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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public

**Pre-Trial Brief on behalf of Victims represented by
the Common Legal Representative**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. PROCEDURAL HISTORY

1. On 23 March 2016, Pre-Trial Chamber II issued the “Decision on the confirmation of charges against Dominic Ongwen” (the “Decision confirming the charges”), committing M. Ongwen, as the former Commander in the Sinia Brigade of the Lord's Resistance Army (the “LRA”), for trial on 70 charges of crimes against humanity and war crimes committed in northern Uganda between 1 July 2002 and 31 December 2005.¹

2. On 2 May 2016, the Presidency constituted Trial Chamber IX (the “Chamber”).² On 30 May 2016, the Chamber issued a decision setting the commencement date of trial to the 6 December 2016; ordering, *inter alia*, the Prosecution to file its pre-trial brief by the 6 September 2016 and inviting other participants, if they so wish, to file their respective pre-trial briefs by the same deadline.³

3. On 9 August 2016, following an order by the Chamber,⁴ the Defence submitted its Notifications pursuant to rules 79(2) and 80(1) of the Rules of Procedure and Evidence (the “Rules”), informing the Chamber, the Prosecution and the Legal Representatives of Victims of the existence of possible grounds for excluding criminal responsibility under article 31(1)(a) and (d) of the Rome Statute (the accused’s mental disease or defect, and duress), and of the existence of an alibi for

¹ See the “Decision on the confirmation of charges against Dominic Ongwen” (Pre-Trial Chamber II), No. ICC-02/04-01/15-422-Conf and No. ICC-02/04-01/15-422-Red. (the “Decision confirming the charges”). See also the “Separate opinion of Judge Marc Perrin de Brichambaut”, No. ICC-02/04-01/15-422-Anx-tENG, 23 March 2016.

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

³ See the “Decision Setting the Commencement Date of the Trial” (Trial Chamber IX), No. ICC-02/04-01/15-449, 30 May 2016, para. 8.

⁴ See the “Decision on ‘Prosecution’s request to order the Defence to comply with rule 79’” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-460, 7 June 2016. See also the “Prosecution’s request to order the Defence to comply with rule 79”, No. ICC-02/04-01/15-460, 7 June 2016, and related submissions.

the attack on Pajule IDP Camp.⁵ On 25 August 2016, the Defence filed an Update to said notifications.⁶

4. The Common Legal Representative of 592 victims authorised to participate in the present case⁷ submits her pre-trial brief with the aim of presenting to the Chamber the main views and concerns expressed by her clients during consultations in the field in preparation for trial; as well as the expectations of the participating victims. At this stage of the proceedings, the victims mainly reiterated the views already expressed at the confirmation of charges hearing.

II. VIEWS OF THE VICTIMS ON THE FACTS AND CHARGES CONFIRMED

1. The context in which the crimes were committed

5. In the Decision confirming the charges, Pre-Trial Chamber II found that *“in the time period relevant to the charges brought against Dominic Ongwen (i.e. between 1 July 2002 and 31 December 2005) in northern Uganda there was protracted armed violence between the LRA on the one side and the Ugandan government [...]. Such protracted armed violence, due to its intensity and its broad geographical scope covering the entire northern Uganda, amounted to an armed conflict not of an international character within the meaning of article 8 of the Statute. Also, due to the time, place and nature, it is satisfactorily established that the conduct with which Dominic Ongwen is charged as amounting to war*

⁵ See the “Defence Notification Pursuant to Rules 79(2) and 80(1) of the Rules of Procedure and Evidence”, No. ICC-02/04-01/15-517 and No. ICC-02/04-01/15-517-Conf-AnxA (and No. ICC-02/04-01/15-517-AnxA-Red), 9 August 2016; the “Defence Notification Pursuant to Rules 79(2) and 80(1) of the Rules of Procedure and Evidence”, No. ICC-02/04-01/15-518, 9 August 2016 and the “Defence Notification Pursuant to Rule 79(2) of the Rules of Procedure and Evidence”, No. ICC-02/04-01/15-519-Conf, 9 August 2016, for which a public redacted version was filed on 10 August 2016.

⁶ See the “Defence Updates to ICC-02/04-01/15-517 and ICC-02/04-01/15-518”, No. ICC-02/04-01/15-528, 25 August 2016.

⁷ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p. 19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11 and the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 24 December 2015, pp. 20-22.

*crimes was closely linked to the hostilities between the LRA and the Ugandan government. Accordingly, the Chamber is satisfied that the contextual elements of the war crimes with which Dominic Ongwen is charged [...] are established”.*⁸

6. This finding is supported by the explanation that the victims provide in relation to the historical background from which originated the conflict. Since independence in 1962, Uganda has been plagued by ethnically driven, politically manipulated violence. Deep-rooted divisions and polarization remain between different ethnic groups, and these have been greatly exacerbated by the way in which the country’s leadership has developed since independence.

7. In 1986, tension and multiple episodes of violence increased in northern Uganda as the rise of the LRA – an insurgent movement aiming at overthrowing the Ugandan Government – spread violence in different areas of the country. The armed conflict of a non-international character between the Government of Uganda and the LRA was one amongst many to affect post-independence Uganda, but was exceptionally protracted and brutal in its impact on the civilian population, mainly targeting the Acholi people.⁹

8. The LRA had a clear hierarchy, was well-structured and well-organised, armed and able to plan and successfully implement hundreds of attacks against the civilian population, in the course of which various crimes were committed, namely: rape, murder, torture, cruel treatment, enslavement, pillaging, destruction of property, persecution, conscription and use of children under the age of 15 to participate actively in hostilities, and sexual and gender based crimes. The LRA not only had effective tactics in implementing attacks, but had significant military ability.

⁸ See the “Decision confirming the charges”, *supra* note 1, para. 61.

⁹ See O. Otunnu, “Cause and consequences of the war in Acholiland” in Accord 11. 2002, available at <http://www.c-r.org/accord-article/causes-and-consequences-war-acholiland-2002>. See also Refugee Law Project, Working Paper No. 11, “Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda”, 2004.

Mr Ongwen, as a commander, was aware of the existence of the armed conflict and engaged in military operations.¹⁰

9. In an effort to prevent attacks, looting and abductions, the Ugandan Government created so-called “protected villages”. Sadly, these were often overcrowded, in appalling sanitary conditions and dangerous for the internally displaced people. Most of them were forced by the government to enter these camps against their will. In 2002, Uganda launched Operation Iron Fist in an attempt to definitively defeat the LRA insurgency, but the operation sparked more intense and violent attacks by the LRA. This unsuccessful operation dramatically increased the number of internally displaced people, and failed to end the war.

10. Nearly two million northern Ugandans, representing 90% of the affected population, were forced to abandon their often self-sufficient homesteads for a life confined to camps commonly known as internally displaced persons (“IDPs”) camps, dependent on food assistance.

11. The high concentration of people in the IDPs camps made the population more vulnerable and harder to protect from the LRA incursions. The protection of IDPs camps remained precarious, and life became a daily struggle for survival. In this context, the LRA frequently attacked the camps, partly because Kony perceived the victims as loyal to or supporting the Ugandan Government due to the fact that

¹⁰ In relation to factors relevant to the contextual elements of war crimes, the Common Legal Representative refers to: the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (Pre-Trial Chamber I), No. ICC-01/05-01/08-424, 15 June 2009 (the “Bemba Confirmation Decision”), paras. 225, 231, 233-236. See also the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/06-803-tEN, 14 May 2007, para. 232; the “Decision on the Prosecution Application under Article 58(7) of the Statute” (Pre-Trial Chamber I), No. ICC-02/05-01/07-1-Corr, 27 April 2007, paras. 34-35; the “Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana” (Pre-Trial Chamber I), No. ICC-01/04-01/10-1, 20 September 2010, paras. 17-18 and the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/10-465-Red, 16 December 2011, para. 103. See also the “Decision confirming the charges”, *supra* note 1, paras. 56 -59.

they were confined in areas under the protection of the Ugandan Army or UPDF, and partly because he needed to recruit soldiers and wives for his army.

2. The attack against the civilian population

12. In the Decision confirming the charges, Pre-Trial Chamber II found that “[...] *from 1 July 2002 to 31 December 2005, the LRA carried out an attack directed against the civilian population of northern Uganda. Such attack was widespread as it extended over a wide geographical area and a considerable period of time, and involved a large number of acts of violence victimising a large number of civilians, as well as systematic, as it was planned and the violence followed a discernible pattern. Also, it is sufficiently established that the acts with which Dominic Ongwen is charged as amounting to crimes against humanity share common features in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations, with the other acts forming the basis of the LRA attack directed against the civilian population in northern Uganda. [...] Accordingly, the Chamber is satisfied that the contextual elements of the crimes against humanity with which Dominic Ongwen is charged [...] are established*”.¹¹

13. This finding is also supported by the recollection that the victims have of the events they suffered from. The attack against the civilian population was “widespread or systematic”, in the sense of being “*massive, frequent, carried out collectively with considerable seriousness*” and “*directed against a multiplicity of victims*”, or involving patterns of crimes, in the sense of “*non-accidental repetition of similar criminal conduct on a regular basis*”.¹²

¹¹ See the “Decision confirming the charges”, *supra* note 1, paras. 63-64.

¹² See the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/07-717, 30 September 2008 (the “Katanga and Ngudjolo Confirmation Decision”), para. 397; the “Corrigendum of the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya” (Pre-Trial Chamber II), No. ICC-01/09-19-Corr (the “Kenya Investigation Decision”), 31 March 2010 para. 96 and the “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’” (Pre-Trial Chamber III), No. ICC-02/11-14-Corr, 14 November 2011 (the “Côte d’Ivoire Investigation Decision”) para. 54.

14. The accounts of the events shared by the victims of the attacks reveal that they were unarmed men, women and children who suffered from “*series of acts of violence*”,¹³ or, in other words, “*a campaign or operation*” carried out against them¹⁴ by the LRA in the localities where they lived. Moreover, the campaign involved the multiple commission of acts referred to in article 7(1) of the Rome Statute against the civilian population because of its perceived support¹⁵ to the government led by President Museveni. The victims of the attacks were not active in the armed conflict which was raging in northern Uganda during the duration of the period referred to in the charges. This is true for all the victims of the attacks, including many children and women, who were grossly victimised by the commission of crimes charged against Mr Ongwen.

15. The victims indicate that the crimes they suffered from were neither spontaneous nor isolated acts of violence, but rather were part of a planned, directed and organised attack perpetrated over a long period of time following an organisational policy.¹⁶

¹³ See ICTY, *The Prosecutor v. Kunarac, Kovac and Vuković*, Case No. IT-96-23 and IT-96-23/1-A, Judgement (Appeals Chamber), 12 June 2002, para. 89; and ICTR, *The Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case No. ICTR-99-52-A, Judgement (Appeals Chamber), 28 November 2007, para. 918.

¹⁴ See the “Bemba Confirmation Decision”, *supra* note 10, para. 75; the “Kenya Investigation Decision”, *supra* note 12, para. 80; the “Côte d’Ivoire Investigation Decision”, *supra* note 12, para. 31; the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), No. ICC-01/09-01/11-373, 23 January 2012 (“the Ruto et al. Confirmation Decision”), paras. 162 and 164; and the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), No. ICC-01/09-02/11-382-Red, 23 January 2012 (the “Muthaura et al. Confirmation Decision”), para. 109.

¹⁵ See the “Bemba Confirmation Decision”, *supra* note 10, para. 76, and the “Côte d’Ivoire Investigation Decision”, *supra* note 12, para. 32. See also the “Katanga and Ngudjolo Confirmation Decision”, *supra* note 12, para. 399; the “Kenya Investigation Decision”, *supra* note 12, para. 81; the “Ruto et al. Confirmation Decision”, *supra* note 14, para. 162; and the “Muthaura et al. Confirmation Decision”, *supra* note 14, para. 110.

¹⁶ In relation to factors relevant to the contextual elements of crimes against humanity, the Common Legal Representative refers to the “Kenya Investigation Decision”, *supra* note 12, para. 79. See also the “Bemba Confirmation Decision”, *supra* note 10, paras. 73-88 and the “Côte d’Ivoire Investigation Decision”, *supra* note 12, para. 29. In particular, in its decision, Pre-Trial Chamber III provided an analysis of the requirement of a State or organizational policy within the context of “attack directed against any civilian population” by reference to Pre-Trial Chamber II’s decision in the Kenya situation.

16. The broad geographical spread of the victimisation and the large number of victims participating in this case confirm the widespread nature of the attack. To date, 2026 victims have been admitted to participate in the proceedings: 95% of them suffered from the four attacks charged against the Accused and had to flee their homes. The majority of them lost at least one or more of their family members. Their properties were pillaged or destroyed. Women and girls, and sometimes, men were either raped or subjected to other sexual and gender-based crimes. As a result of rapes, some of them contracted sexually transmitted diseases, including HIV; others got pregnant and gave birth to children who have in turn been victimised and stigmatised since then.

17. The victims recall a particular pattern of the LRA in attacking IDPs camps: the attacks were well-planned and well-executed following a standard *modus operandi* which aimed at targeting the UPDF on one side, and the civilians, on the other side. The victims also put emphasis on the crime of pillaging, explaining that the LRA took everything they owned, including all goods necessary to sustain life in the difficult conditions in northern Uganda; pans, cups and clothes, as well as livestock, constituting the key source of income of the affected communities. The victims often compiled detailed lists of the items looted. According to the victims' account of events, some murders were motivated by a desire to oppress their resistance or by a simple wish to rob cattle belonging to the inhabitants of the camps. These acts were clearly intended to cause suffering and injury to members of the targeted group.

18. Moreover, the victims, including elderly, children, and handicapped, were cruelly attacked by the LRA only because of their ethnicity. The victims' loved ones were brutally murdered. Many of the victims were also mutilated and burned. Number of women and young girls were raped or were inflicted inhuman and cruel treatments. Those who survived the attacks had to leave their homes, to flee and take

See also, ROBINSON (D.), "Essence of Crimes against Humanity Raised by Challenges at ICC", *European Journal of International Law*, 27 September 2011, available at: <http://www.ejiltalk.org/essence-of-crimes-against-humanity-raised-by-challenges-at-icc/>.

refuge far away from their places of residence for many years because of fear of reprisals. The victims indicate several reasons for being targeted: mainly because, as residents in the IDPs camps, they were perceived as supporters of the government; and also because they were perceived as helping the Ugandan Army. The victims also explain that Kony and his men, including Mr Ongwen¹⁷, wanted to target them because they were not supporting their insurgency against President Museveni's government. Therefore, according to the victims, the recognition of the crime of persecution in connection with the attacks is an important element for the Trial Chamber's assessment of evidence.

3. The practice of abducting girls and women and the commission of gender-based crimes

19. During the decades of armed conflict in northern Uganda, the LRA systematically abducted girls and women for the purpose of raping them and forcibly marrying them to commanders and fighters. Abductions were normally achieved during the attacks. The majority of abducted girls were forced into marriages and given to the LRA commanders and higher ranking fighters as reward. Top commanders would describe the type of girl they wanted, including age, physical appearance, and intelligence. If recent abductees matched these desired characteristics, then they were collected and distributed to the respective commanders. These innocent girls were ordered to go to those men and become their wives, and any resistance was futile and punishable by rape, severe beating, torture or even death.¹⁸ Once the senior commanders selected the girls they wanted, the lower-ranking fighters took wives among those who remained.

20. Recent studies find that, at least, a quarter of all females abducted for any length of time were forcibly married to members of the LRA, and that half of them gave birth to children, conceived during these forced relationships. Girls forced into

¹⁷ See the "Decision confirming the charges", *supra* note 1, paras. 65-85.

¹⁸ *Idem*, paras. 93-94, 137-138.

marriage are commonly referred to as “sex slaves”. This inaccurate categorization of their activity within the LRA perpetuates a common misunderstanding about their roles and experiences. While forced marriage involves rape, sexual violence and enslavement, the crucial element of the crime is the mental and moral trauma resulting from the imposition, by threat or force arising from the perpetrator’s words or conduct, of a forced conjugal association and a relationship of exclusivity between the “couple”. Forced marriages are coercive relationships without valid consent of the women. They have the traditional characteristics of shared domicile, bearing of children, domestic responsibilities, exclusivity and sex. The nature of these relationships forces girls to take on roles as sexual partners, mothers to the children born from these relationships, cooks, domestics, water collectors, porters, food producers. The relationship consists of a familial aspect where children are born and raised by abducted mothers and their captor husbands.¹⁹

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

¹⁹ See K. Carlson & D. Mazurana “Forced Marriage within the Lord’s Resistance Army, Uganda”, Feinstein International Center, May 2008, available at: <http://fic.tufts.edu/assets/Forced+Marriage+within+the+LRA-2008.pdf>.

22. The victims indicate that rape, sexual violence, sexual slavery, forced marriage and forced pregnancy were crimes usually committed by the LRA, including by senior commanders. They also express appreciation for the fact that finally these crimes are charged against the Accused and some of the victims who directly suffered from said crimes might be willing to appear before the Chamber to tell their stories in an effort – albeit painful – to explain what happened to them and how these crimes have affected their lives.

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

23. The LRA has also been notorious for its widespread abduction of children to serve as soldiers.²⁰ Under article 8(2)(e)(vii) of the Rome Statute, the recruitment of children under fifteen “into armed forces or groups” and their use in hostilities clearly extends to any armed group within the meaning of international humanitarian law. The crime has a permanent or continuous character which means that the offence continues to be committed as long as the child remains in the military group or does not reach the age of fifteen.

24. Given that the codification of this crime aims at protecting children under fifteen years old, as a particularly vulnerable group, from the inherent risks arising out of armed conflicts, in principle, all direct or indirect activities which expose the children to the “armed conflict risk” should be covered by the active participation requirement.²¹ Therefore, the following acts constitute use of children in hostilities: taking direct part in attacks, carrying equipment and belongings for their superiors,

²⁰ *Idem*, paras. 141-145.

²¹ See the “Judgement pursuant to article 74 of the Rome Statute” (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012, para. 628: “All of these activities, which cover either direct or indirect participation, have an underlying common feature: the child concerned is, at the very least, a potential target. The decisive factor, therefore, in deciding if an “indirect” role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target”.

including weapons, collecting firewood for the troops, collecting and disposing dead bodies, collecting and carrying pillaged goods, being used as escorts.

25. These are the kind of tasks typically described by former child-soldiers when asked about their stay within the LRA which used them as a vital resource. Children were easily malleable to whatever purpose Kony wanted and were very quick to obey his orders. One former child soldier explained *“Children copy exactly what they learn during training. They don’t pretend”*. Children, who were used as disposable porters by the LRA, walked quickly and tired slowly. This both increased the LRA’s mobility and enhanced its capacity to carry loads of looted goods over long distances and satisfy the need for food, gumboots and cash. Forcing children to kill their friends or family members in front of other abductees instilled fear in them and discouraged them from escaping. In the words of another former child soldier: *“Sometimes they get the new people to kill. You never refuse to kill, otherwise they will kill you”*. It also forced a “clean break with the past”, as they were less likely to return to a community where they murdered, tortured and looted.

26. Some of the victims participating in this case are either former child soldiers who managed to escape or who were captured by the UPDF and subsequently set free. Parents of former child soldiers also participate as victims in these proceedings. Some of them never saw their children again since their abduction and they have lost all hope to embrace them again. Others still keep the hope of seeing their children back home one day. The ones who had the chance of returning to their families and communities face enormous challenges in trying to return to normal life. They have difficulty processing their experiences and reintegrating within their communities. They need healing from emotional difficulties and traumatic experiences, protection from re-recruitment, training and education in peaceful roles, and careful reintroduction into their communities.²²

²² See C. Dolan, “Which children count? The politics of children’s rights in northern Uganda”, *Accord Issue* 11, 2002, available at <http://www.c-r.org/accord-article/which-children-count-politics->

5. Concerns in relation to the grounds for excluding criminal responsibility raised by the Accused

27. The intention of the Defence to raise grounds excluding the criminal responsibility of the Accused has generated serious concerns amongst victims. They expressed the view that it is impossible to seriously envisage the possibility that Mr Ongwen did not understand at all the extremely grave nature of the criminal acts he has allegedly committed. While it could be argued that children under the age of 15 may not be able to always distinguish what is wrong and what is right, this assumption cannot be valid for someone who has become an adult, who was in position of power within the LRA and who was able to make a distinction and subsequently choose between what was right or wrong. Indeed, Mr Ongwen was a willing participant in the implementation of the policy to attack the civilian population of northern Uganda – and he actively planned and executed military operations.²³

28. The victims also indicate that the Accused had an important role in the LRA during the period of the charges as it is shown by his progressive escalation through the military hierarchy within the LRA; his participation in the Control Altar, representing the core leadership of the movement responsible for devising and implementing its strategy, including issuing orders to attack and brutalise the civilian population.

29. Thus, while being a former child soldier himself, Mr Ongwen took active part in maintaining and enforcing the system of terror that the LRA operated. Therefore, the victims are of the view that Mr Ongwen cannot possibly be considered as

[children%E2%80%99s-rights-northern-uganda-2002](#). See also, “Abducted. The Lord’s Resistance Army and Forced Conscription in Northern Uganda”, Berkeley -Tulane Initiative on Vulnerable Persons, 2007.

²³ On the individual criminal responsibility of the Accused, see the “Decision confirming the charges”, *supra* note 1, paras. 56-59, 70, 75, 80, 85, 101, 137, 140, 145.

someone who had been suffering from a mental disease or defect that destroyed his capacity to appreciate the unlawfulness or nature of his conduct or capacity to control his conduct to conform to the requirements of law within the meaning of article 31(1)(a) of the Rome Statute.

30. As for the defence of duress, the victims highlight that the Accused willingly remained in the LRA and he shared the objectives and purpose of the organisation to overthrow President Museveni's government by applying a policy of persecution of the civilian population perceived to support the government. Mr Ongwen is known amongst the victims as the most courageous, loyal and brutal of the men who served Joseph Kony. He has a record of protracted atrocities against his own people; he was proud of his achievements in the battlefield; he showed no remorse.²⁴

31. The victims are confident that the evidence will show that Mr Ongwen was aware of the LRA policy to attack the civilian population, shared the goals of the movement and was willing to contribute to said goals. The victims also consider that they should fully participate in the debate on the criminal responsibility of the Accused, including in eventually appointing experts, questioning experts and providing substantial submissions on the matter.

6. The impact of the crimes upon victims

32. Prior to the LRA insurgency, people in northern Uganda lived a peaceful life. When community members are asked about their lives before the conflict broke out

²⁴ The Common Legal Representative refers to the proportionality requirement in article 31 of the Rome Statute. See the "Decision confirming the charges", *supra* note 1, paras. 152-155. See also ICTR, *The Prosecutor v. Kanuhanda*, Judgement and sentence, 22 January 2004, paras. 78 and 79; and ECCC, *Co-Prosecutors vs. KAINO Guek Eav alias "DUCH"*, Trial Judgement, Case File/Dossier No. 001/18-07-2007/ECCC/TC, 26 July 2010, para. 557: "*The Chamber accepts that towards the end of the existence of S-21, the Accused may have feared that he or his close relatives would be killed if his superiors found his conduct unsatisfactory. Duress cannot however be invoked when the perceived threat results from the implementation of a policy of terror in which he himself has willingly and actively participated*". The issue was discussed on appeal only in relation to the sentence of the accused, not to the substance of duress as a defence. See Appeal Judgement, 3 February 2012, paras. 360-365.

in 1986, they described it as very pleasant. Life was peaceful and they were free to go about their daily business. People in northern Uganda lived their lives with the comfortable reassurance that they knew what tomorrow would look like. According to research by Justice and Reconciliation Project, a resident of Lukodi said, *“people were friendly to one another, would drink, stay up late and could even decide to sleep in the market. There were no land wrangles; people loved themselves as brothers and sisters. Issues of defilement were unheard of and there was no HIV/ AIDS”*²⁵.

33. Suddenly, all this changed when the LRA started raiding villages and IDPs camps. Victims of the attacks generally recall their experience as follows: *“All around there were killings going on and so much fire burning, that the entire place became so bright as though it was broad daylight. By the time they left, the whole camp was littered with dead bodies as if they had been on a hunting spree. They killed people as if they were hunting animals and not human beings”*.²⁶

34. The LRA’s method of warfare has had a profound psychological impact on the local population. The rebels used extreme violence, especially against civilians, to instil fear and maintain control. The severity of attacks appeared to come in waves, with major massacres interspersed across an ongoing campaign of low-intensity, small-scale assaults. Rebels mutilated, abducted children and adults, and committed rape and other acts of sexual violence against girls and women. They routinely cut off lips, ears, and breasts; gouged eyes and amputated limbs. Many of these mutilations were carried out to prevent “betrayals”. Adults were abducted to help carry looted goods - still causing them chest and back pain - but usually released after a short period.²⁷

²⁵ See “The Lukodi Massacre 19th May 2004” Justice and Reconciliation Project, available at: http://justiceandreconciliation.com/wp-content/uploads/2011/04/JRP_FNXIII_Lukodi-Massacre.pdf

²⁶ *Idem*.

²⁷ See T. Hollander and B. Gill, “Every Day the War Continues in My Body: Examining the Marked Body in Postconflict Northern Uganda”, *International Journal of transitional Justice*, 2014, pp. 1-18.

35. The LRA favoured 9 to 12 year-olds because this age group is the most malleable. Once abducted, children were conscripted as soldiers, porters, and sexual slaves. These children were considered an asset to the LRA because they can walk quickly and do not tire easily. If they do slow down, or are unable to keep up, they were killed, or mutilated and then killed.

36. The LRA also favoured preadolescent girls because they are believed to be free of sexually transmitted diseases. The younger girls were subjected to long hours of exhausting domestic work: walking long distances to fetch water and firewood, cooking, cleaning and working in the fields.

37. The extent of the prejudice suffered by the civilians in northern Uganda is tremendous. Experience of forced conscription into the LRA varies in scope and intensity but is always considered to be traumatic. Children and youth – some as young as 7 and 8 years old – had been forced to mutilate and kill civilians, including members of their own families and communities. Abductees also have had violence inflicted upon them – typically beatings, imprisonment, forced labour, and witnessing violence.

38. Several studies indicate that former abductees who have committed or experienced high levels of violence show substantial increase in emotional distress, as well as poorer family relations. Symptoms of Post-Traumatic Stress Disorder (PTSD) and depression were found to be significantly higher among those who experienced abduction compared to those who only witnessed violence and those who had little exposure to the conflict. Former male and young abductees were found to achieve lower education levels because of the time away from school and the impact of abduction on the resources available for paying fees.²⁸

²⁸ See “Abducted. The Lord’s Resistance Army and Forced Conscription in Northern Uganda”, *op. cit. supra* note 22, p. 5.

39. Reports also show that in average, women experienced a longer stay in captivity than men. Women aged 19-30 years old averaged 4.5 years in abduction, more than the average of any other gender-age group. This finding reflects the LRA's practice of abducting girls and women to serve as sexual partners and servants to the LRA commanders and it is further supported by evidence from some reception centres documenting the systematic use of women for sexual encounters.²⁹

40. As the people from the IDPs camps returned from displacement and tried to rebuild their lives, they had to struggle with daunting resettlement challenges in addition to complex questions on how to approach issues of reconciliation between victims and alleged perpetrators within the community.

41. Many war affected communities in northern Uganda are faced with a similar scenario as they struggle to pick up the pieces of their lives in the aftermath of the conflict, characterized by difficulty to cope with their trauma, and challenges in the pursuit of their justice and reconciliation needs, specifically the need for accountability and reparations.

42. The victims have been waiting for the proceedings in this case to start for more than 10 years. As a result, an important number of victims communicated with the Court and requested to participate in the proceedings many years ago. They all expressed a lot of frustration regarding the long-lasting non-execution of the warrants of arrest issued in 2005. Some victims also showed a disbelief and loss of trust in the proceedings of the Court. Nonetheless, at present, the victims express relief because, finally, the trial will soon start and they hope to contribute to the search for the truth about the events at the origin of their victimisation and to have their voice heard in the proceedings.

²⁹ *Idem*, pp. 11-12.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda

Dated this 6th day of September 2016

At The Hague, The Netherlands