

Confirmation of Charges

(Open Session)

ICC-02/04-01/15

1 International Criminal Court

2 Pre-Trial Chamber II - Courtroom 1

3 Situation: Republic of Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Presiding Judge Cuno Tarfusser, Judge Chang-ho Chung

6 and Judge Marc Perrin de Brichambaut

7 Confirmation of Charges

8 Thursday, 21 January 2016

9 (The hearing starts in open session at 9.31 a.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE TARFUSSER: Good morning to everybody in the Court and the
14 public gallery.

15 First of all, I would like to ask the court officer to call the case.

16 THE COURT OFFICER: Good morning. Yes, Mr President.

17 The situation in Uganda, in the case of The Prosecutor versus Dominic Ongwen, case
18 reference ICC-02/04-01/15.

19 And for the record, we are in open session.

20 PRESIDING JUDGE TARFUSSER: Thank you very much, court officer.

21 Before starting, I would ask the teams, the parties and the participants to introduce
22 their teams, starting with the Prosecutor, Office of the Prosecutor.

23 Please, Mr Gumpert, you have the floor.

24 MR GUMPERT: May it please you, Mr President, your Honours. My name is Ben
25 Gumpert and I am lead counsel for the Prosecution in the case of the Prosecutor and

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1 Dominic Ongwen. With me in Court today, Adesola Adeboyejo, deputy team leader,

2 Julian Elderfield, Pubudu Sachithanandan, Kamran Choudhry, Harry Cheng,

3 Michaela Wagner and Hai Do Duc. Thank you.

4 PRESIDING JUDGE TARFUSSER: Thank you very much.

5 MR GUMPERT: My apologies. There's a case manager as well, last but certainly

6 not least, Ramu Bittaye.

7 PRESIDING JUDGE TARFUSSER: Thank you very much. I would now turn to the

8 Defence of Mr Ongwen. Please, could you introduce yourself and the team.

9 MR ODONGO: May it please, your Lordships. Mr President, I am Krispus Ayena

10 Odongo. I'm lead counsel for Dominic Ongwen. I'm being assisted by Mr Thomas

11 Obhof and Michelle Oliel, assistant counsel. And in court with me, I have two case

12 managers, I have Abigail Bridgman and Roy Titus Odongo Ayena. And in court,

13 your Lordships, I have my client, our client, Dominic Ongwen. Thank you.

14 PRESIDING JUDGE TARFUSSER: Thank you.

15 And now I would invite the Legal Representatives. I will start with Mr Cox.

16 MR COX: May it please the Court, my name is Francisco Cox, I represent 1434

17 victims. My colleague and friend Joseph Manoba is missing because he had some

18 visa problems, but we are hoping he will be able to join us tomorrow probably.

19 With me is Sepideh Tabatabaei and Megan Hirst. Thank you.

20 PRESIDING JUDGE TARFUSSER: Thank you very much. Last but not least Legal

21 Representative of Victims, Ms Massidda, please.

22 MS MASSIDDA: Good morning, Mr President, your Honours. The Office of Public

23 Counsel for Victims is appearing today for the victims who have not appointed a

24 legal representative. In court with me today, to my left, Ms Jane Adong, counsel

25 based in Kampala; to my right, Mr Orchlon Narantsetseg, legal officer; behind us,

1 Mr Juan Pablo Perez Acevedo, legal consultant; Ms Tamara Margitic, case manager;
2 and I am Paolina Massidda, principal counsel.

3 PRESIDING JUDGE TARFUSSER: Thank you very much.

4 Now I just want to introduce the team of the Chamber. We have the legal adviser,
5 Mr Gilbert Bitti, the associate legal officers Silvestro Stazzone, Simon Grabovec and
6 Sarah Raveling.

7 So this is for the record. Now we pass to the official part of this hearing.

8 There is hearing of the confirmation of charges brought by the Prosecutor against
9 Dominic Ongwen. The purpose is for the parties and for the participants to make
10 their submissions on the question whether there is or there is not sufficient evidence
11 to establish substantial grounds to believe that Dominic Ongwen committed each of
12 the crimes with which he is charged by the Prosecutor and accordingly must be
13 committed, or not, or partly to a Trial Chamber for trial on those charges.

14 At this point I would like to make a brief summary of the proceedings that led this
15 case to today.

16 A warrant of arrest of Dominic Ongwen was issued by Pre-Trial Chamber upon
17 request of the Prosecutor on 8 July 2005. This is filing number 6 in the record of the
18 case.

19 Dominic Ongwen was surrendered to the Court in January 2015, one year ago, and
20 made his initial appearance before the Pre-Trial Chamber on 26 January 2015.

21 Under the supervision of the Single Judge, the process of disclosure of evidence
22 between the parties and a number of other procedural activities took place between
23 February 2015 and December 2015.

24 In advance of today's commencement of the confirmation hearing, the Prosecutor on
25 21 December 2015 filed the Document Containing the Charges which indicates the

1 material facts and circumstances and their legal characterisation composing the
2 charges against Dominic Ongwen. I'm referring to filing 375 annex A.
3 The Prosecutor filed also the pre-confirmation brief pursuant to Rule 121(9) in which
4 he sets out what -- she sets out what she considers to be the elements of the crimes
5 charged and how in her view the available evidence satisfies them. This is the same
6 filing annex C.
7 And always on 21 December, the Prosecutor filed the list of evidence on which she
8 relies for the purposes of the confirmation of charges hearing which was then
9 complemented on 22 December 2015. And this filing is 378 confidential annex A.
10 The Defence filed the list of evidence on which it relies for the confirmation hearing
11 on 6 January 2016 adding then one item of evidence on 13 January 2016 when it
12 was -- when it filed its revised list as authorised by the Single Judge. I'm referring to
13 filing 398 confidential annex A.
14 Last Monday, 18 January 2016 the Defence filed its brief in advance of the
15 confirmation of charges pursuant to Rule 121(9) of the Rules. And this is filing 404.
16 The Defence attaches to this filing, as annex B and C, two items of material on which
17 it relies in support of its submissions.
18 However, since this material was not disclosed and included in the Defence list of
19 evidence within the relevant limit, the Chamber will not consider it for the purpose of
20 the confirmation of charges as Rule 121(8) of the Rules in conjunction with Article
21 61(6) of the Statute and Rule 121(5) equally applies to open source material.
22 Finally, I recall that in the course of the proceedings 2026 victims have been admitted
23 to participate in the case.
24 Joseph Manoba and Francisco Cox have been chosen as legal representatives by 1434
25 victims. Paolina Massidda has been chosen by the Court as common legal

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1 representative within the meaning of Rule 90 of the Rules for the remaining 592
2 victims.

3 Mr Manoba and Mr Cox on behalf of their victims, the victims they represent, filed on
4 Monday, 18 January their pre-confirmation brief under Rule 121(9) as authorised by
5 the Single Judge. Decision number 350 of 27 November 2015.

6 This is a brief summary of the proceedings from the moment Mr Ongwen was
7 surrendered up to today.

8 Now in accordance with Rule 122(1) of the Rules, I should now ask the court officer to
9 read out the charges as presented by the Prosecutor. However, as there are 70
10 charges brought by the Prosecutor against Dominic Ongwen, the Document
11 Containing the Charges is long and amounts to almost 60 pages, reading it out now
12 would take a significant amount of time, at least a couple of days I would say, I
13 therefore ask if there is any objection from the parties to skip this procedural step, and
14 in particular, I ask the Defence of Dominic Ongwen and Dominic Ongwen himself
15 whether he waives his right to have the charges read out orally to him.

16 I note in this respect that a translation into Acholi, the language Mr Ongwen has
17 declared to fully understand and speak, of the Document Containing the Charges was
18 filed in the record of the case - it is annex B to filing 375 - which in accordance with
19 Regulation 31(3) of the Regulations must have been notified to Dominic Ongwen by
20 way of personal service and therefore he should be perfectly aware of what he is
21 accused of.

22 So I would like to give the floor first to the Defence and then personally to Dominic
23 Ongwen asking them to respond to the question if they waive the right to have it read
24 out integrally.

25 Please, Defence of the suspect has the floor.

1 MR ODONGO: Mr President, considering the amount of time this is likely to take
2 and the fact that we have the full content of the charges, we have no objection to
3 waiving the necessity to have it read out. Thank you.

4 PRESIDING JUDGE TARFUSSER: Thank you very much. This is very helpful.
5 And I'd now ask Mr Ongwen if he is fully aware of the charges the Prosecutor
6 presented against him and if he was notified the charges in the language he fully
7 understands and speaks, meaning Acholi.

8 Mr Ongwen, you have the floor.

9 MR ONGWEN: (Interpretation) Thank you, your Honour. Well, from my point
10 of view, whether the charges are read or not read is all going to be a waste of time.
11 You may speak five words and only two issues are correct. You may speak ten
12 words and only two things are correct. The reading out these charges, whether they
13 are true or not, is all going to be a waste of time. I've been handed out the document
14 translated in Acholi, so I've read and understood it. Thank you.

15 PRESIDING JUDGE TARFUSSER: Thank you very much, Mr Ongwen.
16 Nonetheless, as the reading out of the charges in open session is not only in the
17 interest of the suspect but also allows the general public to be able to follow the
18 confirmation hearing, I will just summarise that in this case the Prosecutor brings
19 against Dominic Ongwen 70 charges.

20 In particular, charge 1 to charge 10 concerns crimes in relation to the tack on Pajule's
21 IDP, internally displaced person, camp on or about 10 October 2003.

22 Charges 11 to 23 concern crimes in relation to the attack on Odek IDP camp on or
23 about 29 April 2004.

24 Charges 24 to 36 concern crimes committed as part of the attack on Lukodi IDP camp
25 on or about 19 May 2004.

1 And charges 37 to 49 concern crimes in relation to the attack on Abok IDP camp on or
2 about 8 June 2004.

3 The crimes charged as part of these attacks are the following: Attacks against
4 civilian population as such as a war crime; murder as a crime against humanity and
5 as a war crime; attempted murder as a crime against humanity and as a war crime;
6 torture as a crime against humanity and as a war crime; cruel treatment as a war
7 crime; other inhumane acts as a crime against humanity; enslavement as a crime
8 against humanity; outrages upon personal dignity as a war crime; pillaging as a war
9 crime; destruction of property as a war crime; and persecution on political grounds as
10 a crime against humanity.

11 Charges 61 to 68 concern sexual and gender based crimes committed from at least
12 1 July 2002 until 31 December 2005. These are the crimes of forced marriage as
13 inhumane acts as a crime against humanity; torture as a crime against humanity and
14 as a war crime; rape as a crime against humanity and as a war crime; sexual slavery as
15 a crime against humanity and as a war crime; enslavement as a crime against
16 humanity.

17 Finally, charges 69 to 70 are respectively for conscription of children under the age of
18 15 into an armed group; and use of children under age of 15 to participate actively in
19 hostilities as war crimes committed between 1 July 2002 and 31 December 2005 in
20 northern Uganda.

21 Maybe you have noticed that I skipped the charges from 50 to 60. This is because
22 these charges have been presented by the Prosecutor on a confidential basis.

23 In filing number 381 confidential of 26 November 2015, the Prosecutor submits that
24 this is a protective measure required under Article 68 of the Statute and Rule 87 of the
25 Rules of Procedure and Evidence.

1 The Defence responded in filing 386 confidential on 4 January 2016, submitting that it
2 does not object to keeping these charges confidential for the purposes of the
3 confirmation of charges but that should the charges, and I was referring to the charges
4 from 50 to 60 of the Document Containing the Charges, should these charges be
5 confirmed, it will argue that the continuation of this protective measure would violate
6 Dominic Ongwen's right to a fair and public trial.

7 The Chamber, who has the ultimate responsibility on security issues and protective
8 measures agrees on the security assessment of the Prosecutor and accordingly has
9 accept the filing of a public version of the Document Containing the Charges wherein
10 all references to the charges from 50 to 60 have been redacted.

11 It also accepts that the submissions of the parties and participants at this hearing
12 concerning these charges from 50 to 60 be made in closed session. This is to avoid
13 any possible risk that would be unwarranted at this stage in which it is yet to be
14 determined whether there will be a trial on these charges or not.

15 However, I inform you already that should the Chamber decide to confirm charges
16 from 50 to 60, it will be the Chamber itself in its decision under Article 61(7) of the
17 Statute to make public these charges either in their entirety or with the appropriate
18 redactions to the identity of the concerned individuals, but this is a decision we take
19 as a Chamber and upon hearing the parties on this matter.

20 Now, in accordance with Rule 122(3) of the rules, I should now ask the Prosecutor
21 and the Defence whether they intend to raise objections or make observations
22 concerning an issue related to the proper conduct of the proceedings prior to the
23 confirmation hearing. This is particularly important given that in accordance with
24 Rule 122(4) also read in conjunction with Rule 134(2) of the Rules, no procedural
25 matter concerning the pretrial proceedings up until now may be raised in any

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1 subsequent point, whether at confirmation or at trial if the parties choose not to do it
2 now before the confirmation hearing on the merits it opened. Of course, this
3 includes any issue concerning alleged defects in the formulation by the Prosecutor of
4 the charges against Dominic Ongwen in the sense of formal challenges to the charges
5 on the part of the Defence, which do not touch upon their merits and do not require
6 consideration of evidence.

7 We have already been informed, I mean the Chamber has already been informed that
8 neither the Prosecutor nor the Defence intends to raise any procedural matter. I just
9 want the record to reflect this also concerning what I just said about the preclusive
10 effect of the matter being raised at any subsequent point. So I will give the floor to
11 the Prosecutor and the Defence in order to confirm or not. I hope they confirm their
12 commitment not to raise any questions.

13 MR GUMPERT: We acknowledged the preclusive effect. We have no observations
14 and no objections. That's for the Prosecution.

15 PRESIDING JUDGE TARFUSSER: Thank you very much.
16 The Defence?

17 MR ODONGO: My Lord, we speak with the same spirit. We have no observations
18 and shall have no objections, your Honour.

19 PRESIDING JUDGE TARFUSSER: Thank you very much. I'm very grateful to you
20 because this means also that the Chamber, together with the parties, did a good job
21 I would like to emphasise.

22 At this point, we can start with the presentations of the case from the parties and
23 participants.

24 Also here, just to summarise briefly, the Prosecutor requested eight hours;

25 Mr Manoba and Mr Cox about two hours and 30 minutes; Ms Paolina Massidda two

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1 hours, maybe less; and the Defence, from 4 to 6 hours.

2 We have a schedule: We will hear the submissions in this order in the next days

3 until the last day of the hearing, which is next Wednesday, but there is no problem if

4 it ends before, but I think it will not -- in the same order, the final observations under

5 Rule 122(8) of the Rules from the parties and participants.

6 So if there is no other matter to be raised, as I think, I give the floor to the Prosecutor

7 for the introduction of the case.

8 Mr Prosecutor, you have the floor.

9 MR GUMPERT: Thank you, Mr President.

10 I'm going to speak for about an hour now, and I would then be succeeded by other

11 members of the team. That may take me fractionally over the projected break at

12 10.30. I'd ask the Court to permit me to finish these remarks, these submissions.

13 PRESIDING JUDGE TARFUSSER: Because it's 11.

14 MR GUMPERT: It's 11. In that case, I've miscalculated. I'm grateful. But it's still

15 an hour. I've simply misspoken the time. I would ask the Court to permit me to

16 finish and take the break when that occurs.

17 PRESIDING JUDGE TARFUSSER: But if we have an hour and you speak an hour, it

18 should quite be perfectly --

19 MR GUMPERT: More or less.

20 PRESIDING JUDGE TARFUSSER: Okay. Okay.

21 MR GUMPERT: For well over a decade until his arrest in January 2015, Dominic

22 Ongwen was one of the most senior commanders in the Lord's Resistance Army, the

23 LRA.

24 The LRA is an armed group. It came into being in northern Uganda in the late 1980s.

25 It aimed to overthrow the government of Yoweri Museveni; then, as now, the

1 president of Uganda.

2 The Prosecution's allegations against Dominic Ongwen concern his conduct between
3 July 2002 and December 2005. During that period there was regular combat between
4 LRA fighters and Ugandan government troops. But this was not just a civil war
5 between people in uniform.

6 Far from restricting itself to attacks on Ugandan armed forces or other branches of the
7 authorities, the LRA attacked ordinary civilian citizens who wanted no more than to
8 be allowed to live their lives in peace. It ambushed civilian vehicles driving along
9 the roads. It attacked and burnt the camps into which villages had been forced as a
10 protection measure because of earlier attacks. It looted the food, clothes and other
11 basic necessities which its victims needed to survive. It killed and wounded
12 innocent people who had no interest in the violent power struggle the LRA was
13 engaged in. It enslaved the survivors to carry away the loot and to serve as child
14 soldiers and sex slaves.

15 Many of the crimes alleged against Dominic Ongwen were committed between
16 October 2003 and June 2004 as part of a series of attacks on camps in northern Uganda.
17 The Prosecution case is that these camps were targeted because the LRA viewed the
18 civilian inhabitants of northern Uganda as their enemies. In truth, the LRA thinking
19 was very simple. It was a case of "if you're not for us, then you're against us." Any
20 civilian who was unwilling to support their struggle against the government was to
21 be regarded as an enemy, and it was the LRA's policy to kill its enemies.

22 A formal report provided to the Prosecution by the Ugandan army details attacks on
23 the civilian population between July 2002 and August 2004. That's just part of the
24 time period covered by the offences of which the Prosecution is providing evidence to
25 this Chamber. But in this time alone, in just ten northern districts of Uganda, 712

1 separate attacks on civilian targets are recorded. These were persecutory attacks,
2 and they had a devastating effect upon the ordinary people of northern Uganda.
3 In the course of this hearing the Chamber will receive detailed accounts of four
4 separate attacks in which Dominic Ongwen was intimately involved. He bears
5 significant criminal responsibility for the attacks in 2003 and 2004 on civilian
6 displaced person camps at Pajule, Odek, Lukodi and Abok. These were terrifying
7 attacks. Large numbers of the civilian inhabitants of these camps lost their lives In
8 what were often indiscriminate acts of murder. Some were tortured in various cruel
9 ways. Hundreds of them were abducted and forced to carry away the loot. And if
10 they couldn't walk fast enough they were beaten and killed.
11 Nursing mothers whose babies slowed up the progress or who simply cried too
12 loudly, saw them killed or thrown into the bush and left behind.
13 A decade or more ago when these attacks occurred, the use of camera phones was still
14 in its infancy, particularly in locations such as these camps. The Prosecution is not
15 aware of any video footage taken during the attacks themselves, but the Prosecution
16 is in possession of video images taken by the Ugandan authorities shortly after the
17 attack on Lukodi in May 2004. It's helpful to appreciate fully the ferocity of these
18 attacks to view some part of this footage. I have to warn that the subject matter
19 involves images of dead bodies and other disturbing material, but I want to play a
20 short extract of that video now. It should be appearing on the screens, but is not.
21 We have it now.

22 (Playing of the video excerpt)

23 MR GUMPERT: The huts in which the inhabitants lived were thatched with grass,
24 and they were set ablaze. This is an example of a hut in which the civilian
25 inhabitants lived at the time of the attack after it was burnt.

1 During the course of the Ugandan investigation, victims of the attack were disinterred.
2 And you can see, with the identities obscured, the bodies of some of those victims
3 here in the graves in which they were hastily buried. Victims were young and old.
4 There was no discrimination.
5 In addition to the attacks on the camps, the Prosecution allege that Dominic Ongwen
6 played an essential role in two long-term operations which were crucial to the
7 continued existence of the LRA. Both plans involved the abduction of children,
8 some as young as six years old abducted from their family homes.
9 Each of these two plans used abduction for different aims. One plan was aimed at
10 sustaining the fighting strength of the LRA. Young civilians were kidnapped and
11 recruited to become child soldiers.
12 Child soldiers underwent rudimentary military training and they endured brutal
13 disciplinary measures. They were regularly required to participate not only in the
14 murderous attacks on civilian camps, but in the individual acts of torture and murder
15 designed to convince recently abducted children that they were so steeped in blood
16 that there could be no acceptance for them back in civilian society.
17 It wasn't just young boys who were conscripted and used as child soldiers. One of
18 the four individuals on whom the Prosecution rely to provide firsthand accounts of
19 their experience as child soldiers was a girl aged about 10 when she was abducted on
20 her way to school in June 2003. She joined the unit commanded by Dominic
21 Ongwen a few months later. He personally trained this girl and many other child
22 soldiers, some even younger than her, in how to use their guns.
23 This witness describes in detail the work which she carried out: It was the work of
24 abducting and killing defenceless civilians.
25 The LRA leader Joseph Kony viewed children as the most easily moulded into the

1 ruthless fighters that he needed to continue his policy of murder and persecution.

2 Thus Kony and other senior LRA commanders, Dominic Ongwen among them,
3 created the horrific spectacle of the perpetrators of these dreadful crimes, very often
4 being children who had a few years, perhaps just months earlier themselves been
5 victims.

6 Abductions by the LRA also served a different aim. There was a second plan also
7 involving abduction but this time of girls and young women with the express aim of
8 forcing them to act as wives of LRA commanders and fighters.

9 These forced wives were given no choice in the matter. When they hesitated or
10 refused to accept the sexual advances of the man to whom they had allotted, they
11 were savagely and repeatedly beaten. If they were suspected of trying to escape
12 they would be beaten or murdered.

13 They were held for months, in many cases years in sexual and domestic slavery
14 performing household chores and subject to repeated rape. Many of them became
15 pregnant without any choice in the matter, and some gave birth to numerous children
16 who were themselves then ingested into the ranks of the LRA.

17 Not only was the physical effect upon such girls and women devastating, but there
18 were long-lived mental effects as well.

19 For those who survived, even after their escape or release, they had to live -- they still
20 have to live with the stigma of being an LRA wife, a perversion of the true meaning of
21 that word. Their future hopes of reestablishing themselves in society, of creating
22 new conjugal relationships, despite the efforts of a number of organisations which
23 work to assist and empower them, are blighted.

24 And there's a whole category of other victims: The children born in captivity
25 resulting from these forced marriages, who sometimes face hostility and taunts as a

1 result of their parentage.

2 Your Honours, over the next eight hours or so of court time the Prosecution will

3 summarise the evidence which supports each of the charges against Dominic Ongwen.

4 Presentations will be made by different members of the Prosecution team. And the

5 presentations will be thematic. The Chamber will hear in sequence about the

6 charges and, in particular, the evidence of the contextual elements of those charges,

7 the contextual elements of war crimes and crimes against humanity.

8 Then the Chamber will hear about the rich fund of evidence constituted by LRA radio

9 communications which were intercepted and recorded in various ways by the

10 Ugandan authorities.

11 After that, the Chamber will hear submissions on the structure of the LRA, the

12 elements of the various modes of liability by which we say Dominic Ongwen incurs

13 responsibility for these crimes, such as participation in a common plan, or ordering,

14 or command responsibility.

15 Then the Chamber will hear submissions about the crime of persecution, the attack on

16 Pajule, the attack on Odek, the attack on Lukodi and the attack on Abok in the

17 sequence in which those attacks occurred. There will then be submissions on sexual

18 and gender-based crimes and, finally, on the conscription and use of child soldiers.

19 In other words, the presentations will broadly follow the sequence of charges in the

20 Document Containing the Charges.

21 The witnesses to these crimes will not be called to give evidence at this confirmation

22 hearing. In order not to compel them to relive the experiences that they went

23 through more often than is necessary, the Prosecution relies on their written accounts

24 or upon the transcripts of questioning undertaken at an earlier stage. If the case

25 against Dominic Ongwen is committed by this Chamber for trial, then many of them

1 will come forward to testify at the trial, although in some cases the Prosecution may
2 seek to invoke protective measures to withhold their identities from the public gaze.
3 At this hearing, rather than refer to the witnesses by name, the parties will use
4 pseudonyms in the form of numbers, by which the witnesses can be distinguished the
5 one from the other.

6 I want to say a word about the charges. As your Honours observed there are 70
7 separate crimes set out the Document Containing the Charges. There are three
8 reasons why there are so many.

9 The first reason is that within the relatively short span of two and a half years,
10 Dominic Ongwen can be shown to be responsible for a large number of grave crimes
11 committed in various locations and in various ways. The Prosecution has had to be
12 selective, but at the same time we have attempted to ensure that the Chamber is
13 presented with a representative sample of those crimes. Some of them were
14 committed in the course of an attack on a single day. Others, such as the sexual
15 offences and the child soldier offences are continuing crimes spanning months and
16 years.

17 Further, in the interests of clarity, the Prosecution has not lumped together in a single
18 count all the wrongdoing of a particular type. Rather -- for example, rather than
19 alleging a single crime of persecution, comprehending all of the behaviour
20 constituting that crime at the four different camps, the Prosecution has charged that
21 crime separately for each attack and that will enable the Chamber to come to separate
22 conclusions as to whether there are substantial grounds to believe that the crime of
23 persecution was committed at each of the four separate locations.

24 The second reason is that often the same wrongdoing amounts to both a war crime
25 and to a crime against humanity. In order accurately to reflect what took place

1 many of the charges are thus effectively twinned. The document contains -- the
2 Document Containing the Charges has 36 such twinned charges. For example,
3 counts number 2 and 3 -- I pause for them to appear on your screens. Thank you.
4 Counts numbers 2 and 3 both charge Dominic Ongwen with murder committed at the
5 Pajule IDP camp in October 2003. Count 2 a crime against humanity. Count 3 a
6 war crime.
7 The contextual ingredients of these offences, that is to say the matters which the
8 Prosecution must prove about the circumstances in which the wrongdoing was
9 committed, are of course quite separate. And I'll deal with them in detail in just a
10 moment. For the present explanation, it's sufficient to say there are substantial
11 grounds to believe that the murders committed at the Pajule can be regarded as both
12 crimes against humanity and war crimes.
13 The third reason is well illustrated by counts 16, 17, 18 and 19. They're on your
14 screens now.
15 These four counts constitute offences of torture as a crime against humanity, torture
16 as a war crime, cruel treatment and inhumane acts committed during the attack at
17 Odek IDP camp in April 2004. Effectively the physical element constituting these
18 four crimes is the same. It's the physical and mental violence to which the civilian
19 inhabitants of that camp were subjected while they were in custody of the LRA and
20 the injury, pain and suffering which that violence caused. They were beaten,
21 threatened with death, sexually assaulted, forced to carry unbearably heavy loads for
22 long distances and beaten if they walked too slowly or if their children cried.
23 This torture was inflicted, in part, to punish the surviving civilian population of the
24 camp. But while the physical acts are substantially the same, the legal elements of
25 each of these offences are different. This cumulative charging of the same

1 wrongdoing is, the Prosecution say, not only permitted but appropriate at this stage
2 of the proceedings. Because where, as here, there are substantial grounds to believe
3 that each of the crimes is made out, they should all be confirmed. And it will be for
4 the Trial Chamber, the Prosecution submits, rather than this Pre-Trial Chamber, to
5 evaluate which, if any, of these charges might eventually be discarded and which best
6 fits the evidence which that Chamber hears.

7 And it's perhaps self-evident that following the full hearing of evidence, examined,
8 cross-examined, subject to questions from the Bench, that that Chamber will be best
9 placed to resolve questions of concurrence of offences charge.

10 Your Honours, I want to turn from technical matters now to Dominic Ongwen
11 himself. He went by various names. Some called him Wanyama or Wai Wai for
12 short. His radio call sign was Tem Wek Ibong. But most frequently Dominic
13 Ongwen went by the nickname Odomi. Odomi was the tip of the spear for the LRA.
14 During one of the attacks at Pajule in October 2003 he was personally involved as a
15 high ranking officer in the crimes committed. Witnesses saw him leading one group
16 of the attackers and directing their activities. Later he became the commander of the
17 four fighting brigades which carried out such attacks: this was the Sinia brigade.
18 Dominic Ongwen had operational control, through his subordinates officers, of the
19 three battalions in that brigade. He planned attacks, and ambushes, he gave orders
20 about which fighters and which equipment should be used, he gave instructions for
21 the killing of civilians, for the abduction of children, for the conscription of child
22 soldiers and for the looting and destruction of property. Within the Sinia brigade, he
23 presided over the system of forced marriage, rape and sexual slavery which the LRA
24 inflicted upon the young girls that it abducted.

25 The tragedy of this case, the counterpoint to the narrative of repeated violent

1 atrocities, is the fact that not only was Dominic Ongwen the perpetrator of these
2 crimes, he was also a victim. He himself, so he has told this Court, was abducted
3 from his home by an earlier generation of LRA fighters, when he was 14 years old.
4 He himself, therefore, must have gone through the trauma of separation from his
5 family, brutalisation by his captors and initiation into the violence of the LRA way of
6 life.

7 It may, therefore, be as much in sorrow as in anger that some of the accusations that
8 the Prosecution brings against Dominic Ongwen are heard. We recognize that there
9 may be thought to be something of a paradox in the fact that the stories told by so
10 many of the witnesses in this case could in other circumstances be the story of
11 Dominic Ongwen himself. The accounts given by some of the witnesses whose
12 accounts are before the Court record individual acts of kindness on his part.

13 Witnesses who were close to him recall that he could be approachable and
14 considerate, but other witnesses tell of how he instructed his personal escorts to admit
15 dreadful beatings and how he forced recent abductees to participate in the bloody
16 killings of innocent people or even on at least one occasion to kill, cook and eat
17 civilians who had been abducted in attacks.

18 In truth, there is no paradox. The individual who displays 100 percent consistency is
19 a rare specimen indeed: Good men can do bad things and bad men can do good
20 things. The phenomenon of the perpetrator victim is not restricted to international
21 courts such as this one. It's familiar in all criminal jurisdictions. Drug dealers
22 rarely boast serene untroubled childhoods; child abusers are overwhelmingly likely to
23 have been abused themselves as children. But this is no reason to expect that crimes
24 can be committed with impunity. The Prosecution case is that each human being
25 must be taken to be endowed with moral responsibility for their actions. We have a

1 choice as to how we behave. And when that choice is to kill, to rape and to enslave,
2 we must expect to be held to account.

3 Dominic Ongwen became one of the highest ranking commanders of the LRA. He
4 did so by his enthusiastic adoption of the LRA's violent methods and through
5 demonstrations that he could be more active and more brutal in his methods against
6 the population of northern Uganda than other LRA officers. LRA radio
7 communications which were intercepted by Ugandan army, and which are available
8 to this Chamber, record instances of Dominic Ongwen being commended by Joseph
9 Kony for the attacks his troops carried out on civilians. He was held up an example
10 to other less active LRA commanders.

11 As a senior commander at battalion or brigade level Dominic Ongwen had complete
12 operational control over the soldiers under his command. He was often separated
13 by several days' or weeks' march from any higher LRA authority. He could at any
14 time simply have ordered that his troops march to the nearest Ugandan army
15 barracks, lay down their arms and surrender. And, your Honours, that possibility
16 arose. I want to read to your Honours an entry from the Ugandan security
17 organisation logbook which was maintained by radio officers who were intercepting
18 LRA radio communications.

19 This is the 1 August. It's less than 2 months after the attack at Abok IDP camp.
20 And what the intercepting officer wrote is this: "Dominic" - and that name is used
21 exclusively to refer to Dominic Ongwen in these logbooks - "Dominic asked Abudema
22 a more senior LRA commander if he heard what was reported on the radio about
23 himself. Abudema said where he is is far and he couldn't pick Mega FM radio."
24 That was a local radio station in Gulu in the north of Uganda.

25 "Dominic said Mega FM reported that he" - that's Dominic - "assembled all his

1 soldiers and briefed them that their war against the government is now useless so
2 everybody should get a way of returning back home. He claimed" - Dominic - "that
3 this came about because one of his soldiers rang Lukambi," which must I think be a
4 person at the radio station, "and deceived him that he was Dominic speaking with all
5 these false information."
6 Dominic went on to say, "When people heard that information very many rang him
7 thanking him for the wise decision he's come up with, that they all said he should
8 bring home all the people he has."
9 Dominic went on to say, "He will not make any single mistake of reporting to the
10 government." This was Dominic Ongwen's true state of mind. He said, "Now that
11 people are happy with what they heard over Mega FM, he will shock them by starting
12 to kill civilians seriously." He said, did Dominic, "Right now he has already
13 deployed squads for atrocities and very soon people will hear it on the road."
14 So that was Dominic Ongwen's response to the possibility that he might order his
15 troops to lay down their arms and go home.
16 Of course another possibility would have been to take action that so many of the
17 personnel under his control took and to make an individual bid for freedom by
18 simply deserting. The Chamber has access to the accounts of many LRA fighters
19 who took precisely that course.
20 After all, as the commander of Sinia brigade, he didn't have to fear his own savage
21 retribution: the brutal canings or peremptory execution which he himself ordered for
22 unsuccessful escapees. Indeed there is ample evidence that he had the opportunity
23 to escape even to the point at one stage of going so far as to change into civilian
24 clothes to return home. But he didn't take that course either. And perhaps lastly
25 and most simply, he could have decided that he would be happy in the mid-ranks of

1 the LRA doing the minimum possible in the course of its campaign as so many of his
2 fellow officers did.

3 But in the end Dominic Ongwen took none of these alternative courses. Instead he
4 accepted the power and authority which came with his rank and his appointment.

5 He planned and executed murderous operations which brought misery to thousands.

6 He reported the results of those attacks on the radio with excitement rather than any
7 sense of regret. Dominic Ongwen's own personal conduct to victims abducted in the
8 course of LRA raids was violent and sometimes merciless.

9 The circumstances in which he himself was abducted and conscripted into the LRA
10 may amount to some mitigation of sentence in the event that he's convicted of these
11 crimes, but they cannot begin to amount to a Defence or a reason not to hold him to
12 account.

13 I want to turn now to the contextual elements of the crimes with which Dominic
14 Ongwen is charged. And I mean by that the circumstances in which individual
15 offences of, say, murder or rape were committed. The circumstances which permit
16 that conduct to be characterised not just as a crime against Ugandan domestic law,
17 but as a crime against humanity or a war crime, subject to the jurisdiction of this
18 Court.

19 Thirty-six offences are charged as war crimes. To prove these offences the
20 Prosecution has, at this stage, to establish substantial grounds to believe that they
21 took place in the context of, and were associated with, a non-international armed
22 conflict.

23 What's a non-international arm conflict? The Prosecution suggests the law is settled
24 whenever there is protracted armed violence between governmental authorities and
25 organised armed groups, then there's a non-international armed conflict.

1 In northern Uganda at least between 1 July 2002 and 3 December 2005, there was
2 indeed protracted armed violence between the LRA on one side and the Ugandan
3 armed forces on the other. Both sides were organised.
4 It wasn't just the Ugandan army, the Uganda People's Defence Force, or UPDF, and
5 their associated local auxiliaries that were equipped and organised to carry out
6 prolonged operations. The LRA exhibited the same features. It had a headquarters
7 known as Control Altar. It had a formal structure of ranks. Its officers, and you
8 will see some images in just a moment, wore uniforms exhibiting rank badges
9 mimicking those of the regular army. There were frequent announcements of
10 transfers and promotions within a division and brigade structure which mirrored
11 those of a national army.
12 And the LRA was a disciplined body. There were rules that had to be followed.
13 Any departure from orders was liable to be severely punished. It had a
14 sophisticated communications facilities using radios and codes with specialised
15 communication officers responsible for that system. It possesses not only small arms,
16 but heavier weaponry, such as grenade launchers, mortars and machine guns. It
17 was capable of planning and executing operations involving hundreds of fighters in a
18 coordinated fashion as the frequent and organised attacks which form part of the
19 charges against Dominic Ongwen demonstrate.
20 I want to give the Chamber a flavor of the evidence which the Prosecution relies upon
21 to establish the existence of a protracted and continuous armed conflict between the
22 LRA and the Ugandan government forces.
23 Perhaps the most striking evidence comes from the mouth of Joseph Kony the
24 chairman of the LRA himself. And I'll just pause while the visual presentation
25 appears.

1 With a degree of bravado it might be thought both he and his deputy, a man called
2 Vincent Otti took part in a radio programme, a chat show, if you like. It was
3 broadcast on that same Mega FM radio station, the Gulu radio station, in
4 December 2002. Joseph Kony talked openly about the LRA's war with the
5 government of Uganda. He said that "those who are ambushed, shot and killed ...
6 should know that this is a war" and he vowed to "fight until I overthrow the
7 government of Museveni." Joseph Kony certainly thought that an armed conflict
8 was taking place.

9 Further evidence that an armed conflict was going on at the time of the charges
10 against Dominic Ongwen can be found in intercepted radio communications between
11 LRA commanders, the accounts of civilian witnesses who saw clashes and in accounts
12 of former LRA fighters. There's copious evidence on this score and what follows is a
13 selection in chronological order which focuses on Dominic Ongwen and the troops
14 under his command. A map showing the location of the various internally displaced
15 person camps in northern Uganda will help illustrate this evidence. Zooming in on
16 the district of Gulu on the left and Pader on the right, the yellow circles with blue tent
17 symbols mark the location of IDP camps, internally displaced person camps. You
18 can see there's a large number of them holding a very large number of people. The
19 map dates from 2009. That's long after the events with which the Chamber is
20 concerned, but the locations remain valid. Simply to forestall what might be an
21 obvious question the black dots mark locations where, by 2009, internally displaced
22 persons had returned to their home villages.

23 There were clashes between the LRA under Ongwen's command at Olung primary
24 school. At a camp at Patongo, at Ngora -- I'm sorry at Porogali and at Ngora.

25 There was the attack at Pajule in October 2003, one of the four attacks at the centre of

1 this case. That involved a lengthy exchange of fire between LRA attackers and the
2 government forces defending the camp.

3 There was combat between the LRA and Ugandan forces at Lira Palwo in March 2004.
4 And at each of the attacks at Odek, at Lukodi and at Abok, between April and
5 June 2004, there was fighting against government forces assigned to protect the
6 camps.

7 There was combat in 2005 at Koyo Lalogi and Binya. And one of junior officers in
8 Ongwen's brigade recalls other instances of combat in that year at Patongo, at Pader,
9 and at Lapul.

10 It was in the context of the continuous armed conflict at this time of which these are
11 just examples that the crimes alleged against Dominic Ongwen were committed. He
12 knew of the existence of the armed conflict. He can hardly of have done otherwise
13 because he and his men were in the thick of it. And he was constantly updating his
14 superiors and being updated in his turn about the progress of the fight by means of
15 LRA radio communications which took place several times a day throughout this
16 period.

17 Turning to crimes against humanity, 34 offences charged as such. To prove these
18 offences the Prosecution at this stage has to establish substantial grounds to believe
19 that they were committed as part of the widespread or systematic attack directed
20 against the civilian population of northern Ugandan.

21 PRESIDING JUDGE TARFUSSER: Just go ahead.

22 MR GUMPERT: I shall. Thank you, your Honour.

23 This attack was committed in furtherance of the organisational policy of the LRA the
24 Prosecution say. The evidence which the Chamber will hear about the persecutory
25 nature of the LRA's attacks on civilians shows the existence of one aspect of that

1 policy, namely to target civilians for their purported allegiance to the government.

2 The intercepted radio communications show that the attacks were systematically
3 carried out as part of a pattern of compliance with directions given by Joseph Kony to
4 his senior commanders.

5 On 7 May 2003 Kony was urging his commanders to "wage serious atrocities," so that
6 "the community blames the government."

7 In January 2004, the same source records Kony's instructions that the killing of
8 civilians, "from infant to old age," had to be carried out because, he suggested, it was
9 civilians who put pressure on the government to fight the LRA.

10 A significant element of the LRA policy and a significant objective in carrying out the
11 various attacks on the civilian population was the abduction of children to act as
12 soldiers and forced wives. Again the words of Joseph Kony himself and his deputy
13 Vincent Otti are a good starting point when seeking to establish the existence of this
14 aspect of LRA policy. Speaking on that same radio chat show to which I have
15 referred, Kony at first purported to deny the abduction of children by the LRA. But
16 when he was pressed he conceded "that's the way we recruit." And he continued:
17 "This is the same way Museveni was doing it when he was in the bush, by abducting."
18 Vincent Otti's words in the same programme were even more revealing. He said, "I
19 want to assure you that the girls whom we collect and send to the bush are our
20 mothers." He meant, of course, the people who would give birth to future LRA
21 fighters. And he went on to say "We always collect the young ones who are not
22 infected with HIV."

23 The only reasonable interpretation of these words is that they are an acknowledgment
24 that the LRA was implementing a policy of abducting young girls for sex.

25 The Prosecution case is that even if the four attacks at Pajule, Odek, Lukodi and Abok

1 stood alone they would, in themselves, constitute a widespread and a systematic
2 attack on the civilian population of northern Uganda. These four attacks are in
3 many different administrative districts. Their locations form a roughly equilateral
4 triangle. The sides are approximately 80 kilometres long. And you can see them on
5 your screen. The Prosecution say that the widespread nature of these four attacks
6 alone is self-evident.

7 Furthermore, these four attacks followed a pattern. Defending soldiers were
8 engaged, then the civilian population was attacked. Civilians were murdered and
9 gravely wounded, civilian stocks of foodstuffs, cooking utensils and other goods were
10 pillaged. Surviving members of the camp population were enslaved either
11 temporarily, to act as porters for the pillaged goods, or permanently to be used as
12 fighters child soldiers or domestic and sex slaves in the LRA. These were systematic
13 attacks.

14 But, of course, these four attacks do not stand alone. They were part of a series of
15 attacks on the civilian population. Between July 2002 and August 2004, the Ugandan
16 army recorded 51 attacks in Apac district, 164 attacks in Lira district, 88 attacks in
17 Pader district, 118 attacks in Gulu district, 126 attacks in Kitgum district, and 133
18 attacks in the combined districts of Soroti, Katakwi, Kaberamaido and Kotido.

19 When the Prosecution refer in broad terms to "northern Uganda," it is this area to
20 which the Prosecution is referring.

21 Turning to attacks about which the Prosecution has more direct evidence, once again,
22 intercepted LRA radio communications and the accounts of former LRA fighters who
23 have given statements to the Prosecution amply demonstrate the widespread nature
24 of the various components of the attack on the civilian population in northern
25 Uganda during the relevant time. Dominic Ongwen is implicated directly in many

1 of these attacks but in truth, for present purposes, that's incidental. The
2 Prosecution's purpose here is simply to demonstrate that there was an ongoing
3 widespread attack by the LRA as a whole on civilians in northern Uganda.
4 As we zoom in on the areas in particular of Gulu and Pader. The Prosecution has
5 presented evidence to this Court of attacks on civilians at Ojwii on Dominic Ongwen's
6 orders in 2002. And in July and August of that year, he was involved in an attack at
7 Mucwini. There were radio -- there are radio intercepts speaking of attacks in Oroko
8 and Pabbo between March and June 2003. In April 2003, Joseph Kony had been
9 complaining in radio exchanges with his senior commanders that the civilian
10 inhabitants of a camp at Lagile had become a problem. He didn't specify what the
11 problem was, but Dominic Ongwen came up with a solution for that problem: On
12 5 April he reported on that solution, he'd attacked that camp, he'd burnt the houses,
13 he'd killed 20 civilians and he'd abducted many others. He was criticized by Kony
14 for having engaged with Ugandan army forces rather than concentrating wholly on
15 attacking the civilians. And Dominic Ongwen defended his tactical choices by
16 saying that it was necessary to fight the soldiers as a preliminary to attacking the
17 civilians.
18 And there were attacks on civilians at Opit in September 2003, at Labwor Omor in
19 November 2003, at Koc Ongako in February 2004, and of course as I've said already in
20 May 2004 an attack on the IDP camp at Pagak.
21 In August of that year Dominic Ongwen reported the success of an ambush he'd
22 carried out on the Awach road. He recounted several people had been killed,
23 including a boda-boda or motorcycle taxi.
24 And there was an abduction mission at Acet which he had ordered and which
25 fighters under his command took part in.

1 There was no precise date from the Prosecution's witness who took part in that attack.
2 What he is precise about though is that Ongwen's orders were to abduct boys and
3 girls between the ages of 13 and 15.
4 The crimes with which Dominic Ongwen is charged were an integral part of this
5 attack on the civilian population. The offences committed at Pajule, at Odek, at
6 Lukodi, at Abok they're just well-evidenced selections from a large range of similar
7 attacks in which identical offences were being committed.
8 Dominic Ongwen's conscription and use of child soldiers and his essential part in the
9 scheme of abduction of girls so that sexual and gender based crimes could be
10 perpetrated were equally a part of this attack. Indeed they provided a considerable
11 degree of the motivation for it. Dominic Ongwen knew that his conduct was part of
12 this overall policy of attacking the civilian population. Of course he did. He was
13 among the foremost of the LRA commanders who carried that policy out.
14 I want to turn now lastly to make some submissions on counts 50 and 61. These two
15 counts charge the crime of forced marriage.
16 And the crime of forced marriage is not, in those words, contained within the Rome
17 Statute and it is for that reason that I make some brief submissions now about what
18 the Prosecution say is the nature of that offence and the reason for charging it in this
19 case.
20 There was a rule within the ranks of the LRA that there was to be no sex outside
21 marriage. LRA fighters who had sex with women who were not their wives risked
22 being punished or killed and the same applied to women having sex outside their
23 forced marriages. Of course for the men, for the men the severity of that rule was
24 mitigated by the fact that it was common particularly for LRA officers to have many
25 wives. There's evidence that Joseph Kony at one stage had 80 wives. Dominic

1 Ongwen himself is said to have had as many as 20.

2 Witnesses who describe the treatment of girls and young women following abduction

3 by the LRA give consistent and repeated evidence of a process whereby abductees

4 were assigned without any regard for their wishes to men usually much older than

5 them and forced to take them as their husbands. In truth the process of these forced

6 conjugal relations makes the use of words like "husband," "wife" and "marriage"

7 repugnant, but they're the words that were used by the protagonists at the time and

8 by the witnesses now and so an accommodation must be made.

9 Because of these strict LRA rules about sexual activity, forced marriages served as the

10 gateway for the subsequent sexual and gender based crimes which were perpetrated

11 upon abducted women and girls, crimes like rape, sexual slavery. And it's this

12 gateway feature and the element of exclusivity from the woman's point of view which

13 are absent from any of the other crimes charged and which merits the charging of

14 forced marriage as a separate crime.

15 Forced marriage irrevocably changed the status of its victims, both in the way they

16 perceived themselves and in how they were perceived by others. Women and girls

17 who were forcibly married to LRA fighters frequently continue to regard themselves

18 as wives to this day. For some of them this self-image comes freighted with mixed

19 emotions towards the man who forcibly married them. They are often burdened

20 with a residual regard, sometimes even affection, for the man who subjected them to

21 forced marriage as well as raping them and holding them in sexual slavery.

22 And no doubt that arises from the fact that over months or years of association their

23 husband's behaviour towards them wasn't always brutal and violent. And this is

24 particularly the case where he is the father of their children.

25 But other people within the society to which victims have returned following their

1 escape from the LRA also refer to these victims as LRA wives and they are frequently
2 regarded with suspicion and sadly sometimes with hostility in those communities.
3 As I say, forced marriage isn't designated as a distinct crime within the Rome Statute,
4 but Article 7(1)(k) criminalises any inhumane act of a character similar to the act set
5 out in the preceding articles. And those are things like, they include deportation,
6 severe deprivation of liberty and sexual violence. Now, in this respect the Rome
7 Statute mirrors Article 2 of the Statute of the Special Court for Sierra Leone.
8 The Appeals Chamber of the Special Court -- and, your Honours, I'm not going to go
9 to detailed references now. They're contained within the Prosecution's
10 pre-confirmation brief, they're well-familiar to the Bench, and I have a mind that I'm
11 speaking not only to your Honours but also to the public.
12 The Appeals Chamber of that court has held that an accused who by force, threat of
13 force, coercion or - and I lay emphasis on this alternative - taking advantage of
14 coercive circumstances, a person who causes one or more persons through those
15 means to serve as a conjugal partner, knowing that his actions are part of a
16 widespread or systematic attack against a civilian population and knowing that they
17 amount to the infliction of great suffering, serious injury to body or to mental or
18 physical health which is sufficiently similar in gravity to the crimes described in
19 Article 2 of the Statute, the enumerated crimes, that person is guilty of the offence of
20 forced marriage as an, and I quote, "other inhumane act." And that is what the
21 Prosecution say is the case in Dominic Ongwen's case.
22 There are, and I conclude now, two aspects of forced marriage that support its
23 existence as a separate crime appropriately placed within the category of other
24 inhumane acts rather than being subsumed into the crime of sexual slavery. The
25 elements of the offences are different indeed, the Prosecution submit, forced marriage

1 is not predominantly a sexual crime.

2 First aspect, unlike sexual slavery the perpetrator of forced marriage demands
3 conjugal and domestic duties of the victim quite separate from any sexual acts:
4 Bearing children, cooking, and cleaning. These elements are all present in the
5 evidence in the case against Dominic Ongwen.

6 Secondly, the victims of forced marriage suffer separate and additional harm to those
7 victims of the crime of sexual slavery, and the consequences of this harm are of equal
8 gravity to those of other crimes more specifically set out in the Statute.

9 The crime of forced marriage violates the right to marry by consent and establish a
10 family as a result of that union.

11 The domestic duties required of forced wives curtail their liberty quite separately
12 from restrictions on sexual freedom.

13 And the whole concept of marriage, marriage as a positive social institution, social
14 status, property and inheritance rights, the legitimising effect upon children, its
15 importance as the foundation of the family unit and its being a source of comfort and
16 companionship to consenting marital partners is perversely reconstructed for the
17 victims of forced marriage. They must endure all the burdens, but they receive none
18 of the benefits of the institution of marriage.

19 And finally, of course, the physical and psychological damage of the experience itself
20 for victims of forced marriage is supplemented by the lasting social stigma which
21 hampers their recovery and reintegration into society.

22 For these reasons we submit the Chamber should accept the propriety of the charges
23 of forced marriage contained in the Document Containing the Charges.

24 That concludes the initial part of the submissions which the Prosecution makes at this
25 hearing.

Confirmation of Charges

(Open Session)

ICC-02/04-01/15

1 PRESIDING JUDGE TARFUSSER: Thank you very much, Mr Prosecutor. I think
2 we are only five minutes over the time, so this should be okay also for the interpreters.

3 Thank you very much.

4 It's now time for the break. We resume at 11.35 sharp. So we have the break.

5 Thank you.

6 THE COURT USHER: All rise.

7 (Recess taken at 11.05 a.m.)

8 (Upon resuming in open session at 11.36 a.m.)

9 THE COURT USHER: All rise.

10 Please be seated.

11 PRESIDING JUDGE TARFUSSER: So we are resuming our hearing. I give again
12 the floor to the Prosecutor for continuing his presentation.

13 The floor is yours.

14 MR ELDERFIELD: Your Honours, this case has a distinguishing feature. Radio
15 communications between LRA commanders were being intercepted and recorded
16 contemporaneously by several Ugandan military and security organisations during
17 the charged period. These intercepted communications are evidence in this case.
18 You will hear in the course of my colleagues' submissions later today and tomorrow,
19 Dominic Ongwen confirming on the radio that he was responsible for the attacks on
20 Odek, Lukodi and Abok IDP camps.

21 Over the next 40 minutes I will tell the story of the intercept evidence in five chapters.

22 First, I will explain how radio communications were central to the LRA's functioning.

23 Second, I will describe the Ugandan government's interception operation.

24 Third, I will introduce key witnesses.

25 Fourth, I will detail the records that they made.

1 And finally, I will summarise the Prosecution's collection, exploitation and analysis of
2 the intercept evidence.

3 These submissions supplement those in paragraphs 59 to 72 of the Prosecution's
4 pre-confirmation brief.

5 From at least the early 1990s, LRA commanders used high frequency radios to
6 communicate between themselves. Where did they get the radios from? They
7 looted them from Catholic missions or NGO vehicles, or they received them from
8 collaborators.

9 After the Ugandan military disrupted LRA bases in Southern Sudan in mid-2002,
10 LRA commanders led their fighters into northern Uganda. Joseph Kony, however,
11 remained in Sudan around the Imatong Mountains.

12 There is a map I would just like to put up on the screen. As this map scale
13 demonstrates, Joseph Kony was often hundreds of kilometres away from his troops
14 who operated as far south as Apac and Soroti. Because of this geographical isolation,
15 Kony used high frequency radio to issue orders to and communicate with his senior
16 commanders.

17 The LRA transmitted every day, four times a day, at set times. They spoke in Acholi.
18 Commanders who had radios included brigade commanders and above and
19 lower-ranked commanders who were particularly active. From at least July 2002 to
20 December 2005, this included Dominic Ongwen. Logbooks record Dominic Ongwen
21 reporting on the radio frequently during this period.

22 What did they talk about? Kony used the radio to give orders and to enforce
23 discipline. He required each commander to call in their location and to report on
24 their activities since the previous communication time.

25 Commanders were incentivised to report their operations on the radio because it

1 brought them recognition, promotion and rewards, like wives.

2 Commanders reported accurately because of the threat of reprimand or punishment if

3 they were found out not to be truthful. They knew that Kony was able to crosscheck

4 their reports against Mega FM and other public radio broadcasts.

5 The LRA knew that the unencrypted radios that they used were being intercepted by

6 the Ugandan government. So they talked in code to hide their more sensitive

7 communications. The LRA used three main types of code:

8 First, call signs instead of commanders' names. For example, one of Dominic

9 Ongwen's call signs was Tem Wek Ibong.

10 Second, Acholi words or proverbs -- Acholi proverbs or LRA jargon. By way of

11 example, P-3, a UPDF radio operator, explained to the Prosecution that the LRA

12 would say "ram", as in a male sheep, to mean retreat. This is because the way rams

13 fight is first to back up and then attack. The LRA also used the word "aunty" to

14 mean civilian, and "recruits" for abductees.

15 Third, the LRA used "TONFAS". The word "TONFAS" is a radio signal acronym. It

16 stands for Time, Operator, Nicknames, Frequencies, Address, Security.

17 TONFAS codes were pages of random words that LRA commanders referred to in

18 order to transmit its most sensitive communications. The LRA distributed these

19 pages of words by hand to commanders with a radio.

20 Let me give you an example. This is an LRA TONFAS code. This code is named

21 "SHILLA". The numbers on the left the LRA called "miles". The words to the right

22 of the numbers they called "homes". A word's letters they called "windows".

23 Radio interceptors P-59 and P-3 were able to crack these codes, and they explained to

24 us how the LRA used them. For example, if I was an LRA commander, to spell the

25 word "Gooloo", I might say: Go to mile 15. Go to the second home, which is the

1 word "Gwok". Go to the first window. This is the letter "G".

2 Then, go to mile 21. Go to the first home, which is the word "Kooloo". Go to the

3 second, third and fourth windows. And they are the letters "U", "L", and "U".

4 In the mid-1990s, the Ugandan government recognized the strategic significance of

5 the radio communications to its military campaign against the LRA. Three

6 independent radio interception operations were established: By the Internal Security

7 Organisation, or ISO, by the UPDF, and third, by the police. The Ugandan

8 government set up the ISO and the UPDF operations in the mid and late 1990s

9 respectively.

10 The Ugandan police force interception operation began in about mid-2003. Its

11 operation was more modest.

12 By 2001, the ISO and the UPDF had permanent offices in the UPDF barracks in Gulu.

13 Gulu barracks was selected as the permanent operating base because that was where

14 the key UPDF decision-makers worked. Their mandate was to intercept and to

15 record radio communications to inform UPDF military decisions.

16 By 2001, both the ISO and the UPDF were intercepting LRA radio communications

17 daily, with trained staff, on a full-time basis.

18 Just before I move on, I'd like to check with the court officers. The next three slides

19 are photographs, and they should be shown only inside the courtroom.

20 Thank you.

21 This is the photograph of the room in Gulu barracks in which the ISO intercepted

22 communications. It was taken in 2015. The room is a time capsule. On the

23 wooden desk is the same radio that the ISO used to intercept LRA communications.

24 To the right, the same tape recorder. The black lines on the wall are antenna leading

25 from the radio out the window to a large antenna mast.

1 Above the desk are lists of LRA commanders.

2 In the bottom left is a blue mosquito net covering a bed where ISO operatives slept.

3 This is allowed them to monitor LRA communications 24 hours a day.

4 This is a close-up photograph of the equipment that the ISO used to intercept LRA

5 communications. On the left is the radio configured so that it could receive but not

6 send messages. The sound came out of the headphones and also out of the speakers

7 located on the top of the radio.

8 On the right, the cassette recorder, a Sony model. If you look closely, you can still

9 see a tape inside.

10 This is a close-up photograph of the list of LRA commanders above the wooden desk.

11 ISO radio operatives put it on the wall above the radio for quick reference.

12 P-32, who supervised the ISO interception operation, told us that he wrote this list

13 based on information received during the ISO's monitoring of the LRA radio

14 communications.

15 It is dated 25 January 2005, titled "The current LRA command structure." The ISO

16 listed the commanders' name, rank, appointment and home area. You can see

17 Joseph Kony and Vincent Otti first and second.

18 And here, at number 13, Dominic Ongwen. Lieutenant colonel, brigade commander

19 of Sinia brigade.

20 The Prosecution has interviewed nine persons at all levels of the ISO UPDF and police

21 interception operation. I want to introduce briefly the key member of each intercept

22 team.

23 From the ISO P-59. P-59 was, still is, an ISO radio operative, a trained signaller and a

24 native Acholi speaker.

25 P-59 listened to LRA radio communications for about ten years. He could break the

1 LRA TONFAS code.

2 Sorry. Just before I continue, the rest of the slides can be shown to the public. That

3 was just those three that needed to be kept confidential.

4 P-59 knew the LRA TONFAS code. He knew the LRA's command structure, and he

5 could identify LRA commanders on the radio by their voices alone.

6 From the UPDF, P-3. P-3 was one of the most highly trained radio operatives in the

7 UPDF. He listened to LRA radio communications almost every day for six years.

8 Like P-59, P-3 was intimately familiar with the LRA. He could break their TONFAS

9 code. He knew their command structure, and he could identify LRA commanders

10 on the radio by their voices alone.

11 From the police, P-125. P-125 was a police constable trained in radio

12 communications. He intercepted from a police station in Kamdini, which is about 60

13 kilometres south of Gulu. Whereas P-59 and P-3 worked in teams, P-125 worked

14 mostly on his own. P-125 knew the LRA command structure and he could identify

15 LRA commanders by their voice.

16 You will see in submissions later today and tomorrow that, although P-125 was

17 dozens of kilometres away and had almost no interaction with P-59 or P-3, he

18 recorded identical material in his logbooks.

19 The method of interception was similar across the ISO, the UPDF, and the police.

20 The ISO operation was the most sophisticated. Each organisation produced

21 logbooks. The ISO and the UPDF produced short land rough notes and tapes.

22 And the UPDF was alone in producing typed intelligence reports. To help

23 familiarise you with this evidence, I will go through each of these records, explain

24 their significance, and show you an example.

25 Immediately prior to the LRA set communication time, radio operators P-59, P-3 and

1 P-125 sat down at their desks and switched on the radio. As the LRA talked, the
2 operators took, in shorthand, rough notes of the conversations. If commanders
3 talked in codes, operators would write the codes down and break them after the
4 communication had finished. We have collected shorthand rough notes from the
5 ISO and the UPDF.

6 The book you -- the book you can see on this slide is a book of UPDF shorthand rough
7 notes. These notes were entered between March and July 2004, the period in which
8 Dominic Ongwen led the attacks on Odek, Lukodi and Abok. UPDF radio operator
9 P-3 has confirmed that he wrote in this book.

10 At the top of the page, you can see the date and the time of the communication.

11 Down the left-hand side of the page is a list of call signs of commanders who were
12 "on air," meaning that they called their presence in to the other LRA commanders on
13 the radio. And this represents the radio operator recording the TONFAS code.
14 Windpipe is the name of the code, and the numbers are the miles, homes and
15 windows.

16 The cracked code is written out at Acholi at the bottom.

17 After the communication ended, radio operators decoded their shorthand rough
18 notes. They then handwrote the intelligible content in English into the logbooks.

19 These logbook entries were the most important record -- these logbook entries were
20 the most important record that the organisations produced. ISO operators faxed
21 copies of each entry to their superiors in Kampala to brief politicians and senior
22 military figures. And both the ISO and the UPDF physically took the logbooks to
23 show the UPDF division commanders of Gulu barracks after each communication
24 time.

25 Each logbook contains about two months' worth of LRA communications. We have

1 collected logbooks from the ISO, the UPDF and the police.

2 This slide is a page from an ISO logbook. This book covers communications from
3 May to August 2003. You will note that before each entry, radio operators wrote the
4 date and the time of the communication. They also wrote the reference number of
5 the tape that was used to record the transmission, in this case tape 657. Using this
6 number, we can match up each logbook entry to the corresponding tape and confirm
7 the content on each. Also routinely noted were the commanders who signed on to
8 the radio. In this case, Joseph Kony and Dominic Ongwen were on air at the same
9 time.

10 I have the original logbook with me in the courtroom today if your Honours, the
11 Defence or the victims' representatives wish to have a closer look.

12 This is an example of a UPDF logbook. This logbook covers LRA communications
13 from August to December 2004.

14 This is an example of a police logbook. This one covers LRA communications from
15 April to November 2004, the period during which Dominic Ongwen led the attacks
16 on Odek, Lukodi and Abok.

17 The third record I signposted earlier was the tapes. From at least 2003, both the UPDF
18 and the ISO tape recorded LRA radio communications. Tape recordings were used
19 primarily as a backup in case radio operators missed the meaning or the content of
20 the communication during the live broadcast. They could use these tapes to go back
21 to check what had been said to complete their logbook entry.

22 The tape on this slide was produced by the ISO. It is numbered 693, which means
23 that it was the 693rd tape that the ISO recorded of LRA radio communications.

24 This tape records communications from 8 to 10 October 2003, the date of the Pajule
25 attack.

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1 I have the original of this tape also with me in the courtroom.

2 I want to play you a short segment of the tape. Although in Acholi, you will get a
3 sense of its quality and of how LRA commanders talked to each other on the radio.

4 There is no transcript because the substance isn't crucial.

5 And just before I start this audio, I'd like to confirm with the Acholi interpretation
6 booth that there is no need to interpret.

7 (Playing of the audio excerpt)

8 MR ELDERFIELD: This tape was made by the UPDF. You can see from the writing
9 on the tape's shell that it covers from 6.30 in the evening of 30 April to 9 a.m. on 1
10 May 2004.

11 Finally, UPDF intelligence reports. The UPDF compiled typed intelligence reports in
12 Kampala. These were based on the logbook entries that they were sent by the Gulu
13 interception team. The reports were used to brief senior UPDF officials in Kampala.
14 The intelligence reports contain summaries of the logbooks and also human
15 intelligence reports from UPDF units stationed in the field.

16 This slide is an intelligence report produced on 24 May 2004. You can see the date
17 on the left. And on the right, a summary of Dominic Ongwen's report to Joseph
18 Kony about his attack on Lukodi IDP camp.

19 The Prosecution has collected each of the records that I have described, which radio
20 operators P-59, P-3 and P-125 and others generated. This collection was done mostly
21 in 2004 to 2006, but also in 2015.

22 Following collection, we have: First, digitally enhanced the tapes; second,
23 transcribed and translated key tapes and verified their content with witnesses; and
24 third, created tools to help navigate the large body of evidence.

25 I'll briefly go through each of these steps.

1 First, the Prosecution has enhanced the quality of original tapes using state of the
2 art -- state-of-the-art audio enhancement software. Digital enhancement gives
3 translators and witnesses the best possible opportunity to understand the content of
4 the tapes. The enhancement of original audios has in most cases resulted in
5 improvement in the clarity of speakers. Reports have been produced with respect to
6 each enhanced tape. These reports describe the enhancement procedure and detail
7 the filters used.

8 Second, tapes that contain communications on dates most relevant to the charges
9 against Dominic Ongwen have been transcribed and translated using the enhanced
10 audios.

11 The LRA's use of coded language, however, obtain obscures the meaning of
12 conversations. So we took these tapes back to the same radio operators who first
13 decoded the communications, including P-59 and P-3, to verify the accuracy of our
14 translations.

15 We did the same with LRA fighters familiar with the system of radio communication,
16 including P-138 and P-142. These LRA fighters confirmed that those conversations
17 took place and that the interceptions were accurate.

18 You can see on this slide an example of this process. On the left is ISO radio
19 operator P-59's statement, where he explains that a tape was played to him and where
20 he comments on its contents. On the right is the transcript that he annotated.

21 For example, you can see that he has written time stamps and that he identified which
22 commander is speaking when. In this case "ONG" for Dominic Ongwen and "KJ" for
23 Joseph Kony.

24 He also filled in portions that Prosecution translators weren't able to discern. So at
25 6.45, Prosecution translators did not understand what was said. P-59, however, was

1 sufficiently familiar with Kony's voice to hear that he asked Dominic Ongwen
2 whether all the houses... Dominic Ongwen then confirmed that everything had been
3 burnt down.

4 The Prosecution's third step following collection was to compile two documents that
5 will help the Chamber, the Defence and the victims' representatives to navigate the
6 body of collected material. To find corroboration for any single source of intercept
7 evidence, these tools help to identify other sources that relate to the same day.

8 This is a visual representation on this slide, this is a visual representation of all the
9 written records produced by the three organisations in timeline format.

10 Material produced by the ISO is in green. Material produced by the UPDF is in blue.

11 Material produced by the police is in red. When no record exists, there is a white
12 gap. The timeline stretches from January 2002 to June 2006. The ERNs of each
13 record are in the boxes at the top.

14 Draw a vertical line on any point of the timeline to identify how many and which
15 written records cover that date.

16 For example, at the time of the Lukodi attack in May 2004, there is an ISO logbook,
17 three different UPDF records and a police logbook.

18 The second navigational aid is a chart. It is structured around the tapes. You can
19 see them listed chronologically in column B. The chart links these tapes to the other
20 evidence in the collection recorded on the same day.

21 If we pick any tape, for example, the one in row 58, this is a tape containing
22 communications from 8 a.m. on the 1 December to 11.35 on 2 December 2003. It is
23 registered in eCourt at UGA-OTP-0047-0026.

24 Moving to column H of the same row, this column shows that the tape was
25 transcribed and translated by the Prosecution and taken to UPDF radio operator P-3

1 to comment on. He annotated the transcript, which was attached as exhibit F to the
2 statement.

3 Still in row 58, column I shows you the pages in the ISO logbook that record the same
4 information in the tape. Column J takes you to the UPDF logbook. Column K is
5 blank because there is no police logbook entry. Column L gives the reference for the
6 UPDF shorthand rough notes, and in column M, the typed intelligence report which
7 summarises this material.

8 Quite naturally, we have identified shortcomings in the body of intercept evidence in
9 the process of its exploitation. I want to acknowledge these flaws, but explain why
10 they don't affect the integrity of this evidence.

11 First, the collected material was intercepted and recorded with rudimentary
12 equipment, over 10 years ago, in the context of a civil war.

13 Second, record-keeping was not always meticulous. For example, P-27 from the ISO
14 told us that sometimes labels fell off tapes. And radio operator P-59 said that the
15 ISO's archive at one stage was affected by damp.

16 Third, corroboration between the different sources of intercept evidence is not always
17 consistent. For example, sometimes communications recorded in one logbook are
18 not recorded in another or cannot be discerned on the corresponding tape.

19 Fourth, staff from the ISO and the UPDF worked in close proximity in Gulu barracks
20 and may have worked together at times.

21 Your Honours, despite these shortcomings, the intercepted LRA radio
22 communications represent a unique opportunity for you to step inside the mind of
23 Dominic Ongwen and the other LRA commanders at a time before the prospect of
24 prosecution may have influenced their thoughts or actions.

25 P-3, P-59, P-125 and other interceptors were trained professionals who listened to the

1 LRA for years without break.

2 These radio operators said that the material they produced was distinct and
3 independently compiled. Indeed, the record's occasional inconsistency is proof of
4 this.

5 The evidence was collected for intelligence-gathering purposes: to fight a war, rather
6 than to build a criminal case.

7 It is unaffected by human memory's fallibility and free of the bias or suspect
8 motivations that have the potential to taint witness testimony.

9 Its sources are too diverse and its nature too voluminous to be anything other than
10 genuine and highly probative evidence.

11 I invite you to have these concluding thoughts in your mind when you see and hear
12 later today and tomorrow the intercept evidence that supports the Prosecution's
13 charges against Dominic Ongwen.

14 That concludes my submission. Thank you.

15 PRESIDING JUDGE TARFUSSER: Thank you very much.

16 I ask now the lead counsel of the Prosecutor who continues with the presentation.

17 MR GUMPERT: The next portion of submissions on the part of the Prosecution will
18 be presented by my learned friend Mr Pubudu Sachithanandan.

19 PRESIDING JUDGE TARFUSSER: Thank you.

20 You have the floor.

21 MR SACHITHANANDAN: Thank you, your Honour. Just give me one minute
22 while I set up my material.

23 Your Honour, I'm likely to run for about 40 minutes, so that should bring us
24 hopefully to the end of the next session.

25 PRESIDING JUDGE TARFUSSER: That will bring us for sure to the end of the next

1 session I would say.

2 MR SACHITHANANDAN: Yes. I will try to maintain pace, your Honour.

3 Mr President, your Honours, I will try to set the stage for the detailed submissions on
4 the charged crimes by describing the evidence relevant to the modes of liability
5 linking Dominic Ongwen to the charged crimes.

6 Let me begin by providing a brief road map for my submissions that can be seen in
7 this next slide.

8 Firstly, I will describe the organised and hierarchical nature of the LRA, the military
9 structure of the LRA, including the Sinia brigade, where Dominic Ongwen spent
10 much of his career.

11 Secondly, I will describe Dominic Ongwen's position of authority and control within
12 this military structure for the period of the charges, that is from July 2005 -- July 2002
13 all the way up to December 2005.

14 Finally, I will describe how both the hierarchical structure of the LRA and Dominic
15 Ongwen's position of authority within the structure are relevant and establish key
16 elements of the modes of liability linking Dominic Ongwen to the charged crimes,
17 these modes being indirect perpetration, indirect co-perpetration, ordering crimes as
18 well as bearing command responsibility for the charged crimes.

19 I will begin by describing the hierarchical and organised military structure of the
20 LRA.

21 As you can gather from this basic organigram of the LRA, at the very apex of the
22 organisation you had Joseph Kony in his headquarters named Control Altar. Within
23 Control Altar you had multiple departments for political affairs, for operations, for
24 religious affairs, support and personal administration.

25 Below Control Altar you had a division. The division was also an operational unit.

1 It had a commander, it had constituent troops and it carried out operations.
2 But most importantly, below this you had the engines of the LRA, the four
3 operational brigades that carried out operations, conducted attacks, and carried out
4 looting. You had Sinia brigade, the oldest and most senior of the brigades, you had
5 Gilva brigade, Trinkle brigade and finally Stockree brigade.
6 Within the structure the LRA had a number of easily replaceable individuals. These
7 troop numbers were maintained by regular and widespread conscription.
8 Each of these brigades was also composed of battalions, which in turn also had a
9 leader and a deputy leader. Each battalion was composed of companies which in
10 themselves also had leaders. As you can see, a very structured and very detailed
11 organisation.
12 LRA commanders coordinated their activities carefully, both vertically within this
13 organisation as well as horizontally within this organisation.
14 They were able to do so despite geographical distance from each other by
15 communicating daily at preset times on the radio. There were radios at each level
16 within the hierarchy that you see before you. There was radios with Joseph Kony
17 and senior leaders within Control Altar. You had radios at the divisional level.
18 You had radios with each brigade commander in each brigade. And you also had
19 radios at the battalion level with each battalion commander.
20 Now, using these radios, there was a clear communication of orders down this
21 hierarchy from Joseph Kony and Control Altar past the division, through the brigade
22 commanders, through battalion commanders, to company commanders, all the way
23 down to the troops fighting and carrying out crimes on the ground.
24 Now, in the same way, the troops on the ground reported up this hierarchy through
25 the battalion commanders, the brigade commanders all the way up to Control Altar.

1 This reporting was important for you got promotions within the LRA by reporting on
2 the activities, the attacks, the abductions and the looting that you carried out.
3 You got demoted within the LRA if you did not commit these offences.
4 Other than the purely structural information that we gather from this, the LRA also
5 had a very strict system of discipline which contributed to the organised and
6 hierarchical nature of the organisation. Obeying orders was mandatory within the
7 LRA. Witness P-146, a member of the LRA, stated, and I quote, "There was no way
8 anybody other than the senior commanders ... would do anything other than what
9 they had been told to do."
10 In fact, P-224, another witness, also in the LRA, mentioned that he was given 120
11 lashes for refusing to execute an order to kill.
12 Participation in attacks for any member within this hierarchy was also mandatory.
13 P-146 recounted that if an order was given to attack civilians, and I quote, "when you
14 are sent to do anything, you had to do exactly as you are told or else you come back
15 ready to be locked up and may be punished very badly."
16 Similarly, there were punishments for attempting to escape the organisation. Escape
17 from any of these units was usually punished with death.
18 Soon after they were abducted, abductees were warned that any attempt to escape
19 would be punished and a commander's order to kill would typically be carried out in
20 the presence of other fighters from the same brigade.
21 Witness P-146 also recalled that after his abduction, two abductees from his group
22 were killed as a demonstration of what would occur if one attempted to escape.
23 Finally, there was also a strict code on sexual relations within the LRA which was
24 strictly enforced. Suspected adultery, for example, in any of these units was often
25 punished with death.

1 Now, thus far we have talked generally about the LRA structure, but the very same
2 principles apply to the Sinia brigade, which was the organisational home of Dominic
3 Ongwen for much of his career.

4 As you can see from this organigram, the Sinia brigade in itself had an organised and
5 hierarchical structure. You had three battalions: Oka, Terwanga and Siba. You
6 had a brigade headquarters. And finally at the apex of the brigade you had the
7 brigade commander.

8 It's important to note that within the brigade headquarters, there were multiple
9 departments, including an operations room. There was a brigade intelligence officer
10 with his own staff. There was a brigade major again with his own staff, and a
11 brigade administrator.

12 Each of these battalions were also a microcosm of the brigade. Each had more than a
13 hundred men. Each had a commander, a deputy commander, an intelligence officer,
14 a commander for support weapons and an adjutant who maintained records.

15 And as I mentioned earlier, each battalion was composed of a number of companies,
16 each of which again had a commander and a deputy commander.

17 Several other indicators exist of the organised and hierarchical nature of the Sinia
18 brigade. The same system of discipline that I described for the LRA in general
19 applied with equal force within the Sinia brigade.

20 Sinia brigade also had significant operational capacity and the ability to carry out
21 complex attacks.

22 Before any attack, there was intelligence collected by the intelligence officers, often by
23 capturing civilians from the area that is meant to be attacked.

24 Attacks were planned, fighters were selected, a tactical command was set up and a
25 leadership assigned to oversee that particular operation.

1 Special tactics were developed. There were special tactics for, for example, the
2 conduct of ambushes. Special methods existed for setting up camp with observation
3 posts. There were even special tactics for how to cross a major road.
4 Sinia brigade also maintained a permanent standby force, that is, fighters who were
5 constantly ready to be launched on an operation. For example, like the operations
6 the Prosecution will describe in its case and its submissions today and tomorrow.
7 There was also the organised and hierarchical distribution of ammunition.
8 Ammunition was brought in to the brigade commander, who then instructed the
9 operations room to distribute this ammunition.
10 The operations room then proceeded to pass on the ammunition to the fighters in the
11 various battalions.
12 Now, these same procedures that existed at the brigade level were replicated at the
13 battalion level. If a battalion commander within Sinia wished to use a particular
14 heavy weapon at a given attack, he would use that -- he would instruct his support
15 commander to prepare that weapon and to prepare support staff to carry that weapon
16 during that attack.
17 Your Honours, this is a brief and selective survey of the structure and functioning of
18 the LRA and the Sinia brigade. However, it is clear even from this brief survey that
19 it was organised, it was hierarchical and it mirrored in many ways the functioning of
20 a conventional military.
21 I will now move on then to discuss the position of authority that Dominic Ongwen
22 had within this organised hierarchy.
23 This slide indicates the career of Dominic Ongwen over the period of three and a half
24 years. As you can see from this timeline, the upper-hand side of the timeline
25 indicates the various positions held by Mr Ongwen during this time. And the

1 information on the bottom of the timeline indicates the ranks held by Mr Ongwen at
2 the same time.

3 Dominic Ongwen was a military commander in the LRA, first at the battalion level
4 and then at the brigade level, spending the majority of this time within the Sinia
5 brigade.

6 This period from 2002 to 2005 is characterised by Dominic Ongwen's continuous rise
7 in position, in rank and in authority, with him eventually reaching the rank of
8 brigadier general in charge of all LRA forces within Uganda.

9 Witness evidence as well as intercepted radio communications viewed together
10 provide a seamless picture of command authority during this entire period, which
11 begins with him already holding a position of authority.

12 I will pause a moment to explain this image. You will see at the bottom the timeline
13 of Dominic Ongwen's career. Above you see the structure of Sinia brigade. And I
14 will explain how during this period Dominic Ongwen rose within this structure,
15 constantly holding positions of authority and control.

16 At this point in mid-2002 he's a battalion commander and he's a major. This means
17 he had the ability to control the activities of a battalion within Sinia, but he also had
18 the ability to contribute to the overall operations of the entire Sinia brigade since he is
19 a key membership -- he is a key member of the overall leadership of the Sinia brigade.
20 During this period he's constantly described in intercepted communications as being
21 an operational battalion commander.

22 Witness P-245, an experienced Sinia brigade fighter, from Oka battalion, confirmed
23 that in August 2002, Dominic Ongwen was the commander of Oka battalion at an
24 attack on Acholi Pii IDP camp.

25 One month later in September, Kony confirms on radio that Dominic Ongwen was a

1 battalion commander in Sinia.

2 In December of the same year, 2002, Dominic Ongwen is again referred to on radio as

3 a major and as a battalion commander in Sinia.

4 P-205, another senior leader within the Sinia brigade, and an ICC witness, says that

5 Dominic Ongwen was a commander of Oka battalion at the Patongo attack in late

6 2002, fought in combat with this rank and position in Ngora in late 2002, and also

7 carried out attacks in Opit in May 2003, as the battalion commander of Oka battalion.

8 It is important to note at this point that while Dominic Ongwen is injured at Ngora in

9 late 2002, by the spring of 2003 he's once again operational, once again carrying out

10 attacks and once again reporting attacks.

11 On 17 September 2003, Dominic Ongwen is appointed the second in command of

12 Sinia brigade. And as you can see, he rises one level within the structure of Sinia.

13 Dominic Ongwen is already a clear favourite of Kony.

14 On 23 September 2003, Joseph Kony singles him out from amongst other commanders

15 within Sinia for praise. It's a little difficult to read this ISO logbook text of an

16 intercepted communication. I quote, "However, Kony praised Dominic so much for

17 his hard work he is doing. He blamed Pokot and the entire Sinia brigade under

18 Abudema that they are so weak. And almost all the losses LRA are incurring comes

19 from Sinia brigade. He also warned Abudema to be careful, if not the brigade

20 command of Sinia will be appointed another person."

21 There are two things that one must focus on from this communication. Pokot is a

22 fellow battalion commander and Abudema is the current brigade commander of Sinia

23 at this time in 2003.

24 Dominic Ongwen is being selected and chosen for praise as a hard working

25 commander. Other battalion commanders are criticised for not being active. The

1 brigade commander of Sinia at this time is also being criticised for not being active.
2 So Dominic Ongwen was no shirker. He was not even an average performer. He
3 was a person who was using his authority and his autonomy at this time to gain
4 praise to carry out operations and gain praise from the leader of the LRA.
5 Shortly after this, Dominic Ongwen participates in a major LRA operation, the LRA's
6 attack at Pajule IDP camp.
7 As you can see from this image, the Pajule attack was a large scale coordinated attack
8 involving multiple LRA brigades and Control Altar.
9 As you can also see from this image, his co-perpetrators in this attack included Joseph
10 Kony, Vincent Otti, Bogi Bosco and other senior LRA leaders.
11 When your Honours hear further evidence regarding the crimes at Pajule later today,
12 it is important to bear in mind several key factors.
13 Firstly, Dominic Ongwen is already a person of considerable rank. He is a major, a
14 mid-level rank.
15 He is a person of a relatively high position, second in command of Sinia brigade.
16 He is also a person who is exercising considerable authority in the context of this
17 attack, for he leads the attack on the trading centre in Pajule. In other words, he is
18 the leader of one of a number of prongs of attack at Pajule.
19 He has used his rank, his position and his authority to exert joint control over the
20 forces attacking Pajule along with his co-perpetrators.
21 The LRA fighters deployed at Pajule served as the tool through which Ongwen and
22 his co-perpetrators carried out the crimes in Pajule.
23 Shortly after the Pajule attack, Dominic Ongwen is promoted from major to lieutenant
24 colonel. Your Honours, this is a pattern you will see repeatedly during the course of
25 Dominic Ongwen's career. Participation in a successful attack as a leader or as a

1 co-leader followed immediately by promotion to a higher level or a higher rank.

2 Dominic Ongwen uses this additional authority and rank and continues to use his

3 control over LRA fighters to carry out further attacks.

4 Shortly after Pajule, he leads a battalion of Sinia fighters to attack a location called

5 Palaro on 23 November 2003. He continues this pattern into 2004 leading another

6 successful attack in February 2004 at Koc Ongako, again receiving praise from Kony

7 about the nature of his operations.

8 Having carried out a number of these attacks, his efforts finally reach fruition on 5

9 March 2004 when Dominic Ongwen is finally appointed the brigade commander of

10 Sinia brigade.

11 As you can see from this image Dominic Ongwen is now at the apex of Sinia gaining

12 control over the hierarchical military structure of the entire brigade and being able to

13 exert control over the crimes committed by the entire brigade.

14 With him taking over command of Sinia, the brigade begins a period of hectic

15 operations and carry out attack after attack.

16 These begin on 29 April 2004, when Dominic Ongwen attacks the residence, the

17 civilian residence of Odek IDP camp.

18 As you can see from this slide Dominic Ongwen is the overall commander and the

19 commander on the ground at Odek and personally led the forces participating.

20 These forces include troops from Sinia brigade as well as troops from Trinkle brigade.

21 His co-perpetrators at this time include Joseph Kony, senior leaders of Sinia brigade

22 and senior leaders of Trinkle brigade.

23 Again, when you hear detailed evidence about the crimes that were committed at

24 Odek, it is vital that several factors are borne in mind: Dominic Ongwen is now of

25 even greater rank and greater position and greater authority than at Pajule.

1 At Pajule he was one of several leaders. At Odek he is the main man.

2 At Pajule, he was a major. At Odek, he is a lieutenant colonel.

3 At Pajule, he was deputy commander of Sinia. At Odek, he is the commander of
4 Sinia and used this rank, position and authority to exert joint control over the forces
5 fighting at Odek.

6 These forces being the members of Sinia and Trinkle deployed that day served as the
7 tool through which he and his co-perpetrators exerted control over the crimes
8 committed at Odek.

9 An important indication of his authority at Odek is exhibited by the fact that he is the
10 man who reports the Odek attack. He comes on radio shortly after Odek, claims
11 credit for the Odek attack, and Kony and other senior leaders are extremely pleased
12 with Dominic Ongwen's work as a commander.

13 In fact, they are so pleased that a few weeks after Kony again holds Dominic up as an
14 exemplar to be followed and emulated.

15 This is an excerpt of a communication on radio that took place on 18 May 2004, the
16 tape of which is in the possession of the Prosecution.

17 Kony states, "Like Odomi, you should emulate him. He is very okay. Look at how
18 efficient he is, over. Including the other, they came here and did well. You first
19 look at how efficient they were yesterday. They worked very well."

20 This is being said again on open radio as an instruction to other LRA commanders to
21 watch Odomi, i.e. Ongwen, and to follow him because he is such a stellar performer.

22 He exhibits how much of a stellar performer he is 24 hours later at Lukodi.

23 On 19 May Dominic Ongwen's troops carry out an attack on the civilian residents of
24 Lukodi IDP camp. Lukodi is a further example of his growing power and authority.

25 Unlike at Pajule or Odek, Dominic Ongwen is the sole commander and sole indirect

1 perpetrator of the events that occurred in Lukodi. He exerted sole control over the
2 hierarchical structure of the units deployed at Lukodi.
3 He is the overall commander of the attack and indeed, unlike Odek, does not find the
4 need to personally deploy himself on the ground at Lukodi. Instead, he tasks a
5 direct subordinate of his within Sinia to carry out, to carry out the attack and then
6 report back to him.
7 He is still a lieutenant colonel and he's still the commander of Sinia brigade.
8 Even though some troops from the Gilva brigade participate in the Lukodi attack,
9 Dominic Ongwen's control of the entire attack is evident from the facts. He is the
10 ranking officer in this attack. Alex Ocaka, the ground commander of the attack, is a
11 direct subordinate of Dominic Ongwen at this time. The other LRA leaders who
12 participate in this attack, such as senior LRA commander P-205, an ICC witness, and
13 long-term LRA officer P-142, also reported directly to Ongwen.
14 Once again, as in Odek, Ongwen's position of authority is highlighted by the fact that
15 it is he who reports the Lukodi attack to Kony, to Otti and to other senior LRA leaders.
16 And these leaders once again are ecstatic at Dominic's performance at Lukodi.
17 The Lukodi attack results in yet another step forward in Ongwen's rise to power.
18 Kony being overjoyed at Ongwen's exploits promotes Ongwen to the rank of colonel
19 shortly after the Lukodi attack.
20 This promotion to colonel spurs Ongwen on to further attacks. Less than a month
21 after Lukodi and less than a week after his promotion, he launches yet another attack,
22 this time on the civilian residents of Abok IDP camp.
23 Like at Lukodi, by this time Dominic Ongwen's authority has grown to such a level
24 that he finds it no longer necessary to deploy on the ground. He sends one of his
25 subordinate Sinia battalion commanders, Okello Franco Kalalang, to deploy on the

1 ground, carry out the attack on the IDP camp and then return back to report to
2 Dominic Ongwen.

3 Abok is a purely Sinia brigade attack and Dominic Ongwen is the entire overall
4 commander of this attack. He is now a full colonel and he remains the brigade
5 commander of Sinia at this time.

6 Dominic Ongwen continues to rise after Abok. He retains his authority and is finally
7 promoted to brigadier general in December 2004. He also remains the commander
8 of Sinia brigade at least until the end of December 2005. Perhaps importantly in the
9 latter half of 2005, troops from other brigades start coming under the command of
10 Dominic Ongwen. He's at this point the most senior LRA commander in Uganda.

11 Your Honours, if I may pause there for a second, I have now described Dominic
12 Ongwen's continuous rise and maintenance of authority from the period 2002 to 2005.
13 However, I've principally only discussed attacks on IDP camps, but it is also
14 important to note the central role played by Dominic Ongwen with regard to sexual
15 and gender based crimes and child soldier conscription and use during this very same
16 period.

17 As you can see from this slide, as you can see from this slide, Dominic Ongwen when
18 a battalion commander exercised joint control over the sexual and gender based
19 crimes carried out by the Sinia brigade. You can see that the co-perpetrators at this
20 time are the leaders of the Sinia brigade as well as Dominic -- as well as, my apologies,
21 Joseph Kony, the leader of the LRA.

22 As a senior leader within Sinia, he maintained this control over sexual and gender
23 based crimes and child soldier crimes as a battalion commander, as second in
24 command of Sinia and as the brigade command of Sinia.

25 This is yet again an indicator of the central role that Dominic Ongwen played in Sinia

1 brigade and his position of authority during the course of the commission of crimes
2 by the Sinia brigade.

3 Other than the extensive timeline that I have provided, there were a number of other
4 indicators of Dominic Ongwen's control over LRA units.

5 For one thing, Dominic Ongwen ensured that discipline was maintained in his units.

6 He did so by brutally punishing any breach, infraction or insubordination. This
7 could be via beatings or even killings by firing squad.

8 Dominic Ongwen himself ordered beatings. When he was a brigade commander,
9 the punishment often took place in the operations room of the brigade. P-142, a
10 long-term member of the Sinia brigade, states, I quote, "And of course I fear if I don't
11 act to his orders, then I will be actually punished for that." End of quote.

12 Indicating the nature of the functioning of Sinia, where you either obey orders or you
13 are punished for that.

14 Dominic Ongwen also ensured that attempts to escape Sinia brigade were also
15 punished with death.

16 Witness P-236 witnessed the execution of two escapees. Witness P-227 was severely
17 beaten when suspected of trying to escape. P-235, another member of the LRA, was
18 ordered to be severely beaten when caught attempting to leave the Sinia brigade.

19 Another key indicator of Dominic Ongwen's authority during the period 2002 to 2005
20 is his constant participation and constant leadership of attacks.

21 When Kony held up Ongwen as an example of an LRA commander who should be
22 emulated and followed, he did so with good reason. There was no question of
23 Dominic Ongwen being an inactive commander or a nonoperational commander as
24 will become obvious.

25 In 2002, Dominic Ongwen leads attacks in August, September, October and

1 November. These are reported on radio and faithfully recorded by intelligence
2 operatives listening to these conversations on the radio. For example, this slide says
3 Ocan Bunia told Kony that on 6 September 2002 Dominic Ongwen ambushed on
4 Acholibur road. And if you read further second paragraph the report continues,
5 Dominic Ongwen abducted up to 86 recruits.
6 The same pattern continues year after year.
7 2003, attacks in February, April, May, June, September, and on and on, all again
8 reported on radio.
9 And again, into 2004, January, February, March, April, May.
10 It beggars belief, your Honours, that a commander who participates in this many
11 attacks and reports this many attacks cannot be considered inoperational or not active
12 in any way.
13 Other than the conduct of attacks from 2002 to 2003 to 2004 to 2005, a number of other
14 indicators also establish Dominic Ongwen's control over LRA units. One of them
15 was the fact that he constantly received reports of attacks carried out by his
16 subordinates. For example, after the Lukodi attack that I already mentioned, Alex
17 Ocaka, the ground commander of the Lukodi attack, returns and gives both an oral
18 report as well as a written report to Dominic Ongwen.
19 Similarly after the Odek attack Dominic Ongwen receives a report from the fighters
20 on the ground.
21 In July 2004 and August 2004, when Dominic Ongwen is brigade commander of Sinia,
22 battalion commander Labongo reports on the radio a number of ambushes that he
23 carried out. Naturally being a battalion commander in Sinia, it is his duty to report
24 his attacks to his brigade commander, who is again Dominic Ongwen.
25 Your Honour, I think it's 1 o'clock, is it?

1 PRESIDING JUDGE TARFUSSER: It is indeed.

2 MR SACHITHANANDAN: And I'm afraid I will still need a good 10, 15 minutes.

3 I'm in your Honours' hands.

4 PRESIDING JUDGE TARFUSSER: And I'm in the booths' hands.

5 THE ACHOLI INTERPRETER: We'll accommodate 10 minutes. We will

6 accommodate 10 minutes. Yes, we'll accommodate 10 minutes.

7 PRESIDING JUDGE TARFUSSER: Thank you very much. I was told that it can be

8 accommodated by the translator. Thank you very much.

9 So go ahead till the end and then we break for lunch. Thank you.

10 MR SACHITHANANDAN: I'm extremely grateful to the interpreters.

11 Another key factor in Dominic Ongwen's position of authority is that he had the

12 authority to distribute women and girls within the Sinia brigade. When senior LRA

13 commander P-205, who was a leader within the Sinia brigade, reported abductions to

14 Dominic Ongwen, Dominic Ongwen gave permission to P-205 to distribute the

15 women and girls within the unit commanded by P-205.

16 Similarly, Witness P-235, who also spent time within the LRA and within Sinia stated

17 that, I quote, "At times Ongwen would say that girls should be distributed."

18 P-235 observed Ongwen distributing girls in Uganda as well as in other countries.

19 Importantly, and I quote, P-235 says, "At times he would just decide on his own and

20 give women to soldiers who did not have wives. Then he would inform Kony

21 afterwards that this is what he had done."

22 This is important for two separate reasons. Firstly, Dominic Ongwen made

23 decisions about distributing women in Sinia. Secondly, he did not have to wait for

24 instruction regarding this. He had the autonomy to make these decisions and he

25 could do so based on his own volition.

1 This brings me to the end of my discussion of Dominic Ongwen's position of
2 authority. I will now discuss briefly how the hierarchical structure of the LRA and
3 Dominic Ongwen's position of authority within the LRA combined establish his
4 liability under a number of modes of liability under the Statute.

5 As you can see from this slide, Dominic Ongwen is charged as an indirect
6 co-perpetrator for Pajule and Odek.

7 He is charged as an indirect co-perpetrator for the sexual crimes charged as well as
8 the crimes related to child soldiers.

9 He is charged as an indirect perpetrator, that is a sole indirect perpetrator for Abok
10 and Lukodi.

11 And he's also charged with ordering and command responsibility across the board
12 with regard to all attacks and all other crimes.

13 Now, Dominic Ongwen is also charged under a number of other modes of liability,
14 but I will be focusing today on the modes of liability that rely on the structure of the
15 LRA and Dominic Ongwen's position of authority within that structure.

16 As you can see from this slide, with regard to the Odek and Pajule attacks, Dominic
17 Ongwen is one of a number of co-perpetrators. He and his co-perpetrators relied on
18 the organised hierarchical structure of the LRA to carry out the material elements of
19 the crimes committed at Odek and at Pajule.

20 He exercised joint control over these crimes along with his co-perpetrators by
21 subjugating the individual will of the perpetrators on the ground.

22 Similarly for sexual and gender based crimes and child soldier conscription and use,
23 Dominic Ongwen and his co-perpetrators use the hierarchical structure of the Sinia
24 brigade from 2002 to 2005 to carry out sexual and gender based crimes.

25 It is important to note that unlike Pajule and Odek, the common plan for sexual and

1 gender based crimes and child soldier conscription is mainly limited to the Sinia
2 brigade and the hierarchical structure that is used is the Sinia brigade.

3 As I mentioned, by the time of Lukodi and Abok, Dominic Ongwen has the level of
4 authority that he can be considered the sole indirect perpetrator of the crimes
5 committed at Lukodi and Abok, and he does so using the hierarchical apparatus of
6 the LRA fighters and units deployed at Lukodi and deployed at Abok.

7 He exerted control over the crimes at these locations by using the organised
8 hierarchical structure of the troops deployed in order to carry out the material
9 elements of the crimes charged.

10 I will now move on to command responsibility and ordering.

11 As you can see from this slide, there are a number of elements for both these modes
12 which require structure and positions of authority. To be held responsible as a
13 commander, you need to be a military commander or a person effectively acting as
14 such, and the accused needs to have effective command and control or effective
15 authority and control.

16 Similarly to be liable for ordering a crime, one must be in a position of authority.

17 Considering the evidence of Dominic Ongwen's career rising from a battalion
18 commander all the way to a brigadier general, considering his position of authority
19 over a battalion all the way up to all the forces in northern Uganda, it is self-evident,
20 your Honours, that these requirements are satisfied.

21 This brings me, and I'm sure the interpreters are very happy, towards the end of my
22 presentation.

23 But to briefly sum up in 30 seconds, as per the evidence that you have heard today
24 and you will hear during the course of today and tomorrow, the LRA was an
25 organised and hierarchical military structure, as was the Sinia brigade.

1 Dominic Ongwen as a leader rising within this structure was in a position of
2 authority and control. In light of this, he is responsible for the crimes charged as an
3 indirect co-perpetrator, an indirect perpetrator, as a commander and as a person who
4 issued orders for the commission of crimes.

5 Thank you, your Honours, I conclude.

6 PRESIDING JUDGE TARFUSSER: Thank you very much.

7 Before breaking, I just wanted to ask the court officer maybe to collect the logbook
8 which was offered envisioned to the Chamber so we can familiarise with it and bring
9 it back after the beginning of the third session so you can also show it to the other
10 parties if they so wish, and participants, of course, because Ms Massidda has looked
11 at me, you forgot me again, but I have not.

12 So I think this ends this morning, the two sessions of this morning. I'll break now
13 until quarter to 3 I think. Is that right? Yes, should be. Quarter to 3, yes.

14 We resume at quarter to 3. Thank you very much.

15 THE COURT USHER: All rise.

16 (Recess taken at 1.12 p.m.)

17 (Upon resuming in open session at is 2.46 p.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE TARFUSSER: So good afternoon to everybody.

21 The Chamber has decided that we still keep a little bit the logbook for some time and
22 maybe we give it back to you tomorrow, because it has some very interesting things to
23 tell us. So we will give to back tomorrow at some time.

24 Now we start with the third session. I have to remind you that we have to close at 4
25 o'clock because we have another hearing coming in at 4.30, so we have to do this change.

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1 So at 4 o'clock we have -- sharp we have to close down. 4 o'clock I said, yes. At
2 4 o'clock.

3 So, Mr Prosecutor, the floor is yours.

4 MR GUMPERT: Just on that score, before I embark upon the next set of submissions,
5 having spoken to the Defence counsel over lunch, because of that hearing coming up so
6 shortly after hours, they would appreciate a little time with their client to discuss the
7 events of the day, which I have to say I understand. And looking at the timing, it seems
8 that if we're not to break in the middle of what we hoped would be the third
9 presentation this afternoon, it will be better for us to restrict ourselves to just two sets of
10 submissions. That would probably mean we'd end sometime before 4 o'clock and push
11 those next submissions into tomorrow, and that would give the Defence time to speak to
12 their client, which would be a humane option.

13 PRESIDING JUDGE TARFUSSER: Well, I'm fine. We'll see how it develops, and then
14 we'll decide while we're working and -- doing and working, working by doing or
15 whatever.

16 MR GUMPERT: Okay.

17 PRESIDING JUDGE TARFUSSER: Okay. Thank you. You have the floor.

18 MR GUMPERT: Thank you.

19 Your Honours, dreadful crimes were committed during the attacks at the four IDP
20 camps that form a significant part of the case against Dominic Ongwen. But before you
21 hear about the diverse nature of those crimes, I shall address you about a feature that
22 runs through all of the crimes committed during those four attacks, and that is the crime
23 of persecution, counts 10, 23, 36, and 49. These submissions reflect what's set out in
24 paragraphs 111 to 147 of the pre-confirmation brief.

25 The crimes committed during the attacks on Pajule, Odek, Lukodi and Abok targeted the

1 civilian population of northern Uganda as a group, based on political grounds. Those
2 grounds were the perceived support of civilians for the Ugandan government and its
3 military forces.

4 Dominic Ongwen was quite clear about this: P-18, one of the LRA fighters involved in
5 the Lukodi attack, remembers Dominic Ongwen giving a speech to new recruits. He
6 ordered them to attack civilians of a particular IDP camp and, and I quote, "Kill
7 everyone ... no one should remain."

8 What was the reason for this exterminatory policy? I quote P-18 again, "Because the
9 government had sent helicopters to shoot at them." And Ongwen also said that his
10 fighters should, and I quote, "Kill the Acholis because the Acholis are pigheaded."

11 What he meant was that the civilians were persistently supporting the government and
12 should therefore be taught a lesson.

13 To understand Dominic Ongwen's own involvement and better to comprehend his
14 personal persecutory intent, I want to take you a step back and look at the broader
15 persecutory campaign of the LRA as a whole. I want to show you how Joseph Kony
16 planted his persecutory ideas in the heads of his commanders. And you will see how
17 Dominic Ongwen himself committed to those ideas and targeted civilians on political
18 grounds.

19 What was the aim of the LRA? Since its very beginning the LRA aimed to overthrow
20 the government of Uganda. But this insurgency against the government wasn't limited
21 to attacking government members and government forces. The LRA was far more
22 radical than that. They attacked everyone whom they perceived to be supporters of the
23 government, particularly ordinary civilians. Occasionally, Joseph Kony would even
24 instruct his forces to leave off hitting military targets altogether and instead exclusively
25 attack and kill civilians.

1 There were no neutrals for the LRA. In order to avoid being murdered, civilians had to
2 demonstrate that they supported the LRA. Kony made this crystal clear when he gave
3 this instruction to his commanders, and I quote, "Weigh the minds of people in a
4 particular area and decide whether they support LRA or not. That if not, then people in
5 that area should be killed all."

6 So who were these civilians perceived as supporters of the government? There were
7 various types. First, Kony was convinced that civilians living in IDP camps throughout
8 northern Uganda supported the government.

9 Witnesses P-245, one of Ongwen's subordinate officers, and Pajule abductees, P-9 and
10 P-67, all say that Kony issued orders to attack IDP camps and for no better reason than
11 that he considered civilians residing in them as supporters of the Ugandan government.
12 That was the policy that Dominic Ongwen was carrying out when he attacked Pajule and
13 the three other camps where the offence of persecution is charged. Ongwen was
14 present when Vincent Otti told civilians that he had been -- sorry, told civilians that had
15 been abducted from Pajule that he did not, and I quote, "didn't want people to stay in the
16 camp. If people are not wanting to go back to their homes from the camp" - said
17 Otti - "then the LRA will come back, and they will kill everybody in the camp."

18 Second, the LRA considered that it was justified in murdering civilians simply because
19 of the possibility that they might help the UPDF or that they might join the local militias
20 which had been formed to provide support for the regular army.

21 It wasn't necessary for a civilian to take any active steps to assist the government to merit
22 being targeted by the LRA. Civilians were also perceived as supporters of the
23 government if they failed to reveal UPDF positions to the LRA, or refused to follow LRA
24 orders, or if they called the UPDF for help, or if they communicated with the UPDF in
25 any way. Simply living close to the UPDF barracks, just carrying a telephone could

1 raise suspicions to be the cause for your death

2 Kony ordered the killing of anyone who could possibly be recruited or assist the UPDF.

3 Witness P-138, a sergeant in Dominic Ongwen's Sinia brigade, said this of the policy on

4 which he and others under Ongwen's command operated: "If you get a civilian who is

5 a man, it's assumed that he has a gun, and so he should be killed."

6 And in the end, it wasn't just the men who were targeted. Kony's paranoia about the

7 supposed involvement of civilians against the LRA carried over to the next generation.

8 He ordered that women too should be killed, not in retribution for their own actions, but

9 because of the risk that they might bear children who would in the future join the

10 militias and fight the LRA. He said of these women: "They are the ones producing

11 militias who are killing them." And by "them", the transcriber of this radio intercepted

12 message meant the LRA.

13 The LRA even perceived whole regions and their inhabitants to support the government.

14 They took the broad brush approach: whole ethnicities were labelled as collectively

15 supporting the government and thus being the enemies of the LRA.

16 This was the case for civilians from Acholi land, but also those from the Lango and Teso

17 regions which lay to the south and east of Acholiland.

18 The camp at Abok, at the bottom of the triangle, the location of one of the four attacks

19 carried out by Dominic Ongwen, on which this case concentrates, is in the Lango region.

20 The Teso region is the white area to the right-hand bottom corner of the map.

21 The ISO and UPDF logbooks record Kony's orders sent over the radio to his

22 commanders, such as Dominic Ongwen. They show that he was angry about the lack

23 of support from the people of his own region, Acholiland, in the LRA's fight against the

24 government.

25 And Kony ordered that these people should be, and I quote, "killed and if possible

1 wiped off totally because instead of running to the bush to join hands with LRA so that
2 Museveni is toppled, they go to Museveni."
3 In the Lango and Teso regions, civilians were threatened that their support for the UPDF
4 through local militia was going to be dealt with.
5 And deal with it Kony did.
6 Convinced that the entire Lango population supported the government and the UPDF,
7 he gave specific orders that they either be abducted for the purpose of joining the LRA,
8 or otherwise that they be killed.
9 Equally convinced that all civilians in Teso were supporting the government, he told his
10 commanders, and I quote, that everyone who "doesn't want to ... join us ... is an enemy."
11 And he made it plain that every enemy had to be killed.
12 So much for Kony's orders. What were the results, and what part did Dominic Ongwen
13 play in achieving them? All four brigades of the LRA implemented this persecutory
14 campaign. Kony's orders were relayed down the chain of command and carried out, in
15 acts of gruesome violence, by LRA fighters on the ground.
16 Ongwen was part of this of this chain of command. He was aware that the persecutory
17 campaign -- he was aware of that campaign, I should say, because he was present,
18 having signed in on the radio, during the daily communications when Kony issued
19 persecutory orders, and when other LRA commanders reported on their persecutory
20 operations.
21 Ongwen was on air in this way on 23 February 2004 when Kony ordered all LRA units in
22 Uganda to attack and kill civilians because, I quote, "It's the same civilians which
23 Museveni recruit to fight LRA."
24 Ongwen was on air again just one day later. That day Kony's order was this: "All
25 people should know that those who support Museveni will all be killed by LRA."

1 Dominic Ongwen had the authority to endorse and implement the persecutory
2 campaign, and he made use of that authority. The evidence shows that persecution on
3 political grounds was one of his key motives behind the four camp attacks. I'm going to
4 take each of those four attacks, one by one, and set out evidence which demonstrates that
5 the crimes committed at each location were committed as acts of persecution.

6 But more than that, the Prosecution says, these attacks have to be seen as part of a
7 pattern. They take place within just nine months of each other. They show Dominic
8 Ongwen demonstrating his loyalty to and his enthusiasm for the LRA's persecution of
9 the civilian population of northern Uganda. They show him being rewarded with
10 higher ranks and more senior commands after each attack that he lead or planned or
11 executed. These attacks were all of a piece: they were demonstrations of the LRA's
12 attachment to its policy of persecution. If the civilian population was going to support
13 the government, rather than the LRA, then it was going to pay a terrible price for doing
14 so.

15 I turn to Pajule first. Witness P-9 was abducted from Pajule during an attack where
16 Dominic Ongwen was personally leading LRA fighters in an attack on the market or
17 trading centre. P-9 was a local chief. He said, and I quote, "When I was taken to
18 Ongwen, I was told that the LRA was going to kill us because we were supporting the
19 government - this is what came out of the mouth of Ongwen" said P-9. And that
20 witness saw Dominic Ongwen demonstrate his own personal animosity towards
21 civilians. He kicked P-9 and P-9 saw him kick or cane every other person who was
22 brought to him. P-9 said that other LRA commanders described Ongwen as bitter,
23 saying that Ongwen wanted to kill people and overthrow the government. And P-9
24 himself remembers Ongwen as being very fierce and anti-governmental. That same
25 witness confirmed that Ongwen feared that civilians were used by the government to

1 locate the LRA.

2 P-9 also helps to clarify the motives for the attack on Pajule. He recalls Vincent Otti, the
3 LRA's second in command and one of the chief architects of the Pajule attack threatening
4 that if the LRA wanted to, they could kill everyone at the camp. And the same witness
5 heard Otti say that the civilians in Pajule IDP camp had been attacked because they had
6 started to support the government by moving to the camp and that they should move
7 out of it.

8 Turning to the second attack in the sequence at Odek, Witness P-245 participated in that
9 attack. He confirmed that Ongwen had stated that the inhabitants of the camp should
10 be considered as enemies, in advance of the attack Ongwen had ordered the killing of
11 people "who remain in the camp." Why? Because they "are supporting government."
12 P-245 said that the purpose of the attack was to show the civilians that the government
13 or the UPDF was not able to protect them.

14 P-224, Dominic Ongwen's radio signaller, heard Dominic Ongwen tell Kony on the radio
15 that he planned to attack Odek. The reason given was that the civilians of Odek were,
16 quote, "stubborn". What he meant by this was that he suspected them of supporting the
17 government and not the LRA.

18 Next in the sequence, Lukodi.

19 Witness P-202 is the best example here. An LRA fighter who had been abducted before
20 the Lukodi attack. He was present when Dominic Ongwen ordered his fighters to
21 attack Lukodi. And present when Ongwen told them that he was launching the attack
22 because these people are stubborn.

23 The explanation for Dominic Ongwen's purposes was that the definition of stubborn was
24 that the civilians were cooperating with government soldiers by reporting the LRA's
25 positions. And according to that same witness, Ongwen's orders to his fighters were

1 simple and comprehensive: that they should not let any breathing thing remain alive.

2 And lastly, Abok.

3 P-293 was one of the camp leaders at Abok. He overheard LRA fighters discussing
4 Ongwen's order to, and I quote, "Kill everyone who was not one of them." P-293 had
5 had prior interactions with the LRA at Abok IDP camp. He stated that the rebels had
6 told the civilians that "good government was with them," the good government being
7 the LRA. And the witness stated that the rebel soldiers had asked civilians to support
8 them and not support the government in power.

9 P-286, abducted from Abok during the attack, confirmed that the civilians at Abok IDP
10 camp did not support the LRA. He said that his abductors, fighters under Ongwen's
11 command, talked about overthrowing the government and about abducting civilians to
12 increase their strength for this aim.

13 The Prosecution case is that the evidence, taken together clearly shows that Dominic
14 Ongwen is responsible for crimes of persecution. He targeted civilians in the four
15 camps on political grounds, namely that he thought they were, as a group, politically
16 opposed to the LRA, and he's responsible because he targeted them by committing the
17 various other crimes punishable under the Statute with this persecutory intent.

18 During those attacks he committed the crimes of murder, attempted murder, torture,
19 other inhumane acts, cruel treatment, enslavement, pillaging, destruction of property
20 and outrages on personal dignity. And by committing those crimes, he deprived the
21 civilian inhabitants of the camps of their fundamental rights to life, liberty and security
22 of person, freedom of movement, private property, not to be subjected to torture and not
23 to be held in slavery or servitude. By depriving them of these rights he committed the
24 crime of persecution in each camp.

25 And on that basis the Prosecution submits there are, indeed, substantial grounds to

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1 believe that Dominic Ongwen is criminally responsible for offences of persecution and
2 invites the Chamber to confirm counts 10, 23, 36 and 49. Thank you.

3 PRESIDING JUDGE TARFUSSER: Thank you, Mr Prosecutor. Now who is the next
4 speaker of the team?

5 UNIDENTIFIED SPEAKER: Who is the next member of the team who will be
6 speaking?

7 PRESIDING JUDGE TARFUSSER: You have the floor.

8 MR CHOUDHRY: Your Honours, on 10 October 2003, between 15,000 and 30,000
9 civilians who had sought safety at Pajule camp for internally displaced persons had just
10 finished celebrating Uganda's Independence Day.

11 However, in the early hours of the morning, Pajule camp was attacked. Scenes of
12 celebration were replaced by a bloody scene of destruction.

13 It is the Prosecution's case --

14 PRESIDING JUDGE TARFUSSER: Excuse me. Excuse me, your name is not coming
15 up in the -- on the record, on the transcript.

16 MR CHOUDHRY: In that case, your Honour, my name is Mr Kamran Choudhry for
17 the record.

18 PRESIDING JUDGE TARFUSSER: Okay. Thank you. Excuse me for interrupting,
19 but it was needed.

20 You have the floor.

21 MR CHOUDHRY: Your Honour, it is the Prosecution's case that Dominic Ongwen as a
22 commander in the LRA played a key role in the attack at Pajule. Together with other
23 LRA commanders he planned it, he carried it out on the ground.

24 So where is Pajule and what's happened?

25 On your screens now is a map showing the Acholi subregion in northern Uganda and as

1 we zoom in, you can see Pajule located in Aruu county, Pader district, northern Uganda.

2 It is at the top right-hand corner of the triangle of IDP camps attacks attributed to

3 Dominic Ongwen in this case.

4 To give you an idea of the size of Pajule, I refer to a recent satellite photograph of the

5 area. It was taken in 2013.

6 Although the IDP camp is no longer in existence, witnesses say that the layout of Pajule

7 has not changed since 2003. And as the map shows, you will be able to see that Pajule

8 covers an area of approximately 1 kilometre by 1 kilometre.

9 I turn now to a sketch map of Pajule drawn by a witness present on the day of the attack,

10 Witness P-47. The sketch map depicts how Pajule looked in 2003.

11 It shows a Catholic mission marked at the top of your map, a barracks marked in the top

12 right-hand corner. The barracks housed soldiers from the UPDF who served as guards

13 to the camp.

14 And in the middle of the camp is the trading centre area. The trading centre contains

15 shops where civilians could buy and sell amenities. Scattered around the training

16 centre are the houses where civilians within the camp lived.

17 I'll now show you photos of the area so that you are able to have an idea of what Pajule

18 looks like on the ground. These photos were taken last year by the Office of the

19 Prosecutor; however, they are representative of the actual area.

20 The first picture shows the remnants of where the barracks used to be.

21 And moving to the civilian areas, I'd like to show you a video. This is the video of the

22 Catholic mission.

23 Your Honour, I'll move on because the video is not playing.

24 If we can move to the next slide then, please.

25 This is a photo of the training centre area and this is a photo of the market within the

1 trading centre area.

2 Turning to the attack on Pajule camp, the plan to attack Pajule was conceived the
3 evening before 10 October 2003. Vincent Otti, the LRA's second in command, called a
4 meeting of senior LRA commanders. Dominic Ongwen attended that meeting and he
5 attended together with other LRA commanders, including Raska Lukwiya and Bogi
6 Bosco. At the time Dominic Ongwen held the rank of major.

7 It was at that meeting that Dominic Ongwen agreed with Vincent Otti and others to
8 attack Pajule IDP camp.

9 The plan had various aims. LRA fighters P-48, P-130 and P-144 all participated in the
10 attack at Pajule. These witnesses say that Pajule was attacked in order to demonstrate
11 the LRA's power. It was also attacked in to order express LRA dissatisfaction with the
12 civilians at the camp. Civilians that had sought safety at the camp were perceived to be
13 supporters of the Ugandan government.

14 The attack also had the purpose of deliberately targeting civilians. P-15, an LRA fighter
15 who was present when the order to attack Pajule was issued, said that Otti instructed
16 fighters as follows: "that if they found huts, they should burn them, to loot and to
17 abduct children of the age of 8 years old and above, and to attack the barracks. He told
18 the group that even if they found insects on the way that they should kill them, that all
19 houses in Pajule should be burnt, that civilian people and UPDF should be killed."

20 Dominic Ongwen and his co-perpetrators agreed to divide LRA fighters into various
21 groups for the attack, each group being responsible for attacking a different area within
22 the camp.

23 Dominic Ongwen himself took charge of one of these groups. It was a group that was
24 responsible for looting items from the camp and abducting civilians.

25 This, your Honours, was the "Pajule Common Plan" and Dominic Ongwen was a

1 co-perpetrator to the Pajule common plan.

2 The attack itself started at around 5 to 6 a.m. in the early hours of the morning. And as

3 depicted on this sketch map, which is on your screens now, the LRA divided itself into

4 groups. They attacked the barracks area first. This was in order to occupy the UPDF

5 soldiers guarding the camp and to ensure that the LRA assault on the civilian areas was

6 not hampered.

7 Dominic Ongwen's group then attacked the civilian areas. This included attacking the

8 Catholic mission and the trading centre area.

9 Armed with guns, knives and machetes, the LRA fighters under Ongwen's command

10 tore through the camp subjecting its people to horrifying acts of violence, torture and

11 murder. Victims of the attack from the trading centres area describe being woken up

12 by the sounds of shots, gunshots and whistling.

13 In the course of the attack civilians, including young children, were forcibly removed

14 from their homes. Civilians were beaten. Family members were separated from one

15 another. People were shot and some were killed.

16 The attack lasted about an hour. And as Dominic Ongwen and the LRA withdrew, they

17 took with them at least 200 men, women and children. The attack marks one of the

18 largest instances of mass abductions carried out by the LRA in the history of the conflict.

19 Several crimes were committed during the course of the attack on Pajule IDP camp.

20 The Prosecution submits that there are substantial grounds to believe that Dominic

21 Ongwen is criminally responsible for the crimes committed that day.

22 Charged under counts 1 to 10 of the Document Containing the Charges, they are:

23 Attacking civilians as such, murder, torture, cruel treatment, other inhumane acts,

24 enslavement, pillaging and finally, persecution.

25 The evidence that these crimes committed is overwhelming and has been set out in full

1 in the Prosecution's pre-confirmation brief at paragraphs 148 to 228.

2 Some of the highlights are as follows: In relation to count 1 and the crime of attacks
3 directed against the civilian population intercepted LRA communications captured the
4 day before the attack show that Kony instructed LRA commanders to make, and I quote,
5 "killing the order of the day."

6 It was with this in mind that LRA fighters attacked Pajule deliberately targeting its
7 civilians.

8 Turning to the crime of murder, P-248, a victim of the attack, saw LRA fighters shoot at
9 civilians.

10 As you will see on your screens, he describes: "There was a boy who tried to run away
11 at that moment and they shot him in the stomach and all his intestines spilled out. I do
12 not know his name."

13 THE ENGLISH INTERPRETER: Message from the interpreters: Could counsel please
14 be requested to slow down. Thank you.

15 MR CHOUDHRY: "That day you could not run, there were so many of them."

16 Witness P-67, another civilian victim of the attack, described how he saw the dead body
17 of a woman lying face down in the trading area of the camp. Her neck had been cut by
18 a machete. Standing beside her were three small children crying.

19 P-67 also witnessed the killing of two people that day. One of those killed was a typist
20 for a local councillor. P-67 saw an LRA fighter take a bayonet, bayonet knife fixed from
21 on top of a gun and stab the typist, killing him.

22 P-67 also saw an LRA fighter place a gun to the head of another individual. He then
23 shot him three times in the head. What was the reason for this coldblooded murder?

24 It was because the individual had struggled to carry items given to him by the LRA.

25 In relation to the crime of torture, cruel treatment and other inhumane acts, civilian

1 victims of the attack were subjected to severe mental and physical pain.

2 Witnesses P-9, P-67, P-249 and P-61 were all civilian victims of the attack. They

3 describe in terrifying detail how LRA fighters that attacked the camp forcibly removed

4 them from their homes.

5 Once captured, they were subjected to physical assault and violence. LRA fighters

6 ripped off the shirt of P-61 and used it to tie his hands behind his back. He was only 15

7 years old at the time.

8 Witness P-9 was also forcibly removed from his home. Once outside, he was beaten

9 with the butt of a gun before having his hands tied behind his back.

10 The physical suffering was matched by mental anguish as victims were separated from

11 their family members. LRA fighters used an axe to break into P-67's home. They then

12 took his two children and said, I quote, "We do not want you to stay in the camp. If

13 you continue staying in the camp we shall kill all of you ... and we shall start with the

14 children."

15 P-67's children were then placed in a hut together with other children and the door was

16 closed shut. He was forced to watch as LRA fighters called out to others to go and

17 bring fire so that they could set the hut and children ablaze.

18 Turning to the crime of enslavement, during the course of the LRA -- during of the

19 course of the attack, the LRA abducted at least 200 men, women and children. Fighters

20 that participated in the attack, including P-144 place this number much higher with an

21 estimate of there being approximately 400 civilians that were abducted that day.

22 This P-81, a victim who was abducted, described, "There were men, women, children

23 and elderly amongst these abductees. Some of them were only wearing their

24 underpants. The children might have been from about eight to ten years old."

25 Deprived of their liberty, these civilians were forced to serve as mules and carry looted

1 items the LRA fighters had plundered during the attack. As the civilians were being
2 marched to an LRA meeting pointed, LRA fighters, including Dominic Ongwen, kicked,
3 caned and beat them. The civilians had no choice but to comply. Those that refused
4 were killed.

5 After arriving at the LRA meeting point, some of those abducted were then distributed
6 amongst the LRA fighters in order to serve as forced conscripts and sex slaves.

7 You will now hear an audio of an intercepted LRA recording. It was recorded three
8 days after the attack on Pajule camp. It shows Vincent Otti and Joseph Kony discussing
9 the large numbers of people that were abducted during the attack.

10 (Playing of said video excerpt)

11 MR CHOUDHRY: As the tape showed, Vincent Otti, the LRA's second in command,
12 informed Kony that during the attack at Pajule, he as well as over co-perpetrators
13 including Dominic Ongwen "gathered almost 200 people, almost 300 people, then we
14 addressed them. We said today it showed that we are strong." This discussion was
15 also captured in an ISO logbook dated the same day.

16 In relation to the crime of pillaging, numerous victims describe how LRA fighters broke
17 into homes and shops. They describe LRA fighters looting items, such as maize, soda,
18 groundnuts, beans and rice. They also describe how abducted civilians were forced to
19 carry items looted by the LRA.

20 Numerous LRA fighters also provide evidence of LRA looting during the attack. P-309,
21 for example, who participated in the attack directly under Dominic Ongwen, he
22 describes, and I quote: "We started to break into shops, taking sugar, salt, anything to
23 eat and we broke into houses to abduct people who had not fled into the bush."

24 In relation to persecution, the attack at Pajule was committed against the civilian
25 population because of their perceived support for the government of Uganda. The

1 evidence of this has already been presented to you.

2 I shall now turn to the evidence of why the Prosecution say that Dominic Ongwen

3 played a key role in the planning and execution of the attack.

4 In relation to planning the attack together with Vincent Otti and other co-perpetrators,

5 you will now see on your screens a UPDF logbook like the one -- like the sample that

6 you have taken today with an intercepted LRA communication. The logbook is dated

7 10 October 2003, the day of the attack. It records a conversation between Vincent Otti

8 and Joseph Kony. Vincent Otti told Joseph Kony about the plan to attack Pajule as well

9 as Dominic Ongwen's role. It reads:

10 He has deployed his group into groups to go and attack a certain UPDF position and the

11 centre and the mission.

12 Otti also told Kony that Dominic/Bwona, they should attack the mission to loot drugs

13 and other properties.

14 LRA fighters P-138, P-146 and P-101 confirm that Dominic Ongwen was with Vincent

15 Otti in the immediate period prior to the attack at Pajule.

16 Logbook entries of intercepted LRA communications on 5 and 7 October also confirm

17 that the two were together.

18 Compelling evidence of Dominic Ongwen's involvement in planning of the attack is also

19 provided by P-309. P-309 was an LRA fighter who served directly under Dominic

20 Ongwen. He was Dominic Ongwen's escort. P-309 saw Ongwen attend the meeting

21 to plan the attack at Pajule. He explains that it was directly after this meeting at around

22 8 p.m. that Otti announced to between 80 to 100 LRA fighters that they were going to

23 attack Pajule.

24 Turning to the leadership role that Dominic Ongwen took on during the attack, LRA

25 fighters P-45, P-138, P-144 and P-101 all confirm that Dominic Ongwen was selected and

1 agreed to lead one of the groups during the attack. With a mandate to cause bloody
2 destruction, Dominic Ongwen's role on the ground was an essentially one.
3 LRA fighters, including P-309, describe how during the attack, Ongwen ordered them to
4 pillage items and abduct people.
5 And victims that suffered at the direct hands of Ongwen, including P-9 and P-249 also
6 describe the dominant role played by Ongwen. They describe seeing him at the trading
7 centre area of the camp. He was wearing a military uniform and holding a stick. He
8 was surrounded by LRA fighters. Ongwen was using his stick to instruct the LRA
9 fighters. He ordered his fighters to pillage items from the shops and homes. He
10 ordered them to deploy to different areas within the camp. And he ordered them to
11 shoot in different directions.
12 Dominic Ongwen himself also physically assaulted civilians that day. P-9 describes
13 that after being abducted, he was taken to Dominic Ongwen. Dominic Ongwen was in
14 the trading centre area of the camp at the time. Ongwen kicked P-9 to the floor. He
15 then did the same to other civilian victims that were brought to him. Ongwen's
16 treatment of the people of Pajule served as an example to other LRA fighters under his
17 command.
18 Dominic Ongwen's essential contribution continued as the LRA left the camp. As
19 Ongwen left, he took with him a group of abducted civilians. P-249, a victim who was
20 abducted, described seeing Ongwen. Ongwen threatened to kill civilians if they did not
21 move as he instructed.
22 Numerous LRA fighters describe that when Ongwen returned from the attack, he did so
23 with civilians. P-101, for example, explained that she saw Ongwen return with seven
24 civilians and that the civilians were carrying luggage. "Luggage" was a term that was
25 commonly used in the LRA for looted items.

1 After the LRA fighters had returned from the attack, Vincent Otti, the LRA's second in
2 command, addressed them. As another indicator of Ongwen's key role, Ongwen also
3 addressed the civilians. P-9 stated that Ongwen informed people that had been
4 abducted that they could never go home.

5 P-309 describes how Ongwen then distributed the captured individuals to troops under
6 his command.

7 With regard to the attack at Pajule IDP camp, the evidence establishes substantial
8 grounds to believe that Dominic Ongwen should be held criminally responsible for the
9 crimes that were committed that day.

10 His essential role make him criminally responsible as an indirect co-perpetrator pursuant
11 to Article 25(3)(a) of the Rome Statute.

12 His orders to LRA fighters under his command make him responsible under Article
13 25(3)(b).

14 Ongwen's role on the ground had the effect of aiding, abetting or otherwise assisting the
15 commission of crimes, making him responsible under Article 25(3)(c).

16 And his contribution to the commission of these crimes by a group of persons acting
17 with a common purpose also make him criminally responsible under Article 25(3)(d) of
18 the Statute.

19 Finally, Dominic Ongwen is criminally responsible as a commander for crimes
20 committed by the LRA fighters under his command under Article 28(a).

21 Your Honours, the tragic story of the attack at Pajule camp is the first of four attacks that
22 you will hear about throughout the course of today and tomorrow. Ongwen's
23 participation in the planning and the successful execution of the attack at Pajule helped
24 him rise from the rank of major to the position of lieutenant colonel and brigade
25 commander of Sinia brigade. And as you hear about the attacks on Odek, Lukodi and

1 Abok, you will be able to appreciate Ongwen's evolving role in each attack.

2 With respect to the attack at Pajule, and for the reasons I have set out, the Prosecution
3 requests that the charges under counts 1 to 10 be confirmed. Thank you.

4 PRESIDING JUDGE TARFUSSER: Thank you very much. I don't know if we should
5 stop now if this -- if the Defence wants still to speak. I think there is not -- there is no
6 point in starting a new presentation for 15 minutes. What do you think?

7 MR GUMPERT: Your Honour, we're in agreement with that assessment. To start now
8 would inevitably mean that the next speaker, Mr Paul Bradfield, would have to break in
9 the middle of his submissions, that's undesirable in itself, so I submit that it should be
10 put over until tomorrow.

11 I understand, although we don't wish to make use of it, there may be a little more
12 elasticity tomorrow because there is no hearing at the conclusion of this trial, this
13 pre-trial session tomorrow.

14 PRESIDING JUDGE TARFUSSER: The Defence?

15 MR ODONGO: Your Honours, I think our only purpose for today is to listen and to
16 prepare ourselves. And we have to talk to our client in the back room. That's the
17 reason why we were asking for time before 4 o'clock. This serves our purpose very well,
18 your Honours.

19 PRESIDING JUDGE TARFUSSER: So you agree with closing it here?

20 MR ODONGO: Yes, your Honour.

21 PRESIDING JUDGE TARFUSSER: I don't think that the Legal Representative of
22 Victims have to say something on this, so I would break here, close the session of today,
23 after the three sessions by the Prosecutor, and we will resume tomorrow at 9.30.

24 So good evening to everybody. I think I would request tomorrow when we come in,
25 we start, we don't put on the record, I hope it's already on the record, the teams should

1 give to the -- to the court officer the list of participants so we can start without doing

2 this -- without giving the floor to everybody to tell who is in the courtroom, okay?

3 Thank you very much.

4 MR GUMPERT: I will ensure that every speaker for the Prosecutor introduces him or

5 herself so that there's no difficulty with the record.

6 PRESIDING JUDGE TARFUSSER: Thank you very much.

7 So the hearing is adjourned to tomorrow 9.30.

8 THE COURT USHER: All rise.

9 (The hearing ends in open session at 3.45 p.m.)

10 REPORT

11 Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-420, dated 23 March 2016,

12 the reclassified public version of this transcript is filed in the case.