constitute the act of using them to participate actively in hostilities within the definition of article 8(2)(e)(vii). See the *Ntaganda* Judgment, *supra* note 52, paras. 1104, 1108 and 1109.

[326] See the "Judgment on the appeal of Mr Ntaganda against the 'Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9'" (Appeals Chamber), No. ICC-01/04-02/06-1962 OA5, 15 June 2017, para. 2.

training. Children, who were used as disposable porters by the LRA, walked quickly and tired slowly. This both increased the LRA's mobility and enhanced its capacity to carry loads of looted goods over long distances and satisfy the need for food, gumboots and cash. Forcing children to kill their friends or family members in front of other abductees instilled fear in them, discouraging them from escaping. It also forced a "clean break with the past", as they were less likely to return to a community where they murdered, tortured and looted.

113. The evidence demonstrates beyond reasonable doubt that, between at least 1 July 2002 and 31 December 2005, Kony and others senior LRA commanders, including Mr Ongwen, pursued a common plan to abduct children in the territory of Northern Uganda and conscript them into the LRA, including in the Sinia Brigade, in order to ensure a constant supply of fighters.[327] Abduction of children was a widespread and established practice in the LRA.[328] Therefore, the co-perpetrators meant to engage in their conduct or were aware that the recruitment of children would occur in the ordinary course of events in implementing the common plan.[329] Mr Ongwen was aware of the fundamental features of the LRA and the factual circumstances that enabled him, together with other co-perpetrators, to jointly exercise control of the crime.[330]

114. As a result of the common plan, children under the age of 15 were abducted at various locations in Northern Uganda and forcibly integrated into the Oka battalion and the Sinia brigade.[331] Following their recruitment, they were trained for active

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[327] See P-0070 (T-105, p. 86 line 16 – p. 88 line 8); P-231 (T-122, p. 38 line 14 – p. 46 line 6); P-307 (T-152, p. 64 line 14 – p. 66 line 24, T-153, p. 36 lines 7 – 16, as well as UGA-OTP-0266-0425-R01); and P-0330 (T-52, p. 51 lines 19 – 23, p. 52 line 17 – p. 54 line 6).

[328] See P-0145 (T-143, p. 8 line 9 – p. 10 line 14); P-231 (T-122, p. 38 line 14 – p. 46 line 6); P-307 (T-152, p. 64 line 14 – p. 66 line 24; T-153, p. 36 lines 7 – 16, as well as UGA-OTP-0266-0425-R01); and P-0330 (T-52, p. 51 lines 19 – 23, p. 52 line 17 – p. 54 line 6).

[329] See P-0070 (T-105, p. 86 line 16 – p. 88 line 8); P-231 (T-122, p. 38 line 14 – p. 46 line 6); P-307 (T-152, p. 64 line 14 – p. 66 line 24, T-153, p. 36 lines 7 – 16, as well as UGA-OTP-0266-0425-R01); and P-0330 (T-52, p. 51 lines 19 – 23; p. 52 line 17 – p. 54 line 6).

[330] *Ibid.*

[331] See D-0056 (T-229, p. 11 line 1 – p. 17 line 21); D-0068 (T-223, p. 16 line 5 – p. 24 line 44); P-231 (T-122, p. 38 line 14 – p. 46 line 6); P-0233 (T-111, p. 14 line 19 – p. 19 line 4); P-0245 (T-98, p. 35 line 20 –

participation in hostilities.[332] Children under the age of 15 years participated actively in combats and activities linked to combat in the four charged locations, as well as in other places (such as Acet, Alim, Acholibur, Atanga, Barogal, Bar Rio, Dure, Kitgum Matidi, Labworomor, Lanyatido, Opit, Palaro and others).[333] In particular, they served as lookouts, fought against the UPDF and LDUs, pillaged civilian houses and carried pillaged goods.[334] Some of them served as escorts and bodyguards of LRA commanders, including Mr Ongwen, and were forced into sexual intercourses.[335]

115. Mr Ongwen contributed to the realization of the common plan by (a) personally using children under the age of 15 years as escorts who participated in hostilities alongside him;[336] (b) ordering his subordinates to abduct children under the age of 15 years;[337] (c) planning, ordering and deploying his subordinates for

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p. 41 line 9); P-0250 (T-141, p. 7 line 23 – p. 9 line 14); and P-0330 (T-52, p. 51 lines 19 – 23, p. 52 line 17 – p. 54 line 6).

[332] See D-0056 (T-229, p. 11 line 1 – p. 17 line 21); D-0068 (T-223, p. 16 line 5 – p. 24 line 24); P-231 (T-122, p. 38 line 14 – p. 46 line 6); P-0245 (T-98, p. 35 line 20 – p. 41 line 9; p. 51 line 2 – p. 53 line 2; T-99, p. 64 line 25 – p. 65 line 9); P-0252 (T-87, p. 50 line 12 – p. 52 line 8); P-0406 (T-154, p. 22 line 6 – p. 23 line 24); P-0226 (T-8, p. 20 lines 13-24; p. 49, line 9 – p. 50 line 19) and P-0236 (T-16, p. 26 line 24 – p. 29 line 17).

[333] See D-0056 (T-229, p. 11 line 1 – p. 17 line 21), D-0068 (T-223, p. 16 line 5 – p. 24 line 44); P-0097 (T-108, p. 19 line 1 – p. 24 line 3 and p. 70 line 13 – p. 72 line 25); P-0245 (T-98, p. 35 line 20 – p. 43 line 10, p. 46 line 4 – p. 53 line 2; T-99, p. 6 line 23 – p. 8 line 4, p. 41 line 25 – p. 43 line 8; p. 46 line 23 – p. 49 line 13); P-0252 (T-87, p. 57 line 15 – p. 61 line 13); P-0309 (T-61, p. 14 line 7 – p. 21 line 5; and p. 25 line 22 – p. 29 line 18); P-0330 (T-52, p. 40 line 25 – p. 44 line 7; and p. 49 line 15 – p. 50 line 15); P-0379 (T-56, p. 37 line 15 – p. 47 line 21); and P-0236 (T-16, p. 26 line 24 – p. 29 line 17).

[334] See D-0068 (T-223, p. 16 line 5 – p. 24 line 24); P-0097 (T-108, p. 19 line 1 – p. 24 line 3; and p. 70 line 13 – p. 72 line 25); P-0245 (T-98, p. 37 lines 2 - 8; T-99, p. 39 line 6 – p. 45 line 21); and P-0252 (T-87, p. 57 line 15 – p. 61 line 13).

[335] See D-0056 (T-229, p. 13 line 4 – p. 17 line 21); P-0245 (T-98, p. 30 lines 10 – 12, p. 47 line 21 – p. 48 line 8); P-0249 (T-79, p. 48 lines 2 - 15); P-0330 (T-51, p. 66 line 24 – p. 70 line 2); P-0406 (T-154, p. 37 line 10 – p. 40 line 7); P-0379 (T-56, p. 37 line 15 – p. 47 line 21); and P-0226 (T-8, p. 20 lines 13-24, p. 49, line 9 – p. 50, line 19).

[336] See P-0009 (T-14, p. 41 line 3 – p. 42 line 7; T-81, p. 75 line 13 – p. 76 line 7); P-0067 (T-125, p.25 lines 13 – 20, p. 26 line 18 - 22); P-0205 (T-51, p. 2 line 22 – p. 3 line 8); P-0245 (T-98, p. 29 line 14 – p. 30 line 5; p. 47 line 21 – p. 53 line 2); P-0249 (T-79, p. 48 lines 2 - 15); P-0309 (T-60, p. 22 lines 10 – 18, p. 26 line 19 – p. 30 line 18); P-0314 (T-74, p. 49 line 23 – p. 50 line 23; p. 51 line 24 – p. 52 line 20); and P-0406 (T-154, p. 39 line 9 – p. 40 line 7).

[337] See P-0054 (T-93, p. 22 line 3 – p. 24 line 4; T-94, p. 27 line 6 – p. 28 line 24); P-0097 (T-108, p. 14 line 16 – p. 15 line 20); P-0145 (T-143, p. 34 line 14 – p. 35 line 1); P-0200 (T-145, p. 21 line 10-p. 26 line 20); P-0205 (T-48, p. 30 line 21 – p. 39 line 1); P-231 (T-122, p. 38 line 14 – p. 43 line 20); P-0233 (T-111, p. 17 line 3 – p. 19 line 4); P-0250 (T-141, p. 8 line 16 – p. 10 line 3); P-0252 (T-87, p. 25 line 21 – p. 30 line 23), P-307 (T-153, p. 6 line 9 – p. 23 line 2, as well as UGA-OTP-0266-0425-R01); P-0309 (T-60,

attacks in which children under the age of 15 actively participated, in particular, in Pajule, Odek, Lukodi, Abok IDP camps and other places;[338] (d) having operational control over the implementation of the common plan in the units he commanded;[339] (c) supervising and taking part in military training of children under the age of 15 years;[340] (e) failing as a military commander to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failing to submit the matter to the competent authorities for investigation and prosecution.[341] Mr Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit these crimes.[342] He had effective command and control, or authority and control, over LRA fighters that committed these crimes.[343] He also knew or should have known that children conscripted into the LRA and used to actively participate in hostilities were younger than 15 years old.[344]

116. The abduction of children was a deliberate strategy aiming at indoctrinating them into a way of acting and thinking; they were also perceived as less likely than

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p. 13 line 24 – p. 17 line 2); P-0379 (T-56, p. 33 line 17 – p. 37 line 14); and V-0002 (T-171, p. 7 line 10 – p. 8 line 12).

[338] See P-0006 (T-140, p. 8 line 14 – p. 9 line 11); P-0009 (T-81, p. 16 line 17 – p. 17 line. 2, p. 19 lines 4 – 14, p. 76 lines 2 - 7); P-0018 (T-69, p. 12 line 23 – p. 14 line 5); P-0054 (T-93, p. 24 line 10 – p. 30 line 1; and p. 32 line 7 – p. 36 line 17); P-0067 (T-125, p. 19 line 17 – p. 20 line 16; and p. 25 line 13 – p. 26 line 22); P-0142 (T-71, p. 5 line 23 – p. 7 line 2); P-0018 (T-69, p. 13 line 20 – p. 15 line 7); P-0200 (T-145, p. 21 line 10 – p. 26 line 20); P-0205 (T-48, p. 30 line 21 – p. 42 line 19); P-0245 (T-98, p. 27 line 15 – p. 30 line 20; p. 47 line 21 – p. 53 line 2, T-99, p. 6 line 23 – p. 7 line 10; p. 39 line 6 – p. 42 line 24; and p. 53 line 24 – p. 54 line 14); P-0249 (T-79, p. 11 line 23 – p. 12 line 13); P-0252 (T-87, p. 76 line 2 – p. 77 line 9); P-0252 (T-87, p. 57 line 15 – p. 61 line 13); P-0309 (T-60, p. 51 lines 8 – 18); P-0314 (T-75, p. 10 lines 8 – 14); P-0330 (T-51, p. 79 line 23 – p. 81 line 24); P-0406 (T-154, p. 65 line 23 – p. 67 line 20); and P-0410 (T-151, p. 39 line 15 – p. 40 line 8; p. 62 line 22 – p. 64 line 12).

[339] See P-0054 (T-93, p. 22 line 3 – p. 24 line 4); P-0245 (T-98, p. 27 line 15 – p. 30 line 23; p. 47 line 21 – p. 53 line 2); and P-0293 (T-138, p. 23 line 2 – p. 24 line 23).

[340] See P-0054 (T-93, p. 22 line 3 – p. 24 line 4); P-0245 (T-98, p. 27 line 15 – p. 30 line 23 and p. 47 line 21 – p. 53 line 2); P-0252 (T-87, p. 50 line 12 – p. 52 line 8); P-0309 (T-61, p. 32 line 1 – p. 34 line 18); and V-0002 (T-171, p. 11 lines 7 – 18).

[341] See D-0056 (T-229, p. 11 line 1 – p. 17 line 21); D-0068 (T-223, p. 16 line 5 – p. 23 line 3); and P-0054 (T-93, p. 22 line 3 – p. 24 line 4 and p. 30 line 4 – p. 31 line 24).

[342] See D-0056 (T-229, p. 11 line 1 – p. 17 line 21); D-0068 (T-223, p. 16 line 5 – p. 23 line 3); and P-0097 (T-108, p. 41 line 04– p. 42 line 20; p. 48 line 23 – p. 50 line 17, T-109, p. 45 line 2 – p. 50 line 14).

[343] *Ibid*.

[344] *Ibid*.

older ones to try to resist and escape.[345] Witnesses at trial recounted how LRA commanders adopted different strategies to indoctrinate abductees; for example "*atiak*", where a young person is forced to witness terrible events or to perpetrate terrible acts in order to bring him or her into the LRA and make very difficult for him/her to return to his or her former way of life.[346] Prof. Allen affirmed that accounts about the initiation processes of new recruits varied substantially from one person to another: some recounted being required to participate in numerous prayer meetings; others were forced to perform violent acts or in some cases to lick the blood of dead bodies. Some of them were forced to kill friends and relatives.[347] Witnesses also testified about abductees who didn't walk fast enough or refused to obey orders being severely beaten or killed for refusing to do so. Many of those who survived were forced to commit violent acts.

117. The prolonged stay in the bush had a profound impact on the ability to reintegrate in families and communities. Prof. Musisi explained that "[t]*he abducted girls and kidnapped child soldiers faced and witnessed terrible atrocities during their captivity with the LRA. Also, the communities from which they were captured continued to face terror from the LRA. The captives were kept* incommunicado *from their communities. They were also forced to commit atrocities in their very communities including raiding them, stealing from them and even killing or raping members of their families and community. Such acts were abominable in Acholi customs and traditions. The community was very much aware of these activities by their own sons and daughters. There was a division of opinion in the communities as some community members knew that their children were forced by Kony to commit these atrocities or face death while some other members wondered if these child soldiers committed the atrocities on their own volition. This dichotomy in opinion divided and pained the Acholi people, especially the elders who felt a national judgment and condemnation*

[345] See P-0422 (T-28, p. 94 line 20 – p. 96 line 7).
[346] P-0236 recalled how she was forced to watch the killing of two soldiers who had attempted to escape from the LRA (T-16, p. 11 line 19 – p. 12 line 7).
[347] See P-0422 (T-29, p. 41 line 10 – p. 49 line 10).

of all the Acholis as a people for these atrocities on their own people by their own children".[348] Asked about whether she suffered any psychological consequence as a result of being in the bush with Mr Ongwen as his "wife", P-0227 answered: "*Yes. I think a lot, I think a lot about what happened and it pains me*."[349] P-0227, in her victim's application form also stated: "*The things that happened to me while in abduction have affected me so much in that I think about them and I don't think I will ever forget them.* […] *Whenever the month of April comes, it reminds me of the time I was abducted and I can't forget everything that happened during that time. My nights are full of nightmares of what I saw and witnessed like the deaths, it was very horrifying.* […] *I also feel traumatised in that I cannot stay in a noisy place or a tense environment because I would feel a lot of headache and it would remind me of the atmosphere in the bush*".[350]

118. Some of the victims participating in this case are either former child soldiers who managed to escape or were captured by the UPDF and subsequently set free. Parents of former child soldiers also participate as victims in these proceedings. Some of them never saw their children again since their abduction and they have lost all hope to embrace them. Others still keep the hope of seeing their children back home one day. The ones who had the chance of returning to their families and communities face enormous challenges in trying to return to normal life. They have difficulty processing their experiences and reintegrating within their communities. They need healing from emotional and traumatic experiences, protection from re-recruitment, vocational training and education in peaceful roles, and careful reintroduction into their communities.

[348] See the PCV-0003 Report, *supra* note 25, p. 12.
[349] See P-0227 (T-10, p. 62, lines 4-7).
[350] See P-0227's victim application [REDACTED], p. 1, question 2 and p. 5. See also, P-0097 (T-108, p. 77 lines 16 -22); and P-0374 (T-150, p. 15 lines 10 – 24).

VI. LIABILITY OF THE ACCUSED

1. Brief overview of the modes of liability charged against the Accused

1.1 Article 25(3)(a) – Commission as an individual or through another person

119. Pursuant to article 25(3)(a) of the Statute, "*a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person commits* [the] *crime* […] *as an individual*". This mode of liability refers to the physical perpetration of the crime by the person himself or herself.[351] Moreover, the jurisprudence of the Court has already established that the commission "*as an individual*" requires that the accused undertakes the physical carrying out of the elements of the crime.[352]

120. The provision also provides for the liability of an individual who commits a crime "*jointly with another person*" or "*through another person*", regardless of whether that other person is criminally responsible. In the established jurisprudence of the Court, the form of committing the crimes jointly with another person or through another person requires:

- the existence of an agreement or common plan between the accused and other persons to commit the crimes or to engage in a conduct which, in the ordinary course of events, would result in the commission of the crimes; [353]

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[351] See ICTY, *Tadić*, Case No. IT-94-1-A, Appeal Judgement (Appeal Chamber), 15 July 1999, para. 188; ICTR, Case No. *Renzaho*, ICTR-97-31-T, Judgement and sentence (Trial Chamber I), 14 July 2009, para. 739 (the "*Renzaho* Trial Judgement"); and STL-11-01/1/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy Homicide, Perpetration, Cumulative Charging (Appeals Chamber), 16 February 2011, para. 216.

[352] See the "Decision on confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/06-803-tEN, 14 May 2007, para. 332 (the "*Lubanga* Confirmation Decision"). See also, the *Bemba* et al. Appeal Judgment, *supra* note 21, para. 706; the *Lubanga* Appeal Judgment, *supra* note 19, para. 467; the *Katanga and Ngudjolo* Confirmation Decision *supra* note 236, para. 488; and the *Bemba* Judgment, *supra* note 30, para. 58.

[353] See the *Ntaganda* Judgment, *supra* note 52, paras. 771 and 772, 775. The Appeals Chamber in the *Lubanga* case clarified that the commission "*jointly with another person*" requires an agreement between the perpetrators, leading to the commission of the crimes; while the commission "*through another*

- the control of the members of the common plan over other persons who execute the material elements of the crimes by subjugating the will of the direct perpetrators;[354] and
- the accused, though not required to carry out the criminal conduct directly and personally, must have a control over the crime by virtue of his or her essential contribution to it and the resulting power to frustrate its commission.[355]

1.2 Article 25(3)(b) – Ordering

121. Pursuant to article 25(3)(b) of the Statute, "*a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person* [o]*rders* […] *the commission of such a crime which in fact occurs or is attempted*". Ordering is an aggravated form of inducement. The distinguishing feature of ordering is the 'authority requirement'. This authority requires neither *de jure* nor *de facto* superior/subordinate relationship between the person who orders the crime and those who execute the order.[356] In the jurisprudence of the Court, the imputation of liability under "ordering" requires:

- the person is in a position of authority;
- the person instructs another person in any form to either
  - commit a crime which in fact occurs or is attempted; or
  - perform an act or omission in the execution of which a crime is carried out;

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person" entails the accused making use of another person who actually carries out the incriminated acts by virtue of the former's control over that person and thus the latter's conduct is therefore imputed on the former. See the *Lubanga* Appeal Judgment, *supra* note 19, paras. 445-446.

[354] See the *Ntaganda* Judgment, *supra* note 52, paras. 774 and 777. See also, the *Blé Goudé* Confirmation Decision, *supra* note 104, para. 136.

[355] See the *Ntaganda* Judgment, *supra* note 52, paras. 774 and 778. See also, the *Bemba* et al. Appeal Judgment, *supra* note 21, para. 821.

[356] See OLASOLO (H.) & CARNERO ROJO (E.), "Forms of accessorial liability under article 25(3)(b) and (c)", in STAHN (C.) (ed.), *The Law and practice of the International Criminal Court*, Oxford University Press, 2015, p. 562.

- the order had an effect on the commission or attempted commission of the crime;[357] and
- the person is at least aware that the crime will be committed in the ordinary course of events as a consequence of the execution or implementation of the order.[358]

1.3 Article 25(3)(c) – Aiding and abetting

122. Pursuant to article 25(3)(c) of the Statute "*a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [*f]*or the purpose of facilitating the commission of such a crime aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission*". In the jurisprudence of the Court, this provision requires that the accused simply provides assistance to the commission of a crime and intends to facilitate its commission.[359]

1.4 Article 25(3)(d) – Contributing in any other way

123. Pursuant to article 25(3)(d)(i) of the Statute, "*a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person*", under certain conditions, "*in any other way contributes to the commission or attempted commission of a crime by a group of persons acting with a common purpose*". In the jurisprudence of the Court, the provision requires:

- a crime within the jurisdiction of the Court was attempted or committed;

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[357] The causality requirements developed in relation to instigation apply to the attribution of liability under ordering. See the *Bemba et al*. Appeal Judgment, *supra* note 21, para. 848.
[358] See the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda" (Pre-Trial Chamber II), No. ICC-01/04-02/06-309 9 June 2014, para. 145 (the "*Ntaganda* Confirmation Decision").
[359] See the Decision confirming the charges, *supra* note 5, para. 43. See also, the *Blé Goudé* Confirmation Decision, *supra* note 104, para. 167; and the *Bemba* et al. Appeal Judgment, *supra* note 21, para. 1327.

- the commission or attempted commission of the crime was made by a group of persons acting with a common purpose;
- the individual contributed to the crime, in any way other than those set out in article 25(3)(a) to (c); and
- said contribution was:
    - intentional; and
    - made with the aim of furthering the criminal activity or criminal purpose of the group, where they involve the commission of a crime falling under the jurisdiction of the Court.[360]

124. In order to understand the type of contributions that may trigger responsibility under this mode of liability, the CLRV posits it is important to recall the jurisprudence of the Appeals Chamber in relation to co-perpetration. Co-perpetration requires "*control over the crime*" and an "*essential contribution*" to the crime. The "*essential contribution*" does not need to be made at the execution stage and, therefore, it is clear that acts that do not, as such, form the *actus reus* of the crime or offence in question, may nevertheless be taken into account when determining whether the accused made an essential contribution to the relevant crime or offence. The essential contribution may take many forms and need not be criminal in nature.[361]

125. The contribution to the commission of a crime by a group of persons does not represent principal but accessorial liability. Those who contribute to the commission of the crime need not possess control over the crime. The contribution that is relevant to this mode of liability needs *a fortiori* not be made at the execution stage of the common purpose nor be criminal in nature.

[360] See the *Ntaganda* Confirmation Decision, supra note 358, para. 158.
[361] See the *Bemba* et al. Appeal Judgment, *supra* note 21, para. 848.

126. Finally, article 25(3)(c) requires that the aider and abettor acts "[f]*or the purpose of facilitating the commission of* […] *a crime*". In the jurisprudence of the Appeals Chamber, this does not mean that the aider and abettor must know all the details of the crime in which he or she assists. A person may be said to be acting for the purpose of facilitating the commission of a crime, even if he or she does not know all the factual circumstances in which it is committed.[362]

127. Similarly, in relation to article 25(3)(d)(i) of the Statute, the aim of furthering the criminal activity or criminal purpose of the group where such an activity or purpose involves the commission of a crime[363] does not require that the person is aware of the specific crime intended by the group. In relation to article 25(3)(d)(ii) of the Statute, the person provides a contribution (which does not have to be significant or reach a certain minimum degree) to the commission of the crime.[364]

1.5 Article 28(a) – Acting as a military commander

128. Pursuant to article 28(a) of the Statute, a person acting as a military commander may be criminally responsible for crimes committed by his or her subordinates. In the jurisprudence of the Court, the attribution of command responsibility requires:

- the accused to be either a military commander or a person effectively acting as such;
- the accused to have effective command and control, or effective authority and control over the forces (subordinates) who committed one or more of the crimes set out in articles 6 to 8;
- the crimes committed by the forces (subordinates) to result from the accused's failure to exercise control properly over them;

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[362] *Idem*, para. 1400.
[363] See AMBOS (K.), "Article 25", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, *supra* note 3, p. 1015.
[364] See the Decision confirming the charges, *supra* note 5, para. 44.

- the accused either known or, owing to the circumstances at the time, should have known that the forces (subordinates) were committing or about to commit one or more of the crimes set out in articles 6 to 8; and
- the accused to fail to take the necessary and reasonable measures within his or her power to prevent or repress the commission of said crime(s) or failed to submit the matter to the competent authorities for investigation and prosecution.[365]

2. Mr Ongwen's role and authority

129. The evidence demonstrates beyond reasonable doubt that, between at least 1 July 2002 and 31 December 2005, the LRA was a military organisation headed by Joseph Kony, with headquarters, a division, brigades, battalions and companies, with a commander as well as a deputy commander assigned to each unit.[366] Orders were issued by Kony and other leaders to the brigade commanders, who passed them to the battalion commanders, who in turn passed them to their subordinates.[367] The LRA fighters obeyed superiors and followed orders. The LRA maintained a violent disciplinary system that guaranteed adherence to orders and rules.[368] The Sinia Brigade was one of the four LRA brigades, consisted of a brigade headquarters and a number of battalions and coys.[369]

130. The evidence also demonstrates beyond reasonable doubt that, between 1 July 2002 and 31 December 2005, Mr Ongwen was a military commander in the LRA.[370] He commanded a battalion in the Sinia Brigade for much of mid-2002 to March 2004 and then on or about 5 March 2004, became the commander of the Sinia

[365] See the *Ntaganda* Confirmation Decision, *supra* note 358, para. 164.
[366] See P-0059 (T-36, p. 44 line 1 – p. 69 line 28);and P-0070 (T-105, p. 56 line 6 – p. 58 line 4).
[367] See P-0070 (T-105, p. 56 line 6 – p. 58 line 4).
[368] *Idem* (T-106, p. 41 line 9 – p. 45 line 11).
[369] *Idem* (T-105, p. 58 line 19 – p. 79 line 20).
[370] See P-0054 (T-93, p. 11 line 3 – p. 13 line 5; and T-94, p. 38 line 7 – p. 41 line 1); P-0059 (T-36, p. 44 line 1 – p. 69 line 28); P-0070 (T-105, p. 58 line 19 – p. 79 line 20); P-0231 (T-122, p. 32 line 4 – p. 37 line 11); P-0330 (T-53, p. 52 line 12 – p. 56 line 11); and P-0379 (T-56, p. 25 line 11 – p. 33 line 16).

Brigade.[371] Consequently, having effective command and control, or authority and control over his subordinates during this period,[372] he exerted control over the crimes charged and had the ability to prevent or repress any of his subordinates' conduct.[373]

131. As shown *supra*, Mr Ongwen knew about the common plan to attack Acholis,[374] participated in meeting to plan the attacks charged, and gave orders to his subordinates to conduct the attacks against the civilian population in the four locations charged. He ordered the looting and destruction of properties, murders, tortures and cruel and inhumane treatments, as well as the abduction and enslavement of adults and children.[375]

132. Mr Ongwen directly perpetrated sexual and gender based crimes, including rape, sexual slavery, forced marriage and forced pregnancy, as well as torture, enslavement and outrages upon personal dignity against young girls and women under his control.[376] He also ordered the abduction of girls and distributed them among his commanders and soldiers, as *ting tings* and forced wives, knowing the fate reserved to them.[377]

133. The evidence also demonstrates beyond reasonable doubt that, between 1 July 2002 and 31 December 2005, Mr Ongwen ordered the recruitment of children under the age of 15 to be integrated in the LRA, including in the Sinia Brigade, and used as soldiers.[378] Mr Ongwen himself used children as bodyguards.

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[371] See P-0054 (T-93, p. 11 line 3 – p. 13 line 5); P-0070 (T-105, p. 58 line 19– p. 79 line 20); P-0231 (T-122, p. 32 line 4 – p. 37 line 11); P-0330 (T-53, p. 52 line 12– p. 56 line 11); and P-0379 (T-56, p. 25 line 11 – p. 33 line 16).
[372] See P-0070 (T-105, p. 58 line 19 – p. 79 line 20); P-0231 (T-122, p. 32 line 4 – p. 37 line 11); P-0330 (T-53, p. 52 line 12– p. 56 line 11); and P-0379 (T-56, p. 25 line 11 – p. 33 line 16).
[373] *Ibid.*
[374] See *supra* paras. 40, 41.
[375] See *supra* paras. 53, 73 - 75, 78.
[376] See D-0118 (T-216, p. 24 line 24 – p. 25 line 13). See *supra* paras. 95 - 102, and 106.
[377] See *supra* paras. 82 - 84, 92.
[378] See *supra* paras. 112 - 114.

134. The CLRV further submits that throughout the period covered by the charges, the Accused had the necessary *mens rea* in accordance with article 30(1), (2) and (3) of the Statute. Indeed, the evidence demonstrates beyond reasonable doubt that within the meaning of each of the alternative forms of responsibility presented by the Prosecution and in relation to each crime charged, Mr Ongwen meant to engage in the conduct and cause ensuing consequences or was aware that they will occur in the ordinary course of events.

135. The CLRV further submits that none of the grounds for excluding criminal responsibility presented by the Accused can succeed as shown *infra*.

3. Inexistence of grounds for excluding the criminal responsibility of the Accused

3.1 Mental illnesses

136. Article 31(1)(a) of the Statute provides that a person shall not be criminally responsible if, at the time of that person's conduct he or she *"suffers from a mental disease or defect that destroys* [his or her] *capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law"*.

137. Two cumulative elements are consequenltly necessary to constitute an insanity defence: (i) the existence of a mental disease or defect; and (ii) that such disease or defect destroys: (a) the person's capacity to appreciate the *unlawfulness* or *nature* of his or her conduct; or (b) the person's capacity to control his or her conduct in accordance with the requirements of law.

138. Since the terms *mental disease* and *defect* are not defined in the legal texts governing the Court, the types of behaviours and specific symptoms required to

meet the burden of proof are unqualified[379] and both the threshold and the evidence necessary to satisfy said threshold will have to be decided on a case-by-case basis by the Chamber when assessing the available evidence.

139. As far as the first criteria is concerned – namely the existence of a mental disease or defect, at the time of that person's conduct, such condition is essential and must be present during the commission of the alleged criminal act(s). As such, the mental disease or defect that occurs or develops after the temporal moment within which the alleged crime is committed is not relevant.[380]

140. The provision requires that the disease or defect destroys the person's cognitive or volitional capacity.[381] Said severe nature of the disease or defect appears to consequently rule out the mere expression of a momentarily psychological burst or crisis caused by circumstantial physical pain or the experience of a temporal affection such as strong emotions caused by circumvented incidents.[382] Indeed, the testimonies of the experts heard by the Chamber establish that a mental disease or defect induces an impairment of a high degree and duration.[383]

141. As a result, the expert(s)'s testimonies and bulk of evidence before the Chamber first ought to establish whether a mental disease or defect with a degree of severity and durability existed (in the past) and more specifically, whether such a condition existed at the moment the Accused committed the charged crimes.

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[379] See AMBOS (K.), Treatise on International Criminal Law, New York: Oxford University Press, Vol. I, 2013, p. 321.
[380] *Idem*, pp. 314 and 432.
[381] *Idem*, p. 321.
[382] *Ibid*. See also Belgium, Code Pénal, 8 Juin 1867, para. 76, available on the following website: http://www.wipo.int/wipolex/en/text.jsp?file_id=262695 and Belgium, Cour de Cassation, No. 9723 (Arrêt), 18 Mars 1992: "*la démence (telle qu'il l'entend) comprend toutes les formes des maladies mentales, mais ne comprend que les seules maladies de l'esprit qui (peuvent) faire perdre à celui qui en est atteint le contrôle des facultés mentales*"; et que "*notamment, cette notion ne s'applique pas à la colère qui ne constitue pas un trouble morbide des fonctions psychiques", que l'état émotionnel du demandeur ne peut être assimilé à un état de démence et que sa volonté n'a en rien été supprimée ou obnubilée même partiellement*". Available on the following website:
http://jure.juridat.just.fgov.be/view_decision.html?justel=F-19920318-12&idxc_id=102857&lang=FR
[383] See P-0446 (T-162, p. 31 – p. 36 line 9). See also WERLE (G.), JESSBERGER (F.), COOPER (B.), et al., Principles of International Criminal Law, Oxford University Press, Third Edition, 2014, p. 254.

142. Scientifically speaking, a *disease* is a "*definitive pathological process having a characteristic set of signs and symptoms. It may affect the whole body or any of its parts, and its aetiology, pathology, and prognosis may be known or unknown*".[384] It could be understood "*as an ailment, an illness that* […] *happens any time in the life cycle and it could be during the developmental period but also in adulthood*".[385] However, a *defect* is an "*imperfection, anomaly, malformation, dysfunction* […]".[386] Therefore, the defect concerns mostly structures which affect the normal function of the brain.[387] In fact, instead of referring to mental disease or defect, the terms '*mental illness*' or '*mental disorder*' are more commonly used in the health sector, interchangeably, as they also refer to the patients' subjective experience of their symptoms.

143. Both the study of the drafting history of article 31(1)(a) of the Statute[388] and of the relevant national laws and jurisprudence[389] show that medical terms such as

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[384] See Disease. (n.d.), Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition, 2003. Available on the following website: https://medical-dictionary.thefreedictionary.com/disease.

[385] See P-0445 (T-166, p. 63, lines 12-14).

[386] See Defect. (n.d.) Farlex Partner Medical Dictionary, 2012. Available at the following website: https://medical-dictionary.thefreedictionary.com/defect.

[387] See P-0445 (T-166, p. 63, lines 9-11).

[388] The *Ad Hoc* Committee Report referred to the concept as "*the question of mental capacity*". See the Report of the *Ad Hoc* Committee on the Establishment of an International Criminal Court, United Nations General Assembly Official Records, Fiftieth Sessions, Supplement No. 22, A/50/22 (1995), p. 19. Available at the following website: https://www.legal-tools.org/uploads/tx_ltpdb/doc21168.pdf. In the Report of the Preparatory Committee of 1996, two proposals were made: the first one referred to the use of the expression "*legally insane*" if the person suffers from a "*mental disease or mental defect*"; the second one referred to the use of "*mental or neuropsychic disorder*". See the Report of the Preparatory Committee on the Establishment of an International Criminal Court – Volume II (Compilation of Proposals), Fifty-first Session, Supplement No. 22A (A/51/22), United Nations General Assembly, 1996, p. 97. Available on the following website: https://www.legal-tools.org/uploads/tx_ltpdb/doc21329.pdf. In the Preparatory Committee's December 1997 Session, the recommendations of the Working Group on General Principles of Criminal Law were accepted as grounds for excluding criminal responsibility including the following wording: "*the person suffers from a mental disease or defect*" thus indicating that the first proposal made in 1996 was adopted. The disposition enunciates the two concepts but makes no distinction between them and no further discussion or explanations occurred in relation to the semantic chosen, or the criteria to be assessed. See the Decisions Taken by the Preparatory Committee at its Session Held from 1 to 12 December 1997 (18 December 1997) Preparatory Committee on the Establishment of an International Criminal Court, A/AC.249/1997/L.9/Rev.1, Annex V, p. 70, footnote 11. Available at the following website: https://www.legal-tools.org/doc/787a4d/pdf/.

[389] At the national level, many jurisdictions do not operate any differentiation between 'disease' and 'defect'. In the United States, for example, the Circuit Court of Appeals for the District of Columbia

mental illnesses, disorders, disabilities and diseases could be interchangibly used, in the legal sphere, for the purpose of the analysis of a defence.

144. In addition, article 31 in its French version refers to "*maladie* […] *mentale*" and "*deficience* […] *mentale*", which can also translate, in English, interchangeably, as mental illness, disease, disorder and defect. Such terminology tends to highlight that the drafters of the Statute were approaching the issue from a strictly legal perspective.[390]

145. Consequently, in order for a defence to succeed, an accused should be diagnosed which a pathology which qualifies either as a mental disease, a disorder, an illness or a defect in accordance with the symptoms enumerated in one of the referenced instruments used in the medical profession for that specific purpose, and notably the DSM-5, which has been extensively used and explained by all the experts heard by the Chamber.[391] There seems to be no difference whether the diagnosis falls

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refers simply to mental 'disease' and 'illness', which may include 'defect' as an imperfection or malformation. See, for example, United States of America, Russell E. Carter, Appellant v. United States of America, Appellee. (252 F.2d 608). No. 13222. Argued 19 November 1956, Judgment entered 20 December 1956, Opinion filed 24 October 1957, Petition for Rehearing in Banc Denied 21 November 1957, para. 39, ft 10. Similarly, the French author Brunati explains that even though the French law refers to the concept of '*mental or neuropsychic disorder*', it includes not only mental illness in a strict sense, but also other causes of elimination or alteration of discernment. See BRUNATI (R.), Santé mentale et responsabilité pénale (Doctoral dissertation), 2010, p. 36. Available at the following website: https://docassas.u-paris2.fr/nuxeo/site/esupversions/d8fce469-7730-4cea-8bdb-e326c1de1522.

[390] Indeed, in French too, rather than "maladies" and "deficiences" mentales, the terms "troubles mentaux et du comportement" are the ones used in the ICD-10 and 11 (International Classification of Diseases, published by the WHO), available on the following website: https://icd.who.int/browse10/2008/fr#/V; when in English, the terms "mental and behavioural disorders" are used. Available on the following website: https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2ficd%2fentity%2f334423054. The same goes with the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association), where the term "disorders" is used. Available on the following website: https://www.psychiatry.org/psychiatrists/practice/dsm. In German law, codified in sub-rule 20, "[a]*ny person who at the time of the commission of the offence is incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation due to a pathological mental disorder, a profound consciousness disorder, debility or any other serious mental abnormality, shall be deemed to act without guilt*." See Germany, German Criminal Code (Strafgesetzbuch), Bundesgesetzblatt, Part I, 1998-11-19, No. 75, pp. 3322-3410, Section 22. Available on the following website: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/51220/89353/F1928244119/DEU51220%20English

[391] See P-0447 (T-169, p. 13 line 7 – p. 40 line 9 and T-170, p. 35 line 25 – p. 55 line 2 and p. 39, lines 18-19); P-0446 (T-162, p. 24 line 10 – p. 31 line 13); and P-0445 (T-166, p. 24 line 11– p. 33 line 22).

under one pathology or the other, as long as the requirements of article 31(1)(a) are met.[392] It will then be for the Judges to draw the legal consequences of the diagnosis by medical experts in a specific case, in light of the proven existence of a specific pathology at the moment the crimes were committed.[393]

146. Turning to the second criteria – namely the existence of a disease or defect that destroys the capacity to appreciate the unlawfulness or nature of the conduct, *or* the capacity to control the conduct - the disease or defect must additionally be of a high degree of severity.

147. Indeed, in accordance with the wording of article 31(1)(a)(ii), the mental disease must either completely destroy or at a minimum substantially affect[394] the defendant's ability to understand his or her own conduct. In other words, **not only the existence of a specific condition** but importantly its **severity** must be observed and confirmed.[395]

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[392] About the distinction between *disease* and *disorder*, D-0041 explained that a disorder occurs when it is interfering with someone social and occupational functional levels. He confirms that both terms are sometimes used interchangeably. See D-0041 (T-248, p. 83 line 4 – p. 92 line 4). He also stated that the word *defect* is usually used when referring to disorders of childhood or that people are born with, whereas *disease* or *disorder* rather refer to things that happen when individuals develop these disorders as adults, but also in child and adolescent psychiatry (T-249, page 2 line 25 – p. 26 line 12). Generally, all experts heard before the Chamber on this issue used interchangeably the words mental diseases, mental disorders and mental illnesses. See *e.g.*, P-0445 (T-166, p. 63 line 7 – p. 68 line 3).

[393] See KNOOPS (G.J.A.), Defenses in Contemporary International Criminal Law, Leiden: Martinus Nijhoff Publishers, 2007, p. 111. See also the intervention of Presiding Judge Schmitt during the testimony of P-0446 (T-163, p. 11 line 10 – p. 12 line 4).

[394] The language of article 31(1)(a) of the Statute is evocative of the rule developed in the M'Naghten case in the United Kingdom for an insanity defence. The rule covers the first element mentioned in the Rome Statute (mental disease) and the first alternative requirement of the second element (incapacity to appreciate the wrongfulness of an act). The House of Lords determined that for a defence on grounds of insanity to stand, it must be proven that "*at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know that what he was doing was wrong*". See UK House of Lords, M'Naghten's Case (1843), 10 Cl. And Fin. 200, paras. 210-211.

[395] The Supreme Court of Canada, in the Case *Cooper v. R.* indicated: "*a disease of mind embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states* […]. *In order to support a defence of insanity the disease must, of course, be of such intensity as to render the accused incapable of appreciating the nature and quality of the violent act or of knowing that it is wrong*". See Canada, Supreme Court of Canada, case Cooper v. R., [1980] 1 S.C.R 1149, 21 December 1979, p. 1159. Available on the following website: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4496/index.do

148. Under the American criminal legal system,[396] the Model Penal Code Test is quasi similar to article 31(1)(a) of the Statute. According to this test, a *"person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law."*[397] The expression '*lack of substantial capacity*' corresponds to: (i) the impossibility of the defendant to appreciate the criminality of his or her conduct, either by: a) the lack of awareness of what is being done, b) an error in the material circumstances, or c) a failure to perceive significance in a deeper sense of the actions; or (ii) the substantial lack of volitional capacities of the person to act in accordance with the law.[398]

149. In the Republic of Uganda, the insanity defence is addressed under the provisions of section 11 of the Penal Code Act[399]. According to this rule, "[a] *person is not criminally responsible for an act or omission if at the time of doing the act or omission, he or she is through any disease affecting his or her mind – incapable of knowing that he or she ought not to do the act or make the omission but a person may be criminally responsible for an act or omission, although his or her mind is affected by the disease, if that disease does not in fact produce upon his or her mind, one or other effects mentioned in this section in respect of the act or omission*".[400]

150. The German Federal Court of Justice held that temporary mental defects are insufficient for the insanity defence and it must be proved that there is a long-lasting

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[396] See DUKE UNIVERSITY SCHOOL OF LAW, "The American Law Institute's Insanity Test", Duke Law Journal, 1959(2), 317-323, doi: 10.2307/1371206. Available on the following website: https://www.jstor.org/stable/1371206?seq=1

[397] See USA, Model Penal Code § 4, Section 4.01, Mental Disease or Defect Excluding Responsibility. Available on the following website: https://www.law.cornell.edu/wex/model_penal_code_insanity_defense.

[398] See AMERICAN LAW INSTITUTE, Model Penal Code: Official Draft and Explanatory Notes: Complete Text of Model Penal Code as Adopted at the 1962 Annual Meeting of the American Law Institute at Washington, D.C., May 24, 1962. Philadelphia, PA.: The Institute, 1985, Sec. 4.01, p. 89.

[399] See Uganda, The Penal Code Act, Article 11.

[400] See Uganda Supreme Court, *Uganda v. Mwesigwa*, Sentence UGHCCRD70, 11 November 2013. Available on the following website: http://www.ulii.org/ug/judgment/high-court-criminal-division/2013/70.

impairment[401] of the mental or emotional health, noting that long-term disorders do not require an uninterrupted condition. The German provisions would resemble article 31(1)(a) of the Statute in the sense that the capacities of the accused must be impaired to a high degree.

151. Therefore, the CLRV submits that the destruction or severe impairment of the volitional or cognitive capacities of the Accused must be proven at the time of the events, and less severe impairments or hindrances of said capacities are not sufficient for excluding criminal responsibility. Similarly, as explained by the experts, the fact that the Accused would be suffering from any specific condition(s) now or at any time since the moment he has been detained is not conclusive evidence that this/these condition(s) was/were indeed present during the charged period.[402]

152. Consequently, in the absence of an assessment of the Accused's mental health contemporaneous with the charged events, the Chamber must rely on a combination of medical knowledge and available factual evidence to ascertain the mental health of the Accused at the time the crimes were committed.[403] Prof. Mesey explained in her testimony that the aim of a forensic psychiatric evaluation is to assess whether there is mental disorder present and, if so, the nature of said disorder.[404] She underlined that such evaluation uses triangulation: in addition to the mental state examination conducted with the individual (which could not happen in this case neither at the time of the charged events, nor during trial since the Accused refused to meet with the Prosecution's experts), other material is relied upon, particularly documentation about the offences, witnesses' testimonies and other medical or

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[401] See Germany, Der Bundesgerichtshof, 1 StR 658/16, 9 May 2017, para. 23. Available on the following website: http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=242986c2351749d02db1a5379287c3f9&nr=78604&pos=3&anz=77.

[402] See P-0446 (T-162, p. 28 line 11 – p. 31 line 13); and P-0445 (T-166, p. 24 line 20 to p. 21 line 8; and T-167, p. 2 line 25 – p. 4 line 7).

[403] See KRUG (P.), "The Emerging Mental Incapacity Defense in International Criminal Law: Some Initial Questions of Implementation", in *The American Journal of International Law*, Vol. 94, 2000, pp. 317-335, at p. 322.

[404] See P-0446 (T-162, p. 12 line 23 – p. 17 line 5; and p. 17 line 24 – p. 18 line 24).

psychiatric reports. The aim is to assess the presence of consistencies or discrepancies and to tease out what is the most probable diagnosis.[405]

153. There has been a heavy debate between the experts at trial on the relevance of additional testimonies of lay witnesses and of complementary contemporary information in order to assess the mental health of the Accused at the time of the charged events.[406] Questioned about the relevance of information that derives from persons that lived in the social environment of Mr Ongwen and of their observations of the latter (corresponding to evidence already in the record of the case gathered through the testimonies of other witnesses), Prof. Weierstall-Pust answered: "*It's absolutely important* […] *and all of this information has to be considered when we want to come to a final decision*".[407] Prof. Mezey expressed the same view.[408]

154. As for lay witnesses, they may testify upon observed symptoms of mental disease, since normal and abnormal conducts are of common knowledge;[409] however, "*such witnesses may testify only upon the basis of facts known to them.* […] *Also obvious upon a moment's reflection is the fact that, while a lay witness's observation of abnormal acts by an accused may be of great value as evidence, a statement that the witness never observed an abnormal act on the part of the accused is of value if, but only if, the witness had prolonged and intimate contact with the accused*".[410] Despite the debate between the experts about lay witnesses, they seem nonetheless to agree on the fact that said evidence can be

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[405] *Idem*.
[406] See D-0041 (T-249, p. 90, lines 19-22; p. 92, lines 3-4); D-0042 (T-251, p. 94, lines 12-16); and P-0447 (T-252, p. 17 line 22 – p. 19 line 4; p. 20 line 22 – p. 25 line 2; and T-253, p. 77 line 13 – p. 80 line 25).
[407] See P-0447 (T-169, p. 57 line 24 – p. 58, lines 5); and P-0445 (T-166, p. 33, lines 15-19). Despite defending the contrary, D-0041 started his rejoinder testimony by saying: "*I think it would be very difficult for somebody to, for a layperson to make a diagnosis with mental illness, without any form of disrespect, but I think most lay people would see that something is wrong, but they wouldn't particularly tell that this is what the problem is*" (T-248, p. 75, lines 13-16). Similarly, D-0042 admitted that interviews with more people than the four they conducted, could have corroborated the accounts of the Accused (T-251, p. 9 line 24 – p. 10 line 12). In fact, D-0042 admitted himself that lay witnesses testimonies could be of help in the required assessment (T-251, p. 12 line 6 – p. 14 line 4).
[408] See P-0446 (T-162, p. 17 line 6 – p. 18 line 24); and P-0447 (T-169, p. 58 line 8 – p. 73 line 15).
[409] See United States of America, Russell E. Carter, *Appellant v. United States of America*, Appellee (252 F.2d 608). No. 13222. Argued 19 November 1956, Judgment entered 20 December 1956, Opinion filed 24 October 1957, Petition for Rehearing in Banc Denied 21 November 1957.
[410] *Idem*.

used to assess whether people living with the Accused at the time of the charged events had noticed changes in his behaviours or in his moods.[411]

155. In addition to lay witnesses and experts' testimonies, actions an accused did before and after the alleged criminal conduct are also decisive to determine if he or she was suffering from a mental illness, in particular the acts performed to plan the offence (premeditation) and to avoid identification and apprehension afterwards.[412]

156. In the current case, the experts called by the Prosecution assessed similar evidence which supported their conclusion that the Accused was not suffering from any mental disorder during the charged period.[413]

157. Concerning the issue of the burden of proof,[414] it remains the position of the CLRV[415] that, in circumstances where an accused willingly decides to present a defence, raising matters *outside of the scope* of the Prosecution's case, nowhere in the legal texts of the Court is it written, nor even suggested, that the Prosecution - in

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[411] See *supra* note 407.

[412] *Idem*. See also, United States of America, *Plaintiff-Appellee, v. James Wallace Weeks, Jr*., Defendant-Appellant. (716 F.2d 830 14 Fed. R. Evid. Serv. 604) No. 83-8233. October 3, 1983; and United States of America, *Plaintiff-Appellee, v. Dwayne Freeman*, Defendant-Appellant. (804 F.2d 1574 55 USLW 2370, 22 Fed. R. Evid. Serv. 154) Nos. 85-7615, 86-7002. December 4, 1986.

[413] See also the testimonies about the Accused being a skilled commander and a good leader to the soldiers under his command: D-0032 (T-201, p. 4 line 5 – p. 7 line 1); D-0028 (T-181, p. 25 line 18 – p. 26 line 21; p. 27 line 21 – p. 28 line 12); D-0026 (T-191, p. 52 line 9 – p. 53 line 11); D-0018 (T-186, p. 7 line 12 – p. 8 line 10), D-0013 (a wife of Mr Ongwen; T-245, p. 25 line 15 – p. 34 line 5); D-0007 (a cousin of the Accused, abducted with him and who used to live with him beforehand), T-193); D-0118 (T-216, p. 31 line 10 – p. 32 line 6); D-0134 (T-241, p. 14 line 19 – p. 17 line 25); D-0092 (T-208, p. 46 line 11 – p. 50 line 20; T-209, p. 13 line 24 – p. 14 line 19); D-0117 (T-215, p. 39 lines 5-10); D-0130 ([REDACTED]), T-198, p. 10, lines 1-3 and 19-22; p. 18, lines 1-25; p. 28, lines 2-14); and D-0119 (T-196, p. 32 line 8 – p. 33 line 19).

[414] See the "Decision on Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute" (Trial Chamber IX), No. ICC-02/04-01/15-1494, 5 April 2019, paras. 13-16.

[415] See the "CLRV's Response to "Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute"", No. ICC-02/04-01/15-1441, 7 February 2019, paras. 11 to 16.

addition to the thresholds it ought to meet in application of articles 54(1)(a) and 66 of the Statute - *shall also disprove* any defence or evidence brought by the Accused.[416]

158. In conclusion, the CLRV posits that there is evidence that Mr Ongwen took active part in maintaining and enforcing the system of terror that the LRA operated; he took initiatives, decisions and actions that furthered the crimes ordered by Joseph Kony. The Accused had an important role in the LRA during the period of the charges as shown by his progressive escalation through the military hierarchy within the LRA; his participation in the Control Altar, representing the core leadership of the movement responsible for devising and implementing its strategy, including issuing clear orders to attack and brutalise the civilian population[417] and reporting to Kony about it.[418]

159. Mr Ongwen is known amongst the victims as the most courageous, loyal and brutal of the men who served Joseph Kony.[419] He has a record of protracted atrocities

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[416] See the "Decision on the Defence Request for Leave to Appeal the Decision Ordering the Disclosure of Medical Records pertaining to Dominic" (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-744, 10 March 2017, para. 8. See also, the "Decision on the Admissibility and Abuse of Process Challenges" (Trial Chamber III), No. ICC-01/05-01/08-802, 24 June 2010, para. 201. The ICTY Appeals Chamber, faced with a plea of insanity at the time of the offence, ruled that "[…] *if the defendant raises the issue of lack of mental capacity, he is challenging the presumption of sanity by a plea of insanity. That is a defence in the true sense, in that the defendant bears the* onus *of establishing it – that, more probably than not, at the time of the offence he was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of his act or, if he did know it, that he did not know that what he was doing was wrong. Such a plea, if successful, is a complete defence to a charge and it leads to an acquittal*." See ICTY, *Delalić, Mucić, Delić and Landžo ("Čelebići case")*, Case No. IT-96-21-A, Judgment (Appeals Chamber), 20 February 2001, para. 582. See also, United States of America, *Plaintiff-Appellee, v. Korrigan Brown*, Defendant-Apellant. No. 14-10339. November 4, 2015. Available on the following website: https://cases.justia.com/federal/appellate-courts/ca11/14-10339/14-10339-2015-11-04.pdf?ts=1446656487 See also RADOSAVLJEVIC (D.), "Scope and Limits of Psychiatric Evidence in International Criminal Law", International Criminal Law Review, Vol. 13, No. 5, 2013, 1017.

[417] See P-0142 (T-70, pp. 30-31 for orders regarding the Odek attack; p. 36 for orders on the enlisting of civilians; p. 38-39 for reports given to the Accused); P-0440 (T-40, pp. 40-43, who confirms a discussion occurring between Kony and Otti about the LRA commanders and in the course of which Kony was praising the Accused's skills and good performance); P-0142 (T-70, p. 43 for orders regarding the Lukodi attack; pp. 46-48 for the pre-attack briefing); P-0245 (T-99, pp. 69-73); P-0205 (T-47, p. 41, lines 4 - 13; pp. 43-44 for the instructions Mr Ongwen gave for the Odek attack; pp. 52-54, 56-58 and 61-62 for the Lukodi attack; and T-48, p. 13 line 23 – p. 14 line 8.

[418] See P-0142 (T-70, p. 41-43).

[419] P-0172 considered the Accused as a son and at no point did he mention any odd or out of place behaviour (T-113, p. 13 lines 19-21); P-0205 described him as a straightforward person (T-51, p. 35

against his own people and sheer brutality against his forced very young "wives"; he was proud of his achievements in the battlefield; he showed no remorse.[420] Therefore, victims express the view that it is impossible to seriously envisage that Mr Ongwen did not understand the extremely grave nature of the criminal acts he is accused of having committed.[421] While it could be argued that children under the age of 15 may not be able to always distinguish what is wrong and what is right, this assumption cannot be valid for someone who has become an adult, who was in position of power within the LRA and who was able to make a distinction and subsequently choose between what was right or wrong.

160. From the wealth of information presented and analysed in this case, the victims are of the view that Mr Ongwen cannot be considered as someone who had been suffering from a mental disease or defect that destroyed his capacity to appreciate the unlawfulness or nature of his conduct or capacity to control his conduct to conform to the requirements of law within the meaning of article 31(1)(a) of the Statute. To the contrary, the evidence unmistakably demonstrates that the

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lines 2-9); P-0209 described the way the Accused was good at fighting the army soldiers, was a good nurtured person, whose fighters were not suffering a lot of casualties during operations, of whom his soldiers would speak well (T-161, p. 18 lines 13-25); P-0231 described him as very good at military matters and knowledgeable on how to speak to his soldiers and good in his command (even the UPDF knew that the accused knows how to conduct fierce battles), someone who would not give out arbitrary orders, always explaining orders in relation to the operations (T-123, p. 82 line 3 – p. 83 line 50); P-0233 (T-111, p. 42 line 2 – p. 43 line 14, describing him as a motivating commander, a dedicated leader, his gun always ready to take action); and P-0264 (T-66, p. 11, lines 15-22).

[420] The CLRV refers to the proportionality requirement in article 31 of the Rome Statute. See the Decision confirming the charges, *supra* note 5, paras. 152-155. See also, ICTR, *Kamuhanda*, Case No. ICTR-95-54A-T, Judgement and sentence (Trial Chamber), 22 January 2004, paras. 78 and 79; and ECCC, *KAING (Duch)*, Case File/Dossier No. 001/18-07-2007/ECCC/TC, Judgement (Trial Chamber), 26 July 2010, para. 557: "*The Chamber accepts that towards the end of the existence of S-21, the Accused may have feared that he or his close relatives would be killed if his superiors found his conduct unsatisfactory. Duress cannot however be invoked when the perceived threat results from the implementation of a policy of terror in which he himself has willingly and actively participated*". The issue was discussed on appeal only in relation to the sentence of the accused, not to the substance of duress as a defence. See ECCC Appeal Judgement (Supreme Court Chamber), 3 February 2012, paras. 360-365.

[421] See P-0447 (T-169, p. 68 line 7 – p. 73 line 15); and P-0447 (T-252, p. 25 line 1 – p. 35 line 8).

Accused understood clearly his situation in the LRA and rather feared being caught and tried before the ICC.[422]

161. In relation to the charged period, the fact that the Accused may have been faced with extremely difficult situations in terms of personal and emotional well-being, communication and relationships' regulations or resilience and self-esteem does not remove legal responsibility off his shoulders for the crimes committed in as much as it is not proved that his volitional and cognitive capabilities were destroyed at the time of the commission of the crimes charged.[423]

162. As explained by Prof. Musisi, based on his experience as a Psychiatrist who treated many LRA victims, young abducted children can be very suggestible and can be convinced easily. As children develop progressively, their thinking becomes more abstract. However, as they become older, their judgment becomes more complete. Children exposed to repeated severe stress in childhood get distorted in their ways sometimes. However, this doesn't mean that they lose judgment over right and wrong.[424] This judgment comes quite early on. With the development of abstract judgment, they can store information to be used at a later time. They may know that whatever they are doing is wrong, they should not be doing it and they find ways to escape from doing it. This is what happened to many child soldiers, as well as to adults and commanders. Many escaped knowing that they did things to survive. The knowledge of right and wrong is in their mind, even if they perpetrated violence or were exposed to extreme acts of violence.[425]

163. Dr. Abbo concluded, based on the documents she reviewed, notably Prof. de Jong's report, that Mr Ongwen had a favourable early childhood in a stable

[422] See P-0016 (T-35, p. 49 lines 12-17); P-0172 (T-114, p. 10 lines 5-9); and D-0024 (T-192, p. 62 line 22 – p. 63 line 8).
[423] See P-0445 (T-166, p. 55 line 10 – p. 57 line 15); P-0447 (T-169, p. 73 line 17 – page 7 line10); and (T-170, p. 35 line 25 – p. 55 line 2, and p. 43 lines 19-25); and P-0447 (T-253, p. 46 line 3 – p. 51 line 1).
[424] See PCV-0002 (T-176, pp. 52-53; pp. 56-57).
[425] See PCV-0003 (T-177, p. 89 line 4 – p. 97 line 6).

environment.[426] She noted that, while Mr Ongwen's separation from his family was very *unpleasant*, he managed to adapt to the new situation which would explain why some people said that he is resilient[427] continuing his life.

164. Dr. Abbo, Prof. Mezey and Prof. Weierstall-Pust agreed that being exposed to trauma is not sufficient for the diagnosis of a trauma related disorder; the majority of the people who have gone through traumatic experiences in war zones don't develop said disorders, either because they are not affected by the trauma, or because they're not damaged by it in a clinical sense.[428] Prof. Mezey concluded that the experience of trauma cannot and should not be equated with mental illness; in fact the majority of victims of trauma both during their childhood and adult life do not experience any such illness subsequently.[429] Dr. Abbo stated that she did not find evidence sufficient to establish that a mental disease or defect destroyed Mr Ongwen's capacity to appreciate the nature of his conduct, nor his capacity to appreciate the unlawfulness of his conduct or his capacity to control his conduct.[430]

165. Prof. Mezey echoed these conclusions stating that all the evidence points towards Mr Ongwen having control over his actions, being aware of what was happening, able to express an intention to act in certain ways, having agency and control – which are all features incompatible with the presence of a serious mental disorder. Moreover, she indicated that it would be highly improbable and psychologically incoherent to suggest that there was a continuous and ongoing mental abnormality during the time period of the four charged attacks (spanning over a period of months) or that a mental abnormality occurred coincidentally with

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[426] See P-0445 (T-167, p. 86 line 18 – p. 89 line 10; and p. 2 line 23 – p. 23 line 18). See also, D-0007 (a cousin of the Accused, abducted with him and who used to live with him beforehand, T-193); and D-0006 ([REDACTED], T-195, p. 32 line 9 – p. 33 line 6).
[427] See P-0445 (T-166, p. 57 line 16 – p. 62 line 2).
[428] See P-0445 (T-166, p. 55 line 10 – p. 57 line 15); and P-0446 (T-163, p. 7 line 1 – p. 14 line 1).
[429] See P-0446 (T-163, p. 7 line 1 – p. 14 line 1). See also, P-0447's remarks on D-0041 and D-0042 testimonies (T-252, p. 9 line 23 – p. 14 line 6; p. 14 line 7 – p. 16 line 13 and T-253, p. 26 line 7 – p. 32 line 14; p. 53 line 20 – p. 59 line 17; p. 60 line 7 – p. 67 line 6; p. 72 line 22 – p. 74 line 4; p. 74 line 5 – p. 76 line 13; p. 88 line 14 – p. 91 line 3; p. 91 line 12 – p. 95 line 12).
[430] See P-0445 (T-166, p. 57 line 16 – p. 62 line 2).

each of those four attacks. In this regard, she noted that the attacks appear to have been planned and premeditated rather than impulsive, which would not be compatible with a person dissociating every day through those months or years.[431] She also confirmed that the likelihood of the Accused suffering from mental illness every day throughout the period of the charges (almost 3 years), while committing planned and premidated conducts that continued over time (such as forced marriage, slavery or the conscription of child soldiers), would be entirely implausible from a medical stand point.[432]

166. Therefore, it appears from the evidence taken as a whole that, even assuming that the Accused was suffering from an illness at the time of the crimes – a conclusion which the CLRV challenges having been made by the Defence's experts years after the events[433], certainly said illness did not reach the degree of severity required to destroy Mr Ongwen's cognitive or volitional capacity, i.e. his ability to appreciate the unlawfulness or the nature of his conduct or to control his conduct in accordance with the requirements of the law.[434]

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[431] See P-0446 (T-163, p. 7 line 1 – p. 14 line 1); PCV-0002 (T-176, pp. 20-22); and PCV-0003 (T-178, p. 16 line 22 – p. 17 line 25; p. 24 line 4 – p. 26 line 2) on compartmentalisation and the difference with dissociation.

[432] See P-0446 (T-163, p. 10 line 7 – p. 11 line 3).

[433] See D-0041 (T-248, p. 78 line 6 – p. 120 line 7 and T-249, p. 110 line 21 – p. 139 line 20); and D-0042, as well as their Reports, at UGA-D26-0015-0004, UGA-D26-0015-0154, UGA-D26-0015-0948, UGA-D26-0015-1219 and UGA-D26-0015-1574.

[434] In her Report (UGA-OTP-0280-0786), P-0446 reached the conclusion that there is no evidence to show that Mr Ongwen is currently, or has at any time, suffered from Post Traumatic Stress Disorder, Depressive Disorder, Dissociative Disorder or any other significant mental illness or disorder (thus disagreeing with the conclusions reached by Prof. de Jong and D-0042 and D-0041 in their reports). P-0446 did not identify any evidence of mental illness or disorder that would have removed or seriously compromised the mental element of Mr Ongwen's actions during the period covered by the charges. She also states that there is no psychiatric reason, related to current or past mental illness or disorder, to suggest that Mr Ongwen was incapable of appreciating the nature of his conduct, incapable of appreciating the unlawfulness of that conduct; or incapable of controlling his conduct to conform with the requirements of the law. See also P-0446 (T-162, p. 51 line 7 – p. 65 line 1 and T-163, p. 6 line 17 – p. 12 line 13).

3.2 Duress

167. The Defence argues that any alleged acts during the charged period would have been committed under duress caused by Joseph Kony and his close advisors; and that duress would have come from a continuing threat of imminent death and imminent threat of serious bodily harm against the Accused and against other persons which was beyond Mr Ongwen's control.[435]

168. Article 31(1)(d) of the Statute states that a person shall not be criminally responsible if, at the time of that person's action: "*(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be: (i) Made by other persons; or (ii) Constituted by other circumstances beyond that person's control*".

169. Consequently, two requirements are to be demonstrated in pleading duress. Firstly, the conduct of the person has been caused by duress resulting from a threat (whether made by other persons or constituted by circumstances beyond the person's control) of imminent death or of continuing or imminent serious bodily harm against that person or another person.

170. Threats must be imminent or immediate[436] to cause severe and irreparable harm to life or limb.[437] In other words, they must be clear and present, real and

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[435] See the "Defence Notification Pursuant to Rules 79(2) and 80(1) of the Rules of Procedure and Evidence, No. ICC-02/04-01/15-517, 9 August 2016, para. 5.

[436] See ICTY, *Erdemovic*, Case No. IT-96-22-T, Sentencing Judgment (Trial Chamber), 29 November 1996, para. 17 (the "*Erdemovic* Sentencing Judgment") The Judgment was later reversed on appeal due to the finding made by the majority of the Appeals Chamber to the effect that duress does not afford a complete defence to a soldier charged with a crime against humanity and/or a war crime involving the killing of innocent human beings. Yet, the majority of the Appeals Chamber did not question the constitutive elements of duress applied by the Trial Chamber. See the Joint Separate Opinion of Judge McDonald and Judge Vohrah to the Appeals Judgment, 7 October 1997, para. 19.

inevitable.[438] No evidence presented by the Defence shows this to be true. Some witnesses testified about the atmosphere of fear and spirituality in the LRA.[439] Nonetheless, none of them provided convincing evidence about a situation in which, *prior to* engaging in the criminal conduct, Mr Ongwen found himself faced with a clear and present or real and inevitable threat of imminent death or of continuing or imminent serious bodily harm against himself or another person. Only P-0016 testified that [REDACTED].[440] According to this witness, [REDACTED][441] [REDACTED].[442] This appears to be the only time that Mr Ongwen was actually threatened with an imminent death. Yet, it allegedly happened almost a decade after the charged period.

171. Some Defence's witnesses also testified about the fate of senior LRA commanders who were allegedly killed for disobeying Kony.[443] However, these examples are not directly applicable to the personal situation of Mr Ongwen. Indeed, the fact that other members of the organization regardless of their high-ranks could be categorized as enemies and killed for disobedience is not determinative in invoking duress.[444] In fact, all these individuals had different types of relationships with Joseph Kony and, in particular, none of them had an intimate family bond with

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[437] See ICTY, *Erdemovic*, Case No. IT-96-22-A, Separate and Dissenting Opinion of Judge Cassese to the Appeals Judgment, 7 October 1997, para. 16 (the "Opinion of Judge Cassese").
[438] See *Erdemovic* Sentencing Judgment, *supra* note 436, para. 18.
[439] See D-0026 (T-191, p. 42 lines 1– 6).
[440] See P-0016 (T-35, p. 42 line 6 – p. 50 line 6).
[441] *Idem*.
[442] See the Report by Prof. de Jong [REDACTED](the "Psychiatric Evaluation of Mr Ongwen by Prof. de Jong").
[443] See D-0025 (T-226, p. 27 lines 7 – 24); D-0026 (T-191 p. 35 line 2 – p. 37 line 5); and D-0134 (T-240, p. 39 line 13 – p. 41 line 2), testified about the killing of Otti Lagony, Okello Can Odonga, Sam Kolo and Vincent Otti by Joseph Kony.
[444] See the *Duch* Trial Judgment, *supra* note 420, para. 555.

him like Mr Ongwen did.[445] This appears to be the reason why the Accused was in the position to influence Kony.[446]

172. Furthermore, P-0009 also testified that Joseph Kony trusted Mr Ongwen and selected him to be part of the peace talks in 2004.[447] During the talks, the Accused openly threatened the elders and the members of the delegation with death even though they were invited by Joseph Kony. This shows that Mr Ongwen was not afraid of contradicting Kony in front of others,[448] and the latter scolded him for this.[449] D-0025 also testified that he heard that at some point Mr Ongwen was objecting to everything Joseph Kony said, and used to directly say to Kony whatever he felt, which created a lot of friction between them.[450]

173. Said evidence from fact witnesses negates the Defence's suggestion that no one dared to defy Joseph Kony in the LRA. Indeed, Prof. Mezey testified that: (i) the fact that Mr Ongwen in many cases was giving commands or orders shows that he had a degree of knowledge, agency and control which negates any suggestion of duress (understood as an individual being coerced to commit acts for fear of violence or harm to himself or herself); (ii) rather than acting under duress, Mr Ongwen was able to resist orders given to him and to stand up to Kony if he considered they were not justified. This kind of emotional resilience suggests both that he had a moral compass about certain actions, and that he was not in fear for his life; (iii) the fact that Mr Ongwen acted independently and had a degree of authority in his conduct would not be expected in an individual who was acting under duress; and (iv) lastly, the

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[445] D-0130 ([REDACTED]) testified that Mr Ongwen was very close to him and Kony. [REDACTED] (T-198, p. 9 line 23 – p. 10 line 22). P-0016 also testified that Mr Ongwen's sister was married to Kony. Therefore, Kony and the Accused called each other brothers-in-laws (T-34, p. 59 lines 1 – 20). According to P-0142 (a former LRA member), Kony and Mr Ongwen had such a good relationship and in fact Mr Ongwen was loved by Kony (T-73, p. 17 lines 12 – 21).
[446] P-0016 (a former LRA member) [REDACTED] (T-34, p. 41 line 24 – p. 42 line 7). Moreover, P-0231 testified that [REDACTED] (T-123, p. 11 line 1 – p. 13 line 9).
[447] See P-0009 (T-81, p. 49 line 16 - 50 line 6).
[448] *Idem*, p. 55 line 7 – p. 56 line 9.
[449] *Idem*, p. 68 lines 1 – 13
[450] See D-0025 (T-226, p. 68 lines 4 – 18).

individual situation of Mr Ongwen who appeared to act with no fear of harm to himself further rules out any suggestion of duress.[451]

174. Moreover, the Defence seems to suggest that the only punishment for disobeying Kony's orders was death. Yet, assessed in the light of the totality of the evidence presented at trial, such inference is highly implausible. Indeed, Prof. Allen testified that punishments for obeying or defying Kony varied from one person to another.[452] Some people who tried to operate independently or against LRA rules were punished, while others were laughed at by Kony.[453] P-0440 (a former LRA member) testified that there were also commanders like Odhiambo, Odongo and others who disobeyed Joseph Kony's orders.[454] In fact, according to many witnesses, death was not the only punishment allegedly given by Kony in the LRA for disobedience.[455]

175. Consequently, there is no indication that Mr Ongwen was under duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against his person or another person.

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[451] See P-0446 (T-162, p. 57 line 12 – p. 64 line 19).
[452] See P-0422 (T-29, p. 52 line 18 – p. 53 line 7).
[453] *Idem.*
[454] See P-0440 (T-40, p. 4 lines 2 – 22; line 23 – p. 7 line 9; p. 40 line 7 – p. 41 line 3).
[455] See D-0092 (T-208, p. 50 line 22– p. 51 line 13); and D-0134 (T-240_p. 21 line 22 – p. 22 line 20). See also, P-0070 (T-106, p. 41 line 13 – p. 42 line 14); P-0142 (T-71, p. 24 line 13 – p. 25 line 17); D-0025 (T-226, p. 30 line 19 – p. 31 line 7); and D-0027 (T-202 p. 23 line 16 – p. 24 line 4); D-0133 (T-203 p. 56 line 21 – p. 57 line 15 and p. 61 line 12 – p. 67 line 17); D-0024 (T-192 p. 46 line 2 – p. 48 line 13); and P-0138 (T-122, p. 61 line 10 – p. 64 line 18). In this regard, D-0075 testified that he heard rumours suggesting that sometime in 2003, Mr Ongwen, who had sustained his injury and thus had been staying in a sickbay, was summoned by Kony who accused him of attempting to defect and ordered to kill him. As a result, Mr Ongwen (along with witness P-0231) was arrested. However, Otti Vincent refused to kill Mr Ongwen and eventually, the Accused was released and even promoted (T-24, p. 61 line 13 – p. 67 line 25 and p. 69 line 9 – p. 70 line 14). P-0231, testified indeed that [REDACTED]. In comparing the evidence of D-0075 (which he himself qualifies as rumour) *vis-à-vis* the accounts of P-0231 who is a direct witness to the event, the latter version of the incident seems more plausible. If indeed, Kony was planning to kill Mr Ongwen, he would not have promoted the latter to the brigade commander position after this event. *Arguendo*, even if Kony had decided to kill Mr Ongwen, such threat would not qualify as an immediate threat in accordance with article 31(1)(d) of the Statute since Kony's purported decision to kill the Accused was unrelated with the commission of the crimes charged.

176. Furthermore, circumstances created due the Accused's own volition, such as his acceptance of promotions within the ranks of the organisation that allegedly kept him captive and thus exposing him to increasingly higher responsibility or actively sharing and implementing the policy of that organisation, cannot be considered as being beyond the person's control.[456] In this regard, D-0032 (a former LRA member) testified that Mr Ongwen was first given the cadet officer rank in 1996 and since then was promoted progressively because he was a knowledgeable and experienced soldier.[457] P-0054, attested that in the LRA officers were given ranks for two reasons: either for showing aggressive behaviour, working hard and carrying a lot of atrocities, or for enforcing discipline.[458] D-0018 also affirmed that in the LRA, Kony would give promotions and ranks based on the individual's merit and performance in battlefields, meaning that if someone was very good at fighting, Kony would have promoted him or her.[459] P-0410 and P-0003 also testified to the same effect.[460]

177. [REDACTED].[461] Thereore, even if Mr Ongwen's promotions to higher ranks were against his will, his acceptance of said appointments up to the level of brigade commander reflects his sense of duty to the LRA.[462]

178. Mr Ongwen was not just a captive in the LRA but was an exceptional soldier and an exemplary commander. In this regard, D-0032 (a former LRA member) testified that the Accused was a very skilled fighter who knew how to take good care of his soldiers;[463] that Kony praised him for working so well[464] and for being an

[456] See the Decision confirming the charges, *supra* note 5, para. 154.
[457] See D-0032 (T-200, p. 32 line 17 – p. 33 line 6).
[458] See P-0054 (T-94, p. 10 lines 17 – 21).
[459] See D-0018 (T-185 p. 68 line 18 – p. 71 line 7).
[460] See P-0410 (T-151, p. 73 line 25-p. 74 line 13 and T-43, p. 40 line 22 – p. 43 line 7).
[461] See Psychiatric Evaluation of Mr Ongwen, *supra* note 442, p. 13.
[462] See *Duch* Trial Judgment, *supra* note 420, para. 556. The issue was discussed on appeal only in relation to the sentence. See the Appeal Judgment, 3 February 2012, paras. 360 – 365.
[463] See D-0032 (T-201, p. 5 lines 5 – 17).
[464] See P-0016 (T-33, p. 3 line 18 – p. 7 line 10 and p. 19 lines 15 – 22).

efficient commander whom others should emulate.[465] Kony also noted his exemplary behaviour and bravery[466] and promoted him regularly.[467]

179. Several witnesses also testified about the initiatives taken by the Accused when deciding to attack locations, showing that Mr Ongwen was quite proactive and ingenious in implementing the LRA's policy of brutality, negating duress.[468] Indeed, such initiatives coupled with sophisticated means to execute criminal acts are indicative of an absence of duress.[469]

180. Furthermore, situations presumably leading to duress must not have been voluntarily brought by the person allegedly coerced.[470] The case of Mr Ongwen is the exact opposite. In this regard, P-0309 (a former LRA insider) testified that in a place called Barogal, Mr Ongwen's group met some civilians who said that the Government soldiers had been claiming that they had killed him.[471] The Accused asked those civilians to tell the soldiers that he was still alive and he would reach them any time.[472] Thus, Mr Ongwen bragging in this manner about his military prowess does not make him appear as someone under duress. P-0097 also testified that once Mr Ongwen laughed when his death was announced on radio, saying "*let them waste their time*" and that the LRA rebels would fight till the overthrow of the Government.[473]

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[465] *Idem,* p. 28 lines 1 - 8. See also, P-0003 (T-43, p. 31 line 8 – p. 32 line 4); and P-0059 (T-37, p. 13 line 15 – p. 14 line 1).
[466] See T-34, (p. 43 line 4 – p. 45 line 17 and T-33, p. 36 line 25 – p. 41 line 4).
[467] See D-0056 (T-229, p. 30 lines 3 – 21); and P-0233 (T-111, p. 39 line 20 – p. 43 line 16).
[468] See P-0059 (T-37, p. 37 line 18 – p. 38 line 3, p. 41 lines 12 – 16); P-0245 (T-99, p. 39 line 6 – p. 45 line 19); P-0309 (T-61, p. 17 line 18 – p. 22 line 20 and p. 25 line 22 – p. 28 line 14); and P-0372 (T-148, p. 33 line 13 – p. 40 line 6).
[469] See ICTR, *Seromba*, Case No. ICTR-2001-66, Judgment (Trial Chamber), 13 December 2006, paras. 239 and 382 (the "*Seromba* Trial Judgement").
[470] See the Opinion of Judge Cassese, *supra* note 437, para. 16.
[471] See P-0309 (T-62, p. 53 line 11 – p. 59 line 15).
[472] *Idem.*
[473] See P-0097 (T-108, p. 35 line 23 – p. 36 line 2 and p. 46 lines 18 – 24).

181. Indeed, the Accused's willingness to commit the crimes might be inferred from the way he conducted himself during and after the charged period.[474] Therefore, even if Mr Ongwen may have allegedly feared that he or his family would have been killed if his superiors found his conduct unsatisfactory, as suggested by the Defence, duress cannot be invoked when the threat results from the implementation of a policy in which the Accused himself has willingly and actively participated.[475]

182. As a result, duress is not available as a defence in cases where the person was in a superior position, issuing orders and having an effective control over the forces under him or her even if he or she found himself or herself in an organisation operating in *an atmosphere of duress and fear*.[476] In this case, since having been abducted, Mr Ongwen had grown up to be a building block of the brutal system within which he was allegedly kept captive. In this regard, P-0205 (a former LRA insider) testified that the Accused as the brigade commander decided on matters of discipline within his brigade, severely punishing people under his command.[477] Moreover, according to P-0309 (a former escort of the Accused), Mr Ongwen himself enforced the system of intimidation and reprisal by personally ordering the killings of people who escaped from the LRA.[478]P-0379 also testified about [REDACTED].[479]

183. Secondly, under article 31(1)(d) of the Statute, the person should act *"necessarily and reasonably to avoid* [the] *threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided."* Therefore, the act in question must be done to prevent an immediate danger both serious and irreparable, while no

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[474] See the Opinion of Judge Cassese, *supra* note 437, para. 46. See the Oral decision of the Trial Chamber regarding the temporal scope of evidence, 24 January 2018 (T-147, p. 7 lines 1 – 15).
[475] See the *Duch* Trial Judgment, *supra* note 420, para. 557.
[476] See SCSL, *Sesay* et al., Case No. SCSL-04-15-T, Sentencing Judgment (Trial Chamber), 8 April 2009, paras. 258-262, confirmed on appeal: Judgment (Appeals Chamber), 26 October 2009, paras. 1279 – 1282.
[477] See P-0205 (T-48, p. 44 line 9 – p. 46 line 21).
[478] See P-0309 (T-60, p. 39 line 8 – p. 41 line 3 and p. 40 lines 6 – 12).
[479] See P-0379 [REDACTED].

other adequate means is available for escaping[480] or averting such evil.[481] This element further requires the action to be strictly proportional,[482] which implies that the remedy is not disproportionate to the evil confronted by the person.[483] In this regard, a balancing exercise has to be performed,[484] meaning that the harm done must not be disproportionate to the harm threatened,[485] in other words, it must be the lesser of two evils.[486]

184. The CLRV posits that no evidence presented at trial convincingly demonstrated that Mr Ongwen engaged in any of the criminal conducts charged in order to avoid threat, provided that he did not intend to cause a greater harm than the one sought to be avoided (a threat of imminent death or of continuing or imminent serious bodily harm against him or another person).

185. Furthermore, in relation to the Defence's arguments that Mr Ongwen had to obey Kony's orders and as a consequence he is not guilty of the crimes charged, obedience to superior orders is simply a factual circumstance which should be considered in determining whether duress existed.[487] Indeed, superior orders may be issued without being accompanied by any threats to life or limb and thus, if said order is manifestly illegal, the subordinate is under a duty to refuse to obey.[488] If, following such a refusal, the order is reiterated under a threat to life or limb, then the defence of duress may be raised.[489]

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[480] See the *Erdemovic* Sentencing Judgment, *supra* note 436, para. 17 and Separate and Dissenting Opinion of Judge Li to the Appeals Judgment, 7 October 1997, para. 5 (the "Opinion of Judge Li").
[481] See the Opinion of Judge Cassese, *supra* note 437, para. 16.
[482] See the Decision confirming the charges, *supra* note 5, para. 155.
[483] See the *Erdemovic* Sentencing Judgment, *supra* note 436, para. 17; and the Opinion of Judge Li, *supra* note 480, para. 5.
[484] See Joint Separate Opinion of Judge McDonald and Vohrah to the Appeals Judgment, 7 October 1997, para. 81(the "Separate Opinion of Judge McDonald and Vohrah").
[485] See ICTY, *Erdemovic*, Separate and Dissenting Opinion of Judge Stephen to the Appeals Judgment, Case No. IT-96-22-A, 7 October 1997, para. 67 (the "Opinion of Judge Stephen").
[486] See the Opinion of Judge Cassese, *supra* note 437, para. 16.
[487] See Separate Opinion of Judge McDonald and Vohrah, *supra* note 484, para. 36.
[488] See the Opinion of Judge Cassese, *supra* note 437, para. 15.
[489] *Ibid.*

186. Article 31(1)(d) of the Statute does not require the Accused to have made a legal analysis about the legality of Kony's order. According to the jurisprudence of international criminal courts and tribunals, the true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether a moral choice was in fact possible for the accused.[490]

187. D-0028 testified about the fundamental Acholi cultural canons and laws taught to someone who is recruited in the army, namely (i) not to kill women or children in battles, not to steal or pillage and attack only one's real enemies; (ii) the prohibition of abductions; and (iii) the prohibition of marriages in the bush.[491] Prof. Ovuga affirmed that Mr Ongwen was taught the basics of such moral principles in school and at home in particular by his father and grandfather.[492] Prof. de Jong also stated in his report that the Accused grew up in a warm family that was strict in terms of values and norms of good and evil.[493]

188. Dr. Abbo further stated in her report that moral concepts are largely formed in infancy and early childhood, involving the formation of a system of values on which to base decisions concerning "right" and "wrong", or "good" and "bad".[494] She also stated that despite of his abduction at an early age; Mr Ongwen managed to attain the highest level of moral development as there is evidence that he was able to exercise flexibility in his moral judgment when he reportedly blamed his colleagues for atrocities committed by the LRA.[495] Thus, she concluded that Mr Ongwen matured and developed moral reasoning.[496]

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[490] See the Opinion of Judge Li, *supra* note 480, para. 4; the Opinion of Judge Stephen, *supra* note 485, para. 60; and the Opinion of Judge Cassesse, *supra* note 437, para. 45.
[491] See D-0028 (T-180, p. 15 line 23 – p. 16 line 21, T-182, p. 3 line 3 – p. 4 line 24).
[492] See D-0042 (T-250, p. 45 lines 3 – 25; T-254, p. 32 line 10 – p. 33 line 21).
[493] See Psychiatric Evaluation of Mr Ongwen, *supra* note 442, pp. 24 and 26.
[494] See the Forensic Psychiatric Report of Mr Ongwen by P-0445 at UGA-OTP-0280-0740, p. 9.
[495] *Idem*, at UGA-OTP-0280-0741, p. 10 and UGA-OTP-0280-0752, p. 21.
[496] *Idem*, at UGA-OTP-0280-0753, p. 22. See also her testimony (T-166, p. 16 lines 6 – 12; and T-167, p. 34 line 20 – p. 42 line 22).

189. These findings were echoed by Prof. Mezey stating in her report that: (i) there is evidence that Mr Ongwen both understands and is able to respond to the charges as he knows now and knew at the material time that his actions were wrong; and (ii) that he stated feeling guilty about what he did, indicating awareness and insight of the wrongfulness of his actions, despite the fact that he considers he should not be held responsible for his conducts.[497] She concluded that there are evidence indicating that Mr Ongwen had moral awareness or an awareness of the difference between right and wrong and was able to differentiate at least in his own mind between those he considers to be legitimate victims and people who are not legitimate targets;[498] he knew the unlawful nature or wrongfulness of his acts and did not show any impairment in his ability to control his behaviour as was able to distinguish orders that are morally justifiable and others not acceptable.[499]

190. In this regard, Prof. Wessels testified that abducted children remain morally alive and that he majority of former child soldiers do retain some ability to tell right from wrong. They know what they did was horrible as they appreciate the value of life which is held sacred in the Acholi culture.[500]

191. Even Defence's experts, Dr. Akena and Prof. Ovuga indicated that Mr Ongwen acknowledged that the actions of the LRA have resulted in human misery, the loss of lives and property and the destruction of social infrastructure and he regrets his participation in the activities of the organisation on orders from Kony and other leaders.[501] Prof. Akena also testified that there are indications showing that Mr Ongwen was able to understand that the LRA's conducts were wrong.[502]

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[497] See the Psychiatric Report of Mr Ongwen by P-0446 at UGA-OTP-0280-0786, UGA-OTP-0280-0813 and UGA-OTP-0280-0814.
[498] See P-0446 (T-162, p. 57 lines 22 – 25).
[499] *Idem*, p. 59, lines 13 – 21; and p. 60 line 23 – 61 line 1.
[500] See PVC-0002 (T-176, p. 20, lines 12-18).
[501] See the Psychiatric Report by D-0041 and D-0042, UGA-D26-0015-0004 at 0014 and 0015.
[502] See D-0041 (T-249, p. 109 line 9 – p. 110 line 8). See also the Psychiatric examination of Mr Dominic Ongwen by Prof. de Jong, *supra* note 442, pp. 6, 14; as well as P-0447's report discussing the Defence's experts conclusions (the Forensic Report on the mental health status of Mr. ONGWEN regarding crimes with which he is charged and that allegedly occurred in Northern Uganda

192. The Defence also appears to argue that the spirituality within the LRA, in particular the spiritual powers supposedly exercised by Kony, posed a threat of imminent death or of continuing or imminent serious bodily harm against Mr Ongwen or another person. While many witnesses testified about the spiritual or religious beliefs in the LRA, no evidence concretely establishes what the specific terms of article 31(1)(d) of the Statute require. Moreover, and to the contrary, the evidence shows that not everyone in the LRA believed the so called spiritual powers of Joseph Kony.[503]

193. Whether Mr Ongwen himself believed in Kony's spiritual powers is an unknown fact. In any case, the circumstance that the Accused possessed and exercised significant authority and carried out his functions with a high degree of efficiency and zeal negates duress.[504] As mentioned above, Mr Ongwen was one of the most trusted and respected commanders in the LRA and lead a whole brigade; as such, he was in the position of making[505] real moral choices, contrary to lower ranked soldiers.[506]

194. Mr Ongwen was extremely cold and cruel in executing the LRA's policy of brutality.[507] The evidence indeed shows that he was exceedingly ruthless towards defenceless civilians and people surrounding him, including his forced wives, escorts and soldiers in his group. Such brutal means to execute criminal acts clearly fail to meet the criteria of proportionality required by the Statute and are indicative of absence of duress.[508]

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between 2002 and 2005, UGA-OTP-0280-0674 at UGA-OTP-0280-0686, p. 13 and testimony T-169, p. 38 lines 2 – 11 and p. 71 lines 4 – 9).

[503] See *e.g.*, P-0145 (T-143, p. 58 line 10 – p. 59 line 13); D-0019 (T-236, p. 21 line 20 – p. 22 line 6); and D-0060 (T-197, p. 40 line 15 – p. 46 line 17).

[504] See the *Duch* Trial Judgment, *supra* note 420, para. 555.

[505] See the *Erdemovic* Sentencing Judgment, *supra* note 436, para. 18.

[506] See the Opinion of Judge Cassese, *supra* note 437, para. 45.

[507] See P-0018 (T-68, p. 58 line 18 – p. 60 line 6); P-0410 (T-151, p. 61 lines 16 – 24); P-0187 (T-164, p. 18 lines 7 – 16) and (T-165, p. 31 lines 6 – 21); P-0142 (T-71, p. 18 lines 17 – 21); and P-0269 (T-85, p. 26 line 23 – p. 27 line 17).

[508] See the *Seromba* Trial Judgement, *supra* note 469, paras. 239 and 382.

195. On the other hand, the Accused's attempt to reduce the brutality of his actions or lessen the nature of the harm suffered by his victims may be considered in assessing duress.[509] However, there is no evidence even slightly suggesting that Mr Ongwen attempted to diminish the extent and nature of harm suffered by his victims. The evidence presented at trial shows the opposite. P-0189 testified that, in 2006, he met with Mr Ongwen in the bush where he was commanding many fighters, including children under the age of 15 years.[510] When the witness encouraged the Accused to consider surrendering or, at least, releasing the children, the latter flatly refused. At that time Mr Ongwen was the commander of that group and he was not threatened by the Government forces due to the declared cease fire.[511] P-0355[512] and P-0359[513] also testified to the same effect.

196. In fact, the absence of any meaningful sign that the Accused wanted to dissociate himself from the criminal acts negates duress.[514] In the LRA, escapes were common, including of senior commanders alone or along with the people of whom they were responsible.[515] P-0070 (a former LRA member) testified that [REDACTED].[516] Another former LRA member (P-0245) attested that [REDACTED].[517] Prof. Titeca confirmed that, while being risky and dangerous, many LRA members escaped in groups or alone, notwithstanding the risk of getting military and "spiritual" punishments.[518]

197. In this regard, the Defence's suggestion that, had Mr Ongwen escaped, the LRA would have followed him to his home area and conducted reprisal attacks, does not seem plausible in light of the evidence at trial. D-0068 – who spent a long time in

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[509] See the Decision confirming the charges, *supra* note 5, para. 155.
[510] See P-0189 (T-95, p. 40 line 14 – p. 41 line 12).
[511] *Ibid*.
[512] See P-0355 (T-96, p. 87 line 21; p. 88 line 4).
[513] See P-0359 (T-109, p. 68 line 22 – p. 79 line 22).
[514] See ICTY, *Mrda*, Case No. IT-02-59-S, Sentencing Judgement (Trial Chamber I), 31 March 2004, para. 66.
[515] See P-0099 (T-14, p. 64 lines 12 - 22)
[516] See P-0070 [REDACTED].
[517] See P-0245 [REDACTED].
[518] See D-0060 (T-197, p. 86 line 15 – p. 88 line 11).

the LRA, including during the charged period - testified that the rebels would not follow somebody who had escaped – even with a weapon - up to his or her village. In fact, he never heard of any such event.[519] The reason he adduced for explaining why the rebels would not follow the escapees is that the latter did not always stay with those who initially abducted them and knew their home area.[520] D-0134 (who was also a long time member of the LRA) also testified that he escaped because he was not fearful about the fate of his family.[521] According to this witness, the LRA fighters continued to escape every day.[522]

198. In the case of Mr Ongwen, not only did he not escape from the LRA, but also did he ruthlessly enforce the LRA's alleged policy against escapes and actually prevented others from escaping.[523]

199. Therefore, the CLRV concludes that no evidence presented at trial shows that Mr Ongwen was under duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against himself or another person and as a result ought to commit all the crimes charged in a manner that was necessary and reasonable in order to avoid such threat, provided that he did not intend to cause a greater harm than the one sought to be avoided.

200. In conclusion, the CLRV submits that the defences alleged by the Accused have not been established at trial and that Mr Ongwen should be held fully responsible for all the crimes charged.

VII. THE IMPACT OF THE CRIMES UPON VICTIMS

201. The CLRV notes that the Chamber's duty to determine the truth is not limited to establishing the guilt or innocence of the Accused. Part of the truth to be

[519] See D-0068 (T-222, p. 72 line 20 – p. 73 line 10).
[520] *Ibid.*
[521] See D-0134 (T-240, p. 72 lines 5 – 13).
[522] See D-0134 (T-241, p. 18 lines 1– 13).
[523] See P-0200 (T-145, p. 12 line 23 – p. 13 line 14 and p. 15 lines 10 – 16).

determined by the Chamber is the victimisation, the suffering and harm caused to those who were directly affected by the crimes committed. During the course of the trial, the Chamber has heard evidence about the crimes committed, as well as factual and emotional accounts of the agony suffered by victims, their relatives, and their communities. In its evaluation of the evidence, the Chamber should therefore give due consideration to the accounts of victims and the harms they suffered from.

202. While the extent of the victimisation is an issue that will be developed further for the purpose of sentencing if the Accused is declared guilty – and subsequently for reparations - this final section of the brief intends to summarise the main harms suffered by victims as a consequence of the crimes committed.

203. Prior to the LRA insurgency, people in Northern Uganda lived a peaceful life. When community members are asked about their lives before the conflict broke out in 1986, they describe it as very pleasant. Life was peaceful and they were free to go about their daily business. People in Northern Uganda lived their lives with the comfortable reassurance that they knew what tomorrow would look like.[524] According to research by the Justice and Reconciliation Project, a resident of Lukodi said: "*People were friendly to one another, would drink, stay up late and could even decide to sleep in the market. There were no land wrangles; people loved themselves as brothers and sisters. Issues of defilement were unheard of and there was no HIV / AIDS*".[525]

204. Suddenly, all this changed when the LRA started raiding villages and later on, IDPs camps. Victims of the attacks generally recall their experience as follows: "*All around there were killings going on and so much fire burning, that the entire place became so bright as though it was broad daylight. By the time they left, the whole camp was littered with*

[524] See P-0006 – victim [REDACTED] (T-140, p. 20 lines 17-25); P-0097 – victim [REDACTED] (T-108, p. 67 lines 4-9), P-0249 – victim [REDACTED] (T-79, p. 79 line 21 – p. 80 line 25); P-0366 – victim [REDACTED] (T-147, p.17 lines 15-21); P-0374 - victim [REDACTED] (T-150, p. 12 line 21 – p. 13 line 1); and P-0396 – victim [REDACTED] (T-127, p. 5 line 14 – p. 6 line 7).
[525] See "The Lukodi Massacre 19th May 2004" Justice and Reconciliation Project, available on the following website:
http://justiceandreconciliation.com/wp-content/uploads/2011/04/JRP_FNXIII_Lukodi-Massacre.pdf

dead bodies as if they had been on a hunting spree. They killed people as if they were hunting animals and not human beings".[526]

205. The LRA's method of warfare has had a profound psychological impact on the local population. The rebels used extreme violence, especially against civilians, to instil fear and create a climate of terror. The massive abductions of children had a huge impact on the communities: "*Since in Acholi society, children's protection is a communal as well as a family responsibility, communities experienced guilt, shame, and humiliation over their failure and inability to protect their children*".[527]

206. The extent of the prejudice suffered by the civilians in Northern Uganda, and in particular the Acholis, is massive.[528] Threats were permanent in light of regular LRA attacks and presence. For abductees, the hardship started when taken and separated from their families,[529] under threat of violence, fearing for their lives,[530] not knowing where they were brought and whether they would ever come back home,[531] whether their family members were safe[532] and still alive, missing them and feeling lost[533] and afraid.[534] They were made to walk long hours carrying very heavy loads,[535] often weak and hurt with their feet and hands swollen,[536] threatened to be killed

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[526] *Idem*.
[527] See the PCV-0002 Report, *supra* note 257, from p. 28.
[528] See D-0114's testimony (T-247); D-0088 (T-230, p. 25 lines 19 –23); D-0113's testimony (T-221).
[529] See P-0235 (T-17, p. 6, lines 11-13) See PCV-0002 Report, *supra* note 257, pp. 8, 10, 24-25: "*Family separation is among the greatest of all risks to children globally. In Acholi society, as in most societies, the family is the first line of protection against myriad harms to children, and it plays a key role in helping to meet children's basic needs for health, shelter, food, water, and in achieving their full potential. By destroying this protection, the abduction of children under 15 massively violated the children's protection rights and subjected the children to the brutality that the LRA used as an instrument of social control*. […] [T]*his had negative impacts on their mental health and psychosocial well-being*". See also PCV-0002 (T-176, p. 13).
[530] See P-0226 (T-8, p. 11, lines 13-18); P-0235 (T-17, p. 4, lines 17-24); and P-0275 (T-124, p. 12 line 16 – p. 13 line 25).
[531] See P-0235 (T-17, p. 9 line 17 – p. 10 line 3).
[532] See P-0226 (T-8, p. 11, line 22 – p. 12 line 1).
[533] See P-0226 (T-8, p. 21, lines 6-7); and P-0227 (T-10, p. 22, lines 4-10).
[534] See P-0226 (T-8, p. 14, lines 7-8); and P-0235 (T-17, p. 6, lines 17-23).
[535] P-0099 explained: "*My chest hurts at times so much as a result of carrying have load and the hard work form the bush which has affected my entire life since I cannot do any hard work*". See P-0099's victim application [REDACTED], p. 7.
[536] See P-0235 (T-17, p. 6, lines 13-15).

should they not be able to walk with the group or to carry the luggage.[537] P-0227 stated: "*They told me, "Carry that millet flour and get out."* […] [M]*y mother tried to cry, and then they said if my mother continued crying that meant she wanted to see me die, so my mother has to keep quiet*".[538] The men who entered in their house the night she was abducted were holding guns.[539] She added: "*In our home two of my brothers were also abducted. Not only me alone*. […] *When I got out, I found my father was lying down on his stomach with some women who were also next to him*. […] *I didn't know at that time whether he* [her father] *was alive because the soldiers had guns*".[540] Abductees were not allowed to form friendships in the LRA, which led to internalised grief, adding to their emotional burden.[541]

207. To these first emotional and physical tolls[542] was added the immediate threat of being beaten or killed should they try to escape, of which they were immediately informed when abducted.[543] This added to the precarity[544] and the insecurity of the bush life they were facing on a daily basis.[545] P-0214 also stated: "*On different occasions the Rebels would go and carry out attacks and also UPDF soldiers would attack which would force me to run for my safety. This made me so scared most of the time sometimes when there was too much gunfire I would sleep on an empty stomach because there would be no way to get food for the family*".[546]

208. Experience of forced conscription into the LRA varies in scope and intensity but is always considered to be traumatic. Children and youth – some as young as 7

[537] See P-0227 (T-10, p. 15 line 12 – p. 16 line 1).
[538] *Idem*, p. 6 line 25 – p. 7 line 4).
[539] *Idem*, p. 7. lines 14-18).
[540] *Idem*, p. 9 line 8; p. 8 line 4 and 25; p. 9 line 1 and 8).
[541] See the PCV-0002 Report, *supra* note 257, p. 14; P-0314 (T-75, p. 52, lines 8-16); P-0330 (T-53, p. 47, lines 10-15); P-0340 (T-102, p. 52, lines 8-12); P-0366 (T-147, p. 19, lines 1-7: she had nobody to confide in in the bush); and P-0406 (T-154, pp. 83-90: during his captivity he was not able to talk to anyone).
[542] See P-0226 (T-8, p. 15 line 23 – p. 16 line 2; p. 27, lines 2-8).
[543] See P-0099 (T-14, p. 23 line 17 – p. 24, line 9); and P-0099's victim application [REDACTED], p. 7: "*Everything I went through in the bush traumatises me up to now*." See also P-0227 (T-10, p. 21 line 7 – p. 22 line 3).
[544] See P-0226 (T-8, p. 43 lines 13-25).
[545] See P-0227 (T-11, p. 4 line 1 – p. 5 line 4).
[546] See P-0214's victim application [REDACTED], p. 3.

and 8 years old – have been forced to mutilate and kill civilians, including members of their own families and communities. Abductees also have had violence inflicted upon them – typically beatings, imprisonment, forced labour and witnessing horrendous acts of violence.[547]

209. Several studies indicate that former abductees who have committed or experienced high levels of violence show substantial increase in emotional distress, as well as poorer family relations. Symptoms of Post-Traumatic Stress Disorder (PTSD) and depression were found to be significantly higher among those who experienced abduction compared to those who "only" witnessed violence and those who had little exposure to the conflict.[548] P-0235 described how she felt in the following terms: "*I feel so traumatised remembering everything that happened to me while I was in captivity. I moved over dead bodies, I was raped by Dominic Ongwen, I gave birth while in the bush and during times of war and I even survived death several times while in captivity. I lived in captivity for fourteen years and just returned home last year in [REDACTED]. Everything that I went through while in captivity traumatises me a lot up to date*".[549] P-0226 in her victim's application form stated: "*When we reached at some point we met a pregnant woman, the rebels then operated her stomach open removed the baby hit it on the tree several times and they chopped the woman into pieces this has never gone off my mind*".[550] What former abductees went through in the bush had a profound impact on their ability to reintegrate in their families and communities upon their return.[551] In addition, "*Cen*" is also a highly significant source of ongoing distress for formerly

[547] See P-0422 (T-28 p. 94 line 20 – p. 96 line 7; and T-29, p. 41 line 10 – p. 49 line 10); P-0236 (T-16, p. 11 line 19 – p. 12 line 7); and D-0079 (T-189, p. 19 line 18 – p. 20 line 25).
[548] See "Abducted. The Lord's Resistance Army and Forced Conscription in Northern Uganda", Berkeley-Tulane Initiative on Vulnerable Persons, Human Rights Center University of California, Berkeley & Payson Center for International Development Tulane University, June 2007, p. 5. Available on the following website: https://hhi.harvard.edu/publications/abducted-lords-resistance-army-and-forced-conscription-northern-uganda. See also PCV-0003 (T-178 p. 15 line 14 – p. 16 line 21; p. 24 line 4 – p. 26 line 2); D-0133 (T-203, p. 78 line 2 – p. 87 line 17).
[549] See P-0235's victim application [REDACTED], p. 1, question 2.
[550] See P-0226's victim application [REDACTED], p. 4. See also P-0227 (T-10, p. 62, lines 4 – 7); and P-0227's victim application [REDACTED], p. 1, question 2 and p. 5.
[551] See the PCV-0003 Report, *supra* note 25, p. 12.

abducted children who have returned to their communities.[552] However, the sufferings of non-abducted children who witnessed the attacks on the camps, feared being abducted and were victimised in other ways also created tremendous vulnerability.[553] For all of them, the loss of traditions during the LRA insurgency - for example the recurrent absence of burial ceremonies - had a profound impact at an individual and at a community level.[554]

210. As far as victims of gender based crimes are concerned, reports show that, in average, women experienced a longer stay in captivity than men. Women aged 19-30 years old averaged 4.5 years in abduction, more than the average of any other gender-age group. This finding reflects the LRA's practice of abducting girls and women to serve as sexual partners and servants to the LRA commanders and it is further supported by evidence from some of the reception centres documenting the systematic use of women for sexual encounters.[555] Prof. Reicherter underlined that "[s]*exual violence causes terror and destabilization by undermining feelings of individual and community safety and security.* […] *This effect may become a chronic state. A sense of safety and security is a basic human need that is essential for individuals to perform their daily functions and to engage in activities that promote growth and development. When an individual does not perceive that she or he is safe, basic daily activities such as feeding, sleeping, and self-care are undermined and dysregulated. When this occurs, higher-level pursuits-such as taking care of others, gaining employment, and pursuing an education-are also threatened and rendered more challenging, if not impossible*".[556]

211. The harm suffered as a result of gender based violence are manifold, touch both the girls and women who were the direct victims of these crimes, their children

[552] See the PCV-0002 Report, *supra* note 257, pp. 23 and 42 and his testimony (T-176, p. 49). See also, D-0111 (T-183, p. 12 line 22 – p. 25 line 6).
[553] *Idem*, pp. 37, 54-55 and testimony (T-176, pp. 45-46).
[554] See PCV-0002 (T-176, p. 39); P-0218 (T-90, p. 20, lines 3-12); P-0379 (T-58, pp. 7-15); and D-0087 (T-184, p. 17 line 5 – p. 19 line 8).
[555] See the PCV-0001 Report, *supra* note 252, pp. 11-12.
[556] *Idem*, p. 8.

and their wider family. They extend from a wide range of health issues;[557] to psychological trauma;[558] transgenerational harm;[559] loss of chances for education;[560] loss of chances; lack of agency and personal autonomy; poor socio-economical outcomes;[561] family cohesion and subsistence issues, forced displacement, stigmatisation[562] and community issues (including, rejection,[563] loss of family links, delinquency); and economical harm. In addition, Prof. Reicherter underlined that "[c]*onsidering the particular socio-cultural factors, female survivors of LRA rape and sexual violence in Uganda are likely to experience heightened risk for re-victimization*".[564]

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[557] *Idem,* pp. 12, 16, 19, 20, 21, 23 and 24. The CLRV refers to the wide range of medical issues resulting from the chores, beatings and injuries sustained while in captivity in the bush; sexual transmitted diseases such as HIV, chronic infections, risky pregnancies, lifelong birth related complications, sexual & reproductive health diseases, infertility, excessive menstrual bleeding, genital burning, painful intercourse, chronic pain, heart disease as well as somatic symptoms related to poor mental health, notably leading to loss of appetite, weight loss or gain. PCV-0001 also explained how fistula as a traumatic injury associated with war-time rape is an extremely socially isolating condition (pp. 21-22).

[558] *Idem*, pp. 9, 10, 13, 14. The CLRV refers to traumas such as fear and anxiety; anger, shame, guilt, self-blame, helplessness, lack of self-esteem, interpersonal issues, revengefulness; PTSD and other mental health issues; maternal mortality and higher risk of domestic violence, alcohol and drug use/dependence. *Idem*, pp. 5-6: "*In particular, the purposeful systematic commission of mass rape and gender-based violence (including forced marriage and forced pregnancy) is a specific means of societal destabilization by inciting fear, insecurity, hopelessness, humiliation, and degradation for victims, their families, and their community*".

[559] See the PCV-0001 Report, *supra* note 252, pp. 8, 10, 24 and 27; and p. 12: "*These symptoms* [for anxiety disorders] *not only affect the individual but have repercussions for family and community*".

[560] See P-0269 ([REDACTED]); P-0330 (T-53, p. 61, lines 8-10); P-0351 (T-129, p. 12 line 5 – p. 13 line 2); P-0366 (T-147, p. 28, lines 5 – 14); P-0372 (T-148, pp. 63-69); and P-0410 (T-151, pp. 80-81). See also PCV-0002 Report, *supra* note 257, p. 32.

[561] See the PCV-0001 Report, *supra* note 252, p. 5

[562] See P-0099's victim application [REDACTED], question 2 p. 1 and p. 7: "*I am stigmatised in my community up to now, they say I am a wife to a rebel, they attribute all the killings in northern Uganda to me since they say I stayed with Joseph Kony for long and I was planning all the attacks with him which hurts me so much* […] *Ever since my return any man who wants to marry me and gets to know about my background with the rebels in the bush he leaves me there and then[REDACTED] claiming that I reason like rebels, I have no respect and above all I have demons which makes me scream every night, thus broke my heart so much*". See also D-0049 (T-243, p. 69, lines 5-16 and p. 69 line 25 – p. 71 line 12); D-0028 (T-181, p. 29 line 4 – p. 30 line 25); D-0013 (a wife of Mr Ongwen; T-245, p. 9, lines 8-11); D-0006 ([REDACTED], T-194, p. 50 line 3 – p. 52 line 17); D-0110 ([REDACTED], T-231, p. 7 line 22 – p. 17 line 21); D-0130 ([REDACTED], T-198, p. 7, lines 20-25; p. 30, lines 12-20, about his fear of dating an Acholi girl and discovering she is actually his sister because Kony has so many children); and D-0131's testimony ([REDACTED], T-205).

[563] See the PCV-0003 Report, *supra* note 25, p. 14. See also the PCV-0001 Report, *supra* note 252, p. 34; P-0099's victim application [REDACTED], p. 7; and P-0226's victim application [REDACTED], pp. 1 and 5.

[564] See the PCV-0001 Report, *supra* note 252, p. 23.

212. The broad geographical spread of the victimisation and the large number of victims participating in this case confirm the widespread nature of the attack against the civilian population. To date, 4065 victims have been admitted to participate in the proceedings. The vast majority of them suffered from the four attacks charged against the Accused and had to flee their homes; they lost at least one or more of their family members and they were injured in the course of the attacks; their properties were pillaged or destroyed; women and girls, and sometimes men, were either raped or subjected to other sexual and gender based crimes; some women got pregnant and gave birth to children who have in turn been victimised and stigmatised ever since.[565]

213. The consequences of the massive pillaging and systematic destruction of properties that the victims have been suffering from are not only material.[566] Such extended loss and damages not only robbed them of all their scarce resources, tools and living place, but also heavily impacted on the future of their whole families. The already difficult material situation in which the vast majority of the victims were living exponentially worsened; not only were they deprived of common resources to live on a daily basis and of roofs above their heads; but the brutality of the attacks, the abrupt and definite loss they encountered and the void in which they were left as a result created fear and anxiety. Victims felt helpless and deeply traumatised. How can one live and ensure the subsistence of his or her family without a land and a house to inhabit, without food and crops to survive? The damages resulting from the massive pillaging and destructions of which they have been suffering ever since the attacks are material and economical, but also moral, psychological and, consequently, correlatively affect their physical and mental health. The very foundation of family life has been durably compromised. In the words of Prof. Musisi, the "*Acholi people then depended on food rations from the World Food Program*

[565] See P-0099's victim application [REDACTED], question 2 p. 1, and p. 7; P-0226's victim application [REDACTED], pp. 1 and 5.
[566] See V-0001 (T-174, pp. 9-34 and 35-67); as well as her Report, UGA-V40-0001-0010, pp. 51-55, 59-64; V-0004 (T-172, pp. 20-21); P-0018 (T-69, p. 23 line 17 -p. 24 line 1); and P-0018 (T-69, p. 23 line 17 – p. 24 line 1).

(WFP) and Uganda government. The men and women of Acholi, for the first time ever, became beggars of food for survival. Everything became scarce. The Acholi men lost their prestige and power as family heads."[567] "*Family land was lost.* […] *The community had lost its traditional self-reliance skills*; *yet the young had no education to acquire new vocational skills*".[568]

214. Finally, many abductees suffered important injuries which were never properly healed or even taken care of till they returned, in addition to the many common diseases stemming from their living in the bush under frightful hygiene conditions.[569] If the LRA had put in place a system of "sickbays", there were no doctors and no proper medication or medical tools in the bush, leaving the abductees to the mercy of plants and traditional treatments to heal wounds and injuries never seen before.[570] Since many Acholis still perfom manual works for their sustainability, it is even more difficult for returnees to sustain themselves because the majority of them still suffer from injuries and physical wounds.[571]

215. The extent of the health issues from which the CLRV clients suffer comes from direct injuries related to inhumane treatments during the attacks and in captivity (chores, beatings, mutilations, extremely hard and unsanitary conditions of life in the

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[567] See the PCV-0003 Report, *supra* note 25, p. 10. See also the PCV-0002 Report, *supra* note 257, pp. 28 - 29 and his testimony (T-176, p. 26); P-0280 (T-84, p. 13, lines 7 – 24: about the lootings of his family belongings in Abok and the impacts on his family, the difficulties to start rebuilding).

[568] *Idem*, pp. 11-12. Regarding the loss of education while in the bush, see PCV-0003 (T-177, p. 45 line 21 – p. 46 line 23, commenting on the testimony of P-0396 (UGA-PCV-0005-0029), as well as his Report, *supra* note 25, p. 12); P-0227 (T-10, p. 5, lines 15-24 and p. 61 line 23 – p. 62 line 2 and P-0227's victim application [REDACTED], p. 5); P-0236 (T-16, p. 37, lines 1 – 8 and P-0236's victim application [REDACTED], p. 5); P-0099's victim's application [REDACTED], p. 7; P-0226's victim application [REDACTED], p. 5; and the PCV-0002 Report, *supra* note 257, pp. 44, 51 and 52; and D-0105 (T-190, p. 58 line 23 – p. 62 line 4).

[569] See the PCV-0003 Report, *supra* note 25, p. 9; see also V-0003 (T-172, p. 19, lines 19-22); and P-0009 (T-81, pp. 79-80).

[570] See P-0227 (T-10, p. 43, lines 2-7); P-0172 (T-113, p. 47 line 10 – p. 48 line 5); P-0309 (T-61, p. 58 line 11 – p. 59 line 6); P-0314 (T-75, p. 44 line 9 – p. 45 line 22); P-0330 (T-53, p. 36 line 18 – p. 37 line 22); P-0097 (T-108, p. 70 line 15 – p. 72 line 14); P-0252 (T-88, p. 31, lines 7-25); and P-0275 (T-124, p. 18 lines 9-21).

[571] See P-0372 (T-148, pp. 63-69).

bush);[572] wounds sustained during attacks; sexually contracted diseases and injuries; physical inabilities and impairments, but also medical issues deriving from long-lasting non-addressed traumas.[573] In fact, Prof. Reicherter explained that: "*Several clear themes emerged in the Lab's review of the sample victim applications; including evidence of symptoms of psychiatric disorders and signs of profound trauma mental health outcomes. Our sample included a large range of victim experiences: women abducted (and either escaped or released) by the LRA, men, young adults, former child soldiers, as well as family members whose loved ones were raped, abducted, remain missing, or killed by rebels during the lootings of the IDP camps. From our sample of application statements, approximately half of the victims spontaneously reported experiences of distress consistent with psychiatric outcomes of trauma*. […] *A substantial number of victims indicated signs of flashbacks, intrusive thoughts, and repeated memories of similar scenes of mutilated bodies, blood, and killings. Some victims did address these symptoms in cultural notions, such as "seeing ghosts" of the dead. In addition, a subgroup of these victims also described signs of hypersensitivity, notably hyper-startle responses to loud noises (e.g. banging) and attribute it to their fear of the LRA returning, reminiscent of gunshots and the traumatic events of the lootings; some victims particularly reported avoidance behavior from areas where they are more likely to encounter these triggering sensory stimuli. A similar effect appeared to account for several victims who reported effects on their appetite: since the attack, many have avoided or completely stopped eating fresh meat because the blood required in preparing animals triggered thoughts/sensory recollections of dead bodies. Signs consistent with depression were also seen throughout the review. Perceptions of insecurity (i.e. feelings of being unsafe, vulnerable, defenseless, and unprotected from another LRA attack) compounded potential symptoms such as anxiety and states of alarm, often denoted by victims as "living in constant fear." For some victim applicants, the intensity of distress also simultaneously manifested physically as stomach ulcers*".[574]

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[572] See D-0085 (T-239, p. 6 line 24 – p. 12 line 7); D-0088 (T-230, p. 8 line 9 – p. 15 line 6); and D-0049 (T-243, p. 69, lines 17-24).
[573] See P-0226's victim application [REDACTED], p. 5; and P-0236's victim application [REDACTED], pp. 4-5.
[574] See the PCV-0001 Report, *supra* note 252, pp. 36-38.

216. The constellation of harm[575] the victims describe not only has repercussions on their network of social functioning[576] but also over generations. In this regard, P-0235 stated: "*My daughter* […] *started studying but she dropped out of school because I could not afford to pay her at school. This hurts me a lot. My two children* […] *also get disturbed a lot by demons and evil spirits due to all that happened. I think the demons and evil spirits disturb my children because of all the people that their father killed. The demons and evil spirits also disturb me a lot.*[577] *[REDACTED] This hurts me so much. My children lack basic needs. I work a lot to provide my children with basic needs and food. Am so worried about the future of my children. I have also nothing to do to help them. I cry a lot every time I think about my situation. I also do not know if I even have a future*".[578]

217. Finally, victims were forced to live into IDP camps because of the attacks led by the LRA.[579] The dreadful and dangerous situation they have been confronted with in the camps,[580] resulting from unsanitary living, lack of food and water, absence of traditional community structures[581] and constant insecurity[582] led to uncountable material, economical, psychological and physical harm which are a direct consequence of the LRA methods of warfare.[583] Specifically with regard to daily

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[575] See the PCV-0001 (T-175, p. 37, lines 8 - 19).
[576] See PCV-0001 (T-175, p. 23, lines 2 - 22, referring to his Report, *supra* note 252, p. 11); and PCV-0002 (T-176, p. 32).
[577] See the PCV-0001 Report, *supra* note 252, pp. 2 and 12: "*These symptoms* [for anxiety disorders] *not only affect the individual but have repercussions for family and community. For example, children of mothers with panic disorder are 6.8 times more likely to develop the disorder, and children of mothers with phobic disorders are 3.1 times more likely to be diagnosed with the disorder at some point in their life*." And p. 13: "*Similar to anxiety disorders, the presence of depressive and mood disorders extends beyond the individual victim; research suggests that children of depressed mothers have a lifetime prevalence rate of depression between 20% and 41 %. Children of depressed mothers also experience mental and motor developmental issues, self-regulation problems, and increased negative affect*".
[578] See P-0235's victim application [REDACTED], p. 5. See also the PCV-0001 Report, *supra* note 252, pp. 25-32 and PCV-0001 (T-175, p. 24, lines 2-15); the PCV-0003 Report, su*pra* note 25, p. 15 and PCV-0003 (T-177, p. 30 line 7 – p. 32 line 11); and PCV-0002 (T-176, p. 32).
[579] See P-0422 (T-28, p. 82 line 6 – p. 83 line 16).
[580] See D-0083 (T-217, p. 16 line 15 – p. 33 line 23; p. 34 line 12 – p. 45 line 10; and p. 48 line 18 – p. 49 line 19); D-0028 (T-181, p. 40 line 5 – p. 45 line 5); D-0138 (T-246, p. 16 line 19 – p. 18 line 18); D-0125 (T-242, p. 12 line 25 – p. 13 line 4); D-0123 (T-238, p. 9 line 19 – p. 11 line 11); and D-0084 (T-235, p. 12 line 7 – p. 20 line 15; p. 21 line 8 – p. 29 line 1).
[581] See the PCV-0002 Report, *supra* note 257, pp. 27-29.
[582] See V-0003 (T-172, pp. 8-10 and 20-21).
[583] See the PCV-0002 Report, *supra* note 257, pp. 49-52.

subsistance in the camps, Prof. Musisi underlined how very difficult life was. The camps were overcrowded; people lost family cohesion and connectedness; fathers lost their position in the society and in life; culturalisation of children disappeared.[584] Moreover, as the people from the IDPs camps returned from displacement and tried to rebuild their lives, they had to struggle with daunting resettlement challenges and difficult issues of reconciliation within the community.[585]

218. Explaining the implications of the lack of land for the future of the children, Prof. Musisi stated: "[l]*and, among the Acholi, was customarily owned in families which made up clans. Traditionally, the elder patriarchs distributed the land along family lineages. No one was landless. When children were abducted and spent many years in the bush, many could return only to find that their kith and kin had died or their families had been removed from their ancestral land and put in IDP camps for years. On disbanding the IDP camps, after almost 20 years, many of the elderly had died and many of the returned abductees no longer had elder family members to take them back to their village land. They, thus, became lost and landless. Moreover, with the absence of elders, land boundaries could not be clearly known or identified. Many land disputes ensued, and yet there were no elderly to resolve them as had been the case in the past. This made abductees' resettlement difficult. Moreover, many did not have the skills to till the land, rear crops or animals. They had become townspeople*".[586]

219. In conclusion, as underlined by Prof. Reicherter, "[a]*n optimistic outlook focused on growth and recovery following insult and trauma can be facilitated through education, medical and psychological treatment, reparations, financial assistance,* ***and the execution of justice***".[587]

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[584] See the PCV-0003 Report, *supra* note 25, p. 6 and his testimony (T-177, p. 71 line 11 – p. 81 line 4). See also P-0422 (T-28, p. 103 line – p. 104 line 8); and V-0004 (T-173, p. 9 line 22 – p. 11 line 2).
[585] See V-0004 (T-173, pp. 21 line 4 – p. 23 line 1); PCV-0003 (T-177, p. 41 line 19 – p. 42 line 17, commenting on the testimony of P-0252 (UGA-PCV-0005-0029); and p. 43 line 9 – p. 44 line 24, commenting on the testimony of P-0379 (UGA-PCV-0005-0029)).
[586] See the PCV-0003 Report, *supra* note 25, p. 15.
[587] See the PCV-0001 Report, *supra* note 252, p. 43.

VIII. CONCLUSION

220. The Common Legal Representative of Victims submits that there is sufficient evidence to believe, beyond reasonable doubt, that the Accused is responsible for all the crimes charged and respectfully requests the Chamber to declare Mr Ongwen guilty of all the charges alleged against him.

Paolina Massidda

Principal Counsel

Dated this 28th day of February 2020

At The Hague, The Netherlands