

1 International Criminal Court
2 Pre-Trial Chamber III
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Joseph Kony - ICC-02/04-01/05
5 Presiding Judge Althea Violet Alexis-Windsor, Judge Iulia Antoanella Motoc, and
6 Judge Haykel Ben Mahfoudh
7 Confirmation of Charges Hearing - Courtroom 1
8 Wednesday, 10 September 2025
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:21] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE ALEXIS-WINDSOR: [9:32:04] Good morning, everyone. Call
14 the matter, please.
15 THE COURT OFFICER: [9:32:09] Good morning, Madam President, your Honours.
16 The situation in Uganda, in the case of The Prosecutor versus Joseph Kony, case
17 reference ICC-02/04-01/05.
18 And we are in open session.
19 PRESIDING JUDGE ALEXIS-WINDSOR: [9:32:31] I understand that the -- both
20 sides possibly had an issue of housekeeping. Yes? Prosecution, do you want to go
21 first? Tell me.
22 MS VON BRAUN: [9:32:46] Yes, thank you, Madam President.
23 Unfortunately, this morning, I have to report an unfortunate error made by the
24 Prosecution in choosing a photo that we erroneously have attributed to Mr Raska
25 Lukwiya and have used during our visual presentations yesterday in some of the

1 timelines that we have showed where there was a head shot image and we put the
2 name under it. The fact that this photo may not depict Mr Lukwiya came to our
3 attention yesterday and then we checked, and, indeed, we have to concede, that the
4 attribution is not sufficiently verified to our standards and the standards at this point
5 in the proceedings.

6 I'm referring to the photo we disclosed at UGA-OTP-00001350, and, against this
7 background, the Prosecution withdraws the use of this photo from its list of evidence,
8 and we will take the next steps -- the next steps to correct any documents we filed that
9 may also have this photo cited in relation to Mr Lukwiya. And I believe there's also
10 an annex to our Pre-Confirmation Brief where we have inserted it, but this we will do
11 after the hearing.

12 All other evidence we rely on in relation to Mr Lukwiya and that we have presented
13 yesterday continues to stand on firm footing, but I would really -- I hope you accept
14 my apologies for this unfortunate error that I had to report today.

15 PRESIDING JUDGE ALEXIS-WINDSOR: [9:34:48] Well, counsel -- Defence, do have
16 anything to say in response to this?

17 MR HAYNES: [09:34:54] Your Honour, no.

18 PRESIDING JUDGE ALEXIS-WINDSOR: [9:34:55] All right, very well. Counsel,
19 while you're on your feet, was there an issue of housekeeping you wish to bring to the
20 Court's attention? Defence counsel, sorry.

21 MR HAYNES: [9:35:07] The answer to that question is also in the negative, your
22 Honour.

23 PRESIDING JUDGE ALEXIS-WINDSOR: [9:35:12] Very well.

24 All right, then. Well, Prosecution, thank you very much for bringing that to our
25 attention. It is duly noted and we expect to see that it will be corrected on the record

1 after the proceedings.

2 All right, then, we continue this morning with the Prosecution. By our calculation,
3 we believe you have one hour, approximately, thereabouts, yes? All right. Very
4 well, then.

5 MS HENDERSON: [09:35:43] Thank you, Madam President, your Honours. I will
6 be using approximately 45 minutes of that time, by my estimation.

7 I will be addressing your Honours this morning on the LRA's crimes against children.

8 I will then conclude the Prosecution's presentation of the merits by addressing the
9 charges of direct perpetration against Mr Kony.

10 My presentation will be wholly public for broadcast and for the PowerPoint, unless
11 I indicate otherwise.

12 Your Honours, woven throughout the presentations that you have heard so far has
13 been the devastating harm visited by the LRA upon the most vulnerable of northern
14 Ugandan society -- its children. Our repetition on this point is not accidental.

15 Rather, it reflects the reality that the commission of crimes against children was at the
16 very heart of the LRA's policy -- one devised and implemented by Mr Kony.

17 It is the Prosecution's case that Mr Kony and his co-perpetrators, jointly and through
18 LRA fighters under their control, engaged in a coordinated campaign to abduct
19 children in northern Uganda, including children under the age of 15, and to integrate
20 them into the LRA.

21 I will begin the visual presentation by showing a short extract from a 2003
22 documentary in which an abducted child, given the pseudonym David, describes his
23 life as a child soldier in the LRA. Your Honours, his experience mirrors that of the
24 thousands of child soldiers enslaved in the charged period, and this footage is taken
25 at a World Vision centre in Gulu.

1 Just one moment, your Honours, while we get the sound to work.

2 (Viewing of the video excerpt)

3 MS HENDERSON: [09:39:56] And for the record, that is taken from

4 UGA-OTP-00001375 at 3 minutes 10 seconds to 4 minutes 22 seconds. The transcript
5 is at UGA-OTP-00001566 and the English translation at UGA-OTP-00001557.

6 As your Honours have heard from my colleague Ms von Braun, it was on the basis of
7 Mr Kony's standing orders that this policy was implemented throughout the ranks of
8 the LRA. Mr Kony and the LRA perpetrators targeted children because they
9 considered them easier to indoctrinate and less likely to escape.

10 Former LRA Witness P-0372 had this to say in the Ongwen trial when asked why the
11 LRA preferred to abduct children:

12 "The reason they would keep the younger ones was because these young ones could
13 get confused and indoctrinated and would not think about returning home. It was
14 very easy to change their mindsets so that they could be part of the soldiers.
15 Children could easily forget."

16 And that comes from UGA-OTP-00000625, page 51.

17 This motivation is confirmed by the orders of Mr Kony himself over intercepted radio
18 communications during the charged period. In an entry of 21 October 2002,
19 Mr Kony is recorded as saying that the LRA should not abduct people 15 years old
20 and above because, quote, "they are problems." Reference UGA-OTP-0065-0002, at
21 page 0049.

22 On 26 November 2002, Mr Kony is recorded, stating that people "whose minds are
23 not very clear to them should all be killed," and "it's far much easier to work with
24 children whom he captured and trained to become LRA soldiers because they don't
25 mind about material goods." That comes from the same logbook at page 0065.

1 Then, on 29 November 2002, Mr Kony told Vincent Otti over LRA radio to
2 concentrate on abducting, quote, "only young children who are easy to control."
3 Same logbook reference, at page 0073.

4 Abduction was, of course, not the only way for children to enter the LRA. That
5 Mr Kony envisaged the creation of a new tribe meant that hundreds of children were
6 born into captivity, both before and during the charged period. They were carried
7 by and born to the very young women and girls enslaved in the LRA as the forced
8 wives whom my colleague Ms Ndagire described yesterday. They were the proof
9 and the embodiment of Mr Kony's plan.

10 Mr Kony himself had dozens of children to his many forced wives.

11 Appearing on your screens now is a list of Mr Kony's children provided by a former
12 LRA member, Witness P-0023. The names of the children are blurred to protect their
13 anonymity. And the reference is UGA-OTP-0150-0059. This list is not intended to
14 be comprehensive; it includes only those names that the witness could recall.

15 In fact, Mr Kony had so many children that even he had to come up with a way of
16 keeping track. According to Witness 1034 - that's P-1034 - Kony recorded the names
17 and dates of birth of his children in a book. The witness estimated that there could
18 be over a hundred children fathered by him. Reference UGA-OTP-00001146, at
19 paragraph 117.

20 Now, Mr Kony may have seen these children - his own and others - as the divine
21 beginning of a new brand of Acholi, but, your Honours, the lived reality was
22 anything but glorious. I will now display about half-a-minute video footage from a
23 2002 documentary, produced by the Australian broadcaster SBS, entitled "In the
24 Name of the Lord." In it your Honours will see the physical state of a group of
25 women, babies and small children just released by the LRA in or around Atiak.

1 Now, the Prosecution believes that this relates to Vincent Otti's release of some
2 hundred women and children from Atiak in June 2002. And while this event
3 narrowly precedes the charged period, it is highly relevant in showing the deplorable
4 conditions in which the LRA kept enslaved women and their vulnerable children.

5 The reference is UGA-OTP-00001366, from 15 minutes 41 seconds to 16 minutes
6 3 seconds, and the corresponding transcript is at UGA-OTP-00001565. And I must
7 warn that the images of suffering are disturbing.

8 (Viewing of the video excerpt)

9 MS HENDERSON: [09:47:56] As these images show, even infants were not spared
10 from the suffering.

11 My colleague Ms Ndagire has already spoken to the absence of medical assistance
12 available to newborns and the mothers who delivered them in the bush. Similarly,
13 infants were deprived of vital sustenance.

14 In the Ongwen trial, Witness P-0099, a forced wife of Ongwen, described how her
15 decision to escape from the LRA was a matter of life or death for her baby:

16 "The conditions that my child was under, the lack of breast milk and -- the lack of
17 breast milk, if I had decided to stay in the bush at that time, I would have lost my
18 child. I was unable to produce milk for my child and it was extremely difficult for
19 me to live with that child in the bush under those conditions."

20 And the reference there is UGA-OTP-00000945, at page 59.

21 Even if young children survived infancy in the LRA, they were exposed to constant
22 danger. Witness P-0063, a forced wife, explains in her statement how children were
23 often the casualties of the LRA's war with the Ugandan government. I quote:

24 "[...] the helicopters would shoot at us, even the mothers with children. Sometimes
25 they would hit the mothers. Sometimes they would hit the children. If they were

1 hit, they would then be left alone to die."

2 Reference UGA-OTP-0043-0021, at paragraph 86.

3 To compound their trauma, children born in captivity who made it out of the LRA
4 faced stigmatisation and abuse by their receiving communities. And this was
5 especially the case for the children fathered by Mr Kony.

6 Ongwen Defence Witness 0130, a son of Mr Kony, describes his treatment at a
7 rehabilitation centre after he had been rescued from the LRA:

8 "In the camp I didn't have friends; nobody wanted their children playing with me
9 because of who my father was. They said mean things, like son of a killer. My
10 mother had many relatives in the camp but I didn't know them. They kept their
11 distance from me and also kept their children away from me."

12 That's UGA-D26-0025-0001, at paragraph 8.

13 Your Honours, I turn now to Mr Kony and the LRA perpetrators exercising the
14 powers attaching to the right of ownership over abducted children, or in simple terms,
15 the conduct giving rise to the charge of enslavement as a crime against humanity.
16 Now, recalling the words of my colleague Ms von Braun, the LRA was an army of
17 children, their enslavement the very crux of the Prosecution's case on Mr Kony's
18 crimes against children.

19 After being abducted, children were distributed to the households of various LRA
20 commanders or assigned to specific commanders and fighters. Children, like other
21 abductees, could be moved from one LRA commander to the next and between units.
22 Children were forced to carry heavy loads, often for long periods and in difficult
23 terrain. Multiple Prosecution witnesses who were abducted as children describe the
24 harsh conditions of their captivity.

25 Witness P-0098, for instance, who was abducted at the age of 12, describes being

1 forced to walk from morning to night without sufficient food or water. Reference
2 UGA-OTP-0165-0002, at paragraph 27.

3 Witness P-0275, who was abducted from Odek IDP camp at the age of nine, describes
4 being forced to run away from government soldiers while balancing a hot saucepan
5 on his head. It was so hot that his head was scarred for many years. Reference
6 UGA-OTP-0244-3398, at paragraph 85.

7 The LRA forced children to walk long distances, often barefoot, with swollen and
8 injured feet, thirsty and hungry. One witness recalls travelling day and night to
9 reach the Sudan on Mr Kony's orders and in horrific conditions:

10 "If Kony ordered us to reach an area by a certain time we had to travel non-stop. We
11 travelled day and night to reach Sudan. People's legs were swollen. We had
12 passed the border and there was no water after the border for a long time. One boy
13 even died of thirst. A girl sat down, I cannot recall her name [...]. I was asked to
14 watch as the girl's very swollen leg was cut off by the rebels."

15 And with your Honours' leave, I will go into a very brief private session simply to
16 give the reference for that quote so as not to identify the witness.

17 PRESIDING JUDGE ALEXIS-WINDSOR: [9:54:57] Very well. One moment.
18 Can we go into a brief private session.

19 (Private session at 9.55 a.m.)

20 THE COURT OFFICER: [9:55:14] We are in private session, Madam President.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Open session at 9.55 a.m.)

2 THE COURT OFFICER: [9:55:57] We're back to open session, Madam President,
3 your Honours.

4 PRESIDING JUDGE ALEXIS-WINDSOR: [9:56:01] Thank you.
5 Continue, counsel.

6 MS HENDERSON: [09:56:03] Thank you, Madam President.

7 Children, like other abductees, were unable to leave the LRA without risking severe
8 punishment or death. Witness P-0139 recalls seeing an abducted boy being beaten to
9 death for trying to escape. Reference UGA-OTP-0191-0004, at paragraphs 30 to 31.

10 Both boys and girls were forced to perform tasks of domestic servitude within the
11 LRA. They were forced to perform physical labour, such as gathering firewood,
12 preparing campsites, and carrying supplies and personal items of LRA fighters and
13 their wives when they were on the move.

14 Some tasks were gender specific. My colleague Ms Ndagire already detailed
15 yesterday how abducted girls were forced to serve as domestic servants in the LRA
16 and were subjected to sexual and reproductive violence. Some of the abducted girls
17 were also forced to participate in hostilities; for example, witness P-0018, who took
18 part in the attack on Lukodi IDP camp. However, it was boys predominantly,
19 including those under the age of 15, who were forced to train as soldiers and to
20 participate in hostilities.

21 The Prosecution puts forward as witnesses multiple boys who were abducted and
22 made to fight for the LRA when they were under the age of 15. And a full list is
23 accessible to the Chamber at Annex E.9 to the Prosecution's Pre-Confirmation Brief.
24 We will now confidentially display the images of a handful of these child-soldier
25 witnesses, visible only to those present in the courtroom. And I will just wait for

1 confirmation from the court officer that the following slides will not be broadcast.

2 THE COURT OFFICER: [9:58:35] The materials are ready to be displayed inside the
3 courtroom only, thank you.

4 MS HENDERSON: [09:58:38] Thank you, Madam Court Officer.

5 As your Honours can see, these photos are lifted from rehabilitation centre intake
6 forms and other forms of paperwork relating to the children's return from captivity.

7 As that display continues, I'll read the references on to the record:

8 UGA-OTP-0127-3734, UGA-OTP-0127-3740, UGA-OTP-0127-0458,

9 UGA-OTP-0244-3420, UGA-OTP-0244-3415, UGA-OTP-0170-0338,

10 UGA-OTP-0258-0836, UGA-OTP-0269-0708.

11 And your Honours, Madam Court Officer, that concludes the display of confidential
12 material.

13 PRESIDING JUDGE ALEXIS-WINDSOR: [10:00:51] Thank you. Go on, counsel.

14 MS HENDERSON: [10:00:58] Thank you, Madam President.

15 I'll now turn to the individual narratives of some of the Prosecution's child soldier
16 witnesses.

17 Witness P-0264 was about 11 years old when he was abducted in 2002. He testified

18 in the Ongwen trial that he was trained in using weapons and in defending and

19 ambushing positions. He also described an instance of live combat against the

20 Ugandan government forces in which he was part of a group who charged at them,

21 shooting and ultimately defeating them. Your Honours, at this point the witness

22 was 12 years old. The reference is UGA-OTP-00000673, between pages 28 and 34.

23 Witness P-0057 was around 10 years old when he was abducted by the LRA. He

24 describes being given a gun called an AK, and being trained in how to use it. He

25 was then forced to participate in the LRA's attack on the Barlonyo IDP camp at the

1 age of about 12, fighting government soldiers and attacking civilians on the orders of
2 his commander, Okot Odhiambo. Reference UGA-OTP-0069-0515, at paragraphs 14,
3 59 and 60.

4 Witness P-0379 describes seeing children in the LRA who were too small to be able to
5 carry their guns. In his testimony in the Ongwen trial, he said that, quote,
6 "Sometimes when they are carrying their guns they would be dragging the guns and
7 they wouldn't even be able to move with the guns for some good distance."
8 Reference UGA-OTP-00000668, at page 13.

9 The LRA also used boys as lookouts, scouts and escorts, as well as to pillage goods
10 from attack sites and to carry them away. Needless to say, children who were forced
11 to fight in the LRA were exposed to unimaginable harm, both to their psychological
12 wellbeing and physical integrity, including the risk of being killed in battle.

13 Witness P-0307 describes being shot twice by government soldiers during a raid, once
14 in the shoulder and once in the stomach. He was between 12 and 14 at the time.
15 Reference UGA-OTP-0266-0425, at paragraph 49.

16 Yet, the physical and psychological trauma experienced by children in the LRA was
17 not limited to that resulting from fighting. Children were torn from their families,
18 sometimes forced to kill their parents -- I withdraw -- sometimes forced to witness the
19 LRA killing their parents. I refer your Honours to the example cited in the
20 Pre-Confirmation Brief at paragraph 146, footnote 424.

21 Children in the LRA were also forced to beat, sometimes kill, other abductees,
22 civilians and government soldiers. In fact, being beaten or beating others was a
23 common form of initiation into the LRA. I again direct your Honours' attention to
24 our brief at paragraph 146 for the instances contained therein.

25 Ultimately, children were deprived of their chance to be children, to have an

1 education and a normal childhood with their families.

2 Witness P-0275 was wearing his school uniform at the time of his abduction from one
3 of the charged IDP camps, at the age of nine. When an LRA fighter saw he had a
4 pencil in his pocket, he threw it away and told the witness he would not be returning
5 to school. Reference UGA-OTP-0244-3398, at * paragraph 48.

6 Before I conclude this part, your Honours, on children, I will address the figures
7 particularised in the charges -- that is, the number of children victimised by the LRA
8 during the charged period. And, once again, it's important to emphasise that the
9 Prosecution's approach here is conservative.

10 We allege that the LRA enslaved at least thousands of children in the charged period.

11 And we further allege that the LRA conscripted and used to participate in hostilities
12 at least thousands of children under the age of 15 in the same period.

13 And to prove this, we rely on the same demographic analysis referred to by my
14 colleague Ms von Braun in relation to the total number of abductions and by
15 Ms Ndagire in relation to crimes against women and girls.

16 Just to repeat the reference for the record, the data shown here is taken from
17 UGA-OTP-00001133, at page 3.

18 To return once more to that analysis, your Honours may recall that the number of
19 recorded abductions in the charged period was 10,993. Of these, the majority,
20 estimated at 6,209, were under the age of 18. And of these, an estimated 2,556 were
21 aged 15 to 17, while an estimated 3,653 were under 15 years of age. And your
22 Honours will see that breakdown on your screens.

23 Now recall that, for the reasons set out by Ms von Braun, these figures represent the
24 absolute minimum baseline of persons enslaved in the LRA during the charged
25 period. So, your Honours, even by a conservative approach, the figures from the

1 demographic analysis substantiate that "at least thousands" of children were enslaved,
2 tortured, abused and persecuted, as particularised variously in counts 15, 19, 20, 21,
3 22 and 23.

4 I move now to the figures supporting the child soldier charges -- that is, the
5 conscription and use of children under 15 to participate in conflict.

6 And the same demographic analysis provides a breakdown by gender of the
7 estimated 3,653 children under 15 years of age. The breakdown shows that an
8 estimated 2,397 of these children under 15 were boys. Your Honours see that
9 breakdown on your screen by gender now as well.

10 As I previously detailed, abducted boys were predominantly conscripted and used to
11 participate in combat. And the data here comes from page 4 of the same report
12 I previously cited.

13 So, once more, on a conservative approach, this figure substantiates that "at least
14 thousands" of children under 15 were conscripted and used to participate actively in
15 hostilities, as particularised in counts 25 and 26.

16 In conclusion, your Honours, the entire body of evidence - of which I have
17 highlighted just a small portion here - shows that Mr Kony was responsible for the
18 following crimes against children:

19 Enslavement as a crime against humanity, count 15;

20 Torture as a crime against humanity, count 19; and in the alternative, the inhumane
21 act of severe abuse and mistreatment, as a crime against humanity, count 20;

22 Torture as a war crime, count 21; and in the alternative, cruel treatment as a war crime,
23 count 22;

24 Persecution as a crime against humanity, on the grounds of gender and age, count 23;

25 Conscripting children as a war crime, count 25; and

1 Using children to participate actively in hostilities as a war crime, count 26.

2 Your Honours, that concludes our presentation of the systemic crimes. It also
3 concludes our presentation of the crimes we allege Mr Kony committed
4 indirectly - with and through others - in the LRA structure.

5 In this final part, I will address the crimes committed directly and physically by
6 Mr Kony when taking two females as his forced wives. One was a young woman,
7 the other a girl.

8 As detailed by my colleague, yesterday, Ms Ndagire, the LRA forced abducted
9 women and girls to become the conjugal partners of LRA fighters. As the group's
10 founder and leader, Mr Kony was no exception. He was also the creator of this
11 policy. The evidence shows that Mr Kony had dozens of wives during the charged
12 period. He stands charged for his crimes against two of them, which he committed
13 on the territory of Uganda and in the period of the charges -- that is, between 1
14 July 2002 and 31 December 2005.

15 In order to safeguard the anonymity of these two women, I will refer to them as
16 "Victim One" and "Victim Two", as we have done in our amended Document
17 Containing the Charges.

18 Victim One had been abducted by the LRA in October 1991, at the age of
19 approximately 10. She would remain in the LRA for some 14 years. In 1993 - so
20 when the victim was about 12 - Mr Kony forced her to become his wife. This is how
21 the victim describes in her statement the process of becoming a wife in her own
22 words:

23 "You have no choice but to become a wife. To become Kony's wife, when you are
24 abducted and still young, you stay with someone, helping in the house, and looking
25 after the children, as you grow, the man takes ownership. Because you live in a

1 man's place, when you have grown up you become his wife and no other man can
2 talk to you."

3 Your Honours will note the lack of citation on the slide. Just to note, with the
4 Court's leave, I will provide the reference for this and the following citations grouped
5 together at the end of my presentation in a short private session.

6 PRESIDING JUDGE ALEXIS-WINDSOR: [10:14:45] Yes.

7 MS HENDERSON: [10:14:47] The victim goes on to describe how Mr Kony forced
8 her to become his wife by having sexual intercourse with her:

9 "In the evening, Kony told me we would sleep together and I told Kony I would sleep
10 outside. Kony said I could not sleep outside as it will rain on me. Kony told me to
11 sleep in the house with him. Kony came to me and he said, he could not stay alone
12 as the other big women were not there. That I would become his wife and if
13 I refused the escorts would beat me. Then Kony slept with me. Kony had sex with
14 me about one week later."

15 The victim describes how at the time that Mr Kony forced her into sexual intercourse,
16 she did nothing as she was alone, there was no one to help her, and she feared that
17 the escorts would kill her if she screamed.

18 This forced marriage continued into the charged period mainly on the territory of the
19 Sudan, but also on the territory of Uganda when Mr Kony and the victim crossed the
20 border for periods of time between 2003 and 2005. During her captivity and
21 throughout the charged period, the witness performed all duties of being a forced
22 wife in the LRA, such as cooking and fetching water.

23 In 2003, Mr Kony and the victim returned to northern Uganda, where the forced
24 marriage continued and where they continued to have sexual intercourse.

25 During her time in the LRA, the victim was beaten on several occasions upon

1 Mr Kony's orders. One such occasion occurred in northern Uganda in 2003 or 2004
2 when Mr Kony ordered his escorts to beat the victim.

3 Just one moment, your Honours.

4 In 2005, Mr Kony and the victim also returned to northern Uganda while the victim
5 was pregnant with her third child to him. Mr Kony confined her prior to the birth of
6 their child. He had refused to release her in her pregnancy, saying that she should
7 give birth in the bush because he knew how to fight off the government soldiers to
8 protect her. The victim went on to give birth in northern Uganda in October 2005.

9 The victim remained in the coercive environment of the LRA since her abduction and
10 during the charged period. Shortly after her abduction in 1991, she had seen another
11 girl being badly beaten after attempting to escape. After seeing this, the victim did
12 not want to escape. As one of Mr Kony's wives she was always accompanied by an
13 armed escort, even to fetch water. She reasonably feared that she would have been
14 shot had she tried to escape. As she told investigators, and I quote: "I did not think
15 of escaping as I intended to stay alive". End quote.

16 Mr Kony's actions in relation to Victim One fulfil all elements of the crimes charged
17 under counts 30 to 39, directly perpetrated by him during the charged, namely:

18 Enslavement as a crime against humanity, count 30;

19 The inhumane act of forced marriage, as a crime against humanity, count 31;

20 Rape as a crime against humanity, and as a war crime, counts 32 and 33;

21 Torture as a crime against humanity, and as a war crime, counts 34 and 35;

22 Sexual slavery as a war crime, count 36;

23 Forced pregnancy as a crime against humanity, and as a war crime, counts 37 and 38;

24 and

25 Persecution as a crime against humanity, count 39.

1 Victim Two was one of the schoolgirls abducted from the Lwala Girls School in
2 June 2003, in the incident detailed yesterday by my colleague Ms Ndagire. She was
3 around the age of 18 at the time of her abduction. Some weeks later in July 2003, and
4 still in northern Uganda, Mr Kony selected this young woman and forced her to
5 become his "wife". The victim describes refusing to go to Mr Kony's house the first
6 time that she was summoned and being beaten by Mr Kony's escorts, his so-called
7 "boys", due to her refusal. This is what she said in her statement:

8 "I felt I had no choice but to have sex with Kony. I was not prepared. He just
9 forced me."

10 The victim then goes on to describe what happened when she went to Mr Kony's
11 house:

12 "He got me and threw me down and he said I would sleep there and he said if I was
13 misbehaving he would beat me and that if I had forgotten the times when [the 'boy']
14 had beaten me he would beat me himself. Kony slept with me that day. He had
15 sex with me."

16 After raping the victim for the first time in northern Uganda, Mr Kony took her to the
17 Sudan where she remained his forced wife until she was rescued over a year later.

18 As a wife, the victim was forced to perform domestic chores, such as washing
19 Mr Kony's clothes and cooking for him. She was forced to walk long distances,
20 carrying heavy loads.

21 The victim remained in the coercive environment of the LRA during her captivity.

22 She attempted to escape, along with other girls, after her abduction, but she was
23 beaten with a wire lock. One other girl was beaten so badly that she almost died.

24 I now seek your Honour's leave to go into private session so that I can read on to the
25 case record the portion of the two victim statements that I have referenced.

- 1 PRESIDING JUDGE ALEXIS-WINDSOR: [10:22:35] Yes.
- 2 Private session.
- 3 (Private session at 10.22 a.m.)
- 4 THE COURT OFFICER: [10:22:49] We are in private session, Madam President.
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
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- 24 (Redacted)
- 25 (Open session at 10.26 a.m.)

1 THE COURT OFFICER: [10:26:54] We are back to open session, Madam President,
2 your Honours.

3 PRESIDING JUDGE ALEXIS-WINDSOR: [10:26:58] All right. Thank you.
4 Counsel?

5 MS HENDERSON: [10:27:00] Thank you, Madam President.

6 In relation to both victims, Mr Kony assumed the rights of ownership, depriving them
7 of liberty by controlling their movements and environments, imposing conditions that
8 made it impossible for them to escape, including placing them under military guard,
9 controlling their sexual and reproductive autonomy, exacting forced labour from
10 them, and subjecting them to physical and psychological abuse and severe pain and
11 suffering. In these ways, Mr Kony reduced both victims to servile status and
12 deprived them of their fundamental human rights.

13 Mr Kony's actions in relation to Victim Two in particular fulfil all elements of the
14 crimes charged under counts 30 to 36, as well as 39, directly perpetrated by him
15 during the charged period, namely:

16 Enslavement as a crime against humanity, count 30;

17 The inhumane act of forced marriage as a crime against humanity, count 31;

18 Rape as a crime against humanity, and as a war crime, counts 32 and 33;

19 Torture as a crime against humanity, and as a war crime, counts 34 and 35;

20 Sexual slavery as a war crime, count 36; and

21 Persecution as a crime against humanity, count 39.

22 Madam President, your Honours, that concludes my presentation on direct
23 perpetration and it also concludes the Prosecution's submission of the merits.

24 We thank you for your kind attention.

25 PRESIDING JUDGE ALEXIS-WINDSOR: [10:29:11] Thank you very much, counsel.

1 And now we have just about enough time to have the submissions on the merits from
2 the CLRV. Please, counsel.

3 MS MASSIDDA: [10:29:32] Thank you very much, Madam President, your Honours.
4 My name is Paolina Massidda and this morning, together with my colleague Paul
5 Bradfield, we will address the views and concerns of the victims of the merits of the
6 case.

7 I will address the charges relating to the seven charged attacks to the IDP camps and
8 Mr Bradfield will address the thematic crimes.

9 Madam President, your Honours, the armed conflict between the government of
10 Uganda and the Lord's Resistance Army, once described as the world's worst
11 forgotten humanitarian crisis, was one of many to affect Uganda since its
12 independence. However, it was exceptionally protracted and brutal in its impact on
13 the civilian population.

14 Northern Uganda has been the theatre of atrocities for decades. It is a history of
15 unrest, disorder, lost chances and opportunities which had, still have and will
16 continue to have an impact on generations.

17 Prior to the LRA insurgency, people in northern Uganda lived peaceful lives. When
18 asked about their lives before the conflict broke out in 1986, community members
19 described them as very pleasant. Life was peaceful and people were free to go about
20 their daily business. They lived their lives with the comfortable reassurance that
21 they knew what tomorrow would bring.

22 According to a research conducted by the Justice and Reconciliation Project in 2004, a
23 resident of Lukodi explained, I quote:

24 "People were friendly to one another, would drink, stay up late and could even
25 decide to sleep in the market. There were no land wrangles; people loved

1 themselves as brothers and sisters. Issues of defilement were unheard of and there
2 was no HIV/AIDS". End of quote.

3 Suddenly, all this changed when the LRA started raiding villages and IDP camps.

4 Nearly 2 million northern Ugandans, representing 90 per cent of the affected
5 population, were forced to abandon their often self-sufficient homesteads for a life
6 confined to the squalid IDP camps, dependent on food assistance.

7 A survey report released in July 2003 revealed that at least 1,000 people, mainly
8 children, were dying in the camps each week.

9 The high density population in the camps made people more vulnerable and harder
10 to protect from the LRA incursions. The camps' protection remained precarious and
11 life became a daily struggle for survival. Threats were constant due to regular LRA
12 attacks and their continued presence. Victims faced unsanitary living, lack of food
13 and water, absence of traditional community structures, and constant insecurity.

14 The Prosecution presented ample evidence to support the confirmation of all charges
15 relating to the seven attacks brought against Mr Kony.

16 The victims' accounts corroborate the evidence presented by the Prosecution in
17 relation to the charged attacks on the IDP camps in Pajule, Abia, Barlonyo, Odek,
18 Pagak, Lukodi and Abok, occurring between 10 October 2003 and 8 June 2004.

19 As reflected in the victims' accounts of events, there was increased tension and
20 multiple episodes of violence in northern Uganda since 1986. The raising of the LRA
21 as an insurgency movement aimed at overthrowing President Museveni's
22 government, spread violence in different areas of the country, including Gulu,
23 Kitgum, Pader, Lira, Adjumani and Soroti.

24 As a consequence, a conflict of a non-international character started between the
25 government of Uganda and the LRA and was ongoing between 1 July 2002 and 31

1 December 2005, the period of the charges, as also recognised by Trial Chamber IX in
2 the Ongwen trial judgment, as also recalled yesterday by Ms Simms.

3 The LRA had a clear hierarchy, was structured and well-organised, armed, and able
4 to plan and successfully implement hundreds of attacks against the civilian
5 population. Not only did the LRA have effective tactics for carrying out the attacks,
6 it also had significant military ability.

7 As shown yesterday by Ms von Braun, during the period covered by the charges,
8 Mr Kony shared a common plan to attack the civilian population perceived to be
9 supportive of Museveni's government. As the supreme leader of the LRA, Mr Kony
10 had the ultimate power within the organisation. He planned operations, made
11 strategic decisions, devised and enforced LRA rules, issued orders to its members,
12 including orders to kill or otherwise harm the civilian population. All of these
13 factors correspond to the contextual element of war crimes as established by the
14 practice of the court and as described in the amended Document Containing the
15 Charges and in the Prosecution Pre-Confirmation Brief.

16 The evidence presented by the Prosecution also allows concluding, as recognised in
17 the Ongwen trial judgment, that the LRA had the capacity to commit a widespread or
18 systematic attack against the civilian population over a long period of time; the attack
19 was conducted pursuant to or in furtherance of an organisational policy; the LRA
20 followed a regular pattern in implementing its policy of intentionally directing an
21 attack against the civilian population, committing a number of crimes, including
22 murder, torture, enslavement, pillaging, destruction of property, sexual and
23 gender-based crimes, cruel and inhumane treatments, and abductions of children and
24 adults.

25 These elements correspond to the Pre-Trial Chamber's broad interpretation of the

1 "policy" requirement and of a notion of "organisation" which they have consistently
2 recognised when confirming charges against a suspect.

3 Victims were unarmed children, women and men, not active in the armed conflict.

4 This is true for all the victims of the attacks participating in the proceedings and even
5 more so for many thousands of children, girls and women who were victimised by
6 the relevant crimes for which Mr Kony is charged.

7 The LRA regularly attacked the camps, partly because Mr Kony perceived the victims
8 as loyal to or supportive of the government due to the fact that they were confined in
9 areas under the protection of the UPDF and partly because he needed to recruit
10 soldiers and wives for his army.

11 The severity of the attacks appeared to come in waves, with major massacres
12 interspersed across an ongoing campaign of low-intensity with smaller-scale attacks.

13 The attacks were well-planned and well-executed, following a standard modus
14 operandi - the common aspects recalled yesterday by Ms Simms - that were aimed at
15 targeting both the UPDF and the civilians. The rebels routinely cut off lips, ears,
16 breasts, gouged out eyes and amputated limbs. Many of these mutilations were
17 carried out to prevent betrayals. Killings of civilians were widespread. Men were
18 forced to lay face down and have their heads smashed. Women were forced to lay
19 down on their backs and have their throats cut. Others were burned alive in their
20 homes. Most of the victims were mutilated, some were decapitated. Almost all of
21 them suffered injuries caused directly by the rebels or while they were trying to flee
22 or hide to survive the attack.

23 Victims were abducted to carry looted goods, which caused them psychological and
24 physical harm, including pain in their feet, chest and back. When they were too old
25 or sick to remain abductees, they were either released after a short period or killed.

1 A victim recalled, I quote:

2 "They told me, 'Carry that millet flour and get out.' [...] [M]y mother tried to cry, and
3 then they said if my mother continued crying that meant they wanted to see me die,
4 so my mother had to keep quiet". "In our home two of my brothers were also
5 abducted. Not only me alone. [...] When I got out, I found my father was laying
6 down on his stomach with some women who were also next to him. [...] I didn't know
7 at that the time whether he ... was alive or not, because the soldiers had guns."

8 End of quote.

9 For the abductees, the hardships began when they were taken away from their
10 families under threat of violence. They were separated from their loved ones, not
11 knowing where they were being taken or if they would ever return home. They
12 feared for their lives and worried about the safety of their family members who were
13 missing them and feeling lost and afraid. They were forced to walk for hours,
14 carrying very heavy loads. Often, they were weak and injured.
15 To these first emotional and physical tolls was added the immediate threat of being
16 beaten or killed should they try to escape or if they were unable to work with a group,
17 or to carry the heavy loads. They were informed of this threat immediately upon
18 being abducted.

19 Many of the attacks were conducted at night when the LRA raided villages and IDP
20 camps for food and other supplies.

21 One victim in Barlonyo explained, I quote:

22 "The attack began. It was almost dark. They came. Some of them were dressed in
23 military uniforms. It confused everyone. We thought maybe it was the
24 government. That is what we thought. They surrounded the barracks, proceeded
25 through the camp. They began to burn it. We ran. When I came back the next day,

1 so many people were dead. The place was all quiet. There were dead bodies on the
2 road. You could not drive. Everywhere was full of dead people. You might find
3 five dead people in a house, and there was no one to help you dig the grave. You
4 would dig [the grave] yourself. You would bury them without ceremony or
5 possessions." End of quote.

6 So many people died in Barlonyo that mass graves had to be dug. Mass burial
7 severely contradicts Lango traditional practice, in which the trauma of losing a loved
8 one is addressed through ritualised mourning and burial. However, at the time, the
9 Ugandan government argued that the mass graves were a necessary adaptation to the
10 horrific circumstances. The number of deaths was simply too high, and security
11 around the camp was too precarious to allow for individual burials.

12 Another victim from Barlonyo recalled, I quote:

13 "There were so many dead. The bodies were put (in the mass grave) in no order. It
14 was scoop and dump. It was not good. I came to accept why the government put
15 people there, but I wish my family could have been buried at home. It still troubles
16 me." End of quote.

17 The victims' accounts of events reveal that the crimes they suffered from were not
18 spontaneous or isolated acts of violence, but, rather, part of a planned, directed and
19 organised attack against them.

20 The attack was "massive, carried out collectively with considerable seriousness" and
21 "directed against a multiplicity of victims".

22 In this regard, the number of victims affected by the events within the charges is one
23 of the most relevant factors to be taken into consideration for the purpose of
24 determining under the chapeau of Article 7(1) of the Statute whether the attack
25 against the civilian population was widespread or systematic.

1 The broad geographical spread of the victimisation and the large number of victims
2 participating in this case confirm the wide scope of the attack. As Ms Pellet
3 indicated yesterday, 5,795 victims have been authorised to participate in this
4 proceeding. Ninety-five per cent of them suffered from the seven attacks charged
5 against Mr Kony. Victims of the attacks generally recall their experience as follows,
6 I quote:

7 "All around there were killings going on and so much fire burning, that the entire
8 place became so bright as though it was broad daylight. By the same they left, the
9 whole camp as littered with dead bodies as if they had been on a hunting spree.
10 They killed people as if they were hunting animals." End of quote.

11 A victim in Abia explained, I quote:

12 "I was just inside, when we heard some commotion and firing in the distance. I saw
13 a group of guys in uniform. They were setting huts on fire, and people were
14 screaming, burning inside the huts. Then I saw them running towards my shop.
15 I just grabbed my youngest child and ran." End of quote.

16 He couldn't save his wife, brutally hacked with a machete, and his parents, shot dead.
17 Victims indicate several reasons for being targeted -- because, as residents of the IDP
18 camps, they were perceived as supporters of the government, because they were
19 perceived as willing to join the local defence units assisting the UPDF, because they
20 were perceived as helping the UPDF.

21 Victims also explain that it was notorious that Mr Kony wanted to target them
22 because they were not supporting his insurgency against President Museveni.

23 To describe why they were targeted, victims would say, I quote:

24 "We knew that they would have attacked us because they thought that we were on
25 the side of the government."

1 Or "They targeted us because we are Acholi."

2 The recognition of the crime of persecution in connection with the attacks is an
3 important element that victims wish to be recognised in the confirmation of charges.

4 Another important element is the fact that, contrary to international law, the LRA
5 rebels severely deprived the civilian population residing in Pajule, Abia, Barlonyo,
6 Odek, Pagak, Lukodi and Abok, of their fundamental rights to life, liberty and
7 security, freedom of movement, private property. Victims were also deprived of
8 their rights not to be subjected to torture or cruel, inhumane or degrading treatment,
9 and the right not to be held in slavery or servitude.

10 The LRA cruelly attacked the victims - men, women, the elderly, children, babies, the
11 disabled - with no pity and no distinction with regard to gender or age.

12 Those who survived had to leave their homes, to flee and take refuge far away from
13 home for many years, fearing another attack and having lost all they had. Mothers
14 were forced to leave their children, often babies, behind in the bush, or to watch
15 helplessly as their babies were thrown against a tree or at the side of the road and
16 killed.

17 One victim recalled, I quote:

18 "All of a sudden, we saw so many soldiers, and there were bullets and machetes and
19 they were cutting people. I was made to carry a bean of beans on my head. The
20 rebels were caning us badly. They didn't even allow you to rest when you were
21 carrying luggage. My child was crying and he would make me not carry the
22 luggage well, so one of the rebel[s] took him and threw him at the side of the road
23 while I had to continue to march..."

24 Many women and young girls were raped. Some of them contracted infections as a
25 result of the rapes, while others became pregnant and gave birth to children who, in

1 turn, were victimised and stigmatised.

2 The victims' properties were systematically pillaged and burnt. Victims explained
3 that the LRA took everything they owned, including all goods necessary to sustain
4 life in northern Uganda's difficult conditions, such as pans, cups and clothes. They
5 also took livestock, which was a key source of income for the affected people, as well
6 as other properties that held a specific meaning for them, particularly in relation to
7 traditional rituals. Often, victims had compiled detailed lists of the looted items.
8 The consequences of the massive pillaging and systematic destruction of properties
9 that the victims have been suffering from are not only material. Such extensive loss
10 and damage not only robbed them of all their scarce resources, tools and living place,
11 but also had a significant impact on the future of their families. The difficult
12 material situation in which the vast majority of the victims were already living
13 worsened exponentially. They were deprived of the means to live on a daily basis
14 and of roofs over their heads. The brutality of the attacks, the abrupt and definitive
15 loss they experienced and the void in which they were left as a result created fear and
16 anxiety. Victims felt helpless and deeply traumatised.

17 How can one live and ensure the subsistence of his or her family without a land and a
18 house to inhabit, without food and crops to survive?

19 One victim from Pagak explained, I quote:

20 "All my properties were looted and destroyed. I remained with nothing. My entire
21 family remained with nothing. We could not go back to our village and were
22 obliged to start a new life somewhere else ... But how with no means of support?"

23 End of quote.

24 Crimes committed in northern Uganda by the LRA under Mr Kony's command have
25 affected families, communities, men, women and children of all ages. The very

1 foundation of family life has been durably compromised, if not permanently
2 damaged.

3 The horrific and prolonged consequences of the war had a dreadful impact on the
4 individuals, but also the devastated society, eroding the solid and rich culture of the
5 Acholi, Teso and Lango peoples.

6 Family cohesion and connectedness were lost. Fathers lost their position in the
7 society and in life. Culturalisation of children disappeared. Moreover, as the
8 people from the IDP camps returned from displacement and tried to rebuild their
9 lives, they struggled with daunting resettlement challenges and difficult
10 reconciliation issues within the community.

11 The constellation of harm described by the victims has also had repercussions over
12 generations.

13 Recognition of the crimes and of the suffering in a court of law is essential for victims
14 for their right to know the truth and for rebuilding their lives. Restorative and fair
15 justice for victims can only be achieved if the crimes they suffer from and the reasons
16 for the commission of said crimes are duly recognised in the decision confirming the
17 charges against Mr Kony.

18 This concludes, your Honours, my presentation on the charged attacks, I believe just
19 on time for the break. My colleague, Paul Bradfield, with your permission, will then
20 address, after the break, the thematic crimes.

21 On behalf of the victims that we represent, we thank you very much, your Honours,
22 for this opportunity to address you. Thank you.

23 PRESIDING JUDGE ALEXIS-WINDSOR: [10:56:34] Thank you, counsel. All right.

24 So let's take a break now, the morning's break, until 11:30.

25 THE COURT USHER: [10:56:43] All rise.

1 (Recess taken at 10.56 a.m.)

2 (Upon resuming in open session at 11.31 a.m.)

3 THE COURT USHER: [11:31:20] All rise.

4 Please be seated.

5 PRESIDING JUDGE ALEXIS-WINDSOR: [11:31:44] All right. I see the CLRV is
6 ready to go.

7 MR BRADFIELD: [11:31:56] Thank you, Madam President, and may it please the
8 Court. It is my privilege to address this Chamber on behalf of victims in this case.
9 The LRA was notorious for abduction. Families and communities were simply torn
10 apart. Young and old were systematically abducted from their homes, their villages,
11 and their schools.

12 Some were kept for days or weeks; others for months and years.

13 And many have never returned. Every day, parents of the missing still wait and
14 hope for their children to come back home.

15 As the evidence makes clear, life in the bush was hell on earth.

16 Instead of holding books and pencils, children were made to hold guns and weapons,
17 made to attack and kill their own people.

18 Joseph Kony stole the childhood away from the children of northern Uganda. If you
19 were female, you were subjected first to domestic servitude and forced marriage,
20 where many suffered severe sexual abuse. Children were born in that context.

21 In the case law of this Court, they, too, are victims. And children born of war are
22 among the clients that we represent.

23 The LRA committed not only physical violations, but cultural norms were violated
24 too. For example, through forced marriage, centuries-old practices around
25 traditional courtship and dowries were discarded as Joseph Kony implemented his

1 cruel regime.

2 But beyond their immediate effects, these crimes have had a lasting impact on victims
3 and their communities.

4 Allow me to highlight two such aspects.

5 The first is the impact on livelihood. Abduction robbed many victims of their
6 education and their ambitions. As one returnee told me, quote:

7 "By taking me into the bush, the rebels took my past, my present, and my future".

8 When abductees escaped, the Ugandan government gave them amnesty, even though
9 abducted children had nothing to be sorry for. Typically, returnees got an amnesty
10 certificate, a blanket and a jerrycan, and, if they were lucky, a handful of Ugandan
11 shillings to restart their life.

12 Rehabilitation centres such as Rachele in Lira, and Gulu Support the Children
13 Organisation, or GUSCO for short, did exceptional work to receive and to counsel
14 traumatised children, even as war continued to rage. However, up to now, many
15 returnees have struggled to reintegrate and face challenges around mental health,
16 substance abuse, and domestic violence. There is a saying in northern Uganda: "the
17 guns may be silent, but the conflict continues."

18 The second aspect I wish to highlight is stigma.

19 Many returnees live today with enduring stigmatisation.

20 Their ability to fully take part in community life is often blocked because they are
21 labelled "rebels", "Kony's wives", or "those who belong in the bush".

22 Social exclusion and discrimination is very common.

23 Children who were born in captivity also endure stigma and harm that goes unseen.

24 For example, a child born in captivity will typically not know their father's clan. As
25 a result, they are unable to inherit land.

1 Without land, you cannot grow or sell food, you cannot raise livestock, which limits
2 them in many areas of their lives, like paying education fees, and their ability to
3 undergo traditional marriage. They are punished simply for being born.

4 Madam President, your Honours, the direct, the indirect, and the transgenerational
5 harm caused by these crimes is grave.

6 It shocks the conscience. In truth, my words are inadequate, as the harm caused by
7 Joseph Kony is, quite literally, beyond description.

8 But in these proceedings, this harm must find description. And in the DCC, 25 of 39
9 counts relate to systemic crimes, almost two thirds. And the victims wish to convey
10 certain views and concerns in relation to each main category.

11 In relation to Count 25 and 26, namely the conscription and use of children, the
12 victims welcome the broadened material scope of these charges, which now cover
13 conscription into any part of the LRA, as opposed to just one brigade, like in the
14 Ongwen case.

15 Victims understandably felt a great degree of frustration at the narrow charges in
16 Ongwen. This can now be addressed by holding Joseph Kony responsible as leader.
17 That children were conscripted by the LRA and used in hostilities is a matter of public
18 record. The evidence is undeniable. As leader, Joseph Kony bears criminal
19 responsibility.

20 Likewise, in relation to the SGBC counts, namely, counts 15 to 24 and 27 to 39, the
21 victims welcome the broadened material scope of these charges, which now cover
22 conduct committed throughout the LRA.

23 The counts relating to enslavement, sexual slavery, forced marriage, rape, torture,
24 severe abuse and mistreatment, cruel treatment, forced pregnancy, and persecution,
25 are all entirely justified.

1 These counts serve to capture the range of experiences that women and girls endured
2 while in captivity. Age and gender were central to the discriminatory motives of
3 Joseph Kony when he issued his persecutory orders to abduct.

4 During the Ongwen case, evidence of male-on-male sexual violence was brought to
5 light by victims counsel, but such conduct has not been included in these proceedings.

6 While understandably a taboo topic for both victims and perpetrators, male-on-male
7 sexual violence sometimes did occur, and it is part of the overall story of the conflict
8 that should be told.

9 With regard to the Lwala Girls School attack, the victims welcome its inclusion as
10 a standalone charge. This was one of the most notorious abduction incidents of the
11 war, where over 70 young girls were stolen from their beds, beaten, marched all the
12 way to Sudan, and distributed to LRA commanders. Some of the Lwala girls even
13 became forced wives to Joseph Kony himself.

14 Indeed, the Lwala attack is representative of the LRA's modus operandi in relation to
15 women and girls more generally.

16 The attack was part of a long-standing pattern where the LRA targeted schools in
17 particular, even going back to the mid-1990s. For example, another notorious attack
18 on St Mary's College in Aboke in 1996, when dozens of girls were stolen from their
19 dormitories. Many of them were, too, held captive in the bush for years.

20 The terrible legacy of these attacks on Aboke, Lwala, and other schools remain vivid
21 in the memory of people across the north.

22 To borrow the words of Acholi poet Okot p'Bitek, the LRA rebellion resulted in
23 thousands of, quote, "deserted homesteads". The LRA destroyed what Bitek
24 described as "*piny maber*", which translates as "good surroundings".

25 According to Bitek, this concept means, quote, "when things are normal, society

1 thrives, facing and overcoming crisis."

2 But the violence directed by Joseph Kony shattered society.

3 Normal life was not possible. The safety and social bonds normally provided in the
4 homestead, in the village, and at school, were ruined and replaced with trauma, fear
5 and displacement.

6 Madam President, your Honours, in relation to the exclusion of sexual slavery as
7 a crime against humanity, the victims wish again to place on the record their regret
8 that this crime has not been charged.

9 In this regard, we have a specific request of the Chamber.

10 Before making that request, let me say the following.

11 In many ways, sexual slavery was the signature crime of the LRA.

12 Women and girls were deprived of their liberty and subjected to acts of a sexual
13 nature. Sexual slavery touched all areas of northern Uganda. From Arua in the
14 west, to Kotido in the east, from Soroti in the south, to Kitgum in the north.

15 Sexual slavery was committed on a widespread and systematic basis and pursuant to
16 an organisational policy.

17 In summary, the Prosecution's view, as expressed in filing 482, is that the crime of
18 enslavement better captures such conduct and that any final judgment may be
19 fragmented if sexual slavery as a crime against humanity is included.

20 The victims fully respect and acknowledge that the Prosecution has statutory
21 discretion to bring the charges. However, in our respectful submission, the reasons
22 offered for excluding sexual slavery as a crime against humanity are not convincing.

23 I make three points in this regard. First, the net effect of this charging approach is to
24 make sexual slavery as a crime against humanity redundant as a Rome Statute crime.

25 The drafters never intended this.

1 Second, sexual slavery and enslavement are distinct crimes protecting different
2 interests. While both involve the exercise of ownership, sexual slavery requires the
3 additional element of an act of a sexual nature. Third, charging sexual slavery as
4 a war crime alone is, in our submission, inadequate.

5 Sexual slavery under Article 7 and Article 8 differ in their contextual elements. One
6 relates to armed conflict, while the other relates to attacks on the civilian population.
7 These are different legal frameworks covering different contexts.

8 As held in the Ongwen Appeals Judgment, differing contextual elements allows for
9 the identification of different legal interests that are protected by each provision.

10 And that's at paragraph 1656 of that judgment.

11 The victims respectfully submit that the exclusion of sexual slavery under Article 7 in
12 these proceedings creates a potential accountability gap that is unnecessary and
13 avoidable.

14 At this pre-trial stage, we are only concerned if there are substantial grounds to
15 believe a crime has been committed.

16 We are not yet concerned with the extent and the degree to which the suspect will be
17 convicted.

18 The Chamber will recall the previous litigation on this issue. In your decision of 12
19 December 2024, filing number 538, the Chamber held, quote:

20 "the exact legal qualification of any alleged criminal conduct can only be assessed
21 following the disclosure of the Prosecution's evidence and the subsequent
22 presentation of the evidence."

23 The Chamber further held that the matter could be assessed, quote, "at an appropriate
24 juncture."

25 In my respectful submission, that juncture is now.

1 There can be no doubt the crime of sexual slavery as a crime against humanity is
2 established on the evidence. The core elements are present. The contextual
3 elements are present.

4 If your Honours accept that sexual slavery under Article 8 has occurred, then it must
5 follow that it occurred under Article 7 as well.

6 The appropriate course of action then is for your Honours to use your inherent
7 powers to recharacterise the facts and confirm sexual slavery in a manner that reflects
8 the manifest legal character of the material facts in this case.

9 The correct result should, therefore, be, the existing counts charging sexual slavery
10 under Article 8 - namely, counts 27 and 36 - should be confirmed to include sexual
11 slavery under Article 7 as well. Doing so ensures a more complete understanding
12 and characterisation of the harm inflicted both factually and legally.

13 In my submission, additional or new counts are not necessary to grant this request,
14 because the underlying factual conduct remains the same. And for the same reason,
15 it's also not necessary to adjourn.

16 In support of this view and interpretation, I wish to highlight a structural aspect of
17 the existing sexual slavery counts. Notably, counts 27 and 36 each and already
18 charge two separate modes of liabilities - namely, Article 25(3)(a) and (b) - which are
19 offered in the alternative.

20 If it is permissible for a single count to include more than one legal characterisation of
21 the accused's conduct, it logically follows that it is also permissible for a single count
22 to include more than one legal characterisation of the material facts.

23 The core purpose of this hearing and the confirmation decision is to assess the alleged
24 conduct and to confirm charges with their appropriate legal characterisation.

25 Therefore, when confirming counts 27 and 36, the Chamber should confirm both

1 sexual slavery as a war crime and as a crime against humanity.

2 No prejudice arises by making or granting this request. This is a discrete legal issue
3 and the parties can make any relevant submissions in the course of this hearing. The
4 issue can then form a part of your Honours' decision on the merits in the confirmation
5 decision.

6 Finally, I wish to make a submission on the merits of holding these *in absentia*
7 proceedings more generally. Everybody following this case is familiar with the
8 peace versus justice debate in Uganda. In that debate, the views of local leaders are
9 often given more of a platform than victims. Indeed, victims are often left out of that
10 debate altogether. But when you do ask victims, when you go to the village, when
11 you sit down and you talk with them, their view is clear.

12 Our clients resolutely support the process of accountability against Joseph Kony,
13 a man who caused untold death and suffering across two decades in northern
14 Uganda and beyond. Regardless of tribe or clan - be they Acholi, Langi, Lugbara,
15 Madi, Iteso or Kumam - the people of northern Uganda ordinarily expect
16 accountability for wrongdoing. Whether that is informal or formal, in a courtroom,
17 or through a traditional ceremony like *mato oput* or another form, apology and
18 reparation is essential.

19 In this regard, I wish to quote the statement of Ms Pamela Judith Angwech, annex H
20 to Defence filing 583, at paragraph 12,
21 and I quote:

22 "In our culture, an apology is central. When a perpetrator is unapologetic, they
23 remain tied to the victims, who remain with their pain." End quote.

24 The victims wish to highlight that Joseph Kony has never sought to apologise to the
25 people of northern Uganda and he has never offered to make reparation. The

1 essential ingredients for traditional justice are absent, just like Joseph Kony is today.

2 The possibility for traditional mechanisms were even included in the draft Juba Peace
3 Agreement in 2008, but Kony rejected the entire agreement and returned to war. He
4 has always been running away from responsibility.

5 Ultimately, when wrongdoing amounts to grave international crimes, the Rome
6 Statute may legitimately provide accountability and justice for victims. Not only are
7 these proceedings legally justified, they are morally justified.

8 For victims, this hearing is not a token gesture. It is extremely important. Victims
9 deserve and are entitled to take part in this process. They know and understand
10 a full trial can only happen with Joseph Kony present. But no matter what anybody
11 says, either inside this courtroom or outside of it, a confirmation decision will bring
12 an important measure of accountability for victims.

13 But, more importantly, confirming charges will mean that after 20 years of waiting,
14 victim testimonies will have been heard, will have been listened to and acknowledged
15 by this International Criminal Court.

16 On behalf of the victims, I thank you for your attention.

17 PRESIDING JUDGE ALEXIS-WINDSOR: [11:58:38] Thank you very much.

18 I think we have time to go directly to the Defence submissions on the merits.

19 MR HAYNES: [11:59:21] Thank you, your Honour, and - just - good morning. I'm
20 anticipating that this is a 90-minute session and that we will finish at 1 o'clock. I also
21 anticipate that these submissions will take about 40 minutes and so we should
22 comfortably finish before the lunch break.

23 In other housekeeping matters, I will remain entirely in open session - nobody needs
24 to worry about what I'm going to say during the course of the next 40 minutes - and,
25 secondly, you should have all received what I think is headed a "List of Authorities".

1 It's actually a list of decisions and authorities that I will refer to during the course of
2 the submissions. I will not be giving you long reference numbers either to ERNs or
3 filings, and the authorities and filings are sequentially listed helpfully for you so that
4 you can check me as I go along.

5 Lastly, I omitted this morning to inform you of the changes in the Defence team. The
6 lady who was sitting next to me, but is now behind me, is Yvonne McDermott, who
7 glories under the titles of both professor and master. And the case manager this
8 morning is Eva Daniel.

9 I should say, for the benefit of the watching public, because it has caused some
10 consternation, that the gentleman at the back of the court is a security guard. He is
11 not a member of the Defence team and he certainly isn't Joseph Kony.

12 Anyway, on to the substance of the submissions.

13 PRESIDING JUDGE ALEXIS-WINDSOR: [12:01:26] Thank you, counsel. May I
14 have one moment, please.

15 (The Pre-Trial Chamber confers)

16 PRESIDING JUDGE ALEXIS-WINDSOR: [12:01:45] Counsel, just a moment, I'm
17 trying to ascertain whether we received the list. Right, then. We have it in the
18 bundle.

19 MR HAYNES: [12:01:56] Okay. I hope everything is in order with you.

20 PRESIDING JUDGE ALEXIS-WINDSOR: [12:02:00] Yes. Thank you.

21 MR HAYNES: [12:02:04] In my remarks yesterday, I spoke about the difficulties in
22 determining the best interests of a person who cannot be consulted. Today, I will
23 address the limitations arising from those difficulties in terms of the submissions that
24 can be advanced on behalf of the suspect and propose a specific course of action, we
25 say, must now be taken by the Pre-Trial Chamber to ensure the suspect's rights are

1 fully preserved.

2 When the Prosecution first proposed an *in absentia* confirmation hearing in this case, it
3 put forward a number of purported justifications -- including, to air the evidence, to
4 give the victims a chance to speak, and to increase public awareness.

5 We submit that these have been met, to the extent that they can be, through this
6 hearing itself and the publicity and preparations leading up to it. None of these
7 objectives will be further advanced by the issuance of a confirmation decision. This
8 being the case, we submit that at the end of this hearing, this honourable Chamber
9 should issue a conditional stay of proceedings and discharge my mandate as counsel
10 appointed to represent the interests of Joseph Kony.

11 THE INTERPRETER: [12:03:39] Your Honour, could you please ask --

12 MR HAYNES: [12:03:41] I acknowledge that this may --

13 THE INTERPRETER: [12:03:42] -- counsel to slow down.

14 MR HAYNES: [12:03:43] -- at first glance --

15 PRESIDING JUDGE ALEXIS-WINDSOR: [12:03:43] Counsel, one moment please.

16 We've been -- I heard a --

17 THE INTERPRETER: [12:03:46] Could you please ask counsel to slow down for the
18 Acholi booth.

19 PRESIDING JUDGE ALEXIS-WINDSOR: [12:03:51] Yes, thank you. Counsel, I'm
20 hearing a voice asking me if -- for the Acholi booth, if you can possibly slow down. I
21 didn't think you were going terribly fast.

22 MR HAYNES: [12:04:02] I didn't think I could speak any slower, frankly, but I will
23 do my very best.

24 PRESIDING JUDGE ALEXIS-WINDSOR: [12:04:08] Perhaps a pause between
25 sentences.

1 MR HAYNES: [12:04:12] Certainly. I acknowledge that this may appear, at first
2 glance, to be a startling outcome, but it is much less startling when we recognise, as
3 the Statute requires, that these *in absentia* proceedings must halt, before trial
4 preparations commence under part 6 of the Statute. Whether that happens before or
5 after the confirmation decision, there will be a stay of proceedings.

6 For the reasons I will explain, we submit that a stay prior to the confirmation decision
7 is the only way to preserve the rights of the suspect, and to ensure fairness of any trial
8 proceedings that might ensue.

9 Let me proceed step by step, starting with the mandate I was given in this case:

10 It is important to recall, and for everyone who may be watching and listening to these
11 proceedings in Uganda, that my role - and here I quote from Pre-Trial Chamber II's
12 initial instructions to the Registry and my letter of appointment - is to "represent the
13 rights and interests of Mr Kony."

14 But this is a paradoxical mandate to try to fulfil in the absence of any instructions
15 from Joseph Kony about how to respond to the Prosecution's case at confirmation.

16 And, to be absolutely clear, no instructions have been received by me.

17 Our paramount obligation in this situation is to identify, to the extent that we can,
18 Joseph Kony's interests and do nothing whatsoever to prejudice them. The Pre-Trial
19 Chamber when it examined the admissibility of this case in 2009, said that any
20 appointed counsel should not prejudice the arguments which the defence may put
21 forward at a later stage.

22 And the Appeals Chamber then confirmed that appointed counsel's mandate is to
23 offer submissions with a view to safeguarding the interests of the suspect insofar as
24 counsel can identify them.

25 So my mandate is not to act as an *amicus curiae*, offering disinterested advice on how

1 the Prosecution can remedy deficiencies in its case. Nor am I here as some devil's
2 advocate to offer criticism of the Prosecution case based on hypothetical assumptions
3 about what Joseph Kony's ultimate position may be. On the contrary, my role is to
4 ensure that Joseph Kony, and any counsel that he may subsequently retain to
5 represent him, holds the greatest possible latitude to make arguments in relation to
6 the Prosecution's case.

7 So you will not be hearing today about the ways in which some of the charges in the
8 Amended Document Containing the Charges are legally incoherent or incompatible;
9 you will not be hearing about the serious unreliability of some of the Prosecution's
10 central evidence; you will not be hearing about other ways in which the facts have
11 been characterised by the Prosecution in a legally erroneous manner.

12 And let me say on this point, there is no shortage of issues in this case that a duly
13 instructed counsel would love to challenge. As a lawyer of over 35 years' experience,
14 I have to say it was painful for me to sit back and not object when I heard the
15 Prosecution use such imprecise language as you heard yesterday, referring to "at least
16 thousands of victims", and then citing to a list of 204 victims in support of that
17 proposition. Such imprecision would not be accepted in any charging document in
18 any legal system in the world. Your Honours, it was similarly painful for me not to be
19 able to flag the incomprehensibility of the Prosecution referring to the Kwoyelo Trial
20 Judgment as though it were evidence of its propositions. This is a judgment that's
21 currently under appeal, as his Defence lawyer, Counsel Anyuru, could confirm to you.
22 And it is a final judgment from a domestic war crimes tribunal in a jurisdiction that
23 the Office of the Prosecutor deems somehow unwilling or unable to deal with the case
24 of Joseph Kony itself.

25 And lastly, it was very uncomfortable for me to have to sit on my hands as the

1 Prosecution presented on screen, entries from logbooks as though they were the
2 diaries of Joseph Kony himself. Madam President, your Honours will know from
3 your scrutiny of the evidence in this case that these logbooks are purportedly English
4 summaries of rough notes compiled by another person who listened in to
5 conversations in Acholi, in coded language that they oftentimes didn't understand.
6 These logbooks went through many, many links in the chain of custody. But I
7 cannot go into any of that. That's just my personal irritation.
8 Because simply put, in our assessment, it is not in Joseph Kony's interests to give the
9 Prosecution the opportunity to remedy the defects in its case while it still can and
10 attempt to make its case stronger for trial.
11 And this is not just my interpretation. The current Prosecutor himself, Karim Khan,
12 in a 2014 article, wrote of the key risks of presenting a positive defence case at
13 confirmation. He said that Defence counsel should be mindful that if they put
14 forward a full defence, and one or more of the charges are confirmed, then the
15 Prosecution will have been given a preview of the Defence's case strategy and
16 potential evidence. "With this information in hand", he said, and here I quote:
17 "the prosecution can adapt its case strategy and continue its investigations within the
18 framework of the confirmed case, with a view to countering the defence's expected
19 case at trial."

20 The Defence's position --

21 PRESIDING JUDGE ALEXIS-WINDSOR: [12:12:12] Counsel, counsel, you are
22 getting into the meat of the matter and you are speaking faster.

23 MR HAYNES: [12:12:22] One wonders what the purpose is of providing
24 these -- these remarks in writing to the interpreters in advance. But there you go. I
25 will slow down.

1 The Defence's position today is consistent with the interpretation of our mandate
2 from the beginning. As your Honours know, the Defence also declined to accept any
3 agreed facts in this process. Why? Because how could counsel agree to any facts
4 on behalf of Joseph Kony in absence of his instructions?

5 Indeed, in Ntaganda, a Trial Chamber considered that accepting an agreed fact
6 without adequate consultation of the person represented amounted to a potential
7 violation of the Code of Counsel -- the Code of Conduct of Counsel.

8 On the contrary, what if Joseph Kony wants to plead guilty and seek a full mitigation
9 of sentence for this plea and cooperation, and would never have given us instructions
10 to challenge the form of the charges or the strength of the Prosecution's evidence?

11 We simply do not know, and cannot know what his position on any of this is or
12 would be, given that we have never met or had any contact with him directly or
13 otherwise. Any assumptions we might make in this regard could prejudice his
14 future position. And I cannot do that.

15 But this does not mean we have been unable to advance Joseph Kony's interests or
16 safeguard his rights.

17 As you know, we have litigated the legality of the *in absentia* confirmation process
18 itself, including before the Appeals Chamber, which means that we have contested
19 the fact that these proceedings in the absence of Joseph Kony should even take place,
20 because, in our view, they are contrary to the Statute of the Court.

21 We have also challenged whether there was cause to hold this process, collecting
22 testimonials from northern Ugandan political leaders, religious leaders, traditional
23 leaders, as well as victims' advocates, victims themselves, and members of the legal
24 community, who have given written testimonials explaining why they think that this
25 *in absentia* process is misguided, self-interested on the part of the ICC, harmful to

1 ongoing repatriation and reconciliation efforts, and divisive to their communities.

2 We have challenged the form of the confirmation procedure - successfully objecting to
3 the Prosecution's irregular request to call live witnesses at this confirmation hearing,
4 for example - and we have sought to ensure that the proceedings are as public as
5 possible, including an unsuccessful effort in respect of the Prosecution's key insider
6 evidence, which still remains out of the public eye, over our objections.

7 And we have repeated canvas -- repeatedly canvassed the Prosecution to take care
8 with the presentation of video and other images in this courtroom for public display.

9 In each of our steps, we have been guided by our responsibility to act in

10 Joseph Kony's interests and minimise the harm to the fairness of any subsequent trial.

11 But again, we have been mindful of the limits imposed by the absence of instructions,
12 the impropriety of manufacturing those instructions according to our own wishes,
13 and the fundamental importance of avoiding causing any prejudice whatsoever to
14 positions that Joseph Kony may later wish to advance were he ever to be arrested,
15 including challenging the propriety of this entire proceeding.

16 So what does it mean for this confirmation procedure?

17 It is beyond dispute that a confirmation decision will have an impact on any
18 subsequent trial. As the Pre-Trial Chamber recognised, the confirmation decision
19 sets the parameters of the case for trial and ensures that the charges are clear and not
20 deficient in form.

21 But, as past confirmation hearings demonstrate, the confirmation procedure is by no
22 means simply an exercise in judicially approving the Prosecution's charges with
23 limited or no scrutiny. It is designed to be an *inter partes* procedure, where the
24 suspect can actively challenge the evidence presented against him.

25 In Mbarushimana, where the charges were not confirmed, the Appeals Chamber said

1 it "attache[d] considerable significance" to the suspect's right to "challenge the
2 evidence presented by the Prosecutor and to present his/her own evidence" during
3 confirmation hearings.

4 This reflects the view of the Prosecutor Karim Khan in the 2014 essay that I mentioned
5 earlier. He said that in terms of how defence counsel should approach
6 a confirmation of charges hearing, the most important factor "first and foremost" is
7 "the goals and wishes of the client".

8 And this exercise, of the suspect challenging the evidence presented against him, has
9 resulted in entire cases being withdrawn, as, for example, in Mokom, or none of the
10 charges being confirmed, as in the cases of Mbarushimana in the Situation of the DRC;
11 Abu Garda in the Situation of Darfur; and in relation to two cases from the Situation
12 in Kenya, Ali and Kosgey.

13 Even in those cases where some charges were confirmed, the *inter partes* confirmation
14 process has led to many other charges being deleted against other suspects. For
15 example, the Pre-Trial Chamber in Yekatom and Ngaïssona declined to confirm 79
16 out of 111 charges. That's over 70 per cent of those brought by the Prosecution
17 following challenges by counsel acting upon their clients' instructions.

18 In the absence of instructions, none of this *inter partes* scrutiny can take place, at least
19 not in the way that it should, and the framework of Joseph Kony's trial will be
20 established by your Honours in his absence. Importantly, it is the responsibility of
21 the Pre-Trial Chamber - and not the Prosecution - pursuant to regulations 52 and 53 of
22 the Regulations of the Court, to ensure that any charges are sufficiently precise so as
23 to ensure a fair trial.

24 All of this underscores that a confirmation decision is not a mere rubber-stamping
25 exercise, your Honours. And it will not have escaped your attention that some of the

1 legal interpretations that the Prosecution has advanced in this case are rather creative
2 and seek to develop substantive law in new directions. Confirmation decisions bear
3 normative weight. They are seen and cited as authoritative statements of the
4 relevant law.

5 But if you were to issue a decision confirming any of the charges in this case, it would
6 come without the Prosecution charges and evidence having been subjected to any
7 effective challenge or scrutiny by the suspect, which is precisely the reason that the
8 drafters included a confirmation process in the first place. And this is precisely why
9 the Appeals Chamber said that it attached considerable significance to the suspect's
10 ability to challenge the evidence at confirmation. This is the very real, very concrete,
11 and potentially irrevocable prejudice that arises from this *in absentia* procedure.

12 But there is a way that this prejudice can be avoided. We all know that Joseph Kony
13 cannot be put on trial in his absence, as your Honour emphasised during the opening
14 of this hearing. That much is absolutely clear and undisputed from Article 63 of the
15 Rome Statute.

16 This means that at some point, this *in absentia* process must end. We cannot all just
17 sleepwalk blindly into the trial process without conducting an illegal procedure. At
18 some point, the procedures foreseen for the transition between the pre-trial and the
19 trial phases in Articles 61 and 64 of the Statute will have to be stopped, either by way
20 of a conditional stay of proceedings or an adjournment *sine die*. Where this line in
21 the sand is drawn - and it must be drawn - is firmly within the discretion of this
22 honourable Pre-Trial Chamber.

23 Now, a chamber of the International Criminal Court has the power to stay
24 proceedings, temporarily or permanently. Established jurisprudence provides that
25 a chamber - and that includes a pre-trial chamber, as confirmed by the

1 Appeals Chamber in Lubanga, decision 772 - has the power, indeed the duty, to stay
2 proceedings where the essential preconditions of a fair trial are missing. For
3 example, an accused.

4 The Appeals Chamber has also confirmed that a conditional stay of the proceedings
5 may be the appropriate remedy where a fair trial cannot be held at the time the stay is
6 imposed, but where the unfairness to the accused person is of such a nature that a fair
7 trial might become possible at a later stage because of a change in the situation that
8 led to the stay.

9 So, it can be done. As to when it should be done, we submit that the appropriate
10 moment for such a stay or adjournment is immediately following this hearing, and
11 before any confirmation decision.

12 There are many reasons why.

13 Firstly, drawing the line in the sand at this point is the only way to circumvent the
14 real and concrete prejudice of issuing a confirmation decision in the absence of any
15 fundamental scrutiny or challenge from the suspect himself having given instructions
16 to lawyers.

17 Secondly, and just as importantly, a confirmation decision signals the end of the
18 confirmation phase, which triggers a chain of events under the ICC's Statutory
19 framework which have practical, legal and financial consequences for the Court.

20 If this Chamber were to issue a decision confirming any of the charges, Joseph Kony
21 would move from being a suspect to being an accused under the Court's legal
22 framework, which in turn has consequences.

23 A confirmation decision also triggers the mandatory assignment of a trial chamber
24 under Article 61(11), which means the case would be moving from the confirmation
25 phase into the trial phase, but this time in the absence of the accused.

1 Importantly, my mandate expires at the end of the confirmation phase, meaning that
2 this absent accused would now be dealt with by a trial chamber in a situation where
3 he is not represented by assigned counsel.

4 As an accused, Joseph Kony would be entitled to legal representation under Article
5 67(1)(d), so a new counsel would have to be assigned immediately at some expense to
6 the Court. And, speaking of expense, with a trial chamber in place, judicial activity
7 will continue, also at the expense of the Court, and despite the fact that Joseph Kony
8 will still be absent. Take, as a useful illustration, the Banda case, where Mr Banda
9 and his co-accused waived their right to be present at confirmation. Since the
10 confirmation of charges decision was issued in March 2011, there have been more
11 than 600 filings in that case.

12 In 2014, it became clear that Mr Banda would not be appearing for trial and the trial
13 date was vacated. Nonetheless, since that time, as is demonstrated by the records of
14 the Assembly of States Parties, hundreds of thousands of euros have been spent in
15 legal costs for this cryogenically frozen case. This is because, put simply, the trial
16 phase generates judicial activity, even where there is no expectation of a trial.

17 If a confirmation decision were issued in this case against Joseph Kony, the Court
18 could expect a similar level of activity. Decisions can be expected on victims'
19 participation, cooperation issues, the composition and recomposition of the relevant
20 chamber, representation issues, and other procedural matters.

21 We can almost certainly expect admissibility challenges, given that the authorities in
22 Uganda have made clear their desire to try Joseph Kony domestically, should he be
23 delivered to their custody.

24 Status conferences will be held, again as we saw in Banda, where nine years after the
25 confirmation decision was issued, the Trial Chamber convened a status conference in

1 which it raised the question as to whether proceedings with a full trial -- whether
2 proceeding with a full trial *in absentia* was possible.

3 All of this, your Honours, would happen without the participation or representation
4 of Joseph Kony, underscoring the futility of this entire process.

5 In the meantime, like Banda, Joseph Kony would be listed on the ICC's website as
6 someone whose case was in the trial phase, all while he had never set foot in this
7 building. This would further raise the expectation of victim communities and
8 require further and regular outreach by the Court to try to explain this unprecedented
9 state of affairs and delay the inevitable confusion and frustration. And having spent
10 much of the last 12 months in the north of Uganda, we can attest that the confusion
11 and frustration is already there and very loud, despite the excellent and best efforts of
12 the ICC's outreach section.

13 A confirmation decision would set a train in motion that cannot be returned to the
14 station. This costly, uncertain and indefinite pretrial purgatory of an absent accused
15 can be avoided by stopping the train from leaving the station and staying the
16 proceedings now before a confirmation decision is issued. Because once that
17 decision has been issued, the parameters have been set for trial.

18 So, I suppose we need to deal with the situation of what happens if Mr Kony were to
19 be arrested after a confirmation decision were issued.

20 In his opening remarks yesterday, the Deputy Prosecutor noted, in the Prosecution's
21 opinion, this hearing will advance proceedings in a tangible way and that if the
22 charges are confirmed, it would allow the proceedings to move rapidly to the next
23 stage as soon as Joseph Kony is arrested and surrendered to the Court.

24 Now, the Deputy Prosecutor and I go back a long, long way. Indeed, we probably
25 first met at about the same time as the arrest warrant for Joseph Kony was issued 20

1 years ago, so I hope he won't mind me pouring a little cold water over his admirably
2 optimistic outlook or, some might say, wishful thinking.

3 Seriously, who does the Deputy Prosecutor think will arrest Joseph Kony, and where
4 does he think he might be arrested? In Uganda by the Ugandan authorities? Well,
5 if that happens, your Honour, he ain't coming here.

6 My team and I have met the highest legal officers and politicians in the land - we have
7 met the minister of justice, the attorney-general, the chief justice and the president
8 himself - and we have been assured that if Joseph Kony is arrested in Uganda, he will
9 not be transferred to The Hague to stand trial.

10 And why would any sensible, mature, democratic country do that, when they had in
11 their custody a man who could stand charged for offences spanning a period of 20
12 years - encompassing thousands, if not millions of victims, including the girls who
13 were abducted from the Aboke school in 1996 - why would they surrender him to
14 a jurisdiction that could deal with the tiniest slither of his alleged criminal
15 responsibility and deny the victims in their country the right to justice?

16 Of course they wouldn't, and they won't. So that is a non-starter.

17 If he's detained in the Central African Republic or Sudan, and anything happens to
18 him that is detrimental to his liberty, it would again be a transfer to Uganda with the
19 same result. And as for the optimism that the Deputy Prosecutor expressed about
20 the assistance of the United States of America, I think it's fair to say that those days
21 are long gone.

22 But whilst we're in this world of wishful thinking, let us just enter into a little thought
23 experiment: what would happen in the unlikely event that Joseph Kony is one day
24 brought before this Court? If a confirmation decision were issued following this
25 hearing, it would have been issued as a result of a situation where he had not -- where

1 it had not been subject to his scrutiny.

2 But let's say you go ahead and you issue a confirmation decision despite all of that.

3 The important parameters of trial would have been set by that confirmation decision,

4 and so a crucial question is: would he have the right to challenge the confirmation

5 decision? Might he even be entitled to a full re-run of this entire confirmation

6 process, this time with counsel of his choice?

7 The Rules suggest not. The key legal provision is Rule 126(3) of the Rules of

8 Procedure and Evidence. And allow me to quote it in full:

9 "When the person who has fled is subsequently arrested and the Court has confirmed

10 the charges upon which the Prosecutor intends to pursue the trial, the person charged

11 shall be committed to the Trial Chamber established under article 61, paragraph 11.

12 The person charged may request in writing that the Trial Chamber refer issues to the

13 Pre-Trial Chamber that are necessary for the Chamber's effective and fair functioning

14 in accordance with article 64, paragraph 4."

15 Now, a few things about this provision: First, it will not have escaped your attention

16 that it refers only to a person "who has fled". As we all know - and as has been the

17 subject of extensive litigation in this case since 2023 - Joseph Kony is deemed to be

18 a person who cannot be found, not a person who has fled under Article 61. So

19 there's a lacuna in relation to what happens to the person who cannot be found, who

20 is not mentioned in this provision.

21 This means that there are three options. The Trial Chamber could find that the

22 person who could not be found is entitled to a complete new confirmation process

23 from the start. Or it could hold that Rule 126(3) applies *mutatis mutandis* to that

24 person, allowing a limited referral of some issues back to the Pre-Trial Chamber. Or

25 it might simply hold that the case should proceed directly to trial on the basis of the

1 confirmation decision.

2 If the first option were to be followed and the Rules were found to allow for a new
3 confirmation process, then the Court would be required to quash your Honours'
4 confirmation decision because it was issued in the absence of any meaningful
5 *inter partes* process. This would mean a huge waste of effort and resources,
6 undoubtedly raising further confusion and further questions as to the point of this
7 entire process.

8 Should the second or third options be followed and Rule 126(3) were found not to
9 allow a full new confirmation process if the suspect appears, this interpretation would
10 be in apparent -- in apparent contravention of well-established human rights case law
11 and, therefore, Article 21(3) of the Statute under which the right to de novo
12 proceedings is fundamental. Indeed, the Special Tribunal for Lebanon's Appeals
13 Chamber confirmed that the right to a retrial applies to all stages of the proceedings.
14 This leads me to my second point about Rule 126(3), which is that the least that can be
15 said about it is that it does not confer an automatic right to reopen the formulation of
16 charges for the person who has fled. On the contrary, Rule 126(3) appears to impose
17 a heavy burden on the accused - as he then would be - for a referral of issues back to
18 the Pre-Trial Chamber, and without any obligation on the Pre-Trial Chamber to
19 reconsider the scope or nature of the charges.

20 So again, your Honours, if this Pre-Trial Chamber were to issue a confirmation
21 decision, it risks causing irreparable prejudice to the rights of the suspect or the rights
22 of the accused, as he would be thereafter.

23 Again, the solution here is to draw a line in the sand after this week's hearing. Your
24 Honours, indeed, all that was ever requested of you in this case was a hearing of the
25 confirmation of charges. The original request of the Prosecution, filing 446, states:

1 "The Prosecution respectfully requests the Pre-Trial Chamber to hold a hearing on the
2 confirmation of charges against Joseph Kony in his absence".

3 In decision 466 of 23 November 2023, the Pre-Trial Chamber found that "under the
4 prevailing circumstances, there is cause to hold a confirmation hearing against
5 Mr Kony, in his absence". And in authorising that hearing, the Pre-Trial Chamber
6 said at paragraph 70:

7 "the Statute does not allow proceedings *in absentia* to be held beyond the confirmation
8 of charges hearing."

9 Not decision, hearing.

10 Now reasonable minds may differ as to whether the purported purpose of this
11 hearing, as stated by the Prosecution, "to air the evidence, [to] allow the victims to
12 speak, [to] increase public awareness, and potentially to galvanise cooperative efforts
13 to bring fugitives to justice" were ever achievable. But one thing is clear. These
14 purposes do not require a confirmation decision. Exercising the Chamber's inherent
15 power to impose a conditional stay of proceedings at the end of this confirmation
16 hearing, which can immediately be lifted if Joseph Kony is ever transferred to the
17 Court, would circumvent the many legal, procedural and financial headaches I have
18 just outlined that a confirmation decision would trigger.

19 Looking at the bigger picture, compromising the rights of suspects, through issuing
20 confirmation of charges decisions without any participation of those suspects, should
21 not be the future of ICC proceedings. Far from galvanising support for the Court,
22 such a decision would only give fuel to the fire of its detractors who wish to portray
23 this institution as illegitimate.

24 It is not, your Honours. And the best way for you to demonstrate that would be to
25 follow the precedent set in Lubanga and in numerous other cases before this Court,

1 by exercising your inherent jurisdiction to impose a conditional stay of proceedings at
2 the end of this hearing, which can be lifted if Joseph Kony ever appears before it.

3 Thank you.

4 PRESIDING JUDGE ALEXIS-WINDSOR: [12:44:42] Thank you, counsel.

5 It's a quarter to 1. We are not behind time.

6 The Prosecution has 30 minutes, I believe, for its final submissions.

7 MS VON BRAUN: [12:45:16] I'm sorry, can I speak, your Honour, or?

8 PRESIDING JUDGE ALEXIS-WINDSOR: [12:45:22] Yes.

9 MS VON BRAUN: [12:45:23] So since we are 15 minutes to lunchtime, I would

10 request to begin my final observations after lunch. If possible, we could perhaps

11 come back a bit earlier from the lunch break, maybe at quarter to -- after 2. Quarter

12 past 2, sorry.

13 PRESIDING JUDGE ALEXIS-WINDSOR: [12:45:47] That seems acceptable.

14 Yes. All right.

15 MS VON BRAUN: [12:45:51] Thank you.

16 PRESIDING JUDGE ALEXIS-WINDSOR: [12:45:52] So we will take the lunch break

17 from now. Give me one moment, please.

18 All right. So we will take the lunch break from now for 90 minutes. So we will

19 come back at a quarter after 2.

20 THE COURT USHER: [12:46:18] All rise.

21 (Recess taken at 12.46 p.m.)

22 (Upon resuming in open session at 2.22 p.m.)

23 THE COURT USHER: [14:22:52] All rise.

24 Please be seated.

25 PRESIDING JUDGE ALEXIS-WINDSOR: [14:23:37] All right. Good day, everyone.

1 Counsel for the Defence, Mr Haynes, you used 45 minutes this morning. Were you
2 completely finished with your submissions? Did you want -- because you did have
3 more time, did you wish to use any more of your time allotted, particularly in respect
4 of the submission that you made as to the outcome?

5 MR HAYNES: [14:24:15] Your Honour, no, thank you.

6 PRESIDING JUDGE ALEXIS-WINDSOR: [14:24:19] All right, very well. Thank
7 you.

8 Prosecution, you have the floor.

9 MS VON BRAUN: [14:24:30] Madam President, your Honours, counsel representing
10 the rights and interests of Mr Kony, Mr Haynes, has declined to challenge the
11 Prosecution's evidence and to make submissions on the nature and scope of our
12 charges.

13 After appealing your Honours' decisions and failing, then asking for reconsideration
14 and failing, counsel is now advancing another idea, the stay of proceedings.

15 Your Honours, this amounts to an impermissible request for reconsideration. And a
16 stay on proceedings is also entirely unnecessary to safeguard Mr Kony's rights.

17 Mr Haynes explains this new idea with the scope of his mandate, a mandate which is
18 supposed to protect the rights and interests of Mr Kony, a suspect who also has the
19 right not only to a robust defence, but efficient and speedy proceedings.

20 It's Mr Haynes' discretion, his choice how he sees fit to fulfil his mandate. But what
21 came today was yet another idea on how to end these proceedings, rife with legal and
22 factual speculations diametrically opposed to laws of this Court.

23 Importantly, as Mr Haynes himself acknowledges, your Honours have put all
24 safeguards in place to allow the Defence to exercise its role meaningfully, sufficient
25 time to prepare, *inter partes* disclosure communications, litigation, speedy decisions

1 on such issues, the Defence has had every opportunity to engage meaningfully on the
2 Document Containing the Charges, the Prosecution's disclosed evidence, procedural
3 issues, disclosure issues, and they have shown that they can, they have just decided
4 not to bring that to this hearing.

5 Mr Haynes' views are not reconcilable with how these proceedings have been
6 overseen by your Honours and also not with the Statute. A stay of proceeding is
7 completely out of the question.

8 According to Appeals Chambers jurisprudence, for instance in the Lubanga case,
9 decision number 2582, at paragraph 55, a stay is a drastic remedy. According to the
10 Trial Chamber in Lubanga, it must be demonstrated that it would be impossible to
11 piece together the constituent elements of a fair trial.

12 Well, your Honours, the biggest obstacle to a future trial being held, in fact, the only
13 obstacle, should you decide to confirm the charges, is Mr Kony's continued absence.
14 Everyone agrees that no trial can proceed without him. Ordering a stay would do
15 nothing additional to safeguard his rights. All it would do would be to frustrate the
16 pursuit of justice by depriving the victims and affected communities of a decision on
17 the sufficiency of the evidence to substantiate the charges.

18 With your decision, Mr Kony will either be committed to trial or he will not. And of
19 course there will be a confirmation decision. Article 61 demands it. Article 61(7) is
20 directly applicable to confirmation proceedings *in absentia*, which states that the
21 Pre-Trial Chamber "shall, on the basis of the hearing", make a determination on the
22 sufficiency of the evidence. And, accordingly, Regulation 53, that the Pre-Trial
23 Chamber's written decision "shall be delivered within 60 days from the date the
24 confirmation hearing ends".

25 Article 61(11) requires that the Presidency, should you confirm the charges, constitute

1 a Trial Chamber. So there should be no doubt, if you decide to confirm the charges,
2 this case goes to a Trial Chamber.

3 An actual trial, of course, can only start upon arrest. Mr Kony, once arrested, would
4 be by no means without rights. Mr Haynes has identified the correct rule which
5 should, as all rules, be interpreted in light of the rights enshrined in Article 67 of the
6 Statute.

7 And we recognise Rule 126(3) only mentions the term "fled". But, your Honours, the
8 Appeals Chamber in this case, in its decision number 610, at paragraphs 47 to 48, has
9 ruled that there is nothing intrinsic to the terms "fled or cannot be found" that makes
10 them mutually exclusive.

11 Further, to interpret the rule as only applicable to persons who fled would lead to the
12 paradoxical situation that persons who have been deemed "cannot be found" would
13 not fall under the second limb of this rule.

14 And while Article 64(4) allows a Trial Chamber to refer preliminary issues to the
15 Pre-Trial Chamber, the Appeals Chamber has also certified that in these proceedings,
16 robust safeguards to protect the suspect's rights have been put in place.

17 Mr Haynes speculates about what may or may not happen after this case moves to a
18 Trial Chamber, should it move to a Trial Chamber. And we all cannot predict the
19 future, but several things are for sure. This Court retains jurisdiction and the case
20 before you is admissible. Based on the referral, based on previous decisions of this
21 Court, notably Appeals Chamber's decision 408, while the text of the referral is
22 confidential, your Honours have it on the case record, you can appreciate it and you
23 can see the limitations the Defence -- of the Defence interpretations and that these
24 interpretations are without merit.

25 There are no changes in circumstances. The position of Uganda remains the same.

1 Nothing else has ever been communicated to this Court. Mr Haynes has not
2 provided any official written communications supporting his claims.

3 It is a fact that there are no national proceedings against Mr Kony in Uganda, and any
4 insinuation of future national proceedings is purely speculative and not based on a
5 meaningful dialogue, discourse or engagement by the Court with the authorities of
6 Uganda.

7 In fact, the documents before you on the case record show that the International
8 Crimes Division, ICD, was never meant to supplant the Court with regard to top LRA
9 leadership.

10 Second, your Honours, should Mr Kony be arrested, he is free to challenge
11 admissibility and any other issues, like any other suspect arrested. Importantly,
12 whether he or Uganda go down that path, it will always be for this Court to have the
13 last say.

14 Thirdly, none of the arguments advanced relevantly challenge the integrity of the
15 proceedings that you have overseen.

16 What matters is the evidence - whether it meets the test required at this stage - which
17 the Defence has chosen not to touch upon. What matters are the thousands of
18 people from affected communities in northern Uganda following these proceedings as
19 we speak, hoping for justice.

20 What matters is that this Court delivers on its mandate, which is to ensure that the
21 most serious crimes of concern to the international community must not go
22 unpunished and to end impunity. That's what these proceedings are about.

23 Mr Kony is a wanted fugitive accused of the most heinous crimes. In order to allow
24 for his prosecution, your Honours have put in place robust processes to safeguard his
25 rights and interests. And it now falls on your decision on the evidence before you.

1 Should Mr Kony be committed to trial or not?

2 And the Prosecution's plea is unequivocally yes.

3 Before I close, I would briefly like to address the request made concerning changes to
4 the legal characterisation in counts 27 and 36 by my colleague Mr Bradfield.

5 The Prosecution stands by its approach to charging for the following reasons:

6 We have charged the crime of enslavement within our discretion under the Statute as
7 an overarching crime, because: First, this crime incorporates all indicia of
8 enslavement experienced by women, girls and boys under 18 within the LRA during
9 the charged period, thereby putting the criminal acts in their proper context; it allows
10 for a greater number of victims to be considered; all acts relevant to sexualised forms
11 of enslavement and the control of sexual and reproductive autonomy can constitute
12 enslavement as well, including grooming young girls as *ting-tings* to be future forced
13 wives and suffering endured by children born to enslaved women; and it avoids
14 arbitrary fragmentation of harm suffered.

15 Our charging approach will not cause an impunity gap. Quite the opposite, as there
16 is no conduct which is not covered. It also does not render the crime of sexual
17 slavery redundant, because we have charged on the facts of this case and nothing else.
18 Finally, any decision on this issue should be incorporated in your decision and not be
19 decided outside it or before it.

20 The charged crimes are based on specific material facts and each fact is supported by
21 sufficient evidence. This includes the evidence on estimation of the minimum
22 numbers of victims for each count, including the counts for enslavement.

23 Mr Kony as the leader of the LRA used the hierarchy of the LRA to control its fighters,
24 to subjugate them to their will. He exercised control by virtue of essential
25 contributions and he wanted LRA fighters to commit the charged crimes. It's all

1 there in his own words, based on evidence found to be probative and reliable,
2 including the intercept evidence, by Trial Chamber IX whose decision was upheld on
3 appeal.

4 Let me conclude with the following remarks.

5 I wish to stress that the efforts to secure Mr Kony's arrest and surrender are
6 continuing and will continue. The Office of the Prosecutor and the Registry are
7 working together with our partners to finally locate and apprehend Mr Kony so that
8 he can appear before Court. * We will not give up on this such important objective.
9 It remains our ultimate goal.

10 But, meanwhile, your Honours, you have moved this case forward. Whatever
11 outcome you decide will be based on the evidence before you and be in the interests
12 of justice.

13 I conclude my submissions by commending the witnesses and victims in this case. I
14 have had the honour of meeting quite a few in northern Uganda and the
15 conversations have directly influenced how the Prosecution has approached its case.
16 I would have welcomed to be in Uganda today, but I wish to tell victims and
17 witnesses sincerely that this, today, is not the end. The Office of the Prosecutor,
18 though far away here in The Hague, continues to pursue justice in this case.

19 And, finally, I wish to thank you, Madam President and your Honours, and the
20 Chambers staff. I also thank my colleagues from the Defence team, the Victims
21 Representatives, as well as those from the Registry here and behind the scenes,
22 interpreters, transcribers, audiovisual staff who have supported this hearing. It has
23 been a true pleasure to work with such professional and dedicated staff and legal
24 minds.

25 May this not be the end, but a new beginning.

1 I thank you for your attention.

2 PRESIDING JUDGE ALEXIS-WINDSOR: [14:41:35] Thank you, counsel.

3 All right. We have the final observations of the CLRV.

4 MR MANOBA: [14:41:57] Madam President and your Honours, my name is Joseph
5 Manoba and, together with my colleague Francisco Cox, we will be making the
6 closing remarks on behalf of the CLRV.

7 Madam President and your Honours, the Defence yesterday in their opening
8 statements attempted to minimise the role of victims in these proceedings to merely
9 seeking compensation and all reparations.

10 The ICC accountability process triggered in these confirmation charges hearings and
11 proceedings during the last few days provides victims with an important facet of
12 victim healing, which is participation.

13 Many victims of Joseph Kony and his LRA fighters -- fighters' crimes have not spoken
14 to anyone about their personal or individual victimisation on the day their respective
15 IDP camp was attacked or as it were on the day they were abducted and forcefully
16 taken to the bush in the charged period; namely, 1 July 2002 and up to
17 31 December 2005. They, thus, have carried with them a survivor's guilt for many
18 years and some have indeed died with this guilt. They hold themselves guilty for
19 not doing something to avoid or escape the victimisation orchestrated by the LRA
20 under the leadership of Joseph Kony.

21 Participation in these proceedings and hopefully in later proceedings following on
22 from this Chamber's decision hopefully confirming the charges against Joseph Kony
23 will allow not just for the truth behind the violent attacks on civilians to be told, but
24 through the CLRV, most victims will be able to get a listening ear of someone patient
25 enough to listen to their unique ordeals of victimisation and who, in turn, will bring it

1 in due time to the judges and the world to know their story of emotion, pain and
2 suffering. Participation in the court proceedings will, thus, provide victims with
3 agency to tell their stories of the LRA violence.

4 It is well established and accepted, your Honours, in international law that
5 accountability goes hand in hand with redress and harm suffered. Victims'
6 participation in these proceedings lays a foundation for accountability to culminate
7 into repair of all harms the victims have suffered. Whilst it is true that many victims
8 from a number of other proceedings await reparations, attributed to the lack of
9 resources from the Trust Fund for Victims, the outstanding proceedings, including
10 this one against Joseph Kony, should rally States Parties to commit more than before
11 to the plight of victims by taking measures to prepare to repair victims' harm in
12 advance.

13 This is because States have resolved to end impunity for perpetrators of serious
14 international crimes.

15 It is apparent from these proceedings that only a handful of victims - about
16 5,795 - have been granted status to participate, again owing to the limited time set by
17 the Pre-Trial Chamber. Many would have loved to apply and participate in the
18 proceedings that have been ongoing; however, that was not possible. Those victims
19 that we represent appreciate the opportunity to participate in these proceedings and
20 the significance to hold these proceedings. Victims welcome and acknowledge the
21 promise to promptly commence the trial in the event that Joseph Kony is
22 apprehended post the confirmation of charges against him.

23 Your Honours, the Prosecution evidence shows that the accused -- the suspect
24 Joseph Kony is the leader and overall commander of the notorious LRA armed group
25 that sought to take power by force of arms in Uganda. He organised himself and the

1 LRA in such a way that he had commanders below him and with whom he relayed
2 orders and spoke with on LRA radio. He planned and gave directions on carrying
3 out attacks and receiving reports on attacks, and awarding active commanders and
4 those below them with promotions, rank promotions.

5 Your Honours, the suspect Joseph Kony was manipulative. He used promotions in
6 the LRA regular members, on the one hand, and the distribution of girls as so-called
7 wives as reward mechanisms to prevent escape from the LRA. He combined this
8 with demanding and implementing severe punishment including death sentences for
9 all who attempted or planned to escape. These sentences were carried out by
10 commanders and others below them to retain fighters.

11 Joseph Kony was sadistic. Whilst he loved his life and protected it jealously by
12 staying at Command Altar detached from his commander for his own safety, he did
13 not care for and value human life as he did his own. He was happy to order attacks
14 on any civilian settlement, including Odek IDP camp, where his own family would
15 have been resident during the attack.

16 The Prosecution evidence shows that he, for example, congratulated Dominic
17 Ongwen for the attack on Odek IDP camp and other IDP camps where many victims
18 lost their lives, children were abducted and taken away from the love of their parents
19 and family, and also suffered the terror of the attack and the ensuing violence and
20 fear that followed the attack and captivity.

21 Your Honours, when the Defence visited Uganda prior to the commencement of these
22 hearings, the Defence was reported by news reporters in Uganda to have told the
23 prime minister of the Acholi Cultural Institution Mr Mike Otim that the Defence
24 wanted to understand the victims' perspectives on the Court's move to confirm
25 charges against Kony *in absentia*.

1 Mr Otim was reported to have also noted that the visit by the Defence counsel made a
2 good gesture for victims of the LRA atrocities who have had to wait an exceptionally
3 long time to see justice, as remarked by our colleague in her opening statement. It
4 was similarly reported that the justice must be relevant to the victims and deal with
5 their justice questions, including harm suffered.

6 This is a report, as I have indicated, your Honours, coming from the important
7 Cultural Institution of the Acholi.

8 During the last couple of days your Honours have heard from the presentation made
9 by our colleagues in their respective opening statements and on the charges for which
10 Joseph Kony is charged with the grave and atrocious nature of all the attacks and
11 disregard for human life and property which characterised the LRA attacks on
12 civilian targets. These criminal activities by the LRA under the overall command of
13 Joseph Kony and executed and brought about by commanders who agreed with him
14 to realise the common plan implemented and actually achieved the intended outcome
15 of the common plan on innocent civilians, including our clients.

16 The Prosecution evidence demonstrates that the LRA under the overall command of
17 Joseph Kony was a rebel force fighting within the territory of the Republic of Uganda,
18 a State Party to the Rome Statute. The fighting was violent and particularly localised
19 to the greater northern Uganda covering several districts hence the attacks on the
20 charged locations, as we have heard, on Lawala Girls in Kaberamaido district, Pajule
21 IDP camp in Pader district, Abia IDP camp in present day Alebtong district, Barlonyo
22 IDP camp in Lira district, Odek IDP camp in present day Omoro district, Pagak IDP
23 camp in Gulu district, Lukodi IDP camp in Gulu district and Abok IDP camp in
24 present day Oyam district.

25 Your Honours, notwithstanding that schoolgirls at Lawala Girls Secondary School

1 and the residents of the respective IDP camps I have named were young and innocent
2 and civilians respectively, these specific locations that the LRA targeted were also
3 places of learning, displacement, vulnerability, refuge and safety that ought not to be
4 attacked.

5 The LRA attacks in the said locations were thus deliberate and aimed to specifically;
6 one, take food items from an already vulnerable and food deprived population
7 dependent on the World Food Programme for food rations; two, take property of all
8 forms and nature and thereby disempower and render the residents of the IDP camps
9 destitute; three, forcefully take young girls and boys with the intention of enlisting
10 them into the violent LRA organisation and thereby effectively deprive and destroy
11 not only their childhood but their humanity. The LRA organisation therefore had no
12 regard for life or property. And finally, exert and impose fear and trauma on its
13 victims and abductees to ensure compliance and scare the abductees against escape.

14 Your Honours, the Prosecution evidence has also shown that Joseph Kony
15 encouraged his commanders with whom he agreed to carry out attacks on civilian
16 targets with the aim of the outcome being genocidal in nature. He intended for the
17 IDP camp residents to be totally wiped out, owing to victims being compelled to
18 move to IDP camps for safety, which action was viewed by Joseph Kony and his LRV
19 commanders as not supporting the LRA. To this end, each attack on a charged
20 location was characterised by terror and unprecedented violent death.

21 In some cases such as Barlonyo, up to 300 people were killed in just a single attack
22 and individuals dehumanised, deliberate abductions of children, and massive
23 properties looted or simply destroyed, indiscriminate shooting and torching of houses
24 in the IDP camps as well.

25 The harm suffered as a result of gender-based violence -- the harm suffered -- sorry,

1 the harm suffered as a result of gender-based violence are manifold, they touch both
2 the girls and women who were the direct victims of these crimes, their children and
3 their wider family. It extends from a wide range of health issues, to psychological
4 trauma, lack of agency and personal autonomy, poor socio-economical outcomes,
5 family cohesion and subsistence issues, forced displacement, stigmatisation and
6 community issues - including rejection, loss of family links, delinquency - and
7 economical harm.

8 The experience of forced conscription into the LRA various in scope and intensity but
9 is always considered to be traumatic. Children and youth, some as young as 7 and
10 8 years old, were forced to mutilate and kill civilians, including members of their own
11 families and communities. Abductees also have had violence inflicted upon them,
12 typically beatings, imprisonment, forced labour and witnessing horrendous acts of
13 violence. Abductees who have committed or experienced high levels of violence
14 show substantial increase in emotional distress, as well as poorer family relations.
15 Your Honours, what former abductees went through in the bush had a profound
16 impact on their ability to reintegrate in their families and communities upon their
17 return.

18 About 21 years after the LRA attacks on the charged locations, the suspect
19 Joseph Kony is still at large and hiding from being held criminally responsible. In
20 this same period, amongst the then survivors of the attacks on the charged locations,
21 we estimate about 500 victims from the locations of Abok, Odek, Lukodi and Pajule
22 have lost their lives without seeing in person justice being done and receiving
23 reparations from the crimes committed against them.

24 The other victims of course continue to survive after the impugned attacked and are
25 still alive, as many would say, by the grace of God to demand for justice and

1 reparations for the crimes perpetrated against them. They count on the efforts of the
2 international community to apprehend Joseph Kony and have him prosecuted before
3 this Court.

4 Your Honour, that ends my remarks and I will invite my colleague Francisco Cox to
5 conclude our statements.

6 PRESIDING JUDGE ALEXIS-WINDSOR: [15:01:15] Thank you, counsel.

7 Yes.

8 MR COX: [15:01:34] Madam President, your Honours, thank you for the
9 opportunity to addressing you on behalf of 5,795 victims.

10 Your Honour, I would like to insist on our request made by my colleague

11 Paul Bradfield in terms of including sexual enslavement.

12 Your Honour, legal characterisation is important for victims. Invisibility is
13 something that hurts victims. And I think the question is very simple: Can you
14 enslave somebody without committing sexual acts? I think the answer is yes, you
15 can. And if you answer that in the positive, then it's clear that enslavement does not
16 cover all the interests that the drafters and the international community wants to
17 protect by charging and by confirming charges eventually of sexual enslavement.
18 This is important for victims because, and it always surprises me how lawyers that
19 have no contact with victims believe that their only interest is money.

20 When we go to the communities, they tell us, "Tell the Court what happened to us."

21 Of course they want reparations and it's a right. There's nothing bad about
22 reparations. But it's not the only thing they want.

23 So when they say "tell what happened to us", it's not just the facts that matter, it's also
24 how a high court like this one characterises what happened to them. Therefore, the
25 lack of the charge of sexual enslavement is saying that that didn't happen, really, not

1 in the legal point of view. I understand they need the facts, they are there. But
2 tribunals have the competence of the competence, so you have the power to
3 characterise the facts. It's within your domain as what is really in the legal world.
4 Criminal law plays a fundamental role in reaffirming norms and values that we hold
5 dear to us. So that's why we must insist on the request made by my distinguished
6 colleague Paul Bradfield.

7 With regards to the submissions of the Defence, Madam President, your Honours, I
8 must be honest, I found it creative, I found it interesting, but I also found it with no
9 legal basis.

10 What my learned friend is asking you to do is to eliminate Article 61(2)(b). The
11 natural -- I mean the natural consequence of holding the procedures because there
12 might be -- he might appear, there might be expensive proceedings, there might be
13 violations of rights, or everything he said, well, then why did the framers put the
14 possibility of *in absentia* charges?

15 And it's, I think, not only smart -- not only creative, interesting, but also smart
16 because he's trying to re-litigate what he already lost.

17 The Appeals Chamber and the decision confirming the decision to move forward in
18 the *in absentia* confirmation of charges in article -- sorry, in paragraph 75 take care of
19 the concerns my learned friend presents to you about the rights that he can exercise
20 when he shows up. Let's not forget that. It's his determination, his will to be
21 absent.

22 Madam President, my learned friends from the Defence are right that the people that
23 are victims of the crimes of Joseph Kony are much more than 5,795. None of the
24 lawyers who represent those people -- and I must say, because I like to say this every
25 time, these are each individual people, they're not victims, they're not a number, they

1 are actual people. And they -- I mean, we know that the crimes that Mr Kony
2 committed with his co-perpetrators are much -- affected much more people than 5,795.
3 And what's more important, the people that we represent know this. They
4 understand that they are a very small portion of those affected by the crimes that my
5 learned friends have to represent the suspect.

6 But in no way can this be understood as if they don't want a broader picture to be
7 shown in this courtroom. You are well aware, Madam President, your Honours, that
8 the scope, the geographical scope of these -- of this case is much broader than the one
9 that was brought up with Dominic Ongwen. So it would be a little bit strange that
10 because there's a few number of people participating, then you want to shut the first
11 step in the road to justice? It doesn't make sense that this would be in the interests of
12 ending impunity, which is the purpose of the Rome Statute, a canon of interpretation
13 that must illuminate all of your reasoning.

14 And, your Honours, we haven't met -- at least I haven't met the minister of justice, nor
15 the president, nor the most powerful leaders of Uganda, no. We've met those who
16 we represent, simple people in the communities, suffering the consequences of the
17 crimes of Mr Kony.

18 And it puzzles me, because what they say is that they want justice. They want you
19 to confirm these charges because they know, because they lived through it, that there
20 is more than substantial grounds to believe that Joseph Kony is responsible for the
21 crimes that he's being charged today.

22 And they understand. It also always puzzles me why there's this paternalistic view
23 among victims in the community that, "Oh, they will get confused". No, no, they
24 understand. My colleagues that went to the communities told them, "Look, we can't
25 move on if Joseph Kony doesn't appear". They know this. Why is it that they

1 believe people are confused? They might be frustrated, yes, of course, but confused?

2 They know. We've told them. We've done our job. My colleagues have done
3 their job.

4 And, like I say, victims want truth, and it's in their interest and it's their right.

5 As Judge Antônio Cançado Trindade in paragraph 32 of his concurring vote in

6 *Bámaca v Guatemala*, back in 2000, said, "The right to truth is intertwined with the
7 realisation of justice and guarantee of non-repetition".

8 So, it's an individual right of those who we represent, their families, but not only is it

9 an individual right, it's also a collective right because, by sanctioning these crimes,

10 you are trying at least to affirm a guarantee of non-repetition and to end impunity for
11 such crimes.

12 But not only the international community has an interest in justice, and this is why I

13 was particularly surprised and we thought among ourselves in the team when we

14 heard that the community leaders were not interested in justice, that they didn't like

15 the ICC, that they found it self-interested. On 19 May 2016, my friend and colleague

16 Joseph Manoba, myself, Ms Jane Adong - may she rest in peace, a former lawyer

17 working for OPCV - and Paul Bradfield, he was in the Prosecutor's office at that time,

18 we went to Lukodi to commemorate the massacre in Lukodi. And that's not

19 interesting to you, but what might be interesting to your Honours is that in that

20 commemoration, who spoke was the paramount Acholi leader, Mr Rwot

21 Acana -- Acana. You see, that's why Joseph corrects me, rightly.

22 And he said, and this is very interesting, your Honour - well, I find it interesting - that

23 he said that he, personally, had a personal gratitude towards Joseph Kony and

24 Dominic Ongwen because there was a plot to assassinate them in one of the meetings

25 that they had in the peace process and that Joseph Kony and Dominic Ongwen spared

1 his life.

2 But despite that, he said that justice -- if Dominic Ongwen has committed crimes, he
3 must face the proceedings. And he also says Acholiland has soaked up the blood of
4 innocent people and called upon all the people to support the ICC trial.

5 So we have victims that support these proceedings. We have the paramount chief of
6 the Acholiland.

7 And also we have a decision by the Supreme Court of Uganda that mentioned -- it's in
8 the - I'm really going to pronounce this bad - Kwoyelo case before the supreme court
9 on an appeal from the constitutional court about Mr Kwoyelo was saying that he had
10 been discriminated because the amnesty had not been granted to him. And the
11 supreme court determined that the person who commits such crimes may be eligible
12 for amnesty for the act of rebellion or waging a war on Uganda. But he is not, in my
13 view, entitled to amnesty for grave crimes he may have committed.

14 So, even the amnesty law enacted in Uganda would not grant amnesty to such grave
15 crimes.

16 But furthermore, your Honours, Article 21(3) is clear that the application and
17 interpretation of law pursuant to this article must be consistent with international
18 recognised human rights.

19 Your Honour, I thought I was going to speak tomorrow, and this might be absolutely
20 irrelevant to you, but tomorrow is the 51 year since the military coup in Chile. I
21 come from Chile. So we know about this discussion of truth and reconciliation,
22 transitional justice, and it always surprises me that the powerful are concerned about
23 reconciliation, but they never ask the victims, the victims, the ones that suffered the
24 consequences of the crimes, the ones that were raped, that were killed, that
25 disappeared. They have no voice in this, it seems. It's among the powerful that

1 decide.

2 Fortunately, the Inter-American Court of Human Rights has dealt -- because of this
3 long-standing practice of our leaders to wanting to grant amnesty laws for grave
4 human rights violations, has abundant case law talking about the incompatibility of
5 human rights standards with amnesty laws. Just to quote some cases, Barrios Altos
6 v. Peru, Almonacid v. Chile, Gelman v. Uruguay.

7 So, this regional body has again and again said that you can't establish statute of
8 limitation amnesty laws against these great breaches of crime.

9 And a similar reasoning was done by the ICTY in Furundzija, in paragraph 155,
10 where they talk about the provisional torture and how it would be strange that if you
11 have a prohibition of torture, then you would give amnesty for torture afterwards to a
12 public official.

13 Your Honours, even the human rights court, which is more cautious on establishing a
14 bland prohibition on amnesty laws, in the case Margus v. Croatia - sorry, that's my
15 Spanish kicking in - in paragraph 139 states: "In the present case the applicant was
16 granted amnesty for acts which amounted to grave breaches of [...] human rights,
17 such as intentional killing of civilians [...] inflicting grave bodily harm on a child, and
18 the County Court's reasoning referred to the applicant's [...] military officer. A
19 growing tendency in international law is to see such amnesties as unacceptable
20 because they are incompatible with the unanimously recognised obligation of States
21 to prosecute and punish grave breaches of fundamental human rights. Even if [we
22 were to accept] that amnesties are possible where there are some particular
23 circumstances, such as a reconciliation process and/or a form of compensation for
24 victims, the amnesty granted to the applicant in the instant case would still be not
25 acceptable since there is nothing to indicate there were any [of these] circumstances"

1 in the case.

2 Your Honours, I convey to you that that is exactly the case in Uganda. There is,
3 there is a policy on transitional justice, but there's no truth commission. There's no
4 real reparations process going on. There's nothing similar to a transitional justice
5 process occurring in Uganda.

6 It is for all these reasons, your Honour, that victims request that you dismiss the
7 allegations from the Defence and confirm the charges. We believe that the
8 Prosecutor has met the standard of substantial grounds to believe, and victims don't
9 want this to be interrupted.

10 There is still a misunderstanding of what victims want. Staying the
11 proceedings -- staying the proceedings -- it's not, your Honour, that they want it to be
12 heard or they want someone to read in this Court, they follow these proceedings in
13 Uganda and they follow them massively. When there are screenings, thousands of
14 people show up. It's because they are interested that an official body, an
15 international body, the body created to end impunity in 1998 delivers justice. This is
16 the first step, so this is why we ask for the confirmation of charges.

17 Thank you, your Honour.

18 PRESIDING JUDGE ALEXIS-WINDSOR: [15:21:27] Thank you, counsel.

19 Mr Haynes, or the Defence, you now have the opportunity to make your final
20 observations.

21 MR HAYNES: [15:21:38] Yes. I'm conscious of your direction at transcript T-15,
22 page 5, lines 13 to 14, that remarks at that this stage should be responsive and, so, I'll
23 be very brief.

24 I'm sure that Mr Manoba either misspoke or misunderstood the submissions that
25 were made yesterday in our opening statements. Nobody on this side of the court

1 sought to minimise the participation of victims in this process by reducing their
2 interests as financial only. I myself was the legal representative of victims at the
3 Special Tribunal for Lebanon. And behind me, Ms Gibson, Mr Gosnell and many of
4 this team have represented victims in many fora. No such thing was suggested, but
5 perhaps Mr Manoba's inability to understand Acholi, the language in which I think
6 the submission was made, explains the remarks. But they were both professionally
7 insulting, and I think to Mr Anyuru, who lived through the civil war in Uganda,
8 personally insulting. And I would be surprised if Mr Manoba wished to leave those
9 remarks on the record. And they're at page 77, lines 5 to 8.

10 Similarly, I was a little troubled by Ms Braun's submissions at pages -- page 73, lines 5
11 to 8. I thought we had conducted these proceedings with a degree of collegiate
12 respect and I would expect counsel to respect the fact that if I said I had a meeting
13 with the president of Uganda and he told me certain things, that that would be
14 expected -- or that that would be accepted. As it happens, Mr Gosnell was there
15 with me too. I could happily put him on the witness stand if that was seriously
16 contested.

17 One submission only: The elephant in the room is this has to stop somewhere, and it
18 doesn't matter whether you call it a stay or an adjournment or some other order of the
19 Court. Without an accused, this case is at a dead end. And, in the circumstances,
20 given that it has to stop somewhere, a stay prior to the issue of a decision is not
21 drastic as all.

22 And that's all I wish to say.

23 PRESIDING JUDGE ALEXIS-WINDSOR: [15:24:24] Thank you very much,
24 Mr Haynes.

25 All right. We had anticipated that this confirmation of charges hearing would have

1 ended tomorrow, but it has ended today. So this brings us to the end of the
2 confirmation of charges hearing.

3 The Chamber will issue its decision accordingly within the set time frame.

4 Before closing, I would like to thank -- in fact, we would like to thank the parties and
5 participants. The submissions were useful, often heartfelt by all the parties and
6 participants. And we would also like to thank the interpreters, the court officers, the
7 technicians, the security officers, all of the representatives of the Registry for their
8 professional cooperation.

9 And last, but not least, we would like to thank the members of the public who were
10 interested enough to stay here and listen on to the proceedings for two days.

11 And if there is nothing else, then this hearing is at an end today. Very well, then.

12 Good day to all.

13 THE COURT USHER: [15:26:02] All rise.

14 (The hearing ends in open session at 3.26 p.m.)