



Original: English

No.: ICC-02/04-01/15

Date: 12 March 2018

## 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

**Request for reconsideration of the “Decision on the Legal Representatives for  
 Victims Requests to Present Evidence and Views and Concerns  
 and related requests”**

Source: **Legal Representatives of Victims**

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

**The Office of the Prosecutor**  
 Ms Fatou Bensouda  
 Mr Benjamin Gumpert

**Counsel for the Defence**  
 Mr Krispus Ayena Odongo  
 Mr Charles Achaleke Taku

**Legal Representatives of the Victims**  
 Mr Joseph Akwenyu Manoba  
 Mr Francisco Cox

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants**  
 (Participation/Reparation)

**The Office of Public Counsel for Victims**  
 Ms Paolina Massidda

**The Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## I. INTRODUCTION

1. The LRVs respectfully request the Chamber to reconsider the determinations made in paragraphs 57 to 59 of the "Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests" (the "Decision")<sup>1</sup>: namely, that sexual violence against men and boys does not fall within the scope of the charges in this case, and therefore that it is inappropriate for the LRV to call witnesses to testify on this subject.

## II. PROCEDURAL HISTORY

2. On 13 October 2017 the Single Judge issued the "Preliminary Directions for any LRV or Defence Evidence Presentation", in which he directed the LRVs to provide a proposed witness list by 2 February 2018.<sup>2</sup>
3. On 2 February 2018 the LRVs submitted the "Victims' requests for leave to present evidence and to present victims' views and concerns in person".<sup>3</sup> The LRVs requested leave to call six victim witnesses and two expert witnesses. Of the victim witnesses, three were proposed to testify on the subject of the "infliction of sexual violence on men and boys". One of these individuals states that he was raped by members of the Lord's Resistance Army (the "LRA") during the attack on the Abok IDP camp. The other two men state that they were abducted during the attack on the Abok IDP camp (one of them having been a child under 15 years at the time), and that they experienced sexual violence during their time under abduction.
4. On 7 March 2018 the Chamber issued the Decision. The Chamber granted leave for the LRVs to call three victim witnesses and one expert witness. It rejected leave for the LRVs to call evidence of three victim witnesses in respect of sexual

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<sup>1</sup> Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, ICC-02/04-01/1501199-Red, 6 March 2018.

<sup>2</sup> Preliminary Directions for any LRV or Defence Evidence Presentation, ICC-02/04-01/15-1021, 13 October 2017.

<sup>3</sup> Victims' requests for leave to present evidence and to present victims' views and concerns in person, ICC-02/04-01/15-1166, 2 February 2018.

violence committed against men and boys, holding that such acts did not fall within the scope of the case.

### III. THE DECISION

5. Paragraph 57 of the Decision reads:

*The Chamber notes that both proposed topics (sexual violence against men and boys and the desecration of bodies) are not part of the facts and circumstances described in the charges confirmed by the Pre-Trial Chamber. As noted by the LRV, the charges for SGBC as confirmed concern crimes against women and girls. Since the acts described by the anticipated testimony would fall under the category of sexual crimes and such acts are not mentioned in the facts confirmed by the decision on the confirmation of charges, the Chamber considers them to be beyond the scope of the charges. [emphasis added]*

6. The Chamber went on to say that “in light of the above” hearing this evidence would not be appropriate or necessary.<sup>4</sup>
7. The LRVs note that in their request for leave to present evidence they recognised that the charges confirmed in respect of “SGBC” (sexual and gender based crimes) are expressly limited to violence against women and girls, and that sexual violence against men would fall most readily under other charges:

*The LRVs recognise that the charges confirmed against Dominic Ongwen in respect of sexual and gender-based crimes (charges 50-68) are specifically concerned with crimes against women and girls. However it is submitted that the acts of sexual violence committed against men at a minimum fall within several of the other crimes confirmed. Those which occurred during attacks on IDP camps are covered by the charges of attacks on civilian population, torture, cruel treatment, other inhumane acts and persecution. Those which were experienced by child abductees are linked to the charges concerning the conscription and use of child soldiers, since such acts of violence were a means by which to terrorise, shame and thereby control these children. Additionally, men and boys who were forced against their will to commit acts of sexual violence against women and girls can be seen as indirect victims of charges 62 to 68 (torture and rape through sexual violence).<sup>5</sup>*

### IV. SUBMISSIONS

8. The Chamber has previously recognised its inherent power to reconsider its own decisions. Such a power is exceptional and, in the words of the Single Judge, only

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<sup>4</sup> Decision, para.58.

<sup>5</sup> Victims’ requests for leave to present evidence and to present victims’ views and concerns in person, ICC-02/04-01/15-1166, 2 February 2018, para. 21.

to be exercised if “a clear error of reasoning has been demonstrated” or where necessary “to prevent an injustice”.<sup>6</sup>

9. In the present case the LRVs respectfully submit that the Decision demonstrates an error which meets the test set out above. Moreover, if not addressed by reconsideration, that error will result in an injustice, both at the present stage of proceedings and also during any future reparations proceedings. The LRVs submit that this matter is of an exceptional nature, such as justifies reconsideration by the Chamber.

#### *A. Error of reasoning*

10. As the Chamber recognised in the Decision, charges 50 to 68 which cover sexual and gender based violence, are defined in the confirmation of charges decision as concerning only crimes against women and girls. Indeed, they are specifically limited to particular conduct relating to the alleged systematic abduction and forced marriage of women and girls. Despite this, *other* incidents of sexual violence, including against boys and men (but also including sexual violence against women and girls occurring outside the context of abduction and forced marriage), are relevant to *other* confirmed charges in two ways: (i) they constitute other crimes from among those charges confirmed (or elements of them); (ii) they are consequences of the crimes charged and their results are therefore part of the harm suffered by the victims. The following submissions elaborate on each of these aspects in turn.

##### (i) Sexual violence against men and boys as charged crimes (or part thereof)

11. A number of charges were confirmed which are broad enough to encompass sexual violence and which contain no factual limitation excluding crimes committed against men. Some of these charges are relevant to those sexual

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<sup>6</sup> Decision on the Defence Request for Partial Reconsideration of the Decision under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-711, 23 February 2017, para.4; Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, ICC-02/04-01/15-468, 15 June 2016, para. 4.

assaults which happened within a camp during an attack, while others are relevant to sexual assaults which took place during abductions.

12. In respect of sexual violence which was *committed in Abok IDP camp during the attack* on that camp, the confirmed charges include:

- Charge 37: The war crime of an attack against a civilian population as such under Article 8(2)(e)(i) of the Statute;
- Charges 42-43: Torture, as a crime against humanity and a war crime under Articles 7(1)(f) and 8(2)(c)(i) of the Statute respectively;
- Charge 44: The crime against humanity of other inhumane acts under Article 7(1)(k) of the Statute;
- Charge 45: The war crime of cruel treatment under Article 8(2)(c)(i) of the Statute;
- Charge 49: The crime against humanity of persecution under Article 7(1)(h) of the Statute.

In the LRVs' submission, a rape committed during the Abok IDP camp by an LRA fighter against a civilian man must constitute at least one (and probably several) of these charged crimes.

13. To take the clearest case: it is now well beyond contestation that international law recognises rape as a form of torture. A series of decisions of the International Criminal Tribunal for the former Yugoslavia (the "ICTY")<sup>7</sup> and the International Criminal Tribunal for Rwanda (the "ICTR")<sup>8</sup> have held this to be the case. In *Kunarac et al* the ICTY Appeals Chamber explained as follows:

*Torture is constituted by an act or an omission giving rise to "severe pain or suffering, whether physical or mental", but there are no more specific requirements which allow an exhaustive classification and enumeration of acts which may constitute torture. Existing case-law has not determined the absolute degree of pain required for an act to amount to torture.*

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<sup>7</sup> ICTY, *Prosecutor v Furundžija*, Trial Judgment, IT-95-17/1-T, 10 December 1998, paras 163 and 171; ICTY, *Prosecutor v Mucić et al. ("Čelebići")*, IT-96-21, 16 November 1998, Trial Judgement, paras 480-496; ICTY, *Prosecutor v Kunarac et al.*, Appeal Judgment, IT-96-23 & IT-966-23/1-A, 12 June 2002, paras 149-151.

<sup>8</sup> ICTR, *Prosecutor v Akayesu*, Trial Judgment, ICTR-96-4-T, 2 September 1998, para. 597.

*The Appeals Chamber holds that the assumption of the Appellants that suffering must be visible, even long after the commission of the crimes in question, is erroneous. Generally speaking, some acts establish per se the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.*

*Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering...<sup>9</sup>*

Rape has also been held to constitute torture by the Inter-American Court of Human Rights (the “IACtHR”)<sup>10</sup> and the European Court of Human Rights (the “ECHR”).<sup>11</sup> In an approach similar to that of the ICTY set out above, the IACtHR has explained that:

*an act of torture may be perpetrated both through acts of physical violence and acts that cause acute mental or moral suffering to the victim. In addition, this Court has recognized that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage, leaving the victim “physically and emotionally humiliated,” a situation that, unlike other traumatic experiences, is difficult to overcome with the passage of time. This reveals that severe suffering of the victim is inherent to rape, even when there is no evidence of physical injuries or disease.<sup>12</sup>*

14. United Nations human rights mechanisms have also taken the position that rape is a form of torture.<sup>13</sup>

15. The jurisprudence and reporting in this area overwhelmingly concerns rapes and other forms of sexual violence committed against women. However where similar acts are committed against men the same legal characterisation is appropriate. This has been explicitly recognized by the Committee Against Torture.<sup>14</sup> Research undertaken in Uganda and the region in recent years shows that rape has specific

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<sup>9</sup> ICTY, *Prosecutor v Kunarac et al.*, Appeal Judgment, IT-96-23 & IT-966-23/1-A, 12 June 2002, paras 149-151.

<sup>10</sup> IACtHR, *Rosendo Cantú et al. v Mexico*, Judgment of 31 August 2010, paras 107-118.

<sup>11</sup> ECHR, *Aydin v. Turkey*, Judgment, App. No. 23178/94, 25 September 1997, paras 83 and 86.

<sup>12</sup> IACtHR, *Rosendo Cantú et al. v Mexico*, Judgment of 31 August 2010, para.114.

<sup>13</sup> See for example: Committee Against Torture, General Comment No.2, 24 January 2008, paras 18 and 22; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras 51-53.

<sup>14</sup> Committee Against Torture, General Comment No.2, 24 January 2008, para.22.

and devastating psychological consequences on male victims,<sup>15</sup> supporting the view that it must be characterised as torture. To take a different view concerning rape and other serious forms of sexual violence against men in fact only risks contributing to the continued invisibility of such crimes and the stigmatization of their victims (a concern which is discussed further below).

16. The LRVs note that none of the charges listed above at paragraph 12 is limited factually by the confirmation of charges decision in such a way as would exclude from its scope rapes or other acts of sexual assault.
17. The LRVs therefore believe that it should be uncontroversial that the charges of torture cover the experience of its client (and proposed witness) who states that he was captured and brutally raped by LRA rebels during the attack on Abok IDP camp. This man was a civilian who was in the custody and under the control of LRA fighters at a point in time when they inflicted severe physical and mental pain and suffering on him. This treatment was not linked to a lawful sanction. It was inflicted for the purpose of punishment and intimidation. It was clearly linked to the ongoing widespread and systematic attack against the civilian population as well as the armed conflict. The elements of Articles 7(1)(f) and 8(2)(c)(i) are all satisfied.
18. Even if, *arguendo*, the Chamber considered that one of these elements appeared not to be satisfied, this rape would constitute a crime within several other charges:
  - If the requirement under Article 8(2)(c)(i) for a particular purpose (such as intimidation and punishment) were not satisfied, the charge of cruel treatment under Article 2(c)(i) would nonetheless be made out.

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<sup>15</sup> J. Edstrom, C. Dolan, T. Shahrokh, O. David, "Therapeutic Activism: Men of Hope Refugee Association Uganda Breaking the Silence over Male Rape in Conflict-related Sexual Violence, March 2016 ([https://www.refugeelawproject.org/files/others/Therapeutic\\_Activism\\_MOH.pdf](https://www.refugeelawproject.org/files/others/Therapeutic_Activism_MOH.pdf)); See also Kristina Lažauninkaitė, Victims of sexual violence affected by the Lord's Resistance Army conflict: addressing sexual violence within Ugandan national law and the International Criminal Court (ICC), June 2016 (<http://arno.uvt.nl/show.cgi?fid=141594> ), pp3-4.

- If the requirement of Article 7(1)(f) relating to custody or control was considered not to have been met, the charge arising under Article 7(1)(k) of other inhumane acts would nonetheless apply.
- In any event the rape constitutes a violent assault which formed part of the “attack” on the civilian population of Abok IDP camp as such, which is covered by the charge under Article 8(2)(e)(i).
- The victim, like other civilians in Abok IDP camp, was targeted on political grounds and, by virtue of his rape, was severely deprived of his right to liberty and security of the person. The charge of persecution under Article 7(1)(h) is therefore made out in addition to those concerning torture and other inhumane acts.

19. Concerning sexual violence committed against *persons abducted from Abok* during the attack, relevant charges include:

- Charges 42 to 45: Torture, cruel treatment and inhumane acts as war crimes and crimes against humanity under Articles 7(1)(f), 7(1)(k) and 8(2)(c)(i) of the Statute (It is noted that the factual definition of these charges as confirmed specifically includes reference to civilians abducted from Abok and forced to march carrying looted items.<sup>16</sup>);
- Charge 49: Enslavement as a crime against humanity under Article 7(1)(c) of the Statute;
- Charge 69: The war crime of conscription of children into an armed group under Article 8(2)(e)(vii) of the Statute.

20. For child recruits, sexual violence was a means by they were humiliated and terrorised by the LRA and thereby one of the mechanisms used to achieve enlistment against their will. Similarly, for adult abductees, sexual violence was one of the means used to achieve their enslavement through terror and intimidation: it was a means used by the LRA to establish control in the nature of

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<sup>16</sup> Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, 23 March 2016, p87.

ownership over abductees. Forcing an abductee to undertake horrifying, humiliating and demeaning acts demonstrated the LRA's control over that individuals and the latter's inability to exercise free choice in his actions.

21. The relevance of violent intimidation to the crime against humanity of enslavement is clear from the jurisprudence of the ICTY. In *Kunarac et al.* the ICTY Appeals Chamber cited with approval a number of "indicia of enslavement" identified in the trial judgment that case:

*These factors include the 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'.<sup>17</sup>*

22. The use of various forms of violence, including violence of a sexual nature, was therefore one aspect these crimes. While evidence of one incident of such violence would not suffice to establish these crimes on its own, such evidence is nonetheless relevant to the constitutive elements of those crimes, and therefore falls within their scope.

23. The LRVs therefore submit that evidence from their two proposed witnesses who suffered sexual violence during their abduction falls within the scope of the charges of enslavement and child conscription. In any event, and for the reasons to those set out above regarding crimes committed in the Abok IDP camp itself, these acts constituted torture, cruel treatment or other inhumane acts. The factual particulars of these crimes as set out in the confirmation of charges decision specifically include the use of abduction and use for forced labour of civilians following the attack.<sup>18</sup>

(ii) Sexual violence against men and boys as harm arising from crimes charged

24. Additionally, and even if the Chamber does not accept the submissions above, the LRVs submit that the infliction of sexual violence on men and boys was a direct

<sup>17</sup> ICTY, *Prosecutor v. Kunarac et al.*, Appeals Judgment, IT-96-23-T and IT-96-23/1-A, 12 June 2001, para. 119

<sup>18</sup> Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, 23 March 2016, p87.

consequence of the other crimes charged, and constitutes a form of harm done to the victims by virtue of those other crimes. For example: where abducted children experienced sexual violence, it is submitted that this occurred to these children *because of* their forced recruitment, in the same way as other forms of violence (both physical and psychological) have been understood as caused by child conscription.

25. Indeed, the LRVs submit that during the course of the Prosecution case the Chamber has heard abundant evidence regarding other forms of harm inflicted on child and adult abductees. These include: physical beatings; being forced to inflict physical violence on others; threats against the abductees, their family members and communities; various forms of neglect and mistreatment such as being provided insufficient food, water, shelter and clothing; being forced to undertake excessive work and travel on foot; being exposed to dangerous combat situations with inadequate preparation; and many others. Just as these forms of treatment and the various types of harm resulting from them have been treated as linked to the crimes involved in the abductions, so too must incidents of sexual violence which were carried out against abductees while they were under the control of the LRA.
26. On the basis of the above it is submitted that the Chamber erred when it concluded that sexual violence against men and boys falls outside the scope of the confirmed charges. Indeed such acts constitute several other crimes charged, and also can be understood as forms of harm resulting from charged crimes.

#### ***B. Injustice***

27. *Additionally*, it is submitted that the Chamber should reconsider its decision because of the injustice caused by the conclusions set out in paragraphs 57 to 59 of the Decision. The LRVs highlight in particular two forms of injustice which so arise:

(i) Establishment of the truth

28. International law recognises that victims of gross human rights violations have a right to the truth.<sup>19</sup> While it is neither intended nor possible that an individual criminal trial will *comprehensively* vindicate this right, participating victims do have an interest in seeing that the Court's proceedings at a minimum ensure that there are no gaps between the Court's factual findings and the actual truth.<sup>20</sup>

29. This aspect of the right to truth takes on a particular importance in respect sexual crimes because these are often rendered invisible by social and cultural factors. Research in Uganda indicates that sexual violence against men and boys is highly stigmatized and isolating:

*At its core, sexual violence ruptures the victims' understanding of their own gender identity, and of what it means to be 'men' – notions previously predicated on traditional models of masculinity expressed in relation to (and counterposed to) female identity. This rupture results in stigmatisation from the community, silencing and isolating men who have been raped.*<sup>21</sup>

30. Ugandan domestic law remains inadequate in respect of these crimes, and indeed the fear of prosecution for sodomy has been described as having a chilling effect on reporting.<sup>22</sup> Male victims of sexual violence face a number of "powerful obstacles and disincentives" to reporting their experiences:

*First, normative obstacles reside in models of masculinity that do not entertain male vulnerability. Second, they reside in related notions of male sexuality as characterised by*

<sup>19</sup> See for example: ECHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, Judgment, App. No. 39630/09, 13 December 2012, para.191; IACtHR, *Moiwana Village v Suriname*, Judgment of 15 June 2005, paras 204-205 ; UN General Assembly Resolution 68/165 on the Right to the truth, 18 December 2013; UN Commission on Human Rights Resolution 2005/66 on the Right to the truth, 20 April 2005; Human Rights Council Resolution 9/11 on the Right to the truth, 18 September 2008; UN Human Rights Council Resolution 12/12 on the Right to the truth, 12 October 2009; UN Human Rights Council Resolution 21/7 on the Right to the truth, 10 October 2012; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147, 16 December 2005, paras 22(b) and 24.

<sup>20</sup> *Prosecutor v Katanga and Ngudjolo Chui*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial State of the Case, ICC-01/04-01/07-474, 13 May 2008, paras 31-34.

<sup>21</sup> J. Edstrom, C. Dolan, T. Shahrokh, O. David, *supra* footnote 15, p6.

<sup>22</sup> Refugee Law Project, Promoting Accountability for Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International and Domestic Laws Relating to IDP and Refugee Men in Uganda, Refugee Law Project Working Paper No.24, July 2013 ([https://www.law.berkeley.edu/files/Sexual\\_Violence\\_Working\\_Paper\\_\(FINAL\)\\_130709.pdf](https://www.law.berkeley.edu/files/Sexual_Violence_Working_Paper_(FINAL)_130709.pdf)), especially at pp62-63.

*penetration and female sexuality as characterised by being penetrated. Together, these two models – which are upheld through social norms as well as internalised by individual men – result in assumptions that men cannot actually be raped. They also imply that if men are penetrated in a same-sex ‘act’, they must have wanted it to occur and they must therefore be homosexual. Whether consent is being considered or not, they are, at any rate, regarded as having been feminised, or as having become women. ...*

*In practical terms, the absence of services that can deal with male victims’ specific needs is a major disincentive for survivors to disclose their experience of sexual violence .... [The Refugee Law Project’s] own interactions with a range of potential service providers in Uganda – ranging from police to medical professionals, lawyers and humanitarian workers – confirms that none of them have received any training on how to work with male survivors, whether in terms of their own attitudes, technical skills, or knowledge of dealing with male-specific harms...<sup>23</sup>*

31. This analysis is echoed by the LRVs’ own experience with their clients. Many of the men who experienced sexual violence did not report this in their application forms or during early discussions with the LRVs. It has been necessary to build trust over an extended period of time before these victims began speaking about these events. For some clients, disclosure to the LRVs was the very first time they have spoken about their experience of sexual violence to anybody.
32. The LRVs are deeply concerned that the Chamber’s approach in holding that these crimes fall without the scope of the case will impact negatively on male victims of sexual violence in two ways.
33. First: it is gratefully acknowledged that the Chamber has otherwise gone to significant lengths to ensure a comprehensive account in its public hearings of victims’ experiences of the conflict. However where so many other aspects of victims’ experiences are highlighted publicly, the conscious *exclusion* of material about sexual violence against men has the consequence of entrenching the misconception that such violence did not happen. In recent years a small but important number of reports have begun to emerge concerning sexual violence against men during the LRA conflict. They highlight that for too long these crimes have been overlooked.<sup>24</sup> Some have specifically called for increased ICC attention

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<sup>23</sup> J. Edstrom, C. Dolan, T. Shahrokh, O. David, *supra* footnote 15, p11.

<sup>24</sup> J. Edstrom, C. Dolan, T. Shahrokh, O. David, *supra* footnote 15, pp11-12; Kristina Lažauninkaitė, *supra* footnote 15, p20.

to these issues.<sup>25</sup> It would be regrettable if, rather than addressing this problem, the Chamber's approach were in fact to exacerbate it.

34. Secondly: for those individuals who have bravely spoken up about their experiences of sexual violence despite the barriers to reporting mentioned above, the Chamber's decision risks reinforcing the harmful social messages they have internalised and which form disincentives to disclosure. Their experience is treated as something which is not "about" the crimes which were committed against them. It is therefore something about *them* (their gender identity: masculinity or lack of it). The Chamber's decision therefore risks denying victims' right to truth in a way which may have very direct and tangible impacts on them.
35. If the Chamber refuses to hear testimony concerning sexual violence against men, it may fail to capture certain important features of the crimes committed by the LRA. It would thereby fail to avail itself of all information relevant to establishing the truth about the crimes charged. There is a danger that this would not only serve as an injustice to the victims, but could also undermine the legitimacy of the trial and its outcome. The Chamber has so far been resolute in conducting its truth-seeking role. The LRVs submit that it must continue to do so, both in terms of the evidence publicly aired and the completeness of the trial judgment. In its judgment the Chamber must not omit important categories of crimes falling within the charges, lest it risk presenting an incomplete account, and thereby deliver incomplete justice.

## (ii) Reparations

36. Secondly, the LRVs are gravely concerned about the implications of the Chamber's determination in paragraph 57 of the Decision on any future reparations process. Clearly, if sexual violence against men and boys is deemed to fall outside the charges, such conduct must also fall outside the scope of any

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<sup>25</sup> Refugee Law Project, Comments on the ICC Draft Policy Paper on Sexual and Gender Based Crimes, 23 February 2014 ([https://www.refugeelawproject.org/files/briefing\\_papers/14-02-26-RLP-Commentary\\_on\\_ICC\\_Policy\\_Paper.pdf](https://www.refugeelawproject.org/files/briefing_papers/14-02-26-RLP-Commentary_on_ICC_Policy_Paper.pdf)); See also: Kristina Lažauninkaitė, *supra* footnote 15, who at p36 expresses hope of ICC action based on the fact that the charges in the present case appear to encompass sexual violence against men.

conviction. This forecloses the possibility of having a reparations award which addresses the harm suffered by male victims of sexual violence. This is deeply problematic to those men who have suffered serious harm as a result of sexual violence, many of whom continue to suffer that harm until today.

37. It is plainly the responsibility of the Chamber, in the context of any future reparations proceedings, to consider and determine which forms of harm are linked to any crimes in respect of which the accused is convicted. However the LRVs respectfully submit that the determination made in paragraph 57 of the Decision amounts to a pre-emptory and cursory ruling on this subject, not resulting from a consideration of the relevant evidence on this subject or even any publicly explained reasoning. If not reconsidered it will cause real and lasting injustice to male victims of sexual violence.

### *C. Exceptionality*

38. The LRVs take note of and respect the Single Judge's rulings that reconsideration is an exceptional measure.<sup>26</sup> This is without doubt a fundamental principle for ensuring the certainty of judicial decision-making and the expeditious conduct of proceedings.

39. To date the LRVs have neither sought reconsideration nor requested leave to appeal any decision of the Chamber. It is emphasized that such steps would not be undertaken lightly.

40. The present submissions have been filed following much deliberation and in light of the serious consequences identified above as flowing from the Decision for the affected participating victims. In particular, the omission of any material in the case relating to sexual violence against men risks creating a misleading account of the conflict which will undermine the value of the trial judgment and do harm to the already stigmatized and isolated victims of these crimes. Moreover the denial

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<sup>26</sup> Decision on the Defence Request for Partial Reconsideration of the Decision under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-711, 23 February 2017, para.4; Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, ICC-02/04-01/15-468, 15 June 2016, para. 4.

of any possibility for these victims to seek reparations in the event of a conviction at the end of trial would constitute a further grave harm.

41. The LRVs sincerely believe that these consequences are so serious as to justify the exceptional measure of reconsideration by the Chamber. They note moreover that the relevant portion of the Chamber's decision was brief and based on minimal submissions from the trial participants. The LRVs respectfully submit that a matter of this importance would benefit from a more fulsome consideration by both the participants and the Chamber. The LRVs therefore respectfully submit that this question is of an exceptional nature, such as to justify the Chamber's reconsideration.

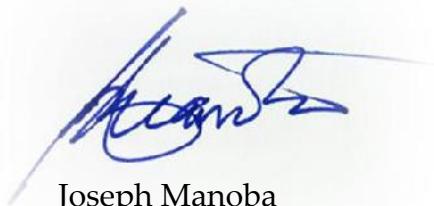
## V. RELIEF SOUGHT

42. For the reasons set out above, the LRVs submit that the Chamber's determinations in paragraphs 57 to 59 of its Decision contain "clear errors of reasoning" and would also, if not reconsidered, result in significant injustice to participating victims. The Chamber is therefore respectfully requested to reconsider its decision in this respect and to authorise the presentation of evidence relating to sexual violence committed against men and boys.

43. The LRVs recognise that the present request is closely linked to other, more practical, matters relating to the victims' presentation of evidence. In particular, the LRVs recognise that with the presentation of their case due to begin shortly, allowing additional witnesses beyond those authorised in the Decision may create logistical challenges. Should the Chamber be minded to grant the LRVs' request, but have concerns regarding the amount of time available for the presentation of additional evidence, the LRVs would be willing to identify one or two of the male victims of sexual violence to testify. They would also be willing to shorten the time used in the presentation of this evidence and potentially of their other witnesses. The LRVs stress that this would not be their preference. However

they would consider such an approach as being far less harmful than failing entirely to present evidence on this important subject.

Respectfully submitted,



Joseph Manoba



Francisco Cox

Dated this 12<sup>th</sup> day of March 2018

At Kampala, Uganda and Santiago, Chile