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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**

**Public Redacted Version of the ‘Corrected version of the “Victims’ Closing Brief”  
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## 1 INTRODUCTION

1. The jurisprudence of this Court recognises that victims have three principle rights: (i) to have a declaration of truth by a competent body (right to truth); (ii) to have those who victimized them identified and prosecuted (right to justice); and (iii) the right to reparations.<sup>1</sup> In line with these established rights, the Legal Representatives for Victims (“LRVs”) respectfully submit these final submissions on behalf of the participating victims in this case.
2. The more than 2500 victims represented by the LRVs in these proceedings (“Victims”) believe that the evidence adduced before the Chamber establishes, beyond a reasonable doubt, that the crimes charged and outlined in the Document Containing the Charges (“DCC”)<sup>2</sup> and confirmed in the ‘Decision on the confirmation of charges against Dominic Ongwen’<sup>3</sup> were committed. Moreover, they are convinced by the evidence presented by the Prosecution that these crimes were committed by Mr Dominic Ongwen (“the Accused” or “Odomi”), soldiers of the Lord’s Resistance Army (“LRA”) and persons under the direct control, command, and authority of the Accused.
3. The crimes that form the basis of this case took place in 2004 and 2003, approximately 16 years ago. The horrific and prolonged consequences of this war have devastated the numerous communities in Northern Uganda. The consequences and effects of this conflict continue to affect victims to date. For some victims, justice has come too late. More than forty participating victims have passed away during the course of these proceedings.<sup>4</sup>
4. Trial Chamber IX (“the Chamber”) authorised three victims to present evidence relating to the harm that they suffered as a result of the attacks on the Abok, Odek and Lukodi internally displaced persons (“IDP camps”). In addition, the LRVs also presented expert testimony and a report outlining a study commissioned by the LRVs to assess victims’ experiences of the crimes and their consequences (the “Victims’ Expert Study”). During the course of the proceedings, the LRVs attempted on two occasions to present the

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<sup>1</sup> Pre-Trial Chamber I, ‘Decision on the 34 Applications for Participation at the Pre-Trial Stage’, 25 September 2009, ICC-02/05-02/09-121, para. 3. See also Pre-Trial Chamber I, ‘Decision on the Set of Procedural Rights attached to Procedural Status of Victim at the Pre-Trial Stage of the Case’, 15 May 2008, ICC-01/04-01/07-474, paras 31-44. Victims’ right to the truth has also been established universally by different human rights bodies and courts. See for example, “Study on the truth” by The United Nations High Commissioner for Human Rights, E/CN.4/2006/91 from the 8 of Feb. 2006.

<sup>2</sup> Document containing the charges” filed by the Prosecutor on 21 December 2015: ICC-02/04-01/15- 375-Conf-AnxA.

<sup>3</sup> ICC-02/04-01/15-422-Red.

<sup>4</sup> ICC-02/04-01/15-1702.

views and concerns of victims in person, however, these requests were denied, respectively, by the Chamber and the Presiding Judge in his capacity as Single Judge.<sup>5</sup>

5. Thousands of people were compelled by increasing violence to move to IDP camps, where they were forced to live in cramped, inhumane conditions. The Government of Uganda's measures to provide protection to camp residents were insufficient thereby allowing for the LRA to easily overrun the barracks and camps. Doubly victimised by both a government that failed to protect them and the LRA, residents of the camps were left susceptible not only to malnutrition and disease, but also had to live in fear for their lives due to constant attacks by the LRA.
6. The conflict and consequent displacement and disruption of daily life has resulted in the destruction of local infrastructure and a decline in socio-economic growth in northern Uganda. Hundreds, if not thousands of children were unable to attend school due to the insecurity and prevalence of abductions by the LRA. Many children who were abducted were unable to continue with their education, compelled to replace their text books with guns, trained as child soldiers, and forced to commit serious crimes as part of their conscription into the LRA, losing their childhoods and innocence in the process. Girls were forced to become sexual slaves or forced 'wives' to senior commanders and soldiers of the LRA, often bearing them children.
7. Those children who managed to escape and return to school were met with taunts and insults. Unable to face the daily stigma and discrimination, many dropped out of school, leaving entire generations without a foundation for pursuing employment or a livelihood, let alone of pursuing their childhood dreams.
8. Forced by the conflict to live in the IDP camps, victims faced absolute poverty as they were unable to attend to their farms, or had to do so under strict curfew conditions. Others had to leave their farms behind given the long distances between the camps and their farms. Their produce and livestock was under constant attack by the LRA, and this forced many people to sell their livestock, leaving many in a state of penury.
9. The conflict destroyed the culture and social fabric of both Langi and Acholi societies. The large numbers of orphans and child-headed families, who have to fend for themselves, illustrate this tragedy. Some victims had been forced to kill members of their own family or communities, resulting in lasting fractures. Others faced stigma when they returned from the bush, in particular, women and girls who had returned with

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<sup>5</sup> ICC-02/04-01/15-1638 and ICC-02/04-01/15-1166.

children as a result of rape. These children face an uncertain future as they are perceived as illegitimate children or labelled as children of rebels.

10. In Acholi and Lango custom, a child born outside marriage can only gain its legitimacy if another man pays money to the mother's family. However, this is not possible for children born in the LRA and often these children are often discriminated against by members of their own extended families. There is strong evidence that the stigma and discrimination faced by female abductees and their children will have an intergenerational impact. The same is true of many of the other forms of harm suffered
11. Furthermore, community and social support structures which existed prior to the conflict have been eroded. The communities living in the camps were forced to be dependent on food aid and handouts. Ethnic identity and practices disintegrated whilst alcohol and other substance usage increased, as did levels of crime. Young men expected to provide for families are without any means of income and turn instead to socially destructive behaviours. Violence, including domestic violence has also increased within the communities in northern Uganda.
12. The LRVs do not intend to address in detail all aspects of the accused's individual criminal responsibility as this exercise falls within the purview of the Prosecutor. However, the LRVs will make limited submissions on the accused's responsibility for the commission of crimes committed by him, and his subordinates during the attacks that he led and commanded at Abok, Odek, and Lukodi IDP camps. These submissions will focus on the factual elements of the crimes committed against the victims represented by the LRVs, including their relatives, and the command responsibility of Dominic Ongwen in relation to these events. The LRVs will refrain from providing submissions on the attack on Pajule IDP camp as the LRVs represent no victims from this location.
13. Furthermore, the LRVs will refrain from making detailed legal submissions on the material elements of crimes charged by the Prosecutor taking into consideration the page limits of the present submission and the fact that this area will more than adequately be covered in the Prosecution closing brief. In addition, the LRVs submit the Chamber is well apprised of the current state of the law in this area; and detailed summation and repetition of the various material elements of the crimes charged will be of limited value.

14. The LRVs submit that the evidence demonstrates that the accused, as senior commander of the Sinia Brigade, was an active participant and member of the LRA fighters that planned and implemented deliberate attacks on unarmed civilians living in the IDP camps and committed the war crimes and crimes against humanity on them with impunity.
15. In Odek (Counts 11-23), the LRVs submit that, on the basis evidence submitted at trial, Dominic Ongwen is guilty of war crimes and crimes against humanity of; attacks against the civilian population; murder; attempted murder; torture/cruel treatment/other inhumane acts; enslavement; pillaging; outrages upon personal dignity; persecution; other inhumane acts; and cruel treatment.
16. In Lukodi (Counts 24-36) the LRVs submit that, on the basis evidence submitted at trial, Dominic Ongwen is guilty of the war crimes and crimes against humanity of: murder; attempted murder; enslavement; torture/cruel treatment/ other inhumane acts; pillaging; destruction of property; persecution and the destruction of property.
17. In Abok (Counts 37-49), the LRVs submit that, on the basis evidence submitted at trial, Dominic Ongwen is guilty of the war crimes and crimes against humanity of murder, attempted murder, torture/cruel treatment/ inhumane treatment; enslavement; pillaging, destruction of property; and persecution.
18. The LRVs submit that , on the basis evidence submitted at trial, Dominic Ongwen is also guilty of committing sexual and gender based crimes (“SGBC”) perpetrated directly by him (Counts 50-60) and SGBC not directly perpetrated by him (Counts 61-68).
19. The LRVs further submit that, on the basis evidence submitted at trial, Dominic Ongwen is guilty of pursuing a common plan to abduct children in the territory of northern Uganda and conscript them into the Sinia Brigade and other LRA units in order to ensure a constant supply of fighters (Counts 69 and 70.)

## **2 CONFIDENTIALITY**

20. Pursuant to regulations 23*bis*(1) of the Regulations of the Court, the present submissions are classified as ‘confidential’ as they include reference to confidential evidence and sensitive information relating to protected victims and witnesses. A public redacted version of these submissions will be filed in due course.



### 3 APPLICABLE LAW

21. Article 30(1) of the Statute states that unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Article 30(2) of the Statute sets out that, a person has intent where (a) in relation to conduct, that person means to engage in the conduct; (b) in relation to consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. “*Knowledge*” is further defined in article 30(3). ‘*Knowledge*’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

#### 3.1 General principles concerning individual criminal responsibility

22. A person bears criminal responsibility within the meaning of Article 25(3)(a) of the Statute – first alternative – if he ‘commits such a crime [...] as an individual’ or in the second alternative ‘jointly with another or through another person, regardless of whether that other person is criminally responsible.’<sup>6</sup>
23. Under Article 25(3)(b) a person bears criminal responsibility if he or she ‘[O]rders, solicits or induces the commission of such a crime which in fact occurs or is attempted.’<sup>7</sup>
24. In relation to command responsibility, under Article 25(3) (d) (i) and (ii) a person bears criminal responsibility if he or she:

*“[I]n any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:*

- i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or*
- ii. Be made in the knowledge of the intention of the group to commit the crime;”*<sup>8</sup>

25. Under Article 28(a) a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective

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<sup>6</sup> Article 25(3)(a) of the Statute.

<sup>7</sup> Article 25(3)(b).

<sup>8</sup> Article 25(3) (d) (i) and (ii).

authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

*“(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and  
(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”*

### **3.1.1 Mental elements**

26. Article 30(1) of the Statute stipulates that unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Article 30(2) of the Statute sets out that, a person has intent where (a) in relation to conduct, that person means to engage in the conduct; (b) in relation to consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. “Knowledge” is further defined in Article 30(3), namely: “Knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events

### **3.1.2 Modes of liability**

27. The LRVs will focus their submissions on the Accused’s responsibility for indirect perpetration and indirect co-perpetration under Article 25(3)(a) of the Statute, for ordering under Article 25(3)(b) of the Statute as well as command responsibility under Article 25(3)(d)(i) and (ii) and 28(a) of the Statute as relates to the attacks on Odek, Abok and Lukodi IDP Camps.
28. The LRVs submit that where for the same count and the same set of facts the Accused’s responsibility is pleaded pursuant to both Articles 25 and 28 of the Statute and the accused could be found liable under both, the Chamber should enter a conviction on the basis of Article 25 of the Statute to sufficiently reflect culpability and consider the superior position of the accused as an aggravating factor in sentencing.

#### **3.1.2.1 Indirect perpetration and Indirect co-perpetrations – article 25(3) (a)**

29. A person bears criminal responsibility within the meaning of Article 25(3)(a) of the Statute – second alternative – if he commits a crime ‘jointly with another or through

another person, regardless of whether that other person is criminally responsible.’<sup>9</sup> The Court’s jurisprudence highlights that for indirect co-perpetration:

*“(i) the suspect must be part of a common plan or an agreement with one or more persons; (ii) the suspect and the other co-perpetrator(s) must carry out essential contributions in a coordinated manner which result in the fulfilment of the material elements of the crime; (iii) the suspect must have control over the organization; (iv) the organization must consist of an organized and hierarchal apparatus of power; (v) the execution of the crimes must be secured by almost automatic compliance with the orders issued by the suspect; (vi) the suspect must satisfy the subjective elements of the crimes; (vii) the suspect and the other co-perpetrators must be mutually aware and accept that implementing the common plan will result in the fulfilment of the material elements of the crimes; and (viii) the suspect must be aware of the factual circumstances enabling him to exercise joint control over the commission of the crime through another person(s).”<sup>10</sup>*

30. This has been similarly confirmed and relied upon in the *Bemba*, *Katanga* and *Al Bashir* cases.<sup>11</sup>
31. The Majority in the Lubanga case held that that co-perpetration under Article 25(3) (a) “requires that the offence be the result of the combined and coordinated contributions of those involved [...]. None of the participants exercise, individually, control over the crime as a whole but, instead, the control over the crime falls in the hands of a collective as such. Therefore, the prosecution does not need to demonstrate that the contribution of the accused, taken alone, caused the crime; rather, the responsibility of the co-perpetrators for the crimes resulting from the execution of the common plan arises from mutual attribution, based on the joint agreement or common plan”.<sup>12</sup>
32. The Lubanga Majority also concluded that “the accused [must] provide an essential contribution to the common plan that resulted in the commission of the relevant crimes”,<sup>13</sup> but it does not define “essential” in this context. However, given that the

<sup>9</sup>Article 25(3) (a) of the Statute.

<sup>10</sup> *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-01/11-373, para. 292.

<sup>11</sup> ICC-01/09-01/11-373, para. 292, fn. 474 (citing Pre-Trial Chamber II, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-424, paras. 350-351; Pre-Trial Chamber I “Decision on the confirmation of charges” against Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07-717, paras. 500-514, 527-539; Pre-Trial Chamber I, “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-3, paras. 209-213).

<sup>12</sup> ICC-01/04-01/06-2842, para. 994.

<sup>13</sup> ICC-01/04-01/06-2842, paras. 1006, 1018(ii).

accused alone need not exercise control over the crime,<sup>14</sup> “essential” cannot mean that the individual accused must have had the power to stop the crime or frustrate its commission. Instead, the Majority emphasized that “the co-perpetrator’s role is to be assessed on a case-by-case basis” and that this assessment “involves a flexible approach, undertaken in the context of a broad inquiry into the overall circumstances of a case.”<sup>15</sup>

33. In general, co-perpetration (i.e. commission of a crime “jointly with another”) describes the situation in which two or more persons work together in the commission of the crime so that the sum of their coordinated individual contributions results in the realization of the objective elements of a crime. As held by the Appeals Chamber, this requires an agreement between the co-perpetrators (whether express or implied, previously arranged or materializing extemporaneously) which ties them together and justifies the reciprocal imputation of their respective acts.<sup>16</sup> In circumstances where a plurality of persons was involved in the commission of a crime within the jurisdiction of the Court, the most appropriate criterion to determine whether a person “committed” the crime jointly with others (rather than contributing to a crime committed by someone else) is “control over the crime”, which requires an evaluation of whether the person had control over the crime by virtue of his or her essential contribution within the framework of the agreement with the co-perpetrators and the resulting power to frustrate the commission of the crime.<sup>17</sup> If the answer is in the affirmative, then it can be concluded that the person committed his or her crime, and did not contribute to the crime of another.
34. The Statute criminalises as forms of “commission” not only situations in which the co-perpetrators put in place their respective contributions by directly and personally executing the objective elements of the crime, but also when they do so “through another person” by jointly controlling the action of another person to such a degree that the will of that person becomes irrelevant, and that his or her action must be attributed to the co-perpetrators as if it were their own.<sup>18</sup> This form of responsibility (which has

<sup>14</sup> ICC-01/04-01/06-2842, para. 994.

<sup>15</sup> ICC-01/04-01/06-2842, para. 1001.

<sup>16</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction”, 1 December 2014, ICC-01/04-01/06-3121-Red (“*Lubanga Appeal Judgment*”), para. 445.

<sup>17</sup> *Lubanga Appeal Judgment*, para. 473; *The Prosecutor v. Charles Blé Goudé*, Decision on the confirmation of charges against Charles Blé Goudé, ICC-02/11-02/11-186, (“*Blé Goudé Confirmation Decision*”) para. 141.

<sup>18</sup> *Blé Goudé Confirmation Decision*, para. 136. See also e.g. Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/05-01/09-3, para. 213; Pre-Trial Chamber II, *The Prosecutor*

been defined as “indirect co-perpetration” or “joint indirect perpetration”) still rests on the notion of reciprocal imputation of co-ordinated actions performed by each co-perpetrator. The only difference with “direct” co-perpetration is that the objective elements of the crime are executed by other persons who are utilised by the co-perpetrators for the commission of the crime. As held by Pre-Trial Chamber I, this form of responsibility combines the commission of a crime “jointly with another” (in which each of a plurality of persons has the capacity to frustrate the commission of the crime in the way it is realised by not performing his or her coordinated contributive acts within the framework of an agreement among them) with the commission of a crime “through another person” (in which a person commits the crime by subjugating another person’s will, rather than personally and directly executing the objective elements of the crime).<sup>19</sup>

35. This latter situation of commission “through another person”, in which the perpetrator has the sole control over the crime and commits it by making use of another person who physically carries out the incriminated conduct, rather than by directly executing the material elements of the crime,<sup>20</sup> is conventionally referred to in the jurisprudence of the Court as “indirect perpetration”, which is the mode of liability that the Prosecutor attributes to Dominic Ongwen for the crimes charged in charges 24 to 49.

### 3.1.2.2 *Ordering – Article 25(3)(b)*

36. Article 25(3)(b) of the Statute ascribes individual criminal responsibility to a person who “[o]rders, solicits or induces the commission of [a crime within the jurisdiction of the Court] which in fact occurs or is attempted.”<sup>21</sup> The term ‘ordering’ should be given its ordinary meaning.
37. In *Bagosora et al.*,<sup>22</sup> the ICTR Appeals Chamber recalled that ordering “requires that a person in a position of authority instruct another person to commit an offence.”<sup>23</sup> The actus reus of ordering “cannot be established in the absence of a prior positive act because the very notion of ‘instructing’, pivotal to the understanding of the question of

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*v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, ICC-01/09-01/11-373 (“*Ruto et al. Confirmation Decision*”), paras 291-292.

<sup>19</sup> *Blé Goudé Confirmation Decision*, para. 136.

<sup>20</sup> See e.g. *Lubanga Appeal Judgment*, para. 465.

<sup>21</sup> Article 25(3)(b) of the Statute.

<sup>22</sup> *Bagosora et al. Appeal Judgment*, para. 277.

<sup>23</sup> *Bagosora et al. Appeal Judgment*, para. 277.

‘ordering’, requires ‘a positive action by the person in a position of authority’”.<sup>24</sup> Furthermore, in *Nahimana et al.*, the ICTR Appeals Chamber held that with respect to ‘ordering’, a person in a position of authority may incur responsibility for ordering another person to commit an offence, if the person who received the order actually proceeds to commit the offence subsequently.<sup>25</sup>

38. Responsibility is incurred if the order has a direct and substantial effect on the commission of the illegal act.<sup>26</sup> Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order.<sup>27</sup>
39. It is not necessary to demonstrate the existence of a formal superior- subordinate relationship between the accused and the actual physical perpetrator of the crime.<sup>28</sup>
40. Moreover, in the case of Dragomir Milošević, the ICTY Appeals Chamber, considered that:

*The Trial Chamber has adopted a very general approach in that it did not analyse whether Milošević ordered every sniping or shelling incident, but rather concluded that those incidents could only take place if ordered by him in the framework of the campaign directed against the civilian population [...]. In principle, this approach is not erroneous as such, given that both the actus reus and the mens rea of ordering can be established through inferences from circumstantial evidence, provided that those inferences are the only reasonable ones.*<sup>29</sup>

41. As regards ‘soliciting’ and ‘inducing’ – the second and third alternatives under Article 25(3)(b) of the Statute – the Trial Chamber in *Bemba et al.* recalled that these fall into the broader category of ‘instigating’ or ‘prompting another person to commit a crime’ in the sense that they refer to a form of conduct by which a person exerts psychological influence on another person as a result of which the criminal act is committed.<sup>30</sup>

<sup>24</sup> *Bagosora et al.* Appeal Judgment, para. 277.

<sup>25</sup> *Nahimana et al.* Appeal Judgment, para. 481.

<sup>26</sup> *Setako* Appeal Judgment, para. 240. See also *Renzaho* Appeal Judgment, para. 315; *Gacumbitsi* Appeal Judgment, para. 185.

<sup>27</sup> *Nahimana et al.* Appeal Judgment, para. 481.

<sup>28</sup> *Galić* Appeal Judgment, para. 176. See also *Setako* Appeal Judgment, para. 240; *Gacumbitsi* Appeal Judgment, para. 182; *Kamuhanda* Appeal Judgment, para. 75; *Semanza* Appeal Judgment, para. 361.

<sup>29</sup> *D. Milošević* Appeal Judgment, para. 265.

<sup>30</sup> *Bemba et al.* Trial Judgment, para. 73.

42. The *mens rea* for instigating requires that the perpetrator acts with either direct intent or prompt another to commit a crime, or with awareness of the substantial likelihood that a crime will be committed in execution of that instigation.<sup>31</sup>

3.1.2.3 Responsibility of commanders and other superiors – Article 25(3)(d)(i) and (ii) and Article 28(a)

43. As observed in the jurisprudence of the Court, article 28 reflects a different form of criminal responsibility than that found in article 25(3)(a) of the Statute in the sense that a superior may be held responsible for the prohibited conduct of his or her subordinates for failing to fulfil his or her duty to prevent or repress their unlawful conduct or submit the matter to the competent authorities.<sup>32</sup>
44. Accordingly, as pointed out by Pre-Trial Chamber I,<sup>33</sup> a fundamental difference exists between the forms of commission incriminated in article 25 of the Statute, which establish liability for one's own crimes, and article 28 of the Statute, which establishes liability for violation of duties in relation to crimes committed by others.
45. The Statute provides for criminal responsibility of military commanders in Article 25(3)(d)(i) and (ii) and Article 28(a). The drafters of the Statute have taken into account the jurisprudence of the ad hoc tribunals and expressly set out a number of elements that had previously only been reflected in the relevant jurisprudence.<sup>34</sup> In *Bemba*, the Trial Chamber also relied on the aforementioned jurisprudence when it formulated six elements characterising command responsibility under the Statute. It set forth that:

- (a) crimes within the jurisdiction of the Court must have been committed by forces;*
- (b) the accused must have been either a military commander or a person effectively acting as a military commander;*
- (c) the accused must have had effective command and control, or effective authority and control, over forces that committed the crimes;*
- (d) the accused either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes;*

<sup>31</sup> *Nchamihigo* Appeal Judgment, para. 61. See also *Kordić and Čerkez* Appeal Judgment, paras. 29, 32.

<sup>32</sup> *Bemba* Confirmation Decision, para. 405; *Gbagbo* Confirmation Decision, para. 262; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment pursuant to Article 74 of the Statute", 21 March 2016, ICC-01/05-01/08-3343, paras 173-174.

<sup>33</sup> *Gbagbo* Confirmation Decision, para. 262.

<sup>34</sup> See AMBOS (K.), "Superior Responsibility", in CASSESE (A.), GAETA (P.) and JONES (Eds.), *The Rome Statute of the International Criminal Court: a Commentary*, Vol. I, Oxford University Press, Oxford, 2002, pp. 848-849.

(e) *the accused must have failed to take all necessary and reasonable measures within his power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution; and*

(f) *the crimes committed by the forces must have been a result of the failure of the accused to exercise control properly over them.*<sup>35</sup>

46. Article 28(a) of the Statute applies to commanders “effectively acting”<sup>36</sup> as such and thus includes both *de jure* and *de facto* military commanders.<sup>37</sup> “[W]hat determines the boundaries of applicability of the doctrine of superior responsibility is not the nature of the role or function [...] but the degree of authority which he is capable of exercising over others”.<sup>38</sup> Even a superior who lacks formal letters of appointment or commission but does, in reality, have effective control over the perpetrators of offences might incur criminal responsibility.<sup>39</sup>
47. Furthermore, the superior may incur responsibility for crimes committed by persons who are not formally his direct subordinates, insofar as he exercises effective control over them.<sup>40</sup> The “*the ability to exercise effective control in the sense of a material power to prevent or punish [...] will almost invariably not be satisfied unless such a relationship of subordination exists*”.<sup>41</sup>
48. Finally, knowledge may be inferred from circumstantial evidence.<sup>42</sup> A failure by the accused to punish the past offences of his subordinates may be relevant to determining whether he “*possessed information that was sufficiently alarming to put him on notice of the risk that similar crimes might subsequently be carried out by his subordinates and justify further inquiry*”.<sup>43</sup>

### **3.2 Contextual Elements: Crimes against humanity**

49. Article 7 of the Statute sets out that all proscribed acts listed must be committed “*as part of a widespread or systematic attack directed against any civilian population, with*

<sup>35</sup> *Bemba* Trial Judgment, para. 170.

<sup>36</sup> See Article 28(a) of the Statute.

<sup>37</sup> *Aleksovski* Trial Judgment, paras. 75-75; *Blaškić* Trial Judgment, para. 300.

<sup>38</sup> METTRAUX (G.), *The Law of Command Responsibility*, Oxford University Press, Oxford, 2009, p. 102. See also *Kajelijeli* Appeal Judgment, para. 87; *Bagilishema* Appeal Judgment, para. 50; *Bemba* Trial Judgment, para. 179.

<sup>39</sup> *Stakić* Trial Judgment, para. 459.

<sup>40</sup> *Blaškić* Trial Judgment, para. 301

<sup>41</sup> *Karadžić* Trial Chamber, para. 582; *Stakić* Trial Judgment, para. 459; *Delalić et al.* Appeal Judgment, para. 303. See also *Bemba* Confirmation Decision, 414.

<sup>42</sup> *Karadžić* Trial Chamber, para. 585; *Galić* Appeal Judgment, paras. 171, 184.

<sup>43</sup> *Karadžić* Trial Chamber, para. 586; *Strugar* Appeal Judgment, paras. 297-301; *Blaškić* Appeal Judgment, para. 62.



*knowledge of the attack*”.<sup>44</sup> Article 7(2) more specifically defines that an “[a]ttack directed against any civilian population’ means a course of conduct involving multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.<sup>45</sup>

50. The term ”directed against” the civilian population requires that the civilian population must be the primary, as opposed to incidental, target of the attack.<sup>46</sup>
51. A population is considered to be civilian if it is predominantly civilian in nature,<sup>47</sup> the presence of certain non-civilians in its midst does not change the character of the population.<sup>48</sup> The attack must have targeted more than a limited and randomly selected number of individuals within the population.<sup>49</sup>
52. While the term ”widespread” refers to the large-scale character of the attack and the number of persons targeted, the term ”systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>50</sup> The assessment of what constitutes “widespread” or “systematic” may take into account the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, and identifiable patterns of crimes.<sup>51</sup> As set out by the *Bemba* Trial Chamber, the requirement that the acts form part of a ‘course of conduct’ shows that Article 7(1) is not designed to capture single isolated acts.<sup>52</sup>
53. The Bemba Trial Chamber further set out that “[w]hile it may be of evidential value, the Statute does not envisage any requirement of demonstrating a ‘motive’ or ‘purpose’ underlying the policy to attack the civilian population.”<sup>53</sup> It considered that the “policy” need not be formalised and may be inferred from a variety of factors, which, taken together, establish that a policy existed.<sup>54</sup>
54. Such factors, according to that Chamber, may include (i) that the attack was planned, directed or organised; (ii) a recurrent pattern of violence; (iii) the use of public or private resourced to further the policy; (iv) the involvement of the state or

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<sup>44</sup> Article 7(1) of the Statute.

<sup>45</sup> Article 7(2) of the Statute.

<sup>46</sup> *Bemba* Trial Judgment, para. 154.

<sup>47</sup> *Karadžić* Trial Judgment, para. 474. See also *Tadić* Trial Judgment, para. 638; *Milutinović et al* Trial Judgment, para. 146.

<sup>48</sup> *Tadić* Trial Judgment, para. 638. See also *Bemba* Trial Judgment, para. 153.

<sup>49</sup> *Karadžić* Trial Judgment, para. 475.

<sup>50</sup> *Karadžić* Trial Judgment, para. 477, referring to *Blaškić* Appeal Judgment, para. 101.

<sup>51</sup> *Karadžić* Trial Judgment, para. 477.

<sup>52</sup> *Bemba* Trial Judgment, para. 149.

<sup>53</sup> *Bemba* Trial Judgment, para. 159.

<sup>54</sup> *Bemba* Trial Judgment, para. 160.

organisational forces in the commission of crimes (v) statements, instructions or documentation attributable to the state or the organisation condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation.<sup>55</sup>

55. As such, the course of conduct must reflect a link to the state or organisational policy in order to exclude those acts which are perpetrated by isolated and un-coordinated individuals acting randomly on their own.<sup>56</sup>
56. In relation to all individual crimes against humanity, the Elements of Crimes, moreover, require that the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack against a civilian population.<sup>57</sup>

### **3.3 Contextual Elements: War crimes**

57. Article 8(1) of the Statute sets out that the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. As recalled by the *Bemba* Trial Chamber, the existence of a plan, policy or large-scale commission is not a pre-requisite for the Court to exercise jurisdiction over war crimes but rather serves as a practical guidance for the Court.<sup>58</sup>
58. Article (8)(2)(c) concerns war crimes “[i]n the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause”.<sup>59</sup>
59. The *Bemba* Trial Chamber recalled that the concept of ‘armed conflict’ within the established framework of international law was set forth by the Appeals Chamber in *Tadić*; the latter definition also having been endorsed by the Court’s Pre Trial Chamber.<sup>60</sup> The Appeals Chamber in *Tadić* considered that an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between government authorities and organized armed groups or between such groups

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<sup>55</sup> *Bemba* Trial Judgment, para. 160.

<sup>56</sup> *Bemba* Trial Judgment, para. 161.

<sup>57</sup> Elements of Crimes, Articles 7(1)(a)-(k).

<sup>58</sup> *Bemba* Trial Judgment, para. 126.

<sup>59</sup> Article 8(2)(c) of the Statute.

<sup>60</sup> *Bemba* Trial Judgment, para. 128, referring to *Tadić* Jurisdiction Decision, para. 70; *Bemba* Confirmation Decision, para. 229.

within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal conflicts, a peaceful settlement is achieved.<sup>61</sup>

60. In relation to Article 8(2)(c) of the Statute, the Elements of Crimes further require that (i) the perpetrator was aware of the status of the victim(s) and (ii) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.<sup>62</sup> As regards crimes proscribed under Article 8(2)(e) of the Statute, the Elements of Crimes require that the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.<sup>63</sup>

### **3.4 Material elements of the crimes charged**

#### **3.4.1 *Murder and Attempted murder***

##### **3.4.1.1 Murder and Attempted Murder as a crime against humanity - Article 7(1)(a)**

61. For the Elements of Crimes of Article 7(1) (a) of the Statute to be satisfied it must be proven that the: (i) perpetrator killed one or more persons;<sup>64</sup> (ii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (iii) the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack against a civilian population. A victim's killing may be proven by circumstantial evidence as long as the victim's death is the only reasonable inference that can be drawn therefrom.<sup>65</sup>

##### **3.4.1.2 Murder and Attempted Murder as a war crime – Article 8(2)(c)(i)**

62. Article 8(2)(c)(i) of the Statute proscribes “[v]iolence to life and person, in particular murder of all kinds [...]”
63. As regards the material elements of Article 8(2)(c)(i)<sup>94</sup> of the Rome Statute, the *Bemba* Trial Chamber underscored that, like the *actus reus* of the crime against humanity of murder, the *actus reus* of the war crime of murder requires that a perpetrator killed or caused the death of one or more persons.<sup>66</sup>

<sup>61</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>62</sup> Elements of Crimes, Articles 8(2)(c)(i)-(iv).

<sup>63</sup> Elements of Crimes, Articles 8(2)(e)(i)-(xv).

<sup>64</sup> The term “killed” is interchangeable with the term “caused death”. See the Elements of Crimes of Article 7(1)(a).

<sup>65</sup> *Bemba* Trial Judgment, para. 88.

<sup>66</sup> *Bemba* Trial Judgment, para. 91

64. However, the war crime of murder contains the further and distinct element that the person or persons so killed were either *hors de combat* or civilians, medical personnel, or religious personnel taking no active part in the hostilities.<sup>67</sup> The burden to establish the status of the victim as a civilian taking no active part in hostilities lies with the Prosecution.<sup>68</sup>

### 3.4.2 *Attacks against the civilian population*

#### 3.4.2.1 *Attacks against a civilian population as a war crime – Article 8(2)(e)(i)*

65. The Elements of Crimes specify that in order to satisfy the *actus reus* requirements of the war crime of “attacks against a civilian population” the perpetrator must have (i) directed an attack; (ii) the object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.<sup>69</sup> The Elements further set out the specific intent requirement that the perpetrator must have intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.<sup>70</sup>
66. The *Katanga* Trial Chamber considered that the term “attack” must be understood as ‘acts of violence against the adversary, whether in offence or defence’.<sup>71</sup> It further held that no result needs to ensue from the attack, as it considered “that the absence of a result requirement in the Elements of Crimes is not accidental, insofar as, where such a requirement exists, the Elements of Crimes refer to it and specify the consequence thereof.”<sup>72</sup>
67. Moreover, the *Katanga* Trial Chamber recalled that the prohibition on the direct targeting of civilians “*can in no circumstances be counterbalanced by military necessity.*”<sup>73</sup> Relying on, *inter alia*, Additional Protocol II to the Geneva Conventions, academic commentary and jurisprudence of the ICTY, it concluded that “*the prohibition on directly attacking civilians is [...] absolute and applies both to international and non-international armed conflict.*”<sup>74</sup>
68. The *Katanga* Trial Chamber considered that the crime may be established “*even if the military operation also targeted a legitimate military objective*” and noted that it was

<sup>67</sup> Elements of Crimes, Article 8(2)(c)(i)-1, War crime of murder.

<sup>68</sup> *Bemba* Trial Judgment, para. 94.

<sup>69</sup> Elements of Crimes, Article 8(2)(e)(i) – War crime of attacking civilians.

<sup>70</sup> Elements of Crimes, Article 8(2)(e)(i) – War crime of attacking civilians.

<sup>71</sup> *Katanga* Trial Judgment, para. 798.

<sup>72</sup> *Katanga* Trial Judgment, para. 799.

<sup>73</sup> *Katanga* Trial Judgment, para. 800.

<sup>74</sup> *Katanga* Trial Judgment, para. 800.

important that it be established that the primary object of the attack was the civilian population or individual civilians.<sup>75</sup>

69. Importantly, it also specifically recalled that indiscriminate attacks may qualify as intentional attacks against the civilian population or individual civilians, “*especially where the damage caused to civilians is so great that it appears [...] that the perpetrator meant to target civilian objectives.*”<sup>76</sup>
70. An “attack” for the purpose of crimes against humanity is distinct from an ‘attack’ referred to in Article 8 of the Statute for purpose of determining whether a war crime was committed.<sup>77</sup> It may be, but need not be, part of a military operation.<sup>78</sup> The requirement that the acts form part of a “course of conduct” indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts.<sup>79</sup>

### 3.4.3 Rape

#### 3.4.3.1 Rape as a crime against humanity pursuant to Article 7(1)(g) and as a war crime pursuant to Article 8 (2)(e)(vi)

71. As previously set out by the *Bemba* Trial Chamber, only the contextual elements of these two statutory crimes differ.<sup>80</sup> The material elements of the *actus reus* of both crimes require that (i) “*the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any part of the body*”.<sup>81</sup>
72. The invasion must have been “committed by force, or threat of force or coercion [...] or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”

<sup>75</sup> *Katanga* Trial Judgment, para. 802.

<sup>76</sup> *Katanga* Trial Judgment, para. 802.

<sup>77</sup> Article 7(2)(a) of the Statute; and Elements of Crimes, Introduction to Article 7, para. 3. Other chambers have explained that “attack” refers to “campaign or operation carried out against the civilian population”. *Gbagbo* Confirmation Decision, para. 209, and the case law listed in footnote 505 thereof

<sup>78</sup> Elements of Crimes, Introduction to Article 7, para. 3.

<sup>79</sup> *Bemba* Trial Judgment, para. 149, referring to the *Gbagbo* Confirmation Decision, para. 209

<sup>80</sup> *Bemba* Trial Judgment, para. 98.

<sup>81</sup> Elements of Crimes, Article 7(1)(g)-1.

### 3.4.4 Sexual slavery

#### 3.4.4.1 Sexual Slavery as a crime against humanity pursuant to Article 7(1)(g) and as a war crime pursuant to Article 8(2)(e)(vi)

73. The crime against humanity of sexual slavery is laid down in Article 7(1)(g) of the Statute. The war crime of sexual slavery is laid down in Article 8(2)(e)(vi) of the Statute.
74. The material elements of the war crime of sexual slavery only differ from those of the crime against humanity of sexual slavery in terms of the contextual elements of the crime. The elements of crime for the crime against humanity of sexual slavery require that (i) “[t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty”, (ii) the perpetrator “caused such person or persons to engage in one or more acts of a sexual nature”; (iii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; (iv) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population; (v) the perpetrator’s conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.<sup>82</sup>
75. The legal elements of the war crime of sexual slavery are: (i) the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; (ii) the perpetrator caused such person or persons to engage in one or more acts of a sexual nature; (iii) the conduct took place in the context of and was associated with an armed conflict not of an international character; (iv) the perpetrator was aware of factual circumstances that established the existence of an armed conflict; (v) the perpetrator’s conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.
76. There is no exhaustive list of situations or circumstances which reflect the exercise of a power of ownership.<sup>83</sup> In determining whether the perpetrator exercised such a power,

<sup>82</sup> Elements of Crimes, Article 7(1)(g)-2.

<sup>83</sup> The Elements of Crimes refer to definitions contained in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. See in this regard Elements

the Chamber must take into account various factors, such as control of the victim's movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim's vulnerability.<sup>84</sup> The exercise of the right of ownership over someone need not entail a commercial transaction.<sup>85</sup> Imposition of 'similar deprivation of liberty' may take various forms;<sup>86</sup> it may cover situations in which the victims may not have been physically confined, but were otherwise unable to leave as they would have nowhere else to go and fear for their lives.<sup>87</sup>

### 3.4.5 *Persecution*

#### 3.4.5.1 *Persecution as a crime against humanity – Article 7(1)(h)*

77. The Elements of Crimes define the crime against humanity of persecution as follows:<sup>88</sup>  
 "[T]he perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted group or collectivity as such. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender [...] or other grounds that are universally recognized as impermissible under international law [...]."<sup>89</sup>
78. The Trial Chamber in *Ntaganda* found that for the purpose of identifying those rights whose severe infringement may constitute persecution, more defined parameters for the definition of human dignity can be found in international standards on human rights such as those laid down in the Universal Declaration of Human Rights (UDHR), the two

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of Crimes, Article 7(1)(g)-2, footnote 18 and Article 8(2)(e)(vi)-2, footnote 66. See also *Katanga* Judgment, para. 975; *Sesay et al.* Trial Judgment, para. 160.

<sup>84</sup> *Kunarac et al.* Appeal Judgment, paras 119 and 121. See also *Katanga* Judgment, para. 976; *RUF* Trial Judgment, para. 160; *Taylor* Trial Judgment, para. 420.

<sup>85</sup> *Katanga* Judgment, para. 975; *Taylor* Trial Judgment, para. 420; *Brima et al.* Trial Judgment, para. 709; see also UN Economic and Social Council, Systematic rape, sexual slavery and slavery-like practices during armed conflict – Update to the final report, E/CN.4/Sub.2/2000/21, 6 June 2000, para. 50.

<sup>86</sup> See in this regard Elements of Crimes, Article 7(1)(g)-2, footnote 18 and Article 8(2)(e)(vi)-2, footnote 66. See also *Katanga* Judgment, para. 977; SCSL, *Taylor* Trial Judgment, para. 420, and AFRC Trial Judgment, para. 709.

<sup>87</sup> *Katanga* Judgment, para. 977; *Taylor* Trial Judgment, para. 420; *AFRC* Trial Judgment, para. 709. .

<sup>88</sup> The contextual elements are omitted from the definition recounted here.

<sup>89</sup> Elements of Crimes, Article 7(1)(h).

UN Covenants on Human Rights, and other international instruments on international human rights, as well as the rights reflected in international humanitarian law.<sup>90</sup>

79. Furthermore, in *Ntaganda* the Trial Chamber found that the deprivation of a fundamental right must be contrary to international law, and this is to mean that no justification exists under international law for the impediment of the concerned right.<sup>91</sup> As such, Trial Chamber held that “*the commission of any act considered to be a crime against humanity will, in principle, result in a deprivation of fundamental rights of one or more individuals, as envisaged in Article 7(2)(h), and meet, in and of itself, the minimum level of severity required.*”<sup>92</sup>

### 3.4.6 Pillage

#### 3.4.6.1 Pillage as a war crime – Article 8(2)(e)(v)

80. The material elements of this war crime require that (i) the perpetrator appropriated certain property, (ii) intended to deprive the owner of the property, (iii) intended to appropriate it for private or personal use, and (iv) the appropriation was without the consent of the owner, and (v) the conduct took place in the context of and was associated with an armed conflict not of an international character.<sup>93</sup>
81. Article 8(2)(e)(v) relates to “pillaging a town or place”. The pillaging of a town or place comprises all forms of appropriation, public or private, including not only organised and systematic appropriation, but also acts of appropriation committed by fighters in their own interest.<sup>94</sup>
82. In order for the war crime of pillaging to be established, it must also be demonstrated that the perpetrator intended to prevent the owner from having or using his or her property.<sup>95</sup> As to the requirements that the perpetrator must have been aware of the fact that the property was appropriated without the consent of the owner, in the absence of the owner, or in coercive circumstances, the perpetrator’s knowledge of non-consent of the owner may be inferred.<sup>96</sup>

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<sup>90</sup> *Ntaganda* Judgment, para. 991.

<sup>91</sup> *Ntaganda* Judgment, para. 993.

<sup>92</sup> *Ntaganda* Judgment, para. 994.

<sup>93</sup> Elements of Crimes, Article 8(2)(e)(v).

<sup>94</sup> *Katanga* Judgment, para. 905.

<sup>95</sup> *Bemba* Trial Judgment, para. 119.

<sup>96</sup> *Bemba* Trial Judgment, para. 121.



### 3.4.7 *Destruction of Property*

#### 3.4.7.1 *Destruction of Property as a war crime – Article 8(2)(e)(xii)*

83. In addition to the nexus requirement between the crime and the existence of an armed conflict not of an international character, and the perpetrator's awareness of the circumstances establishing such conflict, the Elements of Crimes specify that the following five requirements need to be made out to establish the war crime of destruction of property: (i) the perpetrator destroyed certain property; (ii) such property was property of an adversary; (iii) such property was protected from the destruction under the international law of armed conflict; (iv) the perpetrator was aware of the factual circumstances that established the status of the property; and (v) the destruction was not required by military necessity.<sup>97</sup>

### 3.4.8 *Outrages on personal dignity*

#### 3.4.8.1 *Outrages upon personal dignity as a war crime pursuant to Article 8(2)(c)(ii)*

84. Article 8 of the Statute considers the commission of “*outrages upon personal dignity, in particular humiliating and degrading treatment*” to constitute war crimes falling under the jurisdiction of the ICC. The wording of this article is identical to that of Article 3(1)(c) common to the four Geneva Conventions of 1949.

85. The *Aleksovski* Trial Chamber at the ICTY defined outrages upon personal dignity as particularly intolerable forms of inhumane treatment that cause “*more serious suffering than most prohibited acts falling within the genus*”.<sup>98</sup> It further stated that to be considered as an outrage upon personal dignity, the act or omission “*must cause serious humiliation or degradation to the victim*”.<sup>99</sup> Since the level of seriousness of humiliation or degradation is subjective (sensitive persons would be more prone to perceive their treatment as humiliating), the Chamber added an objective element and specified that “*the humiliation must be so intense that the reasonable person would be outraged*”.<sup>100</sup> This approach of the *actus reus* was confirmed in the *Kvočka* case, which approved the inclusion of the victim's temperament or sensitivity, in addition to the “reasonable person” standard, when assessing whether the act is an outrage upon personal dignity.<sup>101</sup> Finally, the *Kunarac* Trial Chamber asserted that the humiliation or degradation

<sup>97</sup> Elements of Crimes, Article 8(2)(e)(xii).

<sup>98</sup> *Aleksovski* (IT-95-14/1-T), Trial Judgment, 25 June 1999, para. 54.

<sup>99</sup> *Ibid.*, para. 56.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Kvočka et al.* (IT-98-30/1), Trial Judgment, 2 November 2001, para. 167.

inflicted upon the victim did not need to be lasting for the act to be qualified as an outrage upon personal dignity.<sup>102</sup>

86. With respect to the mens rea, the Kunarac Appeals Chamber approved the Trial Chamber's assessment and stated that "[t]he crime of outrage upon personal dignity requires that the accused knew that his act or omission could cause serious humiliation, degradation or otherwise be a serious attack on human dignity".<sup>103</sup>
87. The Elements of Crimes define outrages upon personal dignity in a very similar fashion as the jurisprudence of the ICTY, requiring that the perpetrator "*humiliated, degraded or otherwise violated the dignity of one or more persons*".<sup>104</sup> Therefore, humiliation and degradation are examples of outrages upon personal dignity and leave the door open for other forms of violation of dignity to be dealt with as outrages upon personal dignity.<sup>105</sup> With respect to the *actus reus*, both subjective and objective elements are present. On the one hand, the Elements of Crime affirm that "*[t]he severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity*" (objective element).<sup>106</sup>
88. The Elements of Crimes explicitly broaden the scope of potential victims of outrages upon personality since they specify that "[f]or this crime, '*person*' can include [*a*] *dead person*", and that the victim "*need not personally be aware of the existence of the humiliation or degradation or other violation*".<sup>107</sup> Consequently, outrages upon personal dignity can also be perpetrated against unconscious persons, mentally handicapped persons or on dead bodies.

### 3.4.9 Cruel treatment

#### 3.4.9.1 Cruel treatment as a war crime, pursuant to articles 8(2)(c)(i)

89. The Elements of Crimes define the crime against humanity of persecution as follows: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities; (iii\_)

<sup>102</sup> *Prosecutor v. Kunarac et al.* (IT-96-23 & 23/1-T), Trial Judgment, 22 February 2001, para. 501, emphasis in original.

<sup>103</sup> *Prosecutor v. Kunarac et al.* (IT-96-23 & 23/1-A), Appeals Judgment, 12 June 2002, para. 164.

<sup>104</sup> Elements of Crimes, Article 8(2)(b)(xxi), para. 1

<sup>105</sup> Lee, R. (2001) *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*, Transnational Publishers (Ardsley), p. 184; and Triffterer, O (Ed.) (1999), *Commentary of the Rome Statute of the International Criminal Court: Observers' notes, Article by Article*, Cottier et al., 'Article 8', p. 246.

<sup>106</sup> Elements of Crime, Article 8(2)(b)(xxi), para. 2.

<sup>107</sup> Elements of Crime, Article 8(2)(b)(xx), para. 1, fn. 49.

the perpetrator was aware of the factual circumstances that established this status; (iv) the conduct took place in the context of and was associated with an armed conflict not of an international character and (v) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **3.4.10 Torture**

#### **3.4.10.1 Torture as a crime against humanity pursuant to Article 7(1)(f) and as a war crime pursuant to Article 8(2)(ii)**

90. The Elements of Crimes identify the following criteria to be met to satisfy the crime of torture as a crime against humanity: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) such person or persons were in the custody or under the control of the perpetrator; (iii) such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions; (iv) he conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.
91. The seriousness of the pain or suffering sets torture apart from other forms of mistreatment. In assessing the seriousness of any mistreatment, the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed.
92. The ICC Elements of Crimes requires the “purpose” element with respect to torture as a war crime but not as a crime against humanity.<sup>108</sup> Furthermore, before the ICC definition of torture does not contain an official capacity requirement.<sup>109</sup>
93. With regards to torture as a war crime, the Elements of Crimes provide that: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) the perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; (iii) such person or persons were protected under one or more of the Geneva Conventions of 1949; (iv) the perpetrator was aware of the factual circumstances that established that protected status; (v) the conduct took

<sup>108</sup> ICC Elements of Crimes, fn 14 (stating “It is understood that no specific purpose need be proved for this crime”).

<sup>109</sup> See also corresponding ICTY jurisprudence, finding that official capacity is not required under customary international law, *Kvočka et al. Judgement*, para. 139; *Kunarac et al. Appeals Judgement*, para. 148.

place in the context of and was associated with an international armed conflict; and (xi) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **3.4.11 *Enslavement***

#### ***3.4.11.1 Enslavement as a crime against humanity, pursuant to Article 7(1)(c)***

94. The Elements of Crimes define the crime against humanity of persecution as follows: (i) the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; (ii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population and (iii) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

### **3.4.12 *Other inhumane acts***

#### ***3.4.12.1 Other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k)***

95. The Elements of Crimes define the crime against humanity of persecution as follows: (i) the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act (ii) such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute; (iii) the perpetrator was aware of the factual circumstances that established the character of the act; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

### **3.4.13 *Sexual and gender based crimes – material elements***

#### ***3.4.13.1 Forced marriage – as another inhumane act – article 7(1)(k)***

96. The crime of forced marriage is not explicitly included in the Rome Statute. However, it may fall under the characterisation of other inhumane acts pursuant to article 7(1)(k) of the Statute.<sup>110</sup>

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<sup>110</sup> AFRC Appeal Judgement, para. 196.

97. The material elements of the crime of other inhumane acts are (i) infliction of great suffering, or serious injury to body or to mental or physical health by means of an inhumane act (ii) of character (nature and gravity) similar to any other act referred to in article 7(1)(a)-(j) of the Statute.<sup>111</sup>
98. According to the jurisprudence of the Appeals Chamber of the Special Court for Sierra Leone (“SCSL”), the elements of the crime of forced marriage include situation when: the perpetrator compels a person by force, threat of force, or coercion to serve as a conjugal partner; the perpetrator acts through his words or conduct, or those of someone for whose actions he is responsible; the acts result in severe suffering, or physical, mental or psychological injury to the victim;<sup>112</sup> there is exclusivity between the “husband” and “wife”, which could lead to disciplinary consequences for breach of this exclusive arrangement.<sup>113</sup> These elements distinguish the crimes of forced marriage as other inhumane acts from the crime of sexual slavery. At the same time, the two crimes share the material elements of non-consensual sex and deprivation of liberty.<sup>114</sup>
99. Evidence of sustaining physical, mental or psychological injury may include: repeated acts of rape and sexual violence, forced labour, corporal punishment, and deprivation of liberty, being forced to watch the killing or mutilation of close family members, before becoming “wives” to those who committed these atrocities, being labelled rebel “wives” resulting in being ostracised from one’s community, social stigmatisation.<sup>115</sup>
100. When assessing the gravity of forced marriage the Appeals Chamber of the SCSL has taken into account: the nature of the perpetrator’s conduct, especially the atmosphere of violence in which victims were abducted; the vulnerability of the women and girls, especially those of a very young age.
101. In interpreting the term “coercive environment” as one of the possible circumstances of rape, the Chambers of this court have followed the ICTR *Akayesu* judgement.<sup>116</sup> The latter found that “*coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among*

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<sup>111</sup> Elements of Crimes, Article 7(1)(k)-1 and 2; Footnote 30.

<sup>112</sup> AFRC Appeal Judgement, para. 196.

<sup>113</sup> AFRC Appeal Judgement, para. 195.

<sup>114</sup> *Ibid.*

<sup>115</sup> AFRC Appeal Judgement, para. 199.

<sup>116</sup> *Bemba* Trial Judgement, para. 103; *Ntaganda* Trial Judgement, para. 935.

*refugee Tutsi women at the bureau communal*".<sup>117</sup> Additionally, the Chambers of this Court found that other factors may contribute to such coercive environment. These include: the number of people involved in the commission of the crime, whether the rape is committed during or immediately following a combat situation, or together with other crimes.<sup>118</sup> However, it must be proven that the perpetrator's conduct involved "taking advantage" of such a coercive environment.<sup>119</sup>

102. Finally, the victims' lack of consent does not need to be proven as it does not constitute a material element of the crime of rape.<sup>120</sup> According to the Elements of Crimes "*a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity*".<sup>121</sup> As noted in the *Bemba* judgement, "[i]n such cases, the Prosecution will only have to prove that the victim's capacity to give genuine consent was affected by natural, induced, or age-related incapacity".<sup>122</sup>

3.4.13.2 Sexual Slavery as a crime against humanity – article 7(1)(g); Sexual Slavery as a war crime pursuant to article 8(2)(e)(vi)

103. The crime of sexual slavery consists of two material elements (actus reus): "The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty"; and second, the "perpetrator caused such person or persons to engage in one or more acts of a sexual nature".<sup>123</sup>
104. Noteworthy, as regards to the first element, the "right of ownership" and the powers attaching to it may take many forms.<sup>124</sup> "Powers attaching to right of ownership must be construed as the use, enjoyment and disposal of a person who is regarded as property by placing him or her in a situation of dependence which entails or his or her deprivation of any form of autonomy."<sup>125</sup> Moreover, exercise of the right of ownership over someone does not necessarily entail a commercial transaction over someone.<sup>126</sup>

<sup>117</sup> *Akayesu* Trial Judgment, para. 688.

<sup>118</sup> *Bemba* Trial Judgement, para. 104; *Ntaganda* Trial Judgement, para. 935.

<sup>119</sup> *Bemba* Trial Judgement, para. 104; *Ntaganda* Judgement, para. 935.

<sup>120</sup> *Bemba* Trial Judgement, paras 105-106; *Ntaganda* Trial Judgement, para. 934.

<sup>121</sup> Elements of Crimes, footnotes 15 and 64.

<sup>122</sup> *Bemba* Trial Judgement, para. 107.

<sup>123</sup> Elements of Crimes, article 7(1)(g)(2).

<sup>124</sup> *Ntaganda* Trial Judgement, para. 952, *Katanga* Trial Judgement, para. 975.

<sup>125</sup> *Katanga* Trial Judgement, para. 975.

<sup>126</sup> *Ntaganda* Trial Judgement, para. 952.

105. Determination of the exercise of power requires a case by case assessment in which the following factors are taken into account: “*control of the victim’s movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim’s vulnerability*”.<sup>127</sup> Deprivation of liberty does not require de facto confinement of a person subjected to sexual slavery but rather this person’s perception of his or her situation as well as his or her reasonable fear.<sup>128</sup>
106. As regards the second element, it concerns the victim’s ability to decide the conditions in which he or she engages in sexual activity.<sup>129</sup>

**3.4.13.3 Forced Pregnancy as a crime against humanity article 7(1)(g); Forced Pregnancy as a war crime article 8(2)(e)(vi)**

107. According to the Elements of Crimes, an act to be qualified as enforced pregnancy it must be established that “[t]he perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law”<sup>130</sup>, such as rape, torture or sexual enslavement.

#### **4 SUBMISSIONS ON THE ASSESSMENT OF THE EVIDENCE**

108. It is for the Chamber to determine whether the ultimate weight of all the evidence adduced is sufficient to establish beyond reasonable doubt the elements of the crimes charged and the responsibility of the Accused. In assessing the weight to be given to the testimony of a witness, the Chamber needs to assess the credibility of witnesses, the reliability of their testimony, and ultimately determine the weight to be accorded to their evidence.<sup>131</sup>
109. The Prosecution bears the burden of establishing each element of the alleged crimes and the charged modes of responsibility for a conviction of the Accused beyond reasonable doubt. The victims of the crimes committed have a right to truth and justice as well as

<sup>127</sup> *Katanga* Trial Judgement, para. 976; *Ntaganda* Trial Judgement, para. 952; *Kunarac et al.*, Trial Judgement, , paras 542 and 543; *Kunarac et al.* Appeal Judgement, paras 119 and 121; *Sesay, Kallon and Gbao* Trial Judgement, , para. 160; *Taylor* Trial Judgement, para. 420.

<sup>128</sup> *Katanga* Trial Judgement, para. 977; *Ntaganda* Trial Judgement, para. 952;

<sup>129</sup> *Katanga* Trial Judgement, para. 978.

<sup>130</sup> Elements of Crimes, Article 7(1)(g)-4 and Article 8(2)(e)(vi)-4.

<sup>131</sup> See e.g. *Lubanga* Appeal Judgment, para. 239; *Ndahimana* Appeal Judgment, para. 45. See also *Ntawukulilyayo* Appeal Judgment, para. 21.

the right to contribute to the search for the truth, which extends to making final submissions on the evidence presented at trial.

110. The LRVs recall that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>132</sup> A Chamber may enter a conviction on the basis of a single witness, although such evidence must be assessed with the appropriate caution.<sup>133</sup> Insignificant discrepancies between the evidence of different witnesses, or between the evidence of a particular witness in court and his prior statements, in general have not been regarded as discrediting such evidence.<sup>134</sup> A Chamber is also free to decide not to rely on some parts of a witness's account whilst accepting other aspects of his or her evidence.<sup>135</sup>
111. As regards the evidence of an accused, the Trial Chamber in the *Katanga* case set out that it took the statements of the accused into account and that it “*relied on them in its Judgement*” insofar as it found them credible.<sup>136</sup> Where it considered the accused's account not sufficiently credible, it “*dismissed it without any conclusion as to his guilt or innocence.*”<sup>137</sup>
112. The Defence have at times sought to raise arguments about inconsistencies between victim testimony and material contained in the victims' original application forms.<sup>138</sup>
113. Such issues are not specific to this case. They have their roots in the nature of the application process for victims' participation. In that process the Court neither recognises a right for victims to be legally assisted, nor provides legal aid if lawyers are instructed. It might be inferred from this that the Court has to date not deemed it necessary for this process to be conducted with legal rigour. This is likely because it is understood that application forms are completed for a limited purpose: they are not intended as evidence concerning the guilt or innocence of the accused; but rather to assist in a *prima facie* determination of whether an applicant meets the definition in rule 85.
114. In practice victims are usually assisted to complete application forms by community groups who have been given such training by the Registry as resources and timing

<sup>132</sup> *Karadžić* Trial Judgment, para. 12; *Nyiramasuhuko et al.* Appeal Judgment, para. 2063; *Kupreškić et al.* Appeal Judgment, para. 33.

<sup>133</sup> *Haradinaj* Appeal Judgment, para. 145.

<sup>134</sup> *Karadžić* Trial Judgment, para. 12.

<sup>135</sup> *Bemba* Trial Judgment, para. 231; *Katanga* Trial Judgment, para. 84; *Setako* Appeal Judgment, para. 48; *Haradinaj et al.* Appeal Judgment, para. 201.

<sup>136</sup> *Katanga* Trial Judgment, para. 105.

<sup>137</sup> *Katanga* Trial Judgment, para. 105

<sup>138</sup> For example: Concerning P-187, T-165, 5:23-11; 7:18-8:9; concerning P-286, T-132, 13:18-14:9.



permit. The same individuals serve as interpreters. They may frequently operate in less than ideal conditions, including under time constraints and without proper privacy. Even where best practices have been taught in a training – for example regarding the need to read back a statement to the victim to ensure that it is correct before it is signed – the Registry is not in a position to verify that such instructions have been followed.

115. It must therefore be borne in mind that this process is fundamentally different in nature to that by which a witness statement or record of interview is produced.
116. The fact that errors may easily be made by the person completing the form for a victim, was even explained clearly by one of the Defence's own witnesses, who had himself completed an application form to participate in the Uganda Situation in 2010:

*“Thank you for the question. I’ve heard what you read. The person who wrote this made an error. The person did not follow what I narrated because you know sometimes it’s very difficult to write Acholi. Sometimes it’s easy, sometimes it’s hard and you might make mistakes. For the person who is writing it it might make sense, but for whoever is reading it, it might not make sense. So the person did not write – did not write down the correct information.”*<sup>139</sup>

117. Having set out the correct information, the witness went on:

*So the person who wrote this down made a mistake. The person should have actually been asking me, should have made clarifications, and asked me, “Have I wrote this down correctly? Have I wrote this down correctly?” But the person did not ask for clarification, so that’s where the mistake came about. Thank you.*<sup>140</sup>

118. In the *Ntaganda* Judgment the Trial Chamber considered this matter and concluded that:

*“the conditions of production of victim applications differ from those of formal witness statements, which are taken by a party, assisted by staff qualified to do so, and recorded after having been read back to the witness. Accordingly, the Chamber has generally attributed less weight to inconsistencies between a witness’s testimony and a victim application, than to inconsistencies with a formal witness statement. Major identified inconsistencies have been assessed on a case-by-case basis, considering, inter alia, the nature and scope of the inconsistencies, the explanations provided by the witness in this regard, and the conditions of production of the application, including, in particular, whether the form was completed*

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<sup>139</sup> D-79, T-189, 38:20-25.

<sup>140</sup> D-79, T-189, 40:4-7.

*with the assistance of an intermediary or individuals formally connected to the Court.*”<sup>141</sup>

119. The LRVs respectfully submit that this is the correct approach and invite the Chamber to follow this approach in the present case. Indeed the LRVs note that although the Presiding Judge has also expressed frustrations concerning the quality of victim applications,<sup>142</sup> he has likewise recognised that a victim application form

*“is not a statement like a statement from the Prosecution and is not filled out by the [dual status] witness, so it’s always a little bit obscure, frankly speaking, how these, the information in these application forms come into place, sometimes, especially with witnesses who would not write the information down themselves.”*<sup>143</sup>

## **5 CONTEXTUAL BACKGROUND TO THE CONFLICT**

120. The roots of the war between the Government of Uganda (“GoU”) and the LRA in Acholiland are entwined with the history of conflicts in Uganda and the rise to power of the National Resistance Movement/National Resistance Army (“NRM/A”). The conflict has persisted because of fragmented and divisive national politics, strategies and tactics adopted by the armed protagonists, and regional and international interests.
121. The LRVs submit 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 a protracted non international armed violence between the LRA on the one side and the Ugandan government, principally its armed forces, the UPDF, together with associated local defence units (LDUs) on the other side.
122. The LRA engaged in a pattern of deliberate attacks against civilians, in particular against those residing in IDP camps established by the government. According to the evidence, the LRVs submit the leadership of the LRA held the belief that all civilians who resided in such IDP camps were supporting the government, and that this fact alone sufficed to make them legitimate targets.
123. The LRVs submit 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, involved a large number of acts of violence victimising a large number of

<sup>141</sup> *Ntaganda* Trial Judgment, para.85.

<sup>142</sup> T-165, 6:12-7:4, 8:19-9:1.

<sup>143</sup> T-132, 14:10-14.

civilians; and was systematic, as it was planned and the violence followed a discernible pattern.

124. Following the overthrow of Milton Obote, and before Joseph Kony's LRA, D-113 stated that life was already hard for people in Northern Uganda due to the prevalence of rebel groups in Lango, Acholi and Teso.<sup>144</sup> Indeed, prior to the war in northern Uganda in 1986, many Acholi families kept cattle. During the course of the war, however, most cattle were stolen or killed by the fighting forces.
125. In both the Acholi and Lango ethnic communities, older people who owned these domesticated animals and understood their significance to their lives, regard cattle as the most prestigious form of wealth. Both tribal groups also keep goats, sheep and pigs. Agriculture, however, is the primary activity of subsistence in the greater north of Uganda. Although war and life in displacement have limited or even deprived the majority of communities from growing their own food.
126. Expert witness for the Prosecution, Professor Tim Allen (P-422) presented evidence that Joseph Kony's position was that the LRA was not an "irrational" or "mad movement" and that one of the grievances of the northern Ugandan population was that cattle were removed in huge numbers from the region when President Museveni's forces began operating in the late 1980s. Given the importance of cattle in Acholi culture, this was a great loss to the population in the area.<sup>145</sup>
127. Defence witness D-83 also recalled an incident during that time when over 200 heads of cattle were stolen from his grandfather's farm.<sup>146</sup> D-74 noted how the livestock was taken from the Acholi and Lango communities by Museveni's forces, which led him to join the LRA.<sup>147</sup> P-85, stated that the reason why the LRA was fighting was because of "*bad governance by the sitting government*" and because the government "*took away the wealth of the Acholi people and the Langi*", and thus they were fighting to overthrow the government.<sup>148</sup>
128. D-87 noted the duality of the harm suffered by the civilians in Northern Uganda, whereby their livestock was forcibly removed, without compensation by the Ugandan government, and having to contend with the LRA rebels who "*committed so many*

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<sup>144</sup> D-113, T-221, 17: 7-12.

<sup>145</sup> P-422, T-28, 48: 4-11, 51: 11-19.

<sup>146</sup> D-83, T-217 :10: 2-15.

<sup>147</sup> D-74, T-187, 5: 9-12.

<sup>148</sup> P-85, T-158, 13: 20-24.

*crimes, such as abduction, beating people.*”<sup>149</sup> P-422 stated that compared to the movement of Alice Lakwena, the LRA had a more militarised approach and used terror tactics. The LRA tended to operate in much smaller units and “[had] the biggest possible impact by doing shocking things.”<sup>150</sup>

129. P-355 stated how the conflict between the LRA and the government forces led to heightened insecurity within Northern Uganda.<sup>151</sup> The activities of the LRA prevented ordinary people from getting on with their lives and people lived in constant fear of the abductions of women and children. Normal life within the region was severely disrupted as a result of the conflict.<sup>152</sup>
130. Resident District Commissioner, P-355 stated that the severity of the security situation during 2002-2004 escalated and the number of internally displaced people rose drastically within this person. He stated that internally displaced camps existed in almost every part of the district.<sup>153</sup>
131. With regards to the inability of the GoU to curtail the violence, D-139 stated that many believed that the continuation of the war was a way to keep the Acholi population from organising or as being a policy of extermination or genocide against the Acholi.<sup>154</sup> Civilians were not only targeted by the LRA, but also had to face violence and killings from their own government.<sup>155</sup>

## **6 SUBMISSIONS ON SPECIFIC CATEGORIES OF CRIMES CHARGED**

### **6.1 Attack on Odek IDP Camp on or about 29 April 2004 (Counts 11-23)**

132. The LRVs submit that the evidence presented demonstrates that Dominic Ongwen and Joseph Kony –as co-perpetrators put into action a common plan to attack Odek IDP camp and meant to engage their conduct and bring about the objective elements of the crimes of attacks against the civilian population, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging, outrages upon personal dignity and persecution or were aware that they would occur in the ordinary course of events in implementing the Odek common plan.

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<sup>149</sup> D-87, T-184, 5: 15-23.

<sup>150</sup> P-422, T-28, 27: 23-25.

<sup>151</sup> P-355, T-96, 69:8-13.

<sup>152</sup> *Ibid.*

<sup>153</sup> P-355, T-96, 69:8-13, 69.

<sup>154</sup> D-139, T-218, 13: 1-7.

<sup>155</sup> D-139, T-218, 19:4-11.

133. Dominic Ongwen, as commander of the Sinia Brigade<sup>156</sup>, along with other soldiers under his command was responsible for the attack on Odek IDP camp. Numerous witnesses that the Prosecution have called attest to this fact. The attack on Odek IDP Camp took place on or about 29 April 2004 (which forms the basis of charges 11-23).
134. The initial plan to attack Odek IDP Camp was formulated by Joseph Kony and he relayed these instructions to Dominic Ongwen so that he could carry out the attack as planned.<sup>157</sup> Dominic Ongwen along with Okwonga selected 200 people from their groups to carry out the attack on Odek IDP Camp.<sup>158</sup>
135. At the RV or standby prior to the attack, P-245 states that both Ongwen and Okwonga told the soldiers that people should be chased away from the camps, and those that do not leave should be killed as they are supporting President Museveni.<sup>159</sup> The Accused was the overall commander of the group<sup>160</sup> and the highest ranking officer present at the RV.<sup>161</sup>
136. At the standby, at which P-205 was present, he stated that Ongwen addressed the soldiers who were present and told them to “*go and destroy Odek completely, they should leave only bare ground*” and “[N]othing should be left in Odek.”<sup>162</sup> This is also corroborated by P-410, who was present at the RV and participated in the attack on Odek IDP Camp.<sup>163</sup> Furthermore, the Accused also issued instructions that girls and boys should be abducted, whilst others, who were not fit enough to join the army, ought to be killed.<sup>164</sup> P-330, an escort, was also present stated that the Accused (whom he referred to by the name “Odomi”) ordered the attack on Odek IDP Camp.
137. Ben Acellam and Okwee were selected by the Accused to carry out the attack on Odek IDP Camp.<sup>165</sup> [REDACTED]  
[REDACTED]  
[REDACTED].<sup>166</sup>

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<sup>156</sup> P-245, T-99, 67: 16-23.

<sup>157</sup> P-245, T-99, 49: 24-25, 50:1-7.

<sup>158</sup> P-245, T-99, 51:4-25.

<sup>159</sup> P-245, T-99, 52: 1-13.

<sup>160</sup> P-372, T-148, 41:14-20.

<sup>161</sup> P-264, T-64, 39: 23-15, 40: 1-4. See also P-406, T-154, 41-42.

<sup>162</sup> P-205, T-47, 43:9-21, 43.

<sup>163</sup> P-410, T-151, 13-17, 34.

<sup>164</sup> P-205, T-47, 44:3-9. See also P-264, T-64, 44: 8-14 and P-314, T-75, 4: 9-12.

<sup>165</sup> P-142, T-70, 26: 20-17 and P-264, T-64, 42:9-14.

<sup>166</sup> [REDACTED].

138. The other purpose of the attack was to “collect food” from Odek.<sup>167</sup> Other items such as soap, salt and clothing were also looted from the civilians.<sup>168</sup> P-309, one of Dominic Ongwen’s escorts who participated in the attack on Odek IDP Camp stated that *“Dominic led a short prayer, then he sprinkled water on us, the water was mixed with oil ... we started moving. I knew we were going to Odek.”*<sup>169</sup> Dominic Ongwen told them that they *“were going to work”* which meant they were going to fight.<sup>170</sup>
139. Once the LRA rebels arrived at the barracks at Odek IDP Camp, the Accused blew a whistle, signalling to those under his command to commence the attack. P-309 stated that he was armed with an AK-47, and other LRA soldiers were similarly armed, including Ongwen.<sup>171</sup> After overpowering the government soldiers, the rebels then started to loot whatever they could from civilian homesteads and shops situated in the centre.<sup>172</sup> [REDACTED]  
[REDACTED].<sup>173</sup> According to P-314, there were about 400 people resident in Odek IDP Camp and approximately 60 LRA soldiers, including children who carried out the attack.<sup>174</sup>
140. The rebels split up into two groups, one group went to attack the barracks, and another group went towards the centre.<sup>175</sup> P-54 notes that the fighting went on for some time.<sup>176</sup> P-372, who formed part of the group that was responsible for looting food during the attack, stated how Ongwen’s group was burning houses and abducting people.<sup>177</sup> P-340 also participated in the attack on Odek IDP camp and was responsible for *“collecting food items.”*<sup>178</sup> He also witnessed the burning of houses belonging to the UPDF soldiers and civilian housing within the camp.<sup>179</sup> [REDACTED]  
[REDACTED].<sup>180</sup> P-330 also stated that the LRA soldiers were responsible for setting the huts in the camp alight.<sup>181</sup>

<sup>167</sup> P-264, T-64, 38: 3-10.

<sup>168</sup> P-264, T-64, 61:14-25.

<sup>169</sup> P-306, T-60, 74: 13-25.

<sup>170</sup> P-306, T-60, 74-75.

<sup>171</sup> P-306, T-60, 77.

<sup>172</sup> P-245, T-99, 55: 1-7: 53: 1-9, See also P-306, T-60, 82-83.

<sup>173</sup> [REDACTED]  
<sup>174</sup> P-314, T-75, 4-5.

<sup>175</sup> P-218, T-90, 9: 24-25, 10: 1-4. This is also corroborated by P-314 who stated that Dominic Ongwen split the groups into two, see P-314-T-75, 7: 16-21.

<sup>176</sup> P-54, T-93, 15: 10-25, 16: 1-5.

<sup>177</sup> P-372, T-148, 42: 14-25, 43: 1-12.

<sup>178</sup> P-340, T-102, 27.

<sup>179</sup> P-340, T-102, 28: 1-4.

<sup>180</sup> [REDACTED].

<sup>181</sup> P-330, T-52, 20: 18-25.

141. P-314, who formed part of the group of LRA soldiers that attacked the barracks stated that there were at least 30 people who made up this group, including children, of approximately 14 years of age.<sup>182</sup>
142. Civilians were also shot during the attack.<sup>183</sup> P-264, who participated in the attack, shot and killed civilians present at Odek IDP Camp.<sup>184</sup> He recalled seeing about 10 dead civilians, including men, women and children.<sup>185</sup> P-406 also witnessed three dead civilians who had hit with a club on their heads.<sup>186</sup> P-410 recalled witnessing children being separated from their mothers, and babies being killed while they were crying. Some of these children were hit against trees, whilst the others “*were killed mercilessly.*”<sup>187</sup> This evidence is corroborated by P-330 who stated that some civilians were burned in their huts; others were clubbed on the back of their heads.<sup>188</sup>
143. During the attack 8-10 males and females were abducted from Odek IDP Camp.<sup>189</sup> They were tied together with a rope around their waist and made to carry luggage on their heads.<sup>190</sup> The older abductees were forced to carry the looted food, some of whom were then released.<sup>191</sup> The young boys who were abducted stayed in the Sinia Brigade and were trained as soldiers. The young girls also remained in the Sinia Brigade and were not released. P-245 states that the age of the youngest person who was abducted was 14 years old.<sup>192</sup> P-142 states that the youngest abducted person was 11 years old.<sup>193</sup> This information is corroborated by P-340 who stated that civilians were abducted from Odek IDP Camp and forced to carry loads, and this included boys and girls.<sup>194</sup> Furthermore, P-406 also stated that the age of the youngest abductees was around 11-12 years old.<sup>195</sup> P-410 abducted two people from Odek IDP Camp, including one child.<sup>196</sup>
144. P-252 was 14 years-old and was abducted during the attack on Odek IDP Camp. In response to the shooting in the camp, P-252 attempted to run away, but was captured by

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<sup>182</sup> P-314, T-75, 10: 8-20.

<sup>183</sup> P-264, T-64, 52: 14-25, 53:1.

<sup>184</sup> P-264, T-64, 55:12-17.

<sup>185</sup> P-264, T-64, 60: 3-10.

<sup>186</sup> P-406, T-154, 47:21-25.

<sup>187</sup> P-410, T-151, 13-17, 46-47.

<sup>188</sup> P-330, T-52, 20: 16-17.

<sup>189</sup> P-245, T-99, 53: 24-25, 54: 1-25.

<sup>190</sup> P-264, T-64, 64:14-18.

<sup>191</sup> P-245, T-99, 55:1-9, 64:10-24.

<sup>192</sup> P-245, T-99, 64: 10-24.

<sup>193</sup> P-142, T-70, 6:11-17.

<sup>194</sup> P-340, T-102, 36: 6-16.

<sup>195</sup> P-406, T-154, 50: 11.

<sup>196</sup> P-410, T-151, 39:13-17, 46.

Onen Kamdulu.<sup>197</sup> He witnessed the LRA soldiers entering the home of a lady he knew and shooting her dead<sup>198</sup> and saw the body of a friend from school who had also been shot.<sup>199</sup> At the market, he saw the body of someone who he knew, who had been shot in the stomach<sup>200</sup> and the body of a man who used to sell sugarcane.<sup>201</sup> He also witnessed Onen Kamdulu pillaging food items from shops at the market.<sup>202</sup>

145. P-252 was tied with a rope on his waist, along with other abductees, including ‘his mother from the clan’, and other children, one of whom was approximately 8-9 years old.<sup>203</sup> After leaving Odek with the LRA soldiers, P-252 saw that other people had also been abducted, including children of a similar age and his father.<sup>204</sup> Most of those abducted were carrying items that had been pillaged from Odek IDP Camp. The abductees were separated into three different groups; men; women and children.<sup>205</sup> Older women and infants were sent home.<sup>206</sup>
146. P-330 stated that he personally witnessed the killing of the civilians who had been abducted from Odek IDP Camp. The civilians were killed by “seasoned” LRA soldiers because they could have informed the government soldiers of the location of the LRA which would have jeopardised their position in Gulu.<sup>207</sup> The abducted children were divided amongst the different households of the leaders.<sup>208</sup>
147. As the senior commander of Sinia Brigade, the Accused was responsible for deciding which abducted persons would stay with the rebels, and which would be released.<sup>209</sup> P-410 stated that many of those who were abducted from Odek IDP Camp were killed because they were not able to carry luggage, including children.<sup>210</sup> P-410, himself was forced to kill a young boy who had been abducted.<sup>211</sup>

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<sup>197</sup> P-252, T-87, 11,12,13.

<sup>198</sup> P-252, T-87, 14: 1-4.

<sup>199</sup> P-252, T-87, 14, 15.

<sup>200</sup> P-252, T-87, 15:1-12.

<sup>201</sup> P-252, T-87, 20.

<sup>202</sup> P-252, T-87, 15.

<sup>203</sup> P-252, T-87, 18-19.

<sup>204</sup> P-252, T-87, 24.

<sup>205</sup> P-252, T-87, 34,35.

<sup>206</sup> *Ibid.*

<sup>207</sup> P-330, T-52, 24, 25.

<sup>208</sup> P-330, T-52, 26.

<sup>209</sup> P-372, T-148, 44: 12-21.

<sup>210</sup> P-410, T-151, 50, 1-6.

<sup>211</sup> *Ibid.*



148. P-205 also saw those who carried out the attack on Odek IDP Camp report back to Dominic Ongwen that they had overran the barracks and he also saw all the food items that had been looted.<sup>212</sup>
149. Ongwen updated Joseph Kony on the progress of the attack on Odek IDP Camp and told him about the number of people that had been abducted.<sup>213</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>214</sup>
150. P-218 a camp leader of Odek IDP Camp witnessed the numerous injuries that camp residents sustained as a result of the attack. Many suffered from gunshot wounds as a result of the LRA rebels firing shots into their huts.<sup>215</sup> He saw and counted the bodies of 61 people who died during the attack, most of whom died of gunshot wounds.<sup>216</sup> Some of these people included children, the youngest of which was four-years old.<sup>217</sup>
151. Defence witness D-66 also noted the ferocity of the attack on Odek IDP Camp and narrated how the LRA rebels killed a UPDF soldier and his child that he had tried to hide in the barracks.<sup>218</sup> His brother was abducted and killed during the attack on the Camp, an event that he described as being “extremely painful”.<sup>219</sup>
152. The Prosecution also called four intercept witnesses to provide testimony concerning the audio evidence of intercepted radio communications that purportedly recorded the Accused claiming responsibility for the attacks on Odek, Lukodi and Abok IDP camps.  
[REDACTED]  
[REDACTED] and the other two (P-3 and P-59) worked in the intercept operations of the UPDF and the ISO, respectively.
153. The main focus of the witnesses’ testimony involved listening to the recordings of previous LRA radio communications in order to establish that Ongwen had, shortly after the LRA attacks on the camps in question, claimed responsibility for the attacks.
154. P-16 [REDACTED]<sup>220</sup> [REDACTED]  
[REDACTED]

<sup>212</sup> P-205, T-47, 45:8-22.

<sup>213</sup> P-205, T-48, 6: 15-23.

<sup>214</sup> [REDACTED].

<sup>215</sup> P-218, T-90, 11: 9-21.

<sup>216</sup> P-218, T-90, 12: 16-21.

<sup>217</sup> P-218, T-90, 13, 1-14.

<sup>218</sup> D-66, T-214, 22:5-13.

<sup>219</sup> D-66, T-214, 34: 22-25, 35: 1-8.

<sup>220</sup> [REDACTED].

- 221 . [REDACTED]  
[REDACTED].
155. P-59 works with the Ugandan Internal Security Organisation (ISO) that was monitoring and intercepting the LRA radio communications in Gulu from 2000.<sup>222</sup> The intercept process involved finding LRA frequencies, recording audio of the radio transmissions, making rough notes<sup>223</sup> and compiling more detailed reports in the form of handwritten logbooks.<sup>224</sup>
156. P-440 [REDACTED].<sup>225</sup> [REDACTED]  
[REDACTED]<sup>226</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>227</sup> [REDACTED]  
[REDACTED]<sup>228</sup>.
157. P-3 worked within the intercept operations in the Technical Intelligence arm of the UPDF intelligence section from 1997. The witness began initially as a signaller and was later engaged in monitoring and recording LRA radio communications from 2001 until around 2005/2006 after the LRA went to the Central African Republic (“CAR”).
158. The key pieces of evidence presented to the witnesses were audio recordings of the LRA communications related to the attack and their associated transcripts. For the government witnesses, handwritten notes and logs of the intercepted radio communications were also presented.
159. With regard to the attack on Odek, the key audio recording played to the witnesses had the ERN; UGA-OTP-235-0038. Each of the witnesses was requested to listen to the same segments of the recording (from track 2 between 5:42 to 7:54 and 23:21 to 31:03).
160. The first segment of the recording played to the witnesses (time stamp 5:42 to 7:54) was an intercept of radio communication where one of the parties was providing a brief report that he had just returned from attacking Odek.<sup>229</sup>

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<sup>221</sup> [REDACTED]

<sup>222</sup> P-59, T-36, 7:1-8:8.

<sup>223</sup> P-59, T-36, 22:14-23:20.

<sup>224</sup> P-59, T-36, 27:2-28:12.

<sup>225</sup> [REDACTED]

<sup>226</sup> [REDACTED]

<sup>227</sup> [REDACTED].

<sup>228</sup> [REDACTED]

<sup>229</sup> Transcript of audio recording, UGA-OTP-259-0065 at 0066 to 0068 (P-16); UGA-OTP-248-0462 at 0499 to 0501 (P-59); UGA-OTP-262-0298 at 0336 TO 0338 (P-440); UGA-OTP-248-0263 at 0300 to 303 (P-3).

161. The second segment of the recording (time stamp 23:21 to 31:03) depicted communication in which the parties were providing feedback on the outcome of the attack with regards to the scale of the damage and casualties inflicted, the items looted and the number of people abducted.<sup>230</sup>
162. After listening to the first of the aforementioned segments of the audio recording, each of the witnesses attributed the voice in the recording claiming responsibility for the attack on Odek to Dominic Ongwen.<sup>231</sup> The witnesses, upon listening to the second of the said audio segments, also confirmed that it was Dominic Ongwen's voice they heard reporting on the outcome of the attack on Odek.<sup>232</sup> This report over radio purportedly by the accused Dominic Ongwen detailed the weapons retrieved from the UPDF; the death of civilians and the number and composition of the people abducted.
163. Based on this assessment of their testimony, the witnesses corroborated each other's evidence in the identification and attribution of the voice to the accused in the segments of the audio recordings played to them. Each witness was able to identify and attribute Dominic Ongwen as the speaker on the audio recording claiming responsibility for the attack on Odek and providing a report on the outcome of the attack.
164. Taken in its totality, the LRVs submit that the evidence submitted demonstrates that objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 11); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 12) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 13); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 14) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 15); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 16) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 17); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 18); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 19); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 20); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 21); outrages upon personal dignity as a war crime pursuant to article 8(2)(c)(ii) of the Statute (charge 22); and

<sup>230</sup> Transcript of audio recording, UGA-OTP-0259-0065 at 0069 to 0075 (P-16); UGA-OTP-0248-0462 at 0513 to 0519 (P-59); UGA-OTP-262-0298 at 0355 TO 0361 (P-440); UGA-OTP-0248-0263 at 0318 to 324 (P-3).

<sup>231</sup> P-16, T-32, 42:22-43:7; P-059, T 37, 3:5-4:10; P-440, T-40, 21:21-22:18; P-3, T-43, 18:7-19:18.

<sup>232</sup> P-16, T-32, 56:2-25; P-059, T-37, 7:22-9:1; P-440, T-40, 26: 9-22; P-3, T-43, 25:7-27:8.

persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 23).

165. As concerns the individual criminal responsibility of Dominic Ongwen, the evidence sufficiently demonstrates that he, pursuant to a common plan with other senior LRA leaders, undertook action which was essential for the commission of crimes pursuant to the common plan, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion that Dominic Ongwen, beyond a reasonable doubt committed the above mentioned crimes, jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii), as charged by the Prosecutor.

## **6.2 Attack on Lukodi IDP Camp on or about 19 May 2004 (Counts 24-36)**

166. Dominic Ongwen, as commander of the Sinia Brigade<sup>233</sup>, along with other soldiers under his command, was responsible for the attack on Lukodi IDP camp on or about 19 May 2004. Numerous witnesses that the Prosecution have called attest to this fact, this includes LRA insiders, radio intercept witnesses and civilian victims of the attack.
167. Dominic Ongwen issued instructions to attack Lukodi IDP Camp, and the attack took place with the participation of soldiers from both Sinia and Gilva brigades of the LRA.<sup>234</sup> There were only approximately 30 soldiers from the UPDF in charge of protecting Lukodi IDP Camp.<sup>235</sup> According to P-245, the original orders to attack Lukodi IDP Camp were generated from Joseph Kony, who initially instructed Ocan Bunia to carry out the attack. However, due to Ocan Bunia's lack of proximity to the area, Dominic Ongwen met up with Opio Makasi, the commanding officer of the Gilva brigade, and commenced preparations to carry out the attack on Lukodi IDP camp.<sup>236</sup>
168. During a briefing given by Dominic Ongwen prior to the attack on Lukodi IDP Camp, he instructed his soldiers to "*go to Lukodi, disperse the soldiers in Lukodi, burn their houses, loot food and come back.*"<sup>237</sup> The houses to be attacked included those belonging to civilians.<sup>238</sup> The briefing was given by Dominic Ongwen to the

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<sup>233</sup> P-245, T-99, 67:16-23.

<sup>234</sup> P-142, T-70, 43: 10-18.

<sup>235</sup> P-24, T-77, 19: 14-24.

<sup>236</sup> P-245, T-99, 66:1-20.

<sup>237</sup> P-142, T-70, 46: 16-19.

<sup>238</sup> P-142, T-70, 46: 16-19.

commanders and soldiers, and he warned them not to fail to carry out the mission and that “*he [did] not want to hear that anybody fled or ran away from the battlefield.*”<sup>239</sup> This is also corroborated by P-410 who was also present at the briefing.<sup>240</sup>

169. P-245 was present during this briefing given by Dominic Ongwen<sup>241</sup> and stated that although the accused did not physically participate in the attack on Lukodi IDP camp, he instructed his subordinates, Ocaka and Ojok to carry out the attack.<sup>242</sup> The commanding officers were subordinate to the overall commander, who was Dominic Ongwen.<sup>243</sup>

170. [REDACTED]  
[REDACTED]  
[REDACTED]<sup>244</sup>, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>245</sup>

171. P-406 also participated in the attack on Lukodi IDP Camp and stated that prior to the attack Dominic Ongwen told them that some soldiers should go to the barracks, and the others should go to the camp in order to ‘take some food items and abduct children.’<sup>246</sup> He stated that at least 40 LRA soldiers carried out the attack on Lukodi IDP Camp.<sup>247</sup> He further stated that burning the camp was part of the instructions given by Dominic Ongwen.<sup>248</sup>

172. P-145 also speaks of this meeting, where Dominic Ongwen or Odomi told them to select people so that they could go “*and collect food.*”<sup>249</sup> Once they arrived at Lukodi, the LRA soldiers set out to pillage food from civilians, and attack the camp.<sup>250</sup> This account is corroborated by P-142.<sup>251</sup> In particular, Dominic Ongwen’s group attacked the soldiers at Lukodi IDP camp and proceeded to attack and kill civilians.<sup>252</sup>

<sup>239</sup> P-245, T-99, 69: 4-14.

<sup>240</sup> P-410, T-151, 61.

<sup>241</sup> P-245, T-99, 70: 1-24, 72:10-25.

<sup>242</sup> P-054, T-93, 30: 6-20.

<sup>243</sup> P-054, T-93, 31: 4-11.

<sup>244</sup> [REDACTED]

<sup>245</sup> [REDACTED]

<sup>246</sup> P-406, T-154, 53: 19-23.

<sup>247</sup> P-406, T-154, 54: 11-13.

<sup>248</sup> P-406, T-154, 57: 13-17.

<sup>249</sup> P-145, T-143, 19: 23-25, 20:1-7.

<sup>250</sup> P-145, T-143, 22:21-25, 23:1-20, 26:24-25.

<sup>251</sup> P-142, T-70, 46: 18-19.

<sup>252</sup> P-145, T-143, 26:7-10.

173. Many civilians died during the attack<sup>253</sup>, including victims represented by the LRVs. The houses in Lukodi IDP consisted of small huts with thatched roofs as described by P-142, who participated in the attack on the camp.<sup>254</sup> It was a large camp, as stated by Defence witness D-72.<sup>255</sup> D-72 also states that the camp was burning and houses had been torched.<sup>256</sup>
174. V-4, a local leader for Lukodi IDP Camp who was called by the LRVs to present evidence described the attack in grim detail. He stated that on 19 May 2004 the LRA rebels took over Lukodi camp and surrounded it. They began their onslaught by shooting and stabbing civilians with bayonets. In some cases, civilians were thrown into the burning huts and burned alive. They also looted food items from civilians and continued to burn the camp.<sup>257</sup>
175. Civilians were also abducted by Dominic Ongwen's Sinia Brigade during the attack on Lukodi IDP Camp, including children.<sup>258</sup> Upon their return from Lukodi IDP Camp, Dominic Ongwen thanked his soldiers for a job well done.<sup>259</sup>
176. P-024, who had a new-born child, described how the camp was overrun by LRA soldiers, and how she witnessed people being shot at and cut with machetes<sup>260</sup> and how the LRA soldiers "*were laughing while they were cutting people into pieces.*"<sup>261</sup> The soldiers stole the food she had in her house<sup>262</sup> and burned her house with her other children in it.<sup>263</sup> One of the children tried to escape out of the house and was "*beaten to pulp*", another child who tried to run was thrown back into the burning hut by the rebels and three children, including two of her neighbours were burned in the hut.<sup>264</sup> The three children were four-years old at the time.<sup>265</sup>
177. She was abducted by an LRA soldier along with her two-week old baby who was strapped to her back, and the soldier then took her child from her and "*threw the child away.*"<sup>266</sup> She was given luggage to carry, along with seven other people who had also

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<sup>253</sup> P-142, T-70, 63: 15-16.

<sup>254</sup> P-142, T-70, 61: 11-18.

<sup>255</sup> D-72, T-212, 17: 11-13.

<sup>256</sup> D-72, T-212, 40: 1-5.

<sup>257</sup> V-4, T-173, 11: 6-14.

<sup>258</sup> P-245, T-99, 72: 2-8.

<sup>259</sup> P-245, T-99, 73: 1-4.

<sup>260</sup> P-24, T-77, 20: 2-15.

<sup>261</sup> P-24, T-77, 25: 2-14.

<sup>262</sup> P-24, T-77, 26: 11-17.

<sup>263</sup> P-24, T-77, 27: 8-12.

<sup>264</sup> P-24, T-77, 30:18-25, 31: 1-4.

<sup>265</sup> P-24, T-77, 21: 7-13.

<sup>266</sup> P-24, T-77, 21: 20-25.

been abducted from Lukodi IDP Camp and was beaten by the LRA soldiers.<sup>267</sup> All seven people were killed by the LRA soldiers under the command of Dominic Ongwen.<sup>268</sup> During the attack, her son was also abducted and then killed because he was unable to carry the heavy items given to him by the rebels.<sup>269</sup> Her mother and uncle were also killed during the attack.<sup>270</sup>

178. P-410, who participated in the attack on Lukodi IDP Camp said he saw soldiers and civilians who had been shot, as well as people being burned alive in a hut. He stated that *“those who did not flee were burnt in the house”* and that the LRA rebels were responsible for shooting people and lighting the huts on fire.<sup>271</sup>
179. Men, women and children were abducted from Lukodi IDP Camp, and were forced to carry loads on behalf of the LRA. According to P-410, those who were unable to carry the loads were clubbed to death by the LRA soldiers.<sup>272</sup> The loads consisted mostly of foodstuff that had been looted from the residents of the Camp.<sup>273</sup>
180. After the attack, Dominic Ongwen informed Joseph Kony on what had transpired, including the number of guns that were obtained and the number of people who had been abducted from Lukodi IDP Camp.<sup>274</sup>
181. P-172 was present when Dominic Ongwen and members of the Sinia Brigade organized a standby in preparation for the attack on Lukodi IDP camp.<sup>275</sup> He recalls seeing those who had gone for the attack return with clothes and food that had been pillaged from the Lukodi.<sup>276</sup> P-231 recalled speaking to soldiers from the Sinia Brigade who informed him that members of Sinia and Gilva brigades had undertaken a ‘serious battle’ in Lukodi and had also pillaged food from the area.<sup>277</sup>
182. The four radio intercept witnesses called by the Prosecutor listened to an audio-recording- ERN; UGA-OTP-239-0123. Each of the witnesses was requested to listen to the same segments of the recording (from track 2 at time stamps 23.15 to 24.56). This

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<sup>267</sup> P-24, T-77, 28: 18-25.

<sup>268</sup> P-24, T-77, 28, 2-9.

<sup>269</sup> P-24, T-77, 34:16-24.

<sup>270</sup> P-24, T-77, 38: 21-24.

<sup>271</sup> P-410, T-151, 65.

<sup>272</sup> P-410, T-151, 68.

<sup>273</sup> *Ibid.*

<sup>274</sup> P-205, T-48, 5: 8-21.

<sup>275</sup> P-172, T-113, 21:9-21, 22:1-23.

<sup>276</sup> P-172, T-113, 24:21-25.

<sup>277</sup> P-231, T-122-, 69: 9-20.

segment of the recording depicted a radio communication in which the parties were discussing the attack on Lukodi.

183. Each of the radio intercept witnesses were able to identify the voice of Dominic Ongwen and Vincent Otti discussing the attack on Lukodi. The witnesses confirmed that they heard Dominic Ongwen not only claim that his group had been responsible for the attack, but also confirm that over 100 houses had been burnt and further that the death of over 25 people was “*still few*”.<sup>278</sup>

184. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>279</sup>

185. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>280</sup>

186. The witnesses, prior to the trial hearings, were requested to review the transcripts of the audio recordings prepared by the prosecution and to make corrections based on what they heard on the selected segments of the audio recordings. The victims all made similar annotations to the voices they had identified as originating from Ongwen and from Otti.<sup>281</sup>

187. In light of the available evidence, the LRVs submit that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 24); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 25) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 26); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 27) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 28); torture as a crime against humanity pursuant to article 7(1)(f) of the

<sup>278</sup> P-16, T-32, 75:14-76:5 ; P-59, T-36, 75:23-77:16; P-440, T-40, 30:1-24; P-3, T-42, 78:11-80:10.

<sup>279</sup> [REDACTED].

<sup>280</sup> [REDACTED].

<sup>281</sup> Transcript of audio recording, UGA-OTP-0129-0419 at 0428 -0429 (P-16); UGA-OTP-0266-0084 at 0137 to 138 (P-59); UGA-OTP- 0262-0235 at 288 to 289 (P-440); UGA-OTP- 0132-0093 at 0102 (P-3).



Statute (charge 29) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 30); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 31); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 32); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 33); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 34); destruction of property as a war crime pursuant to article 8(2)(e)(xii) of the Statute (charge 35); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 36).

188. As concerns the individual criminal responsibility of Dominic Ongwen, the LRVs submit that the Prosecution have proven, beyond a reasonable doubt that he committed the crimes through the LRA forces subordinate to him, in the sense of article 25(3)(a) of the Statute, as presented by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

### **6.3 Attack on Abok IDP Camp on or about 8 June 2004 (Counts 37-49)**

189. The evidence of LRA insiders, civilian victims of the attack and intercepted LRA communications demonstrates that on or about 8 June 2004, in the evening, LRA fighters carried out an attack on Abok IDP Camp. As in the other attacks described above, the attackers specifically targeted civilians, shooting them, burning them and beating them, causing the death of at least 28 civilian residents of the camp while certain others survived their injuries.
190. The evidence demonstrates that the attack on Abok IDP camp was carried out by LRA Sinia brigade forces under the control of Dominic Ongwen. While he did not directly participate in the attack on the ground, Dominic Ongwen had overall command of the attack, and ensured that his orders were transmitted and obeyed by appointing a leader on the ground. Witness P-54 reports having participated in the attack under a commander subordinate to Dominic Ongwen, and civilian Witnesses P-280 and P-286 heard LRA fighters refer to Dominic Ongwen as their leader. The intercepted radio communications on 9 and 10 June 2004, in which Dominic Ongwen reported the attack to Joseph Kony, are also instructive and corroborative.
191. P-54 was one of the soldiers selected to carry out the attack on Abok IDP Camp. He states that Dominic Ongwen selected people to participate in the attack at a meeting that

took place at Atoo Hills prior to the attack.<sup>282</sup> In particular, they were told to go to ‘work’ in Abok which meant fighting and collecting food.<sup>283</sup> P-406 was physically present, along with his commander, when Dominic Ongwen issued the instructions to attack Abok IDP Camp. Dominic Ongwen told them to ‘go and collect food; abduct people, and burn down the camp, attack the barracks as well.’<sup>284</sup> P-330 corroborates this evidence, and said that Dominic Ongwen issued the instruction to attack Abok IDP Camp and told Lapwony Okello to select a standby.<sup>285</sup>

192. P-406 stated that around 30-40 LRA soldiers carried out the attack on Abok IDP Camp, with the younger soldiers being given the duties of “making noise” and banging jerry-cans.<sup>286</sup> P-406 beat one civilian with the butt of his gun as the person had refused to hand over food items.<sup>287</sup> He saw his commander set a hut alight, locking in a number of civilians, which included children.<sup>288</sup>

193. Children or child soldiers who were present were given the responsibility of collecting food during the attack.<sup>289</sup> P-340 who participated in the attack on Abok IDP Camp stated that he, along with others, took food from the camp, which included beans and flour.<sup>290</sup> He further stated that he witnessed the houses in the camp burning and it was “*perhaps the veterans who had been in the bush a long time who were setting the houses on fire.*”<sup>291</sup>

194. [REDACTED]  
[REDACTED]  
[REDACTED].<sup>292</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>293</sup>

195. Camp residents such as P-293 recalled hearing gunshots and soldiers of the UDPF attempting to repulse the rebels, however, the fighting intensified and the gunshots were

<sup>282</sup> P-54, T-93, 34:4-14,

<sup>283</sup> *Ibid.*

<sup>284</sup> P-406, T-154, 66.

<sup>285</sup> P-330, T-52, 22-29.

<sup>286</sup> P-406, T-154, 67.

<sup>287</sup> P-406, T-154, 67-68.

<sup>288</sup> P-406, T-154, 71-72.

<sup>289</sup> P-54, T-93, 35: 9-21.

<sup>290</sup> P-340, T-102, 40: 9-22.

<sup>291</sup> P-340, T-102, 41: 1-8.

<sup>292</sup> [REDACTED]

<sup>293</sup> [REDACTED]

now closer to the camp.<sup>294</sup> He heard UPDF soldiers shouting that the LRA rebels had overpowered them, and urging the camp residents to run away.<sup>295</sup> P-293 saw and heard the rebels within the camp, and they included children within their ranks.<sup>296</sup> These children were involved in burning the huts at the Camp.<sup>297</sup>

196. P-293 further describes how the child soldiers were mostly armed with sticks and were responsible for stealing food items and medicines, while the older LRA soldiers were armed with guns.<sup>298</sup> The rebels were burning houses, looting and killing people according to P-293.<sup>299</sup> Defence witness D-65 also describes the attack on Abok IDP Camp, noting how one child was shot<sup>300</sup> and how camp residents were being shot and pushed into the burning huts, whilst others were shot while trying to escape or were abducted.<sup>301</sup>

197. [REDACTED]  
[REDACTED]<sup>302</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>303</sup>

198. A number of people were also abducted from Abok IDP Camp, according to P-406, that included, men, women and children, the youngest of whom were approximately 11-12 years old.<sup>304</sup> One 12 –year old girl who was abducted from Abok was distributed to Dominic Ongwen’s household.<sup>305</sup> [REDACTED]  
[REDACTED]<sup>306</sup>

199. P-293 who returned to the camp the following morning and was responsible for accounting for the dead, states that people were killed by gunshot, others, including children were burned alive in their huts, some were hacked to death by machetes.<sup>307</sup> Around 20-28 bodies were recovered the next morning.<sup>308</sup> On his return the next morning, P-293 was also met with a scene of destruction, huts had been burned down,

<sup>294</sup> P-293, T-138, 21: 20-25, 22: 1-5.

<sup>295</sup> P-293, T-138, 22: 18-20.

<sup>296</sup> P-293, T-138, 23: 2-10.

<sup>297</sup> P-293, T-138, 23: 22-25, 24: 1-3.

<sup>298</sup> P-293, T-138, 24: 5-16.

<sup>299</sup> P-293, T-138, 26: 1-7.

<sup>300</sup> D-65, T-211, 21: 9-10.

<sup>301</sup> D-65, T-211, 21: 11-22.

<sup>302</sup> [REDACTED].

<sup>303</sup> [REDACTED]

<sup>304</sup> P-406, T-154, 75:13-15.

<sup>305</sup> P-406, T-154, 76.

<sup>306</sup> [REDACTED]

<sup>307</sup> P-293, T-138, 26: 1-7.

<sup>308</sup> P-293, T-138, 38: 9-11.

food items had been spilled on the ground, and some livestock had been killed as well.<sup>309</sup>

200. P-293 also heard from abductees who managed to return to the camp that Dominic Ongwen had planned and carried out the attack on Abok IDP Camp.<sup>310</sup> They also [the abductees who returned] heard the rebels stating that Dominic Ongwen would be very happy because the attack had been a success.<sup>311</sup> P-330 returned to the RV once the attack was over and stated that Dominic Ongwen, as head of the convoy, was present. At the RV Okello and the other commanders reported back to Dominic Ongwen on the attack on Abok IDP Camp.<sup>312</sup>
201. The four radio intercept witnesses called by the Prosecution were played an audio-recording- ERN; UGA-OTP-0235-0049. Each of the radio intercept witnesses was requested to listen to the same segments of the recording (from track 1 between 16:00 to 19:20). It should be noted that the name of the location – Abok – is never mentioned in the intercepted communication. Rather, some of the marked characteristics of the attack are mentioned, including the intervention by the UPDF “mamba” vehicles in the course of the attack.
202. The witnesses, after listening to the audio recording all confirmed that they heard the voice of Dominic Ongwen communicating with Raska Lukwiya confirming that he had attacked a location on the previous day. The witnesses also confirmed that they had heard the voice of Vincent Otti in the intercepted communication.<sup>313</sup>
203. [REDACTED]  
[REDACTED]  
[REDACTED].<sup>314</sup>
204. The witnesses, prior to the trial hearings, were requested to review the transcripts of the audio recordings prepared by the prosecution and to make corrections based on what they heard on the selected segments of the audio recordings.<sup>315</sup>

<sup>309</sup> P-293, T-138, 41: 15-23.

<sup>310</sup> P-293, T-138, 36:21-25.

<sup>311</sup> P-293, T-138, 37: 3-11.

<sup>312</sup> P-330, T-52, 38-39

<sup>313</sup> P-16, T-32, 64:10-65:6 ; P-59, T-37, 15:21-17:2; P-440, T-40, 36:14-37:4; P-3, T-43, 33:14-34:17.

<sup>314</sup> [REDACTED].

<sup>315</sup> P-16 Witness Statement UGA-OTP-259-0011-R01 at para 45 to 48; P-59 Witness Statement UGA-OTP-0248-0328-R01 at para 14 to 18; P-440 Witness Statement UGA-OTP-0262-0176-R01 at para 60 to 63; P-3 Witness Statement UGA-OTP-0248-0094-R01 at para 14 to 19

205. During their testimony the witnesses were requested to review their annotated transcripts shortly after the related audio recordings had been re-played to them.<sup>316</sup> The witnesses confirmed the corrections they had made to the transcripts and explained the meaning of some of the coded messages used in the recordings.
206. The witnesses all provided similar explanations to a correction where they claim to have heard Ongwen say words to the effect that he had returned from “*warming the boys*.” The witnesses stated that they had understood this to mean that Ongwen and his group had just returned from fighting.<sup>317</sup>
207. Similarly, most of the witnesses confirmed that Ongwen had used the code “waya”, which is LRA code for civilians, when reporting that he had abducted civilians as opposed to the original translation that seemed to depict him saying that he had captured his Aunt.<sup>318</sup>
208. The witnesses also gave similar translations to the portions of the audio transcripts that had been considered unintelligible by the Prosecution’s transcribers. These included references to the effect that “*I continued shelling indiscriminately*,” “*It was the Mamba that welcomed us from afar*” and “*I continued shooting and all the soldiers ran away*.”<sup>319</sup>
209. In light of the available evidence, the LRVs submit that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 37); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 38) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 39); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 40) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 41); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 42) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 43); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 44); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of

<sup>316</sup> Annotated transcript UGA-OTP- 0259-0086 at 0087to 0089 (P-16); UGA-OTP- 0248-0524 (P-59); UGA-OTP-0262-0363 at 0381 to 0384 (P-440); UGA-OTP-0248-0106 at 0124 TO 0131 (P-3)

<sup>317</sup> P-16, T-32, 65:7-19; P-59, T-37, 17:18- 21; P-440, T-40, 37:17- 25; P-3, T-43, 35:15-22.

<sup>318</sup> P-16, T-32, 66:14-18; P-059, T-37, 18:3-18; It may be noteworthy that P-440 did not make any corrections to his annotated transcripts on this point though in his testimony he seemed to understand the term “waya” to refer to civilians (T-40, 38:17 to 39-4 read together with UGA-OTP-0262-0363 at 0387 to 0388); P-3, while he was not directly questioned on the issues, made similar annotations to the transcripts crossing out the word “aunt” and replacing it with “waya” (UGA-OTP-248-0106 at 0125).

<sup>319</sup> P-016, T-32, 66:19 to 67:8; P-059, T-37, 18:18 to 19:5; P-0440, T-40, 38:2-12; P-003, T-43, 36:6-21.

the Statute (charge 45); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 46); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 47); destruction of property as a war crime pursuant to article 8(2)(e)(xii) of the Statute (charge 48); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 49).

210. As concerns the individual criminal responsibility of Dominic Ongwen, the LRVs submit that he committed, beyond a reasonable doubt, the crimes through the LRA forces subordinate to him, in the sense of article 25(3)(a) of the Statute, as presented by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

#### **6.4 Sexual and gender-based crimes (Counts 50-68)**

211. Under charges 50 to 68, the Prosecutor charges the Accused with sexual and gender based crimes: charges 50 to 60 concern alleged crimes directly committed by Ongwen under article 25(3)(a) of the Statute, while charges 61 to 68 concern sexual and gender based crimes for which the Prosecutor alleges Ongwen's indirect criminal responsibility.

##### **6.4.1 *Sexual and gender-based crimes directly committed by the Accused***

212. The evidence presented by the Prosecution proves beyond reasonable doubt that the Accused himself directly committed sexual and gender based crimes against at least seven women – P-99, P-101, P-214, P-226, P-227, P-235, P-236, as set out in the Decision on the confirmation of charges against Ongwen (charges 50 to 60).<sup>320</sup> These seven women provided their evidence prior to the commencement of the trial, pursuant to article 56 of the Statute, and that evidence was further corroborated by the evidence elicited during trial.
213. These women were abducted by the LRA and given to the Accused as “wives” either immediately or after serving him first as a *ting ting*. These women were deprived of their liberty under coercive circumstances and Ongwen exerted his power over them. Ongwen regularly raped them. Six out of seven women (P-99, P-101, P-214, P-227, P-235, P-236) became pregnant during the times at which they were confined to stay within the Accused's household and were being raped by him. All of these girls and women were ordered and forced by the Accused to perform a range of domestic chores

<sup>320</sup> Decision on the confirmation of charges against Dominic Ongwen, paras 109-124.

under, be it in their role as a “wife” or as a *ting ting*.<sup>321</sup> Had they refused to perform these duties or performed them unsatisfactorily, they would be beaten.<sup>322</sup>

214. The LRVs note that P-99, P-101, P-214, P-227, P-235, P-236 were deprived of liberty as “wives” or *ting tings* for a protracted period of time ranging from August 1996 to August 2010. As a result, not all of the sexual and gender based crimes committed by the Accused against these women fall within the Court’s jurisdiction and within the scope of the present case. Although the evidence regarding conduct outside of the temporal scope of the case is not directly relevant to the Accused’s criminal responsibility in respect of the charges in this case, it is informative about the general LRA policy of abducting women and girls and forcing them to serve as “wives” and servants.

215. P-99 was abducted in 1998.<sup>323</sup> At first she served as a *ting ting* in Kony’s household<sup>324</sup> and then became a “wife” to the Accused.<sup>325</sup> She was forced to sexual intercourse with him on the first day at his household<sup>326</sup>. Eventually she gave birth to one child fathered by the accused, which was born before 1 July 2002.<sup>327</sup> She remained Ongwen’s “wife” and was deprived of her liberty until her escape in the LRA in September 2002.<sup>328</sup>

216. P-101 testified that she was forced to become Ongwen’s “wife” on the day of her abduction, which took place in August 1996 when she was 15 years old.<sup>329</sup> She did not consider herself to be mature enough to be with a man.<sup>330</sup> She was forced to have sexual intercourse with him under threat of being beaten or killed soon after her abduction. As P-101 testified:

*“The escorts were very rough with me and they were very angry. They took me, the escorts took me and he told me to enter and kneel next to his bed. He [...] asked me ‘Have you seen this gun? If you refuse to sleep here then you’re going to face consequences’ [...] Immediately the escorts held my hands and they forced me, I was scared. [...] He held me forcefully and he slept with me. I cried. I cried a lot and I bled a lot because that was the first time that I had has sexual relations, sexual intercourse with a man. And that*

<sup>321</sup> P-101, T-13, 38:6-15; P-99, T-14, 40:6-14.

<sup>322</sup> P-99, T-14, 40:16-25, 41:1-5; P-226, T-8, 46:25, 47:1-4; P-226, T-9, 5:12-25, 6:1-9.

<sup>323</sup> P-99, T-14, 11:2-12.

<sup>324</sup> P-99, T-14, 22:2-4.

<sup>325</sup> P-99, T-14, 17:13-14, 36:6-9.

<sup>326</sup> P-99, T-14, 32:10-25, 33:1-5, 36:6-9.

<sup>327</sup> P-99, T-14, 42:17-25, 43: 2-23.

<sup>328</sup> P-99, T-14, 44:24-25; 45:1.

<sup>329</sup> P-101, T-13, 16:9-16

<sup>330</sup> P-101, T-13, 16:17-18.

*was very difficult, it was extremely difficult. He violated my rights. I was young and there was absolutely nothing that I could say about it.*"<sup>331</sup>

217. Throughout the 8 years that P-101 spent in the bush as Ongwen's "wife" she was forced to have sexual intercourse with him, she thought she had no choice. She testified that she was beaten a number of times for refusing him to have sex with her.<sup>332</sup>

218. Eventually, she became pregnant and gave birth to three children as a result of the forced sex with the Accused (only the second and the third pregnancy fall under the Court's temporal jurisdiction).<sup>333</sup> While pregnant, she was forced to stay with the Accused and had no possibility to escape, however, she escaped from the bush when she was pregnant with her third child.<sup>334</sup> She had no other choice but to have children:

*"When I became pregnant with my three children to Ongwen, I did not think I had a choice as to whether I would become pregnant or not."*<sup>335</sup>

219. P-214 was abducted in 2000 and she was given to the Accused household in 2002 and about a month after she was forced to be his "wife".<sup>336</sup> After a month she was raped for the first time:

*I could not see the security guards from the mattress but I knew they were outside. Ongwen told me to lie down and I did as I was scared of the security guards with their sticks. He pulled his shorts down but did not remove them completely. I looked at him and saw his penis which was uncircumcised. I did not see anything else. Ongwen took his penis and put it inside of my vagina. While he was on top of me, I had fear. I was scared as he wanted to sleep with me and I have never with a man before. I felt pain when he entered me. He was lying on top of me. I tried to push him away but he told me to stop. He was heavy. It did not take long. I felt him ejaculating inside me."*<sup>337</sup> *"I was crying as I was told at home that I should not sleep with a man in the bush. I was told that if I slept with a man in the bush I would not have children or the children would die."*<sup>338</sup>

220. She continued to be confined and forced to sexual intercourse by the Accused.<sup>339</sup> She became pregnant four times as a result of rapes by Ongwen, with the first pregnancy

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<sup>331</sup> P-101, T-13, 17:19-25, 18:1-7.

<sup>332</sup> P-101, T-13, 21:2-8.

<sup>333</sup> P-101, T-13, 16:9-14, 19:1-4.

<sup>334</sup> P-101, T-13, 19:1-4.

<sup>335</sup> P-101, T-13, 21:4-6.

<sup>336</sup> P-214, T-15, 5:10, 18:10, 43:7-25, 44:1-7.

<sup>337</sup> P-214, T-15, 24: 11-19.

<sup>338</sup> P-214, T-15, 24:23-25, 25:1.

<sup>339</sup> P-214, T-15, 25:15-21, 26:10-16.



occurring in 2005.<sup>340</sup> She was deprived of her liberty guarded by her “husband’s” escorts, including during the time when she was pregnant. She emphasised that escaping was not possible

*[b]ecause when you’re in the bush, regardless of whether you think of escaping, it’s impossible to escape because when you do try to escape, when you attempt to escape, they follow you and you are taken back and you may actually be killed as well.*<sup>341</sup>

221. P-226 was abducted at the age of 7<sup>342</sup> and remained in the LRA for about five years.<sup>343</sup> P-226 indicated that when they were walking for a month through the bush after her abduction she would become exhausted, that she sustained wounds, sores in her stomach, her feet and head were aching, but she could not rest because she feared she would be killed.<sup>344</sup>

*“I saw one girl who had swollen legs and she said she was tired so they killed her [...] The boys who were guarding us. [...] The girl was hit behind the head.”*<sup>345</sup>

222. P-226 described the selection process of girls and women that was done by Kony and his commanders.<sup>346</sup> Those selected could not refuse to go where they were told to – “*If you refuse, you were either beaten or killed*” she testified.<sup>347</sup> Upon her abduction she was selected by Ongwen and became a *ting ting* to serve in his household.<sup>348</sup> She yielded to him after having been beaten for a week at his order<sup>349</sup> and was raped by him when she was only ten years old.<sup>350</sup> “*He told me that if I cried he would kill me. That’s what he said. [...] I did not cry because I was afraid that he was going to kill me, so I held my hands over my mouth.*”<sup>351</sup> Her vagina was torn and she was bleeding.<sup>352</sup> The witness had heard Ongwen the next morning referring to what he did to her as “*tearing a polythene bag*”, what in her understanding meant that he had sex with a virgin.<sup>353</sup> Eventually she was forced to become his “wife” at the age of 12 Ongwen continued to

<sup>340</sup> P-214, T-15, 28: 4-8, 20-22.

<sup>341</sup> P-214, T-15, 28:15-18.

<sup>342</sup> P-226, T-8, 8:11, 9:5-7.

<sup>343</sup> P-226, T-8, 13:7.

<sup>344</sup> P-226, T-8, 21:22-25, 26:2-18.

<sup>345</sup> P-226, T-8, 22:17-25.

<sup>346</sup> P-226, T-8, 26:6-11, 27:11-25, 28:1-2, 29:2-7.

<sup>347</sup> P-226, T-8, 32:16, 33:4-5.

<sup>348</sup> P-226, T-8, 29:11-17, 34: 14-15.

<sup>349</sup> P-226, T-8, 38:17-25, 39:1-25, 40:1-22.

<sup>350</sup> P-226, T-8, 41:1-22.

<sup>351</sup> P-226, T-8, 41: 11-14.

<sup>352</sup> P-226, T-8, 41:16.

<sup>353</sup> P-226, T-8, 42:11-19.

force her into sexual intercourse,<sup>354</sup> however, she did not consider him to be her husband.<sup>355</sup> P-101 attested that: “*Ongwen was the worst when it came to young girls. He had sex with them at a very young age*” and she noted with regard to P-226 that “*at the time Ongwen started having sex with her she was 12 years old.*”<sup>356</sup>

223. P-226 testified also that she was forced by the Accused to beat to death a UPDF soldier captured by his men.<sup>357</sup> “They selected a number of girls, each girl was given a stick, you’re asked to beat the soldier and once you’re done you move on and the next person does the same.”<sup>358</sup> According to the witness, the accused told them that those who refuse to beat the soldier would be killed like the soldier.<sup>359</sup> P-266 testified that although this was the only time she took part in a killing, she witnessed other similar events. According to her, usually the boys would be selected to kill a boy who tried to escape, whereas it would be girls who would be selected to beat to death a girl.<sup>360</sup>

224. The LRVs submit that the evidence presented demonstrates that the Accused committed pursuant to article 25(3)(a) of the Statute the following crimes, as charged by the Decision on the confirmation of charges against Dominic Ongwen: forced marriage, as an inhumane act of character similar to the acts set out in article 7(1)(a)-(j), as a crimes against humanity pursuant to articles 7(1)(k) of the Statute (charge 50); torture as a crime against humanity pursuant to articles 7(1)(f) of the Statute (charge 51) and as a war crimes pursuant to articles 8(2)(c)(i) of the Statute (charge 52); rape as a crime against humanity pursuant to articles 7(1)(g) of the Statute (charge 53) and as a war crime pursuant to articles 8(2)(e)(vi) of the Statute (charge 54); sexual slavery as a crime against humanity pursuant to articles 7(1)(g) of the Statute (charge 55) and as a war crime pursuant to articles 8(2)(a)(vi) of the Statute (charge 56); enslavement, a crime against humanity pursuant to articles 7(1)(c) of the Statute (charge 57); forced pregnancy as a crime against humanity pursuant to articles 7(1)(g) of the Statute (charge 58) and as a war crime pursuant to articles 8(2)(e)(vi) of the Statute (charge 59); outrages upon personal dignity, a war crime pursuant to articles 8(2)(c)(ii) and 25(3)(a) of the Statute (charge 60).

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<sup>354</sup> P-226, T-8, 45:15-24.

<sup>355</sup> P-226, T-8, 47:7-8.

<sup>356</sup> P-99, T-14, 3:8-15; P-226, T-8, 54: 10-25, 55:1-9.

<sup>357</sup> P-226, T-8, 62:8-25, 63:1-21.

<sup>358</sup> P-226, T-8, 62:13-14.

<sup>359</sup> P-226, T-8, 63:20-21.

<sup>360</sup> P-226, T-8, 64:9-16.

225. The LRVs submit that full reflection of the scale and gravity of the sexual and gender based violence suffered by victims of the LRA and, specifically, of the Accused, requires adoption of all of the above legal characterisations of the criminal conduct ascribed to Ongwen in the Decision on the confirmation of charges, counts 50 to 60.

#### **6.4.2 Sexual and gender-based crimes for which the Accused is indirectly responsible**

226. The evidence in the record of the case proves beyond reasonable doubt that a policy to abduct girls and women existed in the LRA. Abducted women and girls were deprived of their liberty and forced to become servants and/or exclusive conjugal partners and sexual slaves to men within the LRA.

227. Witness P-172, described the purposes of these abductions: “The abduction of women is to give morale to the soldiers and also to remove that feeling of escape. You know, as human beings we have certain feelings and so when they are older people they have sexual feelings, so when the women are taken to them, that such feelings will always be satisfied”.<sup>361</sup> The abducted women and girls were also forced to serve the LRA fighters, be it in their role as “wives” or as domestic servants. Some of them went through military training and took part in combat.<sup>362</sup>

228. This policy was established by Kony prior to 1 July 2002 and implemented across the LRA. Its execution was dependent on the orders or acquiescence of the LRA commanders and their subordinates.<sup>363</sup> The Accused participated in the execution of this policy, having ordered abduction of girls and women and having distributed them, himself or through his subordinates.<sup>364</sup> According to P-142: “*Within the Sinia brigade, if they bring young girls, then it's Dominic and his operation room who distribute the girls to the different battalions, if that is in Sinia.*”<sup>365</sup> P-226 stated “*Ongwen would send the girls from headquarters to Ochieng's group and would give Ochieng orders on how to distribute the girls as wives.*”<sup>366</sup>

229. Girls and women were abducted upon instruction from different locations.<sup>367</sup> Witness P-142 testified that “[t]here is no single woman in the LRA who voluntarily joined. All

<sup>361</sup> P-172, T-114, 29:17-25.

<sup>362</sup> P-172, T-114, 29:6; P-264, T-65, 10:2-20.

<sup>363</sup> P-138, T-120, 28:12-20, 27:13-21; P-70, T-106, 37: 15-17; P-54, T-93, 37:21-24; P-269, T-85, 17:4-17; P-440, T-41, 24:10-22.

<sup>364</sup> P-142, T-70, 27:17-23, 31:7-11; P-54, T-93, 38:12-18, 39:1-13; P-70, T-106, 36: 6-9; P-54, T-93, 37: 21-24; [REDACTED]; P-269, T-86, 11:3-14; P-227, T-10, 48:16.

P-142, T-71, 41:1-2.

<sup>366</sup> P-226, UGA-OTP-0263-2821 at 2831

<sup>367</sup> P-142, T-70, 26:5-11.

were abducted.”<sup>368</sup> Witness P-70 illustrated how abduction of women and girls would look like sometimes: “*When they are abducted, they will all be tied together using ropes. If they are very many, they will be bound together in groups of tens and they will move in that order so they cannot disentangle and run.*”<sup>369</sup>

230. Abducted women and girls, were usually subjected to a ritual with the use of shea oil.<sup>370</sup> Many of these girls and women were given to men in the LRA as “wives” soon after their abduction.<sup>371</sup> Women and girls were treated like objects. Witness P-27 pictured this process: “[...] *when you go for an operation and then you abduct girls, the girls are brought and eventually distributed to different people. That also depended on the number of girls who were abducted. They [...] would begin distributing the girls basing on the ranks of the commanders available and that was how we eventually came to have women in the bush because if girls were brought, then they will pick a girl and if today they are saying this one has to be given to Ayena, she will be given to you.*”<sup>372</sup> As for the lower ranking fighters, the commanders distributed women to those who they considered as ready to have wives.<sup>373</sup> As P-27 told the Court “*You don't have a choice. Whether you are a man or a woman*”.<sup>374</sup>

231. This distribution procedure in the LRA additionally objectified girls and women because it envisaged a system of classification, which was described by witness P-74: “*The most beautiful ones go to him. Secondly, character. If you are well behaved, you will go to him. And lately, there was also education. Those girls who were highly educated were given to him also and some superior commanders, yes. But [...] when they reach Kony, he will screen them. When he has detected something [...] detestable with one of them, he will reject and will be taken away from him.*”<sup>375</sup> This was replicated at a lower level, as P-352 testified: “*The commanding officers like Odomi had the authority to select women to stay in their houses or in their households, but the lower ranking commanders were given wives, they did not have the right to select.*”<sup>376</sup>

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<sup>368</sup> P-142, T-70, 42:1-2.

<sup>369</sup> P-70, T-106, 54:19-22.

<sup>370</sup> P-70, T-106, 35:11-25.

<sup>371</sup> P-45, T-103, [REDACTED], 77:3-25, 78:1-7; P-45, T-104, 72:10-15; P-396, T-126, 63:22-25, 64:1-4; P-138, T-120, 26:19-24 ; P-142, T-70, 38:13-17.

<sup>372</sup> P-27, T-202, 40:15-20.

<sup>373</sup> P-54, T-93, 39:1-13; P-205, T-48, 29:8-11.

<sup>374</sup> P-27, T-202, 40:25.

<sup>375</sup> P-74, T-187, 51:6-11.

<sup>376</sup> P-352, T-67, 75:25, 76:1-2.

232. Forced marriage and position of forced wives was subject to specific rules set by Joseph Kony<sup>377</sup> and executed by commanders, including by Ongwen or at his orders or with his acquiescence.<sup>378</sup> Women could have been disciplined and punished not only by their hierarchical superiors but also by their respective “husbands”.<sup>379</sup>
233. Girls and women had no possibility to refuse becoming one’s “wife” as they were under a threat of being killed.<sup>380</sup> In the words of P-119 testified *“Later they started distributing us to men, men who were already big, that they will be our husbands. They would ask us, that between life and death, which one do you choose? And you choose life.”*<sup>381</sup>
234. Exclusivity was one of specific features of these imposed marriages in the LRA.<sup>382</sup> As one witness put it, once you are given as a “wife” *“[y]ou have to live with that person. There is not any other person. Even when you are interested in another person, you have to stay with that person that you were given to. If you stay with another person still, you will be killed, both of you will be killed”*.<sup>383</sup> Witness P-264 testified *“[w]henver you are assigned to a husband you don't have a choice whether or not to have children or not to stay with the husband. You did not have a choice. You just have to follow”*.<sup>384</sup>
235. Girls were given as wives when they were considered to be “old enough”.<sup>385</sup> Witness P-264 testified that in the LRA when a girl was abducted and was *“still very young, she's nurtured”*. As explained by the witness, this meant that *“[s]he's kept to grow until when she's fit to be given out to a man, and she's given out to a man. And the man would also be somebody who is already mature, not a young person.”*<sup>386</sup>
236. It was up to the individual commanders to decide whether a girl is old enough to be given as a “wife”.<sup>387</sup> In practice “old enough” would sometimes mean that girls were forced to become “wives” even at age as young as 12 or 13 without a possibility to

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<sup>377</sup> P-45, T-104, 73: 1-3, 16-19.

<sup>378</sup> P-351, T-129, 7:17-25, 8:1-6; P-351, T- 129, 28:12-15; P-366, T-147, 12:15-22.

<sup>379</sup> P-45, T-104, 20:23-25, 21:1-2.

<sup>380</sup> P-45, T-103, [REDACTED], 77:3-25, 78:1-7; P-45, T-104, 72:10-15; P-396, T-126, 63:22-25, 64:1-4; P-138, T-120, 26:19-24; P-142, T-71, 38:13-17.

<sup>381</sup> P-119, T-196, 6:23-25.

<sup>382</sup> P-269, T-85, 19:1-13.

<sup>383</sup> P-45, T-103, 79:12-19; P-45, T-104, 20: 8-25; P-351, T-129, 11:22-23; P-138, T-120, 20:1-3, 28:12-20; P-264, T-65, 10:2-20.

<sup>384</sup> P-264, T-65, 10:2-20; P-117, T-215, 24:11-12; P-26, T-191, 24:11-12.

<sup>385</sup> P-70, T-106, 37:11-13.

<sup>386</sup> P-264, T-65, 2: 24-25, 3:1-8.

<sup>387</sup> P-264, T-65, 10:2-20.

object.<sup>388</sup> Not only the volatile circumstances of their abduction, life as an abductee in the LRA, but also their young age made them particularly vulnerable.<sup>389</sup> Witness P-351, who was given as a “wife” at the age of 13, told the Court “*I was still young and I was not yet ready to become a wife. For that reason I went through a lot of pain, especially whenever I was having intercourse with him*”.<sup>390</sup>

237. Women and girls who were widowed by their LRA “husbands” would be then given to other men. These relations also had to be approved and permitted by superiors before proceedings “*as husband and wife*”,<sup>391</sup> women did not necessarily have a choice.<sup>392</sup>

238. The LRA “wives” were forced to “*have relations as husband and wife*” that is they were forced to non-consensual sexual relations under a threat of being beaten or even killed.<sup>393</sup> Other tasks of the LRA “wives” included, among others, carrying luggage, bags, food, preparation of food, cleaning, bathing, washing, doing laundry, laying their ‘husband’s’ bed.<sup>394</sup>

239. The girls who were too young to become a wife were forced to be servants – so called “*ting tings*”.<sup>395</sup> They would be then given to the LRA fighters or commanders as wives.<sup>396</sup> Ongwen himself had *ting tings* in his household, at least one of which (P-226), became his wife during the time relevant to the charges brought by the Prosecutor.<sup>397</sup> The daily tasks of those girls would include to carry saucepans, collect firewood and water, or to babysit children born in the bush.<sup>398</sup>

240. The evidence presented by the Prosecution shows a clear pattern, according to which, forced wives were subjected to repeated non-consensual sexual intercourse with their “husbands”. Many of them spoke before the Court of brutal rapes that they were subjected to just after they were distributed and given as “wives”.<sup>399</sup> Importantly, it was not only forced wives who suffered from rape in the LRA. Rape in the LRA was committed also with regard to girls, even if they were “not ready to have sexual

<sup>388</sup> P-351, T-129, 7:17-25, 8:1-6; P-366, UGA-OTP-0269-0300.

<sup>389</sup> P-138, T-120, 29:5-13.

<sup>390</sup> P-351, T-129, 8:22-25, 9:1.

<sup>391</sup> P-45, T-104, 73:16-25.

<sup>392</sup> P-448, T-157, 33:21-25, 34:1-7.

<sup>393</sup> P-45, T-103, 79:3-11, P-269, T-85, 18:2-25; P-70, T-106, 35:11-25; P-264, T-65, 10:2-20.

<sup>394</sup> P-45, T-103, 79:3-11; P-269, T-85, 18:2-25; P-70, T-106, 35:11-25; P-264, T-65, 10:2-20.

<sup>395</sup> P-18, T-68, 50:19-20, 51:1-5; P-56, T-229, 18:1-7.

<sup>396</sup> P-138, T-120, 26: 19-24; P-366, UGA-OTP-0260-0289 at 0294-0297.

<sup>397</sup> P-54, T-93, 38:17-24.

<sup>398</sup> P-54, T-93, 38:17-24; P-70, T-106, 35:11-25; P-366, T-147, 56:24-25, 57:1-2.

<sup>399</sup> P-396, T-126, 66:19-25.

intercourse”, without consequences for the perpetrators.<sup>400</sup> This was also the case with regard to Ongwen who, according to P-226, raped her when she was only 10 years old.<sup>401</sup> There is also evidence that he raped other girls at a similar age.<sup>402</sup>

241. “Forced wives” testified that they were penetrated by force, beaten and under threat that they would be killed instantly if they refused. Witness P-374 described to the Court:

*“At the time when he was raping me, he kept on beating me, he kept on slapping me, he kept on beating me. And every time he would be sleeping with me, I would sustain injuries on my private parts, so much so that every time I'm trying to walk, I would experience pain and I would not be able to walk freely. And I also had pain on my lower abdomen, but because I feared that he would eventually kill me, I would try and live with the pain just like that”.*<sup>403</sup>

242. P-119 told the Court that she was so frightened that “it appeared as if I had just chosen life over death. I surrendered to him that he should do whatever he wanted with my body.”<sup>404</sup>

243. P-396 stated that she was forced to non-consensual intercourse with her “husband” from which she sustained physical injuries, yet she continued to be subjected to sexual violence.<sup>405</sup> “Those who were there” told her that she could use warm water to treat herself; however, at the time of her testimony she said that she still has some pain.<sup>406</sup> Witness P-448 testified that after being raped by her “husband” she

*“took three days without being able to walk properly. I would walk with my legs apart. [...] I feel a lot - I feel a lot of pain, even up to now as an older person. It has given me difficulty in my life that even giving birth is a problem, and so it has made me get contraceptives so that I don't give birth again.”*<sup>407</sup>

244. Young girls were even more prone to sustain severe physical injuries in result of rape. Witness P-352’s vagina was torn when she was raped at the age of 13. She told the court that her “injuries were bad. Because having had sexual intercourse by force, forcibly with a man, while I was in the bush did cause problems.” According to her, the

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<sup>400</sup> [REDACTED].

<sup>401</sup> P-226, T-8, 41:1-22.

<sup>402</sup> P-227, T-10, 48:24-25, 49:1-24.

<sup>403</sup> P-374, T-150, 14:24-25, 15: 1-4.

<sup>404</sup> P-119, T-196, 20:7-9.

<sup>405</sup> P-396, T-126, 66:19-25.

<sup>406</sup> P-396, T-126, 66:23-25, 67:1-6.

<sup>407</sup> P-448, T-156, 42:9-14.

injuries she sustained contributed to the end of her relationship that she formed after returning from the bush.<sup>408</sup>

245. Women and girls who suffered from sexual and gender based crimes in the LRA were subjected to physical, mental and psychological suffering resulting from their status. As one of the witnesses noted, she always felt fearful for her life while in the bush. They were placed in a hostile environment, living in constant fear against being punished, beaten, or killed. Many of them observed or participated in acts of brutal violence, or were even forced to kill. According to P-366 who was forced to kill people while in the LRA

*“it would disturb me and I would feel as if they would also kill me, because you don't know why that person was killed. And sometimes you think that maybe I am not even doing the right things and I could be killed any time tomorrow or today. I would only be thinking about my life. I would be thinking whether I would be alive or I would be dead. [...] Sometimes it gives me nightmares and it traumatises me, but sometimes I -- it doesn't have any problem.”*<sup>409</sup>

246. Moreover, life in the bush was hostile as such, especially in terms of often difficult access to shelter, food and water. As witness P-366 described:

*“At the time that I was babysitting I was mistreated; I was given heavy luggage to carry in addition to carrying the baby as well. There was hunger; I was constantly hungry; I was thirsty, dehydrated. There was a time when we trekked for about one week. We did not have any water. I was constantly thirsty. That time I was extremely thirsty, because if there is no water, you have to find a stem or some leaves that you believe that if you chew on them it would actually soothe your throat. If there is nothing like that, then you ask somebody. If that person has some water, and the person is not as thirsty as you are, then you ask them for water. People die from dehydration. I saw people dying from dehydration next to me. Sometimes you tell somebody, can you please urinate. You urinate, and then you drink your own urine because if you are extremely thirsty, sometimes you don't even have urine. But if you see somebody who still has urine, you can actually ask that person for urine and drink it, because life is that hard.”*<sup>410</sup>

247. The experience they went through has a significant bearing on their lives up until today. Some of them have a sense of a lost life like P-045: *There was no way I could start life*

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<sup>408</sup> P-352, T-67, 40.

<sup>409</sup> P-366, T-147, 21:20-25, 22:1-7.

<sup>410</sup> P-366, T-147, 19:12-24



*afresh, I went back home and stayed for a whole year, there was nothing I could do.*”<sup>411</sup>  
and/or of enduring pain like P-351:

*“The changes in my life were that I was still young and I was not yet ready to become a wife. For that reason I went through a lot of pain, especially whenever I was having intercourse with him.”*<sup>412</sup>

248. Others like P-269 or P-351 have a sense of lost opportunities: *“If I was not abducted I would have gone with studies ahead.”*<sup>413</sup>

*“I lost so many opportunities because of that abduction. When I was studying I was top of my class, either number 1 or number. I had hoped that I would do something worthwhile with my life when I was in school. But the abduction made my future bleak and I could not continue with studies when I returned”.*<sup>414</sup>

249. P-227, one of the former wives of Ongwen, told the Court that her abduction and experience as a forced wife gives her a lot of pain:

*“at the time I was a student, my education was interrupted. Right now I have sinus problems. At that time I did not have any problems. I got all of these problems from the bush. I did not have those problems at home. And it really pains me. I feel bad for my life.”*<sup>415</sup>

250. Former forced wives fear or suffer from stigmatization when they return from the bush:

*“If I told people about this, people would think about it, people would gossip about it, and it would be a constant reminder to me. So I -- it was unnecessary for me to tell people other than the people at home. So I -- it was important for me, for my family, to know. Even when -- even though I did decide to go to school, if you tell people about all the things that happen to you, when you go back to school, people would gossip. They would say, ‘Oh, look at her; she was a wife of a Holy. Oh, look at her; she was a wife of a Holy.’ And it would make my life difficult. That's why I did not tell people other than my family.”*<sup>416</sup>

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<sup>411</sup> P-45, T-104, 22:17-20.

<sup>412</sup> P-351, T-129, 8:24-25, 9:1.

<sup>413</sup> P-269, T-86, 8:18-19.

<sup>414</sup> P-351, T-129, 12:11-15.

<sup>415</sup> P-227, T-10, 61:25-62:2.

<sup>416</sup> P-366, T-147, 16:15-17, 19-25, 17:1.

251. They face difficulties forming new relationships. Men with whom former rebel wives form relationships do not want to take care of their children from the bush.<sup>417</sup> Moreover, they live in fear that their children conceived in the bush will also suffer from stigma:

[REDACTED]

[REDACTED]

252. The LRVs submit that the evidence presented demonstrates that the Accused committed pursuant to article 25(3)(a), or (b) or (d)(i) and (ii), or 28(a) of the Statute the following crimes, as charged by the Decision on the confirmation of charges against Dominic Ongwen: forced marriage, as an inhumane act of character similar to the acts set out in article 7(1)(a)-(j), as a crimes against humanity pursuant to articles 7(1)(k) of the Statute (charge 61); torture as a crime against humanity pursuant to articles 7(1)(f) of the Statute (charge 62) and as a war crimes pursuant to articles 8(2)(c)(i) of the Statute (charge 63); rape as a crime against humanity pursuant to articles 7(1)(g) of the Statute (charge 64) and as a war crime pursuant to articles 8(2)(e)(vi) of the Statute (charge 65); sexual slavery as a crime against humanity pursuant to articles 7(1)(g) of the Statute (charges 66) and as a war crime pursuant to articles 8(2)(a)(vi) of the Statute (charge 67); enslavement, a crime against humanity pursuant to articles 7(1)(c) of the Statute (charge 68).

253. The LRVs submit that full reflection of the scale and gravity of the sexual and gender based violence suffered by victims of the LRA and, specifically, of the Accused, requires adoption of all of the above legal characterisations of the criminal conduct ascribed to Ongwen in the Decision on the confirmation of charges, counts 60 to 68.

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## 6.5 Conscription and use of child soldiers (Counts 69-70)

254. The war crime of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities is laid down in Article 8(2)(e)(vii) of the Statute.
255. Conscription or enlistment alone are sufficient and it is therefore not required that a child under 15 years of age who has been conscripted or enlisted also be ‘used’ to participate actively in hostilities.<sup>419</sup> Conscription and enlistment is a continuing crime, for which the commission occurs for as long as the child remains part of or is associated with the armed force or group and until the child reaches 15 years of age.<sup>420</sup>
256. Both conscription and enlistment are forms of recruitment that result in the incorporation of a person into an armed force or group, whether by compulsion (conscription) or on an alleged voluntary basis (enlistment).<sup>421</sup>
257. Some form of coercion or compulsion thus distinguishes conscription from enlistment.<sup>422</sup> The existence of such coercion or compulsion can be established by demonstrating that an individual joined the armed force or group due to, inter alia, a legal obligation, brute force, threat of force, or psychological pressure amounting to coercion.<sup>423</sup> Conscription, however, does not generally require demonstrating that the individual joined the armed force or group against his or her will.<sup>424</sup>
258. Enlistment is to be understood as enrolment on the list of a military body.<sup>425</sup> It may be difficult to distinguish between voluntary and forced recruitment in the case of children under the age of 15, particularly since such individuals may be unable to give genuine and informed consent when enlisting in an armed force or group.<sup>426</sup> Furthermore, a child’s consent does not constitute a legitimate defence to a charge of enlistment.<sup>427</sup>
259. In accordance with the purpose of Article 8(2)(e)(vii) to protect children under the age of 15 years from being used to participate actively in hostilities, and the corresponding risks entailed therein to the children’s life and well-being,<sup>428</sup> the expression “to participate actively in hostilities” imports a “wide interpretation to the activities and

<sup>419</sup> *Lubanga* Trial Judgment, para. 609.

<sup>420</sup> *Lubanga* Trial Judgment, para. 618.

<sup>421</sup> *Lubanga* Trial Judgment, para. 607.

<sup>422</sup> *Lubanga* Trial Judgment, para. 608.

<sup>423</sup> *Lubanga* Appeal Judgment, para. 278.

<sup>424</sup> *Lubanga* Appeal Judgment, para. 301.

<sup>425</sup> *Lubanga* Trial Judgment, para. 608, referring to the Oxford Dictionary (2002), page 831.

<sup>426</sup> See also *Lubanga* Trial Judgment, para. 613.

<sup>427</sup> See also *Lubanga* Trial Judgment, para. 617; and SCSL, CDF Appeal Judgment, para. 139.

<sup>428</sup> *Lubanga* Appeal Judgment, paras 277 and 324.

*roles that are covered by the offence of using children under the age of 15 actively to participate in hostilities*".<sup>429</sup> In assessing whether an activity or role qualifies as "*active participation in hostilities*" for the purpose of the Statute, it is necessary to analyse the link between the activity and any combat in which the armed force or group of the perpetrator is engaged, rather than the risk posed to the child as a potential target in hostilities.<sup>430</sup> The requisite proximity between the child's activities and the hostilities exists in case of, inter alia, "*gathering information, transmitting orders, transporting ammunition and foodstuff, or acts of sabotage*".<sup>431</sup>

260. The determination as to whether a particular activity constitutes active participation in hostilities must therefore be made on a case-by-case basis.<sup>432</sup> The deployment of children under the age of 15 as soldiers and their participation in combat, as well as their use as military guards and bodyguards, constitutes use to participate actively in hostilities within the definition of Article 8(2)(e)(vii).<sup>433</sup>
261. The LRVs submit that evidence pertaining to the conscription and use in hostilities of children under the age of 15 in the Sinia brigade of the LRA in northern Uganda between 1 July 2002 and 31 December 2005, which are the parameters of charges 69 and 70, is abundant.
262. The oral testimony of numerous witnesses called by the Prosecution and the LRVs show that the abduction of children under the age of 15, sometimes even under the age of 10, was a systematic practice and a policy choice of the LRA. Young children were targeted because they were easier to control. After abduction, children of both genders would regularly undergo military training, including in the handling of firearms. These child soldiers were then sent on mission as part of regular LRA units, which included the conduct of hostilities with the UPDF. Another systemic abuse of children in the LRA was their use as "escorts" assigned to fighters. Such escorts would accompany the fighters closely, including in active conflict zones, and would provide physical security and operational assistance.

<sup>429</sup> *Lubanga* Appeal Judgment, para. 340, referring to *Lubanga* Trial Judgment, para. 627.

<sup>430</sup> *Lubanga* Appeal Judgment, paras 332 and 335.

<sup>431</sup> *Lubanga* Appeal Judgment, para. 334, citing Yves Sandoz et al., Commentary on the Additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949 (1987), page 1380, para. 4557; and the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute for the International Criminal Court, U.N. Doc. A/CONF.183/2/Add.1, 14 April 1998, page 21 and fn. 12.

<sup>432</sup> *Lubanga* Appeal Judgment, para. 340.

<sup>433</sup> *Lubanga* Appeal Judgment, para. 340.

263. The abductions of children to replenish the LRA combat forces was, according to the evidence, an explicit plan of the LRA leadership, including Joseph Kony and senior commanders, among them the Accused. Ongwen himself used escorts under the age of 15. Moreover, he ordered abductions of children to use as child soldiers, supervised their military training, and coordinated and deployed LRA units which included fighters under 15 years of age.
264. P-330 stated that the LRA abducted young children as opposed to older people because they believed that children would not be able to escape as easily as adults, and that “*young people could be able to carry out any kind of atrocity.*”<sup>434</sup> The Accused, in particular instructed him, and other soldiers within the LRA not to abduct elderly people, but rather ‘young people [who] will not be able to escape and go back home.’<sup>435</sup> P-330 described the presence of “kados” within Ongwen’s group, who were children who had been abducted at a young age, and ‘were very dangerous people’ who were “*meant to cause grievous harm to people and loot items like goats, chickens ...etc.*”<sup>436</sup>
265. P-340 was abducted in 2002 while still in primary school, and when in Sudan, he was trained by the LRA on how to march and how to assemble and disassemble a gun.<sup>437</sup> P-340’s evidence was that most of the abductees were young, and would range from 14, 15 and 16 years of age.<sup>438</sup> In fact, P-340 fired and used his gun for the first time during the attack on Odek IDP Camp.<sup>439</sup> During the attack on Abok IDP Camp, P-340 stated that the children forced to participate in the attack were approximately 14-15 years old.<sup>440</sup>
266. P-233 was abducted in 2002, while he was still in school, along with his schoolmates of a similar age.<sup>441</sup> Some of his schoolmates were beaten to death when trying to escape and P-233 recalled seeing that ‘their skulls were smashed and their brains were all littering outside.’<sup>442</sup> [REDACTED]  
[REDACTED]<sup>443</sup>

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<sup>434</sup> P-330, T-52, 58: 17-19.

<sup>435</sup> P-330, T-52 59: 18-24.

<sup>436</sup> P-330, T-52, 60.

<sup>437</sup> P-340, T-102, 18: 10-20.

<sup>438</sup> P-340, T-102, 24: 15-18.

<sup>439</sup> P-340, T-102, 26: 19-22.

<sup>440</sup> P-340, T-102, 41: 14-18.

<sup>441</sup> P-233, T-111, 10: 7-8.

<sup>442</sup> P-233, T-111, 10: 19-22.

<sup>443</sup> [REDACTED]

267. P-233 described the abductions by the LRA as “*recruitment into the army*”, an “*army people do not voluntarily join so you have to forcefully recruit.*”<sup>444</sup> He stated that abducted life was not easy as there was “*a lot of torture*” and those newly abducted would have to sleep in the cold, were sometimes beaten and would also be forced to torture other people.<sup>445</sup> P-233 stated that his abduction into the LRA “*ruined his life*” and he was beaten for 125 strokes at one point, and was also shot in the chest, thigh and arms during “*battle*”.<sup>446</sup>
268. P-97 was abducted in 2005 by the LRA and not able to finish primary school as a result. He was abducted with other boys and girls, the girls were younger than he was and the boys were roughly the same size as him.<sup>447</sup> Furthermore, he recalled seeing children of the approximate age of 12 or 13 within the larger LRA group.<sup>448</sup> P-97 was whipped with 50 strokes of the cane in order to prevent him, and others who had been abducted from contemplating escape.<sup>449</sup>
269. P-97 was distributed and given to the group of the Accused.<sup>450</sup> During his time with this group he went on two missions to collect food from civilian farms.<sup>451</sup> Within Ongwen’s group, P-97 stated that the youngest person present was about 12 years old, and that there were about 5-10 persons of this age range present in the group. These included both boys and girls.<sup>452</sup>
270. P-97 highlighted that the tasks of these children included fetching water, collecting firewood and constructing tents for the superior commanders.<sup>453</sup> The younger girls were responsible for preparing meals and helping the wives of commanders.<sup>454</sup> Ongwen also personally ordered that P-97 be beaten with 25 strokes of the cane for losing saucepans while crossing a river.<sup>455</sup> Furthermore, the Accused instructed P-97 to witness the killing of a boy called Atim who tried to escape, in order to deter him from carrying out a similar action.<sup>456</sup>

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<sup>444</sup> P-233, T-111, 49: 7-8.

<sup>445</sup> P-233, T-112, 4: 8-12.

<sup>446</sup> P-233, T-112, 4: 17-23.

<sup>447</sup> P-97, T-108, 10: 19-24.

<sup>448</sup> P-97, T-108, 12: 21-25.

<sup>449</sup> P-97, T-108, 13: 11-21.

<sup>450</sup> P-97, T-108, 17: 17-20.

<sup>451</sup> P-97, T-108, 19:15.

<sup>452</sup> P-97, T-108, 22: 16-25.

<sup>453</sup> P-97, T-108, 23: 10-12.

<sup>454</sup> P-97, T-108, 24: 7-11.

<sup>455</sup> P-97, T-108, 50: 11-17.

<sup>456</sup> P-97, T-108, 51.

271. P-314 was abducted while he was still in primary school in 2002. He was abducted from his homestead along with approximately 60 other people.<sup>457</sup> After 1-2 months, he and others were trained on how to assemble and disassemble a gun; how to march; and how to clean a gun.<sup>458</sup> Training also included how to respond to superiors and how to shoot a gun.<sup>459</sup>
272. The type of gun with which P-314 carried out his training was an AK-47,<sup>460</sup> and he, and the others he was trained with were told that the gun “*was our mother, our father, our life is dependent on the gun and so if we lose it, then that is also the end of us.*”<sup>461</sup> The guns were distributed to those abductees who had spent at least six months in the bush. P-314 and Ongom, who was approximately 14-15 years old, both received guns.<sup>462</sup>
273. P-314 stated that newly abducted children were often chosen to carry out punishments within the LRA. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>463</sup>
274. P-314 also recalled seeing Onen Kamdulu, one of Dominic Ongwen’s escorts, who was approximately 14-15 years old. The escorts were usually assigned one specific duty per day, for example, carrying the commander’s gun, or seat, or cleaning his gumboots, and following the commander wherever he goes.<sup>464</sup> P-406 also stated that Dominic Ongwen had a number of escorts, the youngest of whom would have been approximately 11-2 years old.<sup>465</sup>
275. With regards to the attack on Odek IDP Camp, P-314 stated that the age of the youngest fighter who participated in this attack would have been around his age, that is 13-14 years old.<sup>466</sup> This is corroborated by P-410 who stated that soldiers of all ages participated in this attack, with the youngest person being approximately 13 years old. P-306 also stated that young people participated in the attack on Odek IDP Camp.<sup>467</sup> In relation to the attack on Lukodi IDP Camp, P-406 stated that the ages of the youngest

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<sup>457</sup> P-314, T-74, 12: 11-15.

<sup>458</sup> P-314, T-74, 18: 11-13.

<sup>459</sup> P-314, T-74, 18: 20-19: 1-5.

<sup>460</sup> P-314, T-74, 20:20.

<sup>461</sup> P-314, T-74, 20: 23-25.

<sup>462</sup> P-314, T-74, 21:1-8.

<sup>463</sup> [REDACTED].

<sup>464</sup> P-314, T-74, 52: 11-15.

<sup>465</sup> P-406, T-154, 39.

<sup>466</sup> P-314, T-75, 5: 9-15.

<sup>467</sup> P-306, T-60, 76.

soldiers who participated in the attack was from ages 12-14 years old. This is corroborated by P-410.<sup>468</sup> [REDACTED]

[REDACTED]  
[REDACTED]<sup>469</sup>

276. P-200 who was abducted in 2003 by the Accused recalled seeing him being accompanied by “small boys” who the witness estimated to be 12-13 years old. The children were wearing civilian clothing and were carrying guns.<sup>470</sup> Once in Ongwen’s group, P-200 stated that he witnessed children, the youngest of whom he estimated was 12 years old, being trained on how to carry out attacks, and guarding those who had been abducted.<sup>471</sup> In addition, he saw them being trained on how to handle guns and how to ‘parade’ and march.<sup>472</sup>
277. P-406 was 16 years old when he was abducted by the LRA in 2002 and selected as the escort for a commander called [REDACTED]<sup>473</sup> As an escort, he was responsible for accompanying [REDACTED] everywhere, carrying his chair and preparing his bed.<sup>474</sup> P-406 received military training when in Sudan.<sup>475</sup> This included learning how to use a gun and how to march in a parade.<sup>476</sup> Other boys were also trained with him, including one who was 11-12 years old.<sup>477</sup>
278. P-410 was abducted by LRA rebels on his way home from school in 2002 when he was approximately 13 years old<sup>478</sup> along with 10 other children, the youngest of whom was 12 years old.<sup>479</sup> He was still wearing his school uniform at the time, and the LRA soldier discarded his schoolbag which contained his pens and text books.<sup>480</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>481</sup>.
279. P-410 also received training on: how to march in parade; dismantling and reassembling a gun; operating a gun; how to set up an ambush; how to carry out an attack; as well as

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<sup>468</sup> P-410, T-151, 64: 13-17.

<sup>469</sup> P-330, T-52, 76.

<sup>470</sup> P-200, T-145, 21-23.

<sup>471</sup> P-200, T-145, 23-24.

<sup>472</sup> *Ibid.*

<sup>473</sup> P-406, T-154, 14:11-25.

<sup>474</sup> P-406, T-154, 15: 1-9.

<sup>475</sup> P-406, T-154, 18:19-23.

<sup>476</sup> P-406, T-154, 22:24-25, 23:1-2.

<sup>477</sup> P-406, T-154, 23: 8-20.

<sup>478</sup> P-410, T-151, 6.

<sup>479</sup> P-410, T-151, 12:8.

<sup>480</sup> P-410, T-151, 13.

<sup>481</sup> [REDACTED]



how to evade a helicopter gunship.<sup>482</sup> He was trained with 20 other children who ranged from ages 12-17 years old.<sup>483</sup>

280. P-307 was an escort to an officer in Ongwen's group and stated that the age of the youngest escort within the group was 12 years old.<sup>484</sup> Similarly to other escorts, his role was to carry his commander's gun, bag, prepare his bed, fetch water, and was his commander's gun.<sup>485</sup>
281. P-379 was abducted by the LRA in 2002 while he was still in school. He was abducted along with 150 other people, the youngest of whom were 10-11 years old.<sup>486</sup> Like other boys who had been abducted, he was trained on how to handle a gun.<sup>487</sup>
282. In 2002, P-309 was abducted from his home, while he was still in primary school. He was about 14 years-old at the time.<sup>488</sup> After being abducted, he and others were brought to a large compound where the Accused asked them to identify themselves and state their ages.<sup>489</sup> P-309 stated that the ages of the youngest people present at this compound were 13-16 years old.<sup>490</sup>
283. P-309 was selected as an escort in the Accused's household and some of his tasks included carrying the Accused's bag, weapons, beddings and stool.<sup>491</sup> He could not refuse any of the tasks assigned to him.<sup>492</sup> P-390 was also trained on how to operate an AK-47 gun and a PK.<sup>493</sup> He was also trained 'on how to be respectful to the commanders like Dominic, the battle-hardened LRA soldiers.'<sup>494</sup>
284. P-252, who was abducted from Odek IDP Camp by Ongwen's Sinia Brigade when he was 14 years old stated that children from the ages of 10-14 were all taken into the bush so that they could be recruited as fighters in the LRA.<sup>495</sup> P-252 stated that he was punished with the 80 strokes of the cane and burned with boiling water because the other children who had been abducted from Odek had all managed to escape.<sup>496</sup> [REDACTED]

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<sup>482</sup> P-410, T-151, 25.

<sup>483</sup> P-410, T-151, 26.

<sup>484</sup> P-307, T-152, 64:21-25.

<sup>485</sup> P-307, T-152, 65: 1-8.

<sup>486</sup> P-379, T-56, 10-11.

<sup>487</sup> P-379, T-56, 23: 12-25.

<sup>488</sup> P-309, T-60, 15: 15-16.

<sup>489</sup> P-309, T-60: 15: 1-11.

<sup>490</sup> P-309, T-60, 20.

<sup>491</sup> P-309, T-60, 24.

<sup>492</sup> P-309, T-60, 25.

<sup>493</sup> P-309, T-60, 32.

<sup>494</sup> P-309, T-60, 34.

<sup>495</sup> P-252, T-87, 38.

<sup>496</sup> P-252, T-87, 40.

[REDACTED]

[REDACTED].<sup>497</sup> [REDACTED]

[REDACTED].<sup>498</sup> P-252 was also forced to kill another man using a log.<sup>499</sup> Like other boys who were abducted, P-252 was trained on how to use and handle a gun<sup>500</sup> and ended up using his gun against the UPDF.<sup>501</sup>

285. In light of the available evidence, the LRVs submit that the objective elements of the following crimes are sufficiently established by the evidence: conscription of children under the age of 15 into an armed group as a war crime pursuant to article 8(2)(e)(vii) of the Statute (charge 69); and use of children under the age of 15 to participate actively in hostilities as a war crime pursuant to article 8(2)(e)(vii) of the Statute (charge 70).
286. As concerns the individual criminal responsibility of the Accused, the evidence demonstrates that he, beyond a reasonable doubt, pursuant to a common plan with other senior LRA leaders, undertook action which was essential for the commission of crimes pursuant to the common plan, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion, beyond any reasonable doubt, that the Accused committed the above mentioned crimes jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b), as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

## **7 DEFENCE ARGUMENTS CONCERNING EXCULPATION**

### **7.1 Duress**

287. One of the major arguments raised by the Defence is the one of duress. For duress to exclude criminal responsibility it is required that: (i) the conduct of the person has been caused by duress resulting from a threat (whether made by other persons or constituted by circumstances beyond the person's control) of imminent death or of continuing or imminent serious bodily harm against that person or another person; and (ii) the person acts necessarily and reasonably to avoid this threat, provided that the person does not

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<sup>497</sup> [REDACTED]

<sup>498</sup> [REDACTED]

<sup>499</sup> P-252, T-87, 70.

<sup>500</sup> P-252, T-87, 50-51.

<sup>501</sup> P-252, T-87, 52.

intend to cause a greater harm than the one sought to be avoided. The LRVs are of the view that neither requirement is met in the present case.

288. First, there exists no evidence indicating a threat of imminent death or continuing or imminent serious bodily harm against the Accused (or another person) at the time of his conduct with respect to the particular crimes charged. The threat described by the Defence, i.e. the possibility of later disciplinary measures, was not imminent. As stated by the Pre-Trial Chamber in this case “[D]uress is not regulated in the Statute in a way that would provide blanket immunity to members of criminal organisations which have brutal systems of ensuring discipline as soon as they can establish that their membership was not voluntary.”<sup>502</sup>
289. In any case, and this is the second reason why the Defence argument must fail, the circumstances of Ongwen’s stay in the LRA (which in the Defence claim constitutes the source of the threat) cannot be said to be beyond his control (cf. article 31(1)(d)(ii) of the Statute).
290. One of the principle assertions propelled by the Defence of the accused is that once in the LRA, it was impossible to escape. Any attempt to try to escape would result in death or severe punishment. Others were afraid that Kony would be able to read their minds and prevent them from escaping.<sup>503</sup> The evidence demonstrates that escapes from the LRA were not rare.
291. In Ongwen’s case, the theory put forward by the Defence is that as a senior commander, if the Accused attempted to escape he would have been killed by Joseph Kony and that Kony’s ‘spirits’ would know if he had tried to escape. However, numerous witnesses have testified as to how they were able to escape from the LRA, including victims represented by the LRVs, despite the threat of violence or even death as punishment in the event that they were caught. Furthermore, evidence has been adduced by the Prosecution that shows how even senior commanders within the LRA were able to escape without being killed or having their villages attacked by Joseph Kony.
292. Expert witness for the prosecution, Professor Tim Allen or P-422 stated that more than 26,000 to 30,000 children and young adults passed through reception centres in Northern Uganda after having been abducted and escaping from the LRA. He stated that

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<sup>502</sup> Decision on the confirmation of charges against Dominic Ongwen, para.153.

<sup>503</sup> P-422, -T-29, 36:19-22.

their experiences varied hugely, with some abductees being with the LRA for only a short period of time; whilst others spent longer periods of time with the LRA.<sup>504</sup>

293. [REDACTED]  
[REDACTED]  
[REDACTED].<sup>505</sup>

294. [REDACTED]  
[REDACTED]  
[REDACTED]<sup>506</sup> [REDACTED]  
[REDACTED]<sup>507</sup>

295. [REDACTED]  
[REDACTED]<sup>508</sup> [REDACTED]  
[REDACTED]<sup>509</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>510</sup>

296. [REDACTED]  
[REDACTED].<sup>511</sup> He further stated that the fear of Kony's spirits did not cause him to stay with the LRA, and not attempt to escape, but rather he stayed in order to preserve his life.<sup>512</sup>

297. P-264 gave examples of senior commanders such as Cesar Acellam, Obu, Nyeko and Opio Sam, who were all able to escape from the LRA with no repercussions from Kony.<sup>513</sup> P-172 also gave examples of other commanders who left the LRA as a result of his appeals. These included Kenneth Banya, Sam Kolo, Alero Okwonga, Michael Odongo and Lapaicho Oyat.<sup>514</sup>

298. P-209 informed the Court that the thought of escaping the LRA remains with you from the moment that you are abducted until the day that you actually manage to escape.<sup>515</sup>

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<sup>504</sup> P-422, T-29, 36:19-22.

<sup>505</sup> [REDACTED]  
<sup>506</sup> [REDACTED]  
<sup>507</sup> [REDACTED]  
<sup>508</sup> [REDACTED]  
<sup>509</sup> [REDACTED]  
<sup>510</sup> [REDACTED]  
<sup>511</sup> [REDACTED]

<sup>512</sup> P-205, T-49, 21:1-9.

<sup>513</sup> P-264, T-65, 44:14-16.

<sup>514</sup> P-145, T-143, 62:7-19.

<sup>515</sup> P-209, T-160, 35:8-10.

299. P-145, when speaking on Kony's spirits, stated that Kony was not possessed by any spirits, but rather this was a way of brainwashing young children, to stop them from trying to escape and going home.<sup>516</sup>
300. P-142 also escaped from the LRA, along with 8 members of his household.<sup>517</sup> When speaking of the reason why he escaped, P-286 stated that he escaped because he was forced to go into the bush, and he used the tactics that he had learned in the bush to escape.<sup>518</sup> P-330, [REDACTED], who participated in the attacks on Odek and Abok IDP Camps was also able to escape from the LRA.<sup>519</sup>
301. Defence witness D-92 stated that he informed younger children who were living with him of his escape plan and gave them the advice that they should go back to school.<sup>520</sup> In total, with him included, 13 people managed to escape from the LRA.<sup>521</sup>
302. D-76 decided to escape because he was unable to continue walking and knew that the punishment for stopping would be certain death.<sup>522</sup> As such, he managed to escape from the LRA. D-123 was also able to escape after four days with her two sons.<sup>523</sup>
303. D-134 said that he gained the courage to escape because he knew that even if he stayed with the LRA there was a chance that he would die.<sup>524</sup> The witness also stated that his family knew that he had escaped, but he did not fear that there would be any repercussions on them.<sup>525</sup>
304. The LRVs submit that the Accused could have escaped from the LRA. The Accused could have chosen not to rise in hierarchy and expose himself to increasingly higher responsibility to implement LRA policies. Instead, the available evidence demonstrates that Dominic Ongwen shared the ideology of the LRA, including its brutal and perverted policy with respect to civilians it considered as supporting the government.

## **7.2 Mental disease or defect**

305. In its notification pursuant to Rule 79 (2) of the Rules of Procedure and Evidence, the Defence submitted that it had contracted experts to examine the Accused in order to

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<sup>516</sup> P-145, T-143, 62:7-19.

<sup>517</sup> P-142, T-71, 44:2-14.

<sup>518</sup> P-286, T-131, 58:21-25.

<sup>519</sup> P-330, T-53, 16-20.

<sup>520</sup> D-92, T-208, 54:11-16.

<sup>521</sup> D-92, T-208, 68:20-25.

<sup>522</sup> D-76, T-219, 22: 16-25.

<sup>523</sup> D-123, T-238, 9:15- 25.

<sup>524</sup> D-134, T-240, 72:1-3.

<sup>525</sup> D-134, T-240, 72: 5-8.

determine whether he suffered 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 the law.<sup>526</sup>

306. The defence set out to notify the Chamber, the Prosecution as well as the Legal Representatives for Victims of its intent to produce an Article 31(1) (a) affirmative defence by early October 2016.<sup>527</sup>
307. On 6 December 2016, the Defence provided to the Chamber the ‘Psychiatric report’ (First Report)<sup>528</sup> by the two Defence Experts – Dr. Dickens Akena (D-41) and Prof. Emilio Ovuga (D-42) and a second Psychiatric Report was prepared by the same experts in 28 June 2018 (Second Report)<sup>529</sup>. These reports formed the basis of the Prosecution and Defence Experts testimonies at the conclusion of their respective cases.
308. In the First Report, the Defence Experts described Ongwen’s present mental state as being characterised by depressed mood and intense suicidal feelings, urges and verbalizations as well as features of dissociative disorder.<sup>530</sup>
309. The First Report served as the basis of a Defence submission, before the commencement of the hearings, requesting for a stay of proceedings on the grounds that the Defence Experts, after meeting with Mr Ongwen on many occasions, had determined that Mr Ongwen did not understand the charges brought against him at the International Criminal Court, is not fit to stand trial and that Mr Ongwen was not aware of the wrongfulness of any actions during his time in the bush.<sup>531</sup>
310. While the report focused primarily on an assessment of Ongwen’s current mental state, it also made assertions to his mental state at the time Ongwen was serving in the LRA, noting that;

*“When asked directly whether he knew that the various acts he saw, participated in or carried out in the bush were “wrong”, Mr Dominic*

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<sup>526</sup> Defence Notification Pursuant to Rule 79(2) of the Rules of Procedure and Evidence, ICC-02/04-01/15-518, para. 2

<sup>527</sup> Ibid, para 6

<sup>528</sup> UGA-D26-0015-0004.

<sup>529</sup> UGA-D26-0015-0948

<sup>530</sup> UGA-D26-0015-0004 at 0013

<sup>531</sup> Defence Request for a Stay of Proceedings and Examinations Pursuant to Rule 135 of the Rules of Procedure and Evidence, ICC-02/04-01/15-620-Conf, also publicly available in redacted form (ICC-02/04-01/15-620-Red), para. 78.

*Ongwen said that when he was in the bush, he did not appreciate the wrongfulness of his acts.*"<sup>532</sup>

311. The report went further to contend that on the issue of criminal responsibility;

*"A set of clinical tests of criminal responsibility developed by Ovuga (1991) include (a) the presence of mental disorder at the material time an offence in question was allegedly committed (b) the relationship between an offence in question and the content of the accused's mental state (c) the accused's memory for the events of his/her alleged offence (d) evidence that the accused planned various elements of the offence (e) evidence that the accused attempted to erase evidence of the offence and (f) the impact of a trial therapeutic intervention in the course of observation in a hospital setting. Any three of the six items on the criminal test of responsibility in the affirmative absolves the accused of criminal responsibility. In this case, Mr Ongwen suffered from at least three trauma related mental disorders (depression, post-traumatic stress disorder and dissociative disorder including multiple identity disorder)...."*<sup>533</sup> (emphasis added)

312. The Second Report sought to compound the diagnosis of Ongwen's mental state for the purposes of the Article 31 (1) 9a) defence, with the claim that in the opinion of the Defence Experts Mr. Dominic Ongwen is mentally ill, and he has been mentally ill following his abduction around the year 1987 to date (We have given the approximation, around the year 1987 in view of the fact that we don't know exactly when Mr. Ongwen was abducted). Mr. Ongwen suffers from multiple mental conditions including dissociative identity disorder, dissociative amnesia, major depressive disorder, and post-traumatic stress disorder (PTSD), and symptoms of obsessive-compulsive disorder (OCD).<sup>534</sup>

313. Article 31 (1) (a) sets out that;

*"In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:*

*(a) The person suffers from a **mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;**"* (emphasis added)

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<sup>532</sup> Id, at 0014

<sup>533</sup> Id, at 0015

<sup>534</sup> UGA-D26-0015-0948 at 0974

314. For this defence to be successful, it would appear to be necessary to establish the following key facts: (a) the existence of a mental disease or defect; (b) the prevalence of the disease or defect at the time of the alleged conduct; and (c) the influence of the disease on the perpetrators cognitive or voluntary capacities with regards to the alleged conduct
315. The Defence Experts, in their First and Second Reports proposed the existence of a select number of mental diseases prevailing upon Ongwen's during his time in the LRA, and which mental diseases or defects remain prevalent to date. These included dissociative identity disorder, dissociative amnesia, major depressive disorder, and post-traumatic stress disorder (PTSD), and obsessive-compulsive disorder (OCD).
316. The most significant of these for the purposes of the Article 31 (1) (a) defence in the view of the LRVs concerned the claims surrounding the mental disorder associated with dissociation.
317. The Defence Experts in their Second Report claim that Mr. Ongwen's involvement in the crimes of the LRA were under the influence of dissociative episodes, and multiple episodes of split personality with two distinct personality identities that took control of him in turns from time to time under conditions of adversity.<sup>535</sup>
318. The technicalities of the proper diagnosis of these disorders were comprehensively debated between the Prosecution and Defence Experts with the former, and particularly the Prosecution Expert called in rebuttal to the Defence experts, strongly disagreeing with the psychological diagnosis of Ongwen issued by the Defence Experts.<sup>536</sup>
319. At almost every point, the Prosecution Experts disagreed with the Defence Experts in their conclusion based on the diagnosis of the purported mental disorders identified by the latter.<sup>537</sup> The effect is that it is impossible to decisively conclude that Ongwen was at the material time of the commission of the charged crimes labouring under any of the purported mental disorders.

### ***7.2.1 The existence of a disease or defect at the time of the conduct***

320. While the Defence Experts claimed that the purported mental defects of diseases prevailed throughout Ongwen's time in the LRA, they provide no identifiable basis for

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<sup>535</sup> UGA-D26-0015-0948 at 0975.

<sup>536</sup> P-447, UGA-OTP-287-0072 at 0097-0098.

<sup>537</sup> P-446, UGA-OTP-280-0786 at 0811-0815; P-445, UGA-OTP-280-0732 at 0756; UGA-OTP-280-0674 at 0697-0701.



whether these particular mental defects were prevalent at the time of the charged attacks or indeed during the charged period.

321. In neither the First nor the Second Expert Report can reference be found concerning the immediate state of mind related Ongwen's participation or contributions to the charged attacks in Pajule, Odek, Lukodi or Abok. Indeed, when the one of the Defence Experts, D-041, was questioned on whether they discussed the charged attacks with Ongwen, the responded that Ongwen said that he did not commit the crimes and further they only asked the accused about his mental state between 2002 and 2005.<sup>538</sup>

322. And while this approach would have been understandable if the mental conditions described remained static and rigid throughout the charged period, the Defence Expert's do not explicitly make this claim. In fact, during cross examination on the issue of dissociation, for instance, D-042 indicated that;

*"The problem though is, multiple identity disorder, or any form of dissociation, does not occur all the time every day. You might wish to know or note that particularly during periods when Mr Ongwen either was asked to go to the battlefield or he was under stress that was when he would dissociate. Not all the time."*<sup>539</sup>

323. Without an assessment of whether Ongwen was affected by the purported mental disorders at the time of the attacks, the Defence Expert Reports appear to invite the Chamber and the Parties to speculatively assume that the mental conditions described were prevalent in every instance of the charged attacks.

324. Indeed, D-042 during cross examination concerning the reason for insufficient linkage between any purported mental illness and the crime of sexual slavery charged against the accused, the witness stated;

*"I have already explained to you that the brief given to us, that is, Dr Akena and myself, that we should not concern ourselves with sexual offences. But as far as the other crimes are concerned, we made it explicit, both in the report and also through responses to questions in this courtroom, that some of the crimes, particularly in the battlefield, **might have been** during periods of mental instability. So it is not entirely correct that we did not use the standard, clinical standard that I published."*<sup>540</sup> (emphasis added)

<sup>538</sup> D-41, T-249, 41:21-42:5 and 43:22-44:9

<sup>539</sup> D-42, T-251, 28:18-22

<sup>540</sup> D-42, T-251, 70:8-14

### **7.2.2 *Influence on the Accused's cognitive or voluntary capacities***

325. Given that the Defence Experts do not address the question regarding whether or not the accused was under the influence of the purported mental disorders at the time when any of charged conduct was committed, it is practically impossible to ascertain if there had been diminution or destructions of the cognitive or volitional capacities of the accused with regards to the particular charged conduct at the time it was committed.
326. It is noteworthy that while the expert reports claim that the accused was rendered unable to distinguish right from wrong and unable to control his behaviour or from taking part in the crimes, there is an austere lack of detail concerning the cognitive or volitional deficits on the part of the accused that attended each of the charged crimes.
327. For instance, if *arguendo* Ongwen was labouring under a mental disorder at the time of the attack in Odek, what particular mental disorder was he labouring under? How did the mental disorder in question affect his appreciation of the act he was about to engage? In what way did the mental disorder compromise his capacity for self-control? Without concrete answers to these questions, the Article 31 (1) (a) defences cannot be sustained for any of the charged offences.
328. Based on the overall assessment of the Expert Reports, it is the conclusion of the LRVs that the neither the Defence Expert Reports nor their testimony is sufficiently detailed to enrich the victims or the Courts with an adequate understanding of Ongwen's state of mind at the time when the charged crimes were committed. Consequently, the Defence's Article 31 (1) (a) defences cannot be reasonably sustained.

## **8 HARM SUFFERED BY THE VICTIMS**

329. The Chamber has heard significant evidence regarding the harm suffered by victims as a result of the crimes charged. The key sources of such evidence include: (1) evidence of three participating victims called to testify by the LRVs; (2) evidence given by a large number of other victims who were called as witnesses by the parties (a significant subset of whom are also participating victims represented by either the LRVs or the OPCV); (3) expert evidence specifically developed through the Victims' Expert Study and presented in both a report and the oral testimony of Ms Teddy Atim; (4) expert evidence presented by three experts called by the OPCV.
330. Taken together this material amounts to an enormous volume of evidence. These submissions intend therefore to serve merely as an overview. It is also inevitable that material which covers the experience of more than two and a half thousand participating

victims will, to a great extent, reflect generalisations. The LRVs are conscious that each individual, family, clans, and community will experience harm differently. There is significant variation among the experiences within the victim community. The following submissions seek to highlight some key areas in which particular groups suffered harm differently. Despite this, for the most part these submissions provide a broad picture of common experiences.

331. It is also important to avoid an overly individualised approach when considering the impacts of the crimes. Many forms of harm did affect individuals in particular ways; but these individuals are inherently connected to their community and their community and ethnic identities.<sup>541</sup> The crimes may cause not only individual harm but also harms to social structures and identities.
332. The LRVs note that during the trial there was minimal disagreement regarding the harm experienced by the victims. Despite what at times appears to have been a somewhat indiscriminate attempt to discredit victim witnesses and limit their evidence, the Defence made no significant attack on the evidence presented relating to the harm suffered by the victims. Indeed such an attack would be difficult to reconcile with the Defence's arguments which seem in various ways to exculpate the Accused by reference to his own suffering at the hands of the LRA. In any event, regardless of the reasons for this position, the LRVs request that the Chamber take note of the extent to which evidence relating to harm has remained unchallenged in these proceedings.

## **8.1 Physical harm**

333. Significant evidence has been submitted regarding the physical harm suffered by victims of the crimes charged. The physical harm which was described in the proceedings takes a number of forms. These include the following:

### **8.1.1 *Immediate physical pain***

334. Many victims and witnesses testified of the pain they suffered while a crime was ongoing. For example very many witnesses spoke of the physical pain they experienced during beatings<sup>542</sup> or sexual assaults.<sup>543</sup> During attacks on the IDP camps, civilians were killed or injured in the most painful ways. Many were shot,<sup>544</sup> including people who

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<sup>541</sup> PCV-2, T-176, 9:22-10:4.

<sup>542</sup> P-304, T-133, 22:15-16.

<sup>543</sup> P-374, T-150, 14:24-15:4; [REDACTED].

<sup>544</sup> V-4, T-173, 17:3, 17:17; P-218, T-90, 12:19-21; 13:1-11.

were seeking shelter in huts,<sup>545</sup> and children who were attempting to flee.<sup>546</sup> Others were stabbed.<sup>547</sup> Some were deliberately burned inside torched huts.<sup>548</sup>

335. P-293 recounted:

*People were killed in various manners. Others were shot with a gun. Some of them were children who were abandoned in the house. They were burnt in the house. Some were battered on their heads with sticks. Some were cut with machetes.*<sup>549</sup>

336. When asked how the LRA killed people during the attack on Lukodi, P-187 said:

*Some were hit. Some children were put in a polythene bag and beaten to death. Some were locked inside and burnt inside. Others were put in a bag and they were thrown in the bush. So many of them -- some of them disappeared and they were never found. Others were found in the morning.*<sup>550</sup>

337. V-4 spoke of the terrible smell which filled the air in Lukodi the morning after the attack: the smell of all the people who had burned in their huts.<sup>551</sup>

338. For abductees, physical pain was regularly and intentionally inflicted as a means of establishing control: V2 explained that for two weeks he was whipped every day with a cane.<sup>552</sup> P-252 gave a similar account:

*there were ceremonies. For example, they would tell you that you should now think of yourself as a soldier and not as a civilian anymore. I was beaten for that. The older soldiers beat me as an initiation process. So I was beaten, seven canes on my back and seven -- I was also hit with a machete seven times. And they said that the reason why they did that was to -- for you to become a soldier and to leave your civilian life behind.*<sup>553</sup>

339. It should be borne in mind that this kind of physical pain, experienced while a crime was being committed, would almost inevitably be coupled with intense fear and related forms of psychological suffering (discussed below). A victim could not know when – or even whether – the physical pain being inflicted would come to an end.

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<sup>545</sup> E.g. P-218, T-90, 11:16-21.

<sup>546</sup> E.g. P-187, T-164, 17:23-25.

<sup>547</sup> V-4, T-173, 16:16-18.

<sup>548</sup> P-24, T-77, 31:1-4; P-187, T-164, 16:20-21; 22:9-16.

<sup>549</sup> P-293, T-138, 26:23-27:1.

<sup>550</sup> P-187, T-164, 21:2-5.

<sup>551</sup> V-4, T-173, 16:22-24.

<sup>552</sup> V-2, T-171, 11: 16-17; 34:8.

<sup>553</sup> P-252, T-87, 50: 6-11.

### 8.1.2 *Extreme fatigue*

340. Abductees were forced to cover huge distances on foot. This was true both for child conscripts and those who were abducted for short periods to carry pillaged property.

341. Abductees were given enormous loads to carry. P-280 was given a sack of beans to carry, an amount that he described as being approximately four basins and extremely heavy.<sup>554</sup> P-187 was made to carry two basins of beans and about 10 litres of cooking oil, but said that the younger women with her were given even heavier loads.<sup>555</sup> P-286 was told to carry a man of around 80 kilograms on his shoulders.<sup>556</sup>

342. They were forced to carry these heavy items under difficult conditions. P-24 explained:

*One of the hand was bound on my back. I had only one hand to use. I had a kid strapped on my back. I had luggage on my head. I was not supposed to touch my child. I was supposed to hold the luggage and the other hand was bound.*<sup>557</sup>

343. Some abductees were unwell even before this ordeal: P-269 testified that at the time she was abducted during the Odek attack and forced to carry foodstuffs she had malaria and was six months pregnant.<sup>558</sup> P-286 was barefoot with an injured foot.<sup>559</sup> he explained that

*I walked as if I didn't have any wound because I feared if I had walked with a limp they would possibly kill me. So I had to persevere and walk with them until when we reached somewhere in the bush and rested. I went with them and in the bush and I stayed for a week and a half before I could eventually heal.*<sup>560</sup>

344. Abductees could not request to rest.<sup>561</sup> Those who did not keep up were beaten<sup>562</sup> or killed.<sup>563</sup> P-142 stated that when he was abducted he was immediately slapped and kicked because the LRA soldiers thought he was going to escape. He was beaten again for being unable to carry a heavy load that he had been given.<sup>564</sup> P-85 also stated that if

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<sup>554</sup> E.g. P-280, T-83, 53:2-4, 19-20; Later he was instead given an injured LRA soldier to carry together with another abductee: P-280, T-83, 58: 2-6.

<sup>555</sup> P-187, T-164, 11:14-18.

<sup>556</sup> P-286, T-131, 28:15-29:24.

<sup>557</sup> P-24, T-77, 29:13-16.

<sup>558</sup> P-269, T-85, 41:6-9.

<sup>559</sup> P-286, T-131, 55:21-23.

<sup>560</sup> P-286, T-131, 56:7-11.

<sup>561</sup> P-70, T-106, 52:14-15.

<sup>562</sup> P-24, T-77, 27:18-21; P-304, T-133, 22:3-9, 22:14-23.

<sup>563</sup> P-340, T-102, 18:6-8; P-70, T-106, 56:18-21.

<sup>564</sup> P-142, T-70, 66:3-10.

someone was unable to carry their luggage, they were liable to being beaten or killed.<sup>565</sup> This is also corroborated by P-70 who stated that if someone was weak or unable to walk, they would be untied from bondage and would be killed.<sup>566</sup> P-264 stated when he informed LRA soldiers that he was unable to carry the load he was in severe pain; they asked him if he 'wanted to die?'.<sup>567</sup> In terms of the weight of this type of luggage, P-18 stated that the luggage was more than 25 kilograms and usually consisted of food items such as beans and maize.<sup>568</sup> P-142 stated that he was very small when he was abducted, but was forced to carry loads up to 50 kilograms to carry while walking.<sup>569</sup>

345. For those who were conscripted into the LRA the distances of travel were sometimes considerable. Abductees could be made to walk from morning until night.<sup>570</sup> P-340 described walking for two day and two nights without stopping after which they were told they had reached Sudan.<sup>571</sup> Where the rebel group was being pursued by the UPDF they would be unable to rest at all.<sup>572</sup> At other times, only short rests would be taken.<sup>573</sup>
346. P-231 stated that the injuries he sustained while in the bush continue to affect him to date. He has two splinters that have been yet to be removed from his body.<sup>574</sup> P-264 stated that he once told his senior commanders that he had a dream of being back in school, and as a punishment he was beaten with a machete on his neck, back and buttocks.<sup>575</sup>
347. P-231 similarly stated that those who had been abducted would have to walk long distances without shoes. While in Sudan, there was no food and the camp was struck by cholera at one point which meant that many people died.<sup>576</sup> D-85 also spoke of the heavy loads that she was forced to carry and how at one point she felt that she could no longer continue.<sup>577</sup> D-32 also recounted how difficult it was to walk such long distances.<sup>578</sup>

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<sup>565</sup> P-85, T-158, 13:1-6. This is also corroborated by P-18 who stated that if you refused to carry luggage you would be killed or harmed. See P-18, T-69, 21, 12-14.

<sup>566</sup> P-70, T-106, 56:18-21.

<sup>567</sup> P-264, T-64, 22:6-15.

<sup>568</sup> P-18, T-69, 21:21-23.

<sup>569</sup> P-142, T-71, 66: 13-18.

<sup>570</sup> P-70, T-106, 55:24-25.

<sup>571</sup> P-340, T-102, 15:10-11.

<sup>572</sup> P-70, T-106, 56:10-11.

<sup>573</sup> P-304, T-133, 34:16-18.

<sup>574</sup> P-24, T-123, 7: 2-5.

<sup>575</sup> P-264, T-64, 21:8-16.

<sup>576</sup> P-231, T-123, 5:2-20.

<sup>577</sup> D-85, T-239, 7.

<sup>578</sup> D-32, T-199, 13:22-25. D-119 also speaks of how difficult it was to walk with swollen feet, see D-119, T-196, 13, 17-20.

348. There was minimal time for sleep: P-314 explained:

*There are times when you move throughout the night without lying down and there are times when you, you rest and lie down. You walk from 6 a.m. in the morning, up to evening, and you sleep around 9 p.m. But there was a lot of movement, because we were constantly being pursued and there was no time for sleeping.*<sup>579</sup>

349. When rest or sleep was permitted the conditions were not always conducive:<sup>580</sup>

*when it comes to issues of sleeping it was a bit difficult, because the tents were only meant for the commanders. The rest of the civilians would only -- would sleep around a bonfire. They will just sleep around the bonfire without any tent protecting you.*<sup>581</sup>

350. While undertaking this constant activity over long distances the abductees exhaustion was added to by the fact that they often had little food, water or sleep, as elaborated further below. A number of victims report that they suffered injuries due to the heavy loads they were forced to carry and the conditions under which this occurred, some of which persist until this day.<sup>582</sup>

### **8.1.3 Deprivation of basic needs**

351. The accused's crimes also cause victims to suffer physical harm through deprivation of their basic needs, particularly food and water. P-70 explained that conditions would be particularly bad when large numbers of conscripts had been abducted:

*If they abduct people in huge numbers, then they do not have anywhere to sleep, they do not have blankets or anything to use to cover themselves. Sometimes we don't have enough food to feed them, so life is not good for them.*<sup>583</sup>

352. Abductees described the difficulties of life in the bush as including that there was often insufficient food.<sup>584</sup> They would need to travel great distances seeking food and water.<sup>585</sup> P-340 explained that abductees' access to food would depend on how much was available: when supplies were short food would go to the commanders.<sup>586</sup>

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<sup>579</sup> P-314, T-75, 51:9-13.

<sup>580</sup> See also P-280, T-84, 11:11-18; P-286, T-131, 58:12-17.

<sup>581</sup> P-340, T-102, 52:4-7

<sup>582</sup> E.g. P-269, T-85, 54:20-24; P-304, T-133, 30:15-18.

<sup>583</sup> P-70, T-106, 57:6-9.

<sup>584</sup> V-2, T-171, 15:6-7; P-314, T-75, 51:18, 52:7; P-252, T-88, 30:12-13; P-286, T-131, 58:7-10.

<sup>585</sup> V-2, T-171, 15:7-8.

<sup>586</sup> P-340, T-102, 50:21-25; P-252, T-88, 30: 15-20.

*food was not adequate most of the times because there are times when you would live in an area where there are no foodstuff. There are other moments when you come under attack and you lose the foodstuff that you have. That therefore meant that many times we did not have adequate foodstuff.*<sup>587</sup>

353. Water was also not always available.<sup>588</sup>

*in the Holy, whenever you get to any water point, you will be able to take water. But if you are in an area where there is no water point there is nowhere you would be having water. There are no boreholes there in the bush. There are times you would spend an entire day without drinking water until you reach a point where there is a water point.*<sup>589</sup>

354. Abductees could spend weeks at a time without being able to bathe.<sup>590</sup> Despite being expected to walk great distances at pace, abductees were not given footwear,<sup>591</sup> unless and until they were being sent to participate in an attack.<sup>592</sup> P-

*...they were not given any footwear. Unless somebody is abducted with shoes, then they keep their shoes. But if somebody is barefooted, then they keep on walking in that way.*<sup>593</sup>

*When I was walking I did not have shoes, I was barefooted at the time. I did not have a shirt. I was feeling cold. I did not have anything to eat. I was walking. I was hungry at the time. Those are some of the experiences I went through.*<sup>594</sup>

355. Unsurprisingly sickness was common and many abductees died in this way.<sup>595</sup>

#### **8.1.4 Lasting physical injuries**

356. Many victims described physical injuries which lasted for some time after the infliction of violence. Abductees were deprived of medical treatment and forced to continue strenuous physical exercise, even while recovering from injuries.<sup>596</sup> For example P-314 described how he suffered a wound to his foot from shrapnel, and the only treatment he received for it was shea butter, and that during the two months which it took him to

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<sup>587</sup> P-340, T-102, 51:3-7.

<sup>588</sup> P-304, T-133, 35:21-24.

<sup>589</sup> P-340, T-102, 51: 10-14.

<sup>590</sup> P-252, T-88, 31:24-32:1.

<sup>591</sup> P-314, T-75, 50:12-22.

<sup>592</sup> P-70, T-106, 58:17-19.

<sup>593</sup> P-70, T-106, 58:12-14; See also P-304, T-133, 30:15-19.

<sup>594</sup> P-304, T-133, 35:15-18.

<sup>595</sup> P-70, T-106, 63:13-15.

<sup>596</sup> E.g. P-374, T-150, 14:18-20.



recover from the injury he was not permitted to rest but had to keep walking.<sup>597</sup> Other evidence suggests that this was the most extensive form of treatment available.<sup>598</sup> Opportunities to bathe and therefore ensure wounds were clean were also limited.<sup>599</sup>

357. Not only physical attacks but also sexual violence caused lasting physical injuries. For example P-347 explained:

*At the time when he was raping me, he kept on beating me, he kept on slapping me, he kept on beating me. And every time he would be sleeping with me, I would sustain injuries on my private parts, so much so that every time I'm trying to walk, I would experience pain and I would not be able to walk freely. And I also had pain on my lower abdomen, but because I feared that he would eventually kill me, I would try to live with the pain just like that.*<sup>600</sup>

358. Physical injuries and pain in many cases last until the present day, many years after they were inflicted. P-347's injuries caused by repeated rapes is one example of many:

*Even right now I still experience the pain on my belly. I keep on experiencing that pain. It comes on and off and I persevere because I do not have any other way of dealing with this. Sometimes I take some drugs, but the pain does not cease entirely.*<sup>601</sup>

## **8.2 Psychosocial harm**

### **8.2.1 *Immediate psychological harm during the events***

359. From the time of their conscription, abductees were taught to live in terror. Punishments were inflicted publicly (and sometimes collectively), as a means of terrorising other recruits.<sup>602</sup> Abductees were told that attempts to escape would lead to the worst consequences for themselves and their families and communities:

*People who are newly abducted in the LRA would be told first and foremost that they have been brought into the LRA, they have been brought to be trained to become fighters. If you try to escape, if you are apprehended, you will be killed. If you escape and they know the area from where you have been abducted, if at any point in time the LRA go to that area, all the*

<sup>597</sup> P-314, T-75, 44:20-45:14.

<sup>598</sup> P-70, T-106, 58:22-59:3; P-252, T-88, 31:8-23.

<sup>599</sup> P-252, T-88, 31:24-32:1.

<sup>600</sup> P-374, T-150, 14:24-15:4.

<sup>601</sup> P-374, T-150, 15:6-9.

<sup>602</sup> P-70, T-106, 60:10-13; [REDACTED].

*people in that area or a lot of people will be killed and all the homes will be destroyed. That is what they were told.*<sup>603</sup>

360. Although many abductees did eventually decide to escape they did so in a state of terror induced by these horrific warnings.

361. For abductees, a method repeatedly used to instil fear was to force them to kill others. Witnesses who had been subjected to this form of torture understood that its purpose was to instil fear.<sup>604</sup> [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>605</sup>

362. If abductees refused to follow the command to kill, they themselves would be killed.<sup>606</sup> P-264 who was abducted by the LRA as a child stated that he and others were forced to kill an old man.<sup>607</sup> [REDACTED]

[REDACTED]<sup>608</sup>

363. As Professor Wessells explained, the psychological impact felt by victims was not merely related to individual incidents, but had a cumulative effect in the form of “toxic stress”, [explain].<sup>609</sup> Toxic stress would have been experienced by those abducted and forced into the LRA who faced continuous dangers in many forms; but also would have affected those living in IDP camps under the constant threat of attack, criminality and deprivation.<sup>610</sup>

364. Abductees were aware that at any time they could be subject to violence not only from within the LRA but also through attack by the UPDF. They were ill-equipped to defend themselves during such attacks: some did not have guns;<sup>611</sup> others had guns but with little training, and extremely limited ammunition was provided.<sup>612</sup> As P-314 testified: “I

<sup>603</sup> P-70, T-106, 59:24-60:5.

<sup>604</sup> V-2, T-171, 12:7-11; See also PCV-2, T-176, 51:15; P-280, [REDACTED]. See also P-138, T-120, 9:14-16, 70:3-4 on the fact that the deceased person’s cen would follow you if you escaped.

<sup>605</sup> [REDACTED]  
<sup>606</sup> [REDACTED]

<sup>607</sup> P-264, T-64, 18:1-8.

<sup>608</sup> [REDACTED]

<sup>609</sup> PCV-2, T-176, 14:15-19.

<sup>610</sup> PCV-2, T-176, 14:15-19; 45:19-46:9, 46:5-9.

<sup>611</sup> P-252, T-87, 59:2-6

<sup>612</sup> P-314, T-75, 53:7-54:9.

was not ready to protect myself because I had never fired a gun, I had never shot at someone. I would carry it around, but I had not used it before.”<sup>613</sup> Training was given on how to march and handle a gun, but because bullets were in short supply, the training would not involve any actual shooting.<sup>614</sup> P-340 also described how the very first time he ever shot a gun was when he participated in the attack on Odek.<sup>615</sup>

*Newly abducted people are fearful, very fearful, because they are not used to gunshots. If you are being pursued by gunships, they are not used to being pursued by gunships. Armoured vehicles that are being -- pursued us are also things they are not used to. So, yes, they are extremely frightful.*<sup>616</sup>

365. Many victims had the experience of witnessing terrible violence committed against their own family members. Women abductees whose babies cried had then taken and thrown into the bush.<sup>617</sup> Parents saw their children killed;<sup>618</sup> others saw their parents and siblings killed.<sup>619</sup> [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>620</sup>

366. Witnessing acts of terrible violence against others, or their aftermath, also became commonplace:

*We would step on the dead bodies that we would find along the way.*<sup>621</sup>  
*So when we sat, at that point I would hear things, some noise that would come. I thought maybe they were splitting firewood, but it wasn't. They were actually killing people.*<sup>622</sup>

<sup>613</sup> P-314, T-75, 54:8-9.

<sup>614</sup> P-252, T-87, 50:14-19.

<sup>615</sup> P-340, T-102, 26:19-22.

<sup>616</sup> P-70, T-106, 61:24-62:2; See also P-252, T-88, 32:17-32:24.

<sup>617</sup> P-187, T-164, 13:4-8; 26:1-11; P-269, T-85, 38:4-16; 39:13-14.

<sup>618</sup> [REDACTED].

<sup>619</sup> P-293, T-138, 40:12-13; P-280, T-83, 54:3-7; P-280, T-84, 9:24-10:2.

<sup>620</sup> [REDACTED].

<sup>621</sup> P-187, T-164, 13:3-4.

<sup>622</sup> P-187, T-164, 13:15-17.

*I heard people were crying and then all of a sudden they would go silent. Sometimes they would cry one painful cry and then they would keep quiet. Then I knew that they were killing people. Then when I returned, I also found dead bodies. That was in the morning. And they were also naked, the people who had been killed were naked. That made me to confirm that it was people who were crying yesterday who had been killed and those were their bodies.*<sup>623</sup>

367. Not only abductees, but also other victims were subjected to extreme psychological mistreatment. The methods seem to have been intended to instil the maximum terror in the camp populations. P-24 described having to watch while her children were beaten and thrown into her burning hut to die.<sup>624</sup>

368. After each attack those who survived were left in terror of when another attack might occur. As P-293 explained regarding the attack on Abok:

*That, that was not the first attack. People were really scared. People were still scared of any other attacks, that other attack would still occur. If I tell you that even up to now there are still people who, you know, still have nightmares from that, that attack, they would dream about it and even shout and cry at night that there is fighting again, and yet indeed there is no more fighting. People were really confused and traumatised.*<sup>625</sup>

### **8.2.2 Lasting psychosocial harm from experiencing violence**

369. The mental impacts of the crimes continue to be felt. These impacts take a range of forms.

370. A significant portion demonstrate symptoms of diagnosable mental illness: Among formerly abducted children around one third show PTSD symptoms and around 40 percent suffer from depression.<sup>626</sup> However it is important to note that while some victims may experience diagnosable disorders, this is “only part of the story”, and other forms of mental distress must also be considered.<sup>627</sup>

371. The AYPa rating system, used in the Victims’ Expert Study takes a broad approach to assessing psychosocial wellbeing, taking into account not only diagnosable mental

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<sup>623</sup> P-187, T-164, 27:21-28:2.

<sup>624</sup> P-24, T-77, 31:1-33:19.

<sup>625</sup> P-293, T-138, 42:20-25.

<sup>626</sup> PCV-2, T-176, 12:6-8.

<sup>627</sup> PCV-2, T-176, 9:5; 41: 25-42:2; PCV-1, T-175, 24:2-3.

health disorders but also wider questions of distress or resilience.<sup>628</sup> The Study found overall that:

*For [the Victims] the LRA attacks on Abok, Lukodi and Odek represent a turning point in their lives, as well as the lives of their family and their entire community. Our data demonstrates a significant relationship between the LRA attacks on the three IDP camps and impaired psychosocial functioning in both male and female victim participants from those camps.*<sup>629</sup>

372. Some categories of victims were shown to suffer particularly negative psychosocial outcomes.
373. At the most general level, women have suffered worse psychosocial outcomes than men.<sup>630</sup> Some groups of women have suffered particularly mental distress: the most affected group is women who returned from the bush with children.<sup>631</sup> This may be in part related to the sexual violence they had experience: Sexual violence survivors are particularly likely to suffer ongoing mental health difficulties. Professor Reicherter testified that he was “aware of almost no survivor” who didn’t experience such consequences.<sup>632</sup> However it is also likely due to the particular problems of shame and stigma experienced by women who returned to communities with children born in the LRA,<sup>633</sup> as well as consequential social problems such as an inability to marry or access land.<sup>634</sup>
374. Women who had lost a child through abduction or whose child had been deliberately injured also experience particularly psychosocial problems.<sup>635</sup>
375. Another category of victims with very poor psychosocial outcomes is abductees in general.<sup>636</sup> Evidence from abductees supports this conclusion – demonstrating that not only a self-identification of trauma, but also a sense of guilt and disappointment at what they had not achieved for themselves and their families. P-252 explained:

*..when I was abducted from school, when I came back home from school I was in primary 4. My parents were very proud of me, they were very proud*

<sup>628</sup> V-1, T-174, 18:11-19:3; UGA-V40-0001-0010 at 0026-0027.

<sup>629</sup> UGA-V40-0001-0010 at 0060.

<sup>630</sup> UGA-V40-0001-0010 at 0048-0049.

<sup>631</sup> V-1, T-174; 21:24-22:1.

<sup>632</sup> PCV-1, T-175, 24:13-25.

<sup>633</sup> V-1, T-174, 22:9-11.

<sup>634</sup> V-1, T-174, 22:11-13; [REDACTED].

<sup>635</sup> V-1, T-174, 22:1-6.

<sup>636</sup> V-1, T-174, 29:12-16.

*of my studies, they pay my school fees knowing they are not wasting their money. I saw things in the bush and all those things have completely traumatised me. The things that I did in the bush have completely traumatised me.*<sup>637</sup>

376. “[A] hallmark of PTSD is to have a memory about a traumatic event that sort of replays in different mechanisms, in dreams, in daydreams, in flashbacks.”<sup>638</sup> Many victims continue to relive their traumatic experiences:<sup>639</sup> P-374 said:

*I am psychologically tortured. I keep on thinking about several things, because I remember this person kept on sleeping with me when I was still young and these memories keep coming back.*<sup>640</sup>

*Having witnessed some gruesome acts like killings have impacted me negatively. For instance, now as I speak, sometimes when I’m sleeping, I begin having nightmares. I dream about people who were killed and I feel so bad, sometimes I wake up in the night and fail to sleep till the morning. I only keep on thinking about the things that were happening, the bad experiences in the bush.*<sup>641</sup>

377. P-410 said:

*[T]here were so many things that happened in the bush. A lot of grievous things. Sometimes you are seated and it all comes, you begin thinking about things that were happening in the bush and it comes spontaneously. It comes on and off. Sometimes you can dream that you are in an attack, you are fighting with the soldiers.*<sup>642</sup>

378. P-24 said:

*when I sit I keep -- the image still coming into my mind. When I think about anything, the images come in my mind. But sometimes when I’m walking I get shocks and -- but at moments when I have forgotten about them, I can live peacefully.*<sup>643</sup>

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<sup>637</sup> P-252, T-87, 70:22-71:3.

<sup>638</sup> PCV-1, T-175, 33:14-16.

<sup>639</sup> In addition to the examples below, see also P-252, T-88, 39:4-17; [REDACTED]; P-286, T-131, 59:9-14.

<sup>640</sup> P-374, T-150, 15:11-13.

<sup>641</sup> P-374, T-150, 15:18-22.

<sup>642</sup> P-410, T-152, 75:21-25.

<sup>643</sup> P-24, T-77, 66:7-10.

379. V-2 described experiencing nightmares and ongoing fits of anger.<sup>644</sup> V-4 spoke of his sensitivity to sudden noises and the fact that he is disturbed to this day by the recollection of the smell of burning corpses, which he took up smoking to mask.<sup>645</sup>
380. P-24 who lost some of her children during the conflict, stated that it is difficult to support her children and that they are traumatized by the death of their siblings.<sup>646</sup> In relation to her mental health, she stated that *'I can talk when I sit I keep-the image still coming into my mind. When I think about anything, the images come in my mind.'*<sup>647</sup> D-85 who escaped from the LRA after the attack on Abok IDP Camp stated that her abduction made her life very difficult and that she cannot be happy like people who were not abducted.<sup>648</sup>
381. Many victims also experience continuing guilt, despite the fact that they had no control over the crimes committed against them. Girls are particularly prone to guilt in connection with their experience of sexual violence.<sup>649</sup> Boys are more likely to have been forced to commit violence or killings and to be affected afterwards by the knowledge that they have done something that is wrong.<sup>650</sup> Professor Wessells explained that guilt of this kind may serve as an amplifier of other responses to trauma, including depression.<sup>651</sup>
382. It is significant that so many of the victims were children at the time of the events. Depending on their age, children experience particular forms of harm as a result of traumatic events. For young children this includes an exacerbated traumatic reaction,<sup>652</sup> negative effects on brain development,<sup>653</sup> and interference with the attachment process leading to lasting difficulties in forming relationships.<sup>654</sup> For teenagers it could mean interference with healthy identity formation, making reintegration into society particularly difficult.<sup>655</sup>

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<sup>644</sup> V-2, T-171, 40:7-22; 39:17-21; 40:7-12.

<sup>645</sup> V-4, T-173, 18:21-19:1.

<sup>646</sup> P-24, T-77, 62:6-13.

<sup>647</sup> P-24, T-77, 66: 7-18.

<sup>648</sup> D-85, T-239, 42: 14-23.

<sup>649</sup> PCV-2, T-176, 17:13-25.

<sup>650</sup> PCV-2, T-176, 18:6-9; 20:16-18.

<sup>651</sup> PCV-2, T-176, 17:16.

<sup>652</sup> PCV-2, T-176, 15:2-3.

<sup>653</sup> PCV-2, T-176, 15:7-8.

<sup>654</sup> PCV-2, T-176, 15:12-19.

<sup>655</sup> PCV-2, T-176, 16:17-24.

### 8.2.3 Emotional and psychological harm from loss of family members

383. Many victims suffered terribly because of the loss of their loved ones. People experienced the death of those closest to them in the most horrific ways. Some lost many family members in a single attack. As Professor Wessels testified, for some people the loss of important family members such as parents has had a bigger impact on them than their experience of a mental illness.<sup>656</sup>

384. A different but just as unbearable sense of loss is felt by those whose family members were abducted, and have not returned. These victims are left in limbo indefinitely, not even knowing the fate of the abducted family members:

*They're in pain, and they think that their children have all died. They try [to find out what happened to their children] but it is not easy to find out any information about them. There are people who meet those who escape and come back home, the people whose children are missing still go and ask those who escaped from captivity and come back home. Now if the person tells them that "Your son is alive", at least they will have some hope. But sometimes they are told, "I have not seen the child", and the parents will imagine that maybe he's dead, maybe he's there and he has not just seen this person. We are not sure whether the rebels are still in the bush or they are now finished.*<sup>657</sup>

385. As if people had not suffered enough from the loss of family and community members, they were in many cases also not able to provide traditionally appropriate burials for the deceased. A number of witnesses testified as to the existence of specific rituals which should be followed around the burial of deceased persons, including specific rituals where a person had died in a violent way.<sup>658</sup>

386. However, when abductees died in the bush traditional burial rites were not performed. In Sudan bodies were buried but while moving in Uganda the bodies of dead abductees would simply be left, at most covered with leaves.<sup>659</sup>

387. Families of those who died in the bush were also unable to perform appropriate rites, because they either did not know the fate of the abductees, or were unable to find and recover their bodies.<sup>660</sup> Many bodies were never found.<sup>661</sup>

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<sup>656</sup> PCV-2, T-176, 9:12-13.

<sup>657</sup> V-4, T-173, 29:13-22.

<sup>658</sup> P-218, T-90, 15:1-13; P-218, T-90, 20:16-22.

<sup>659</sup> P-70, T-106, 63:25-64:3; P-252, T-88, 28:3

<sup>660</sup> PCV-2, T-176, 39:18-19.

<sup>661</sup> P-24, T-77, 50:9-10; P-187, T-164, 23:22-23; 41:3-4, 15, 18-19; P-218, T-90, 20:4-12.



388. P-218 stated that traditional Acholi culture; the type of burial ritual for a person is different if they are killed, as opposed to if they died of natural causes.<sup>662</sup> However, he was unable to bury his brothers in line with Acholi customs as they were abducted and killed by the LRA. To date, he was been unable to recover their remains and give them a proper burial.<sup>663</sup> P-24 similarly was unable to recover the body of her son who had been killed and abducted by soldiers of the LRA.<sup>664</sup>
389. P-355 stated that the experience of what girls went through was especially painful, as they would be taken to different commanders and be distributed as ‘housewives.’ Children were forced to kill other children, in order to instil fear and prevent them from attempting to escape.<sup>665</sup> He went on to state that ‘*[I]n those jungles there are so many skeletons of children in captivity, who have died...*’<sup>666</sup>
390. Even where the communities had the bodies of the deceased – as was the case for killed within the IDP camps during the attacks – there were other obstacles to a proper burial. People often did not have sufficient money, or the animals required for these rituals could not be found in the camps.<sup>667</sup> In addition, it was also not possible to fully perform the traditions which should be undertaken in the case of a violent death, because this would involve dealing with the person responsible, and those persons were not known.<sup>668</sup> P-306 explained that the people who were killed during the attack in Abok were therefore unable to receive the appropriate burial rituals:
- The people that died on that day did not receive any proper funeral rites. They were buried like dogs. People did not have anything, people did not have any means to bury them. They did not know who the killers were because the killers did not come forward and confess. So people were just buried anyhow.*
391. In Lukodi bodies which had been buried were then exhumed for post-mortems and had to be reburied.<sup>669</sup> Even so they could not be buried in the villages where the families had their homes, because of the distance from the camp and the danger of LRA attacks: as a result the bodies had to be buried around the camp instead.<sup>670</sup>

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<sup>662</sup> P-218, T-90, 20: 16:22.

<sup>663</sup> P-218, T-90, 20: 4-12.

<sup>664</sup> P-24, T-77, 65: 21-23.

<sup>665</sup> P-355, T-97, 16: 20-25.

<sup>666</sup> P-355, T-97, 17, 1-11.

<sup>667</sup> P-269, T-85, 63:3-4; P-293, T-138, 44:19-23.

<sup>668</sup> P-306, T-130, 14:10-15:25.

<sup>669</sup> V-4, T-173, 17:6-18.

<sup>670</sup> V-4, T-173, 18:10-14.

#### 8.2.4 Cen

392. When a person has killed someone, the spirit of the victim can continue to affect that person.<sup>671</sup> In abstract terms this “cen”, is:

*A kind of aura or emanation that effects people who have experienced violent events and causes adverse effects to those who come into contact with them...*<sup>672</sup>

393. P-138 described cen in more practical terms:

*When you talk about cen, this is a spirit, the spirit of somebody. If you killed somebody innocently, the spirit would possess you, would attack you, can make you run mad. You will not be a very normal person. That is the concept of cen. It also makes you fail to sleep. Sometimes you have nightmares.*<sup>673</sup>

394. Cen can move between people – so a person affected by cen is able to infect others.<sup>674</sup> Because of this cen is not only an individual problem, but a problem for the community meaning that there is a “lack of harmony between the ancestors and the living”<sup>675</sup>

395. The experience of suffering cen was a cause of the stigma experienced by returnees. Because cen can be transmitted from one person to others, it led family and community members to keep a distance from returnees, as discussed further below. However it also constituted a form of suffering itself. As Professor Allen testified, returnees have reported being incapacitated or severely affected by cen even more than ten years after returning from the bush.<sup>676</sup> Professor Allen or P-422 described cen as ‘a kind of aura or emanation that affects people who have experience violent events and causes adverse effects to those who come into contact with them.’<sup>677</sup> P-138 stated that ‘the effect of cen comes directly on the person who committed the murder.’<sup>678</sup>

396. The transmissibility of cen also means that it has been a cause of distress to a significant majority of the Victims; not only to those who were themselves abducted. The Victims

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<sup>671</sup> PCV-2, T-176, 32:2-3; P-252, T-88, 38:5-9.

<sup>672</sup> P-422, T-28, 19:10-12; See also P-422, T-29, 29:25-30:13.

<sup>673</sup> P-138, T-120, 75:2-5.

<sup>674</sup> PCV-2, T-176, 32: 8-9.

<sup>675</sup> PCV-2, T-176, 32: 11-12.

<sup>676</sup> P-422, T-28, 92:20-22.

<sup>677</sup> P-422, T-28, 18:10-13.

<sup>678</sup> P-138, T-120, 77:3-7.

Expert Study found that 67 percent of the Victims reported that “they have been harmed by spirits of the dead.”<sup>679</sup>

397. Some returnees were able to benefit from a ritual to cleanse them of cen and ease their suffering.<sup>680</sup> However in some cases rituals have not been accessible to people, including because they lacked the necessary resources, as explained further below.

### 8.2.5 Stigma

398. Many abductees experienced stigma in their communities upon their return. Returnees were called names,<sup>681</sup> prevented from playing with other children,<sup>682</sup> or just generally kept at a distance from their community.<sup>683</sup> Stigmatisation led returnees to drop out of schooling,<sup>684</sup> or to perform poorly where they did continue to attend. Witness V2’s example shows some of the ways in which this could happen: after enduring name calling and shunning from his fellow students, his head teacher convinced him to privately open up about his experiences in the bush.<sup>685</sup> But instead of responding with support, the head teacher chased him from the school,<sup>686</sup> and the next day told all the students in school assembly to stay away from V2 because he was a killer.<sup>687</sup> V2 explained how this impacted his further study:

*I went to class to continue studying, but I wasn’t paying attention any more. I built a wall around myself and secluded myself. I wouldn’t even writing whatever was on the chalkboard.*<sup>688</sup>

399. V2’s family transferred him to a new school, but his stigmatization continued there.<sup>689</sup> Eventually he could no longer bear to attend that school either.<sup>690</sup> P-252 spoke about how he was stigmatised once he managed to escape from the LRA and returned home. He stated that other children would call him names and therefore it was extremely difficult for him to return to school.<sup>691</sup>

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<sup>679</sup> UGA-V40-0001-0010 at 0098.

<sup>680</sup> P-138, T-120, 75:18-22.

<sup>681</sup> V-2, T-171, 23:1-5; 25:10-19; PCV-2, T-176, 19:8-9; P-252, T-88, 35:24-26:8.

<sup>682</sup> P-374, T-150, 16:6-7; V-2, T-171, 27:10-15.

<sup>683</sup> P374, T-150, 16:18-23.

<sup>684</sup> P-252, T-88, 35:24-26:8

<sup>685</sup> V-2, T-171, 23:6-11.

<sup>686</sup> V-2, T-171, 23:12-13, 20-22; 24:1-5.

<sup>687</sup> V-2, T-171, 24:9-13.

<sup>688</sup> V-2, T-171, 24:14-16.

<sup>689</sup> V-2, T-171, 24:20-25:19.

<sup>690</sup> V-2, T-171, 25:20.

<sup>691</sup> P-252, T-88, 36: 1-8.

400. Stigma was caused by various factors: communities were fearful that returnees had been infected by evil spirits<sup>692</sup> or cen; that they had killed while in the bush.<sup>693</sup> They were scared of the returnees.<sup>694</sup>
401. P-352 stated that she faced stigmatisation from her community, her family and her husband's family after returning from the bush.<sup>695</sup> D-136 stated that some of the girls who returned from the bush were pregnant and had children. He stated that there was a need to sensitize the communities in order to make them understand that these women had no choice in the matter and would have to become the 'wife' to the man they were assigned.<sup>696</sup>
402. Girl or women returnees who brought back their children from the bush were subject to particular stigma and isolation.<sup>697</sup> Prosecution expert witness P-422 also explained the difficulties for women and girls who returned from the bush with children. The children were viewed as children of the LRA commanders, and even children they had after their return were met with stigmatisation.<sup>698</sup> P-422 further stated that these women also have difficulties forming and managing stable relationships and the women now have no choice 'but to move from one male protector to the another, sometimes leaving children from previous unions with relatives.'<sup>699</sup>
403. Marriage was difficult. For example P-187 explained that her daughter married after returning from the bush; but on discovering that she was pregnant as a result of her time in the LRA her husband left her.<sup>700</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>692</sup> P-374, T-150, 16:7-8, 20-21.

<sup>693</sup> P-374, T-150, 16:8-9.

<sup>694</sup> P-374, T-150; 16:9-10, 5-6.

<sup>695</sup> P-352, T-67, 41:1-12.

<sup>696</sup> D-136, T-207, 56:15-25.

<sup>697</sup> PCV-2, T-176, 68:10-15; PCV-1, T-175, 31:3-7.

<sup>698</sup> P-422, T-28, 75:11-24.

<sup>699</sup> P-422, T-28, 76:3-8.

<sup>700</sup> P-187, T-164, 7:5-8.

[REDACTED]  
[REDACTED]<sup>701</sup>

404. As explained below, these difficulties also had impacts on the material well being of these women and their children.

405. Professor Wessels testified that young people often report that stigma is often a more significant problem than mental disorders.<sup>702</sup>

### **8.2.6 Separation and lasting harm to family relationships**

406. Where people were abducted by the LRA, a significant form of harm was caused by the separation of families. For the family members of the abductee, this is almost inevitably the cause of significant worry and distress. However the abducted person also suffers great anxiety about unknown fate of their family members.<sup>703</sup> For children, this separation also removes their “first line” of support and protection: which ordinarily comes from their family.<sup>704</sup>

407. Among the intangible forms of harm suffered by victims is the damage which was done to their relationships. This occurred not only as a result of stigma.

408. Some victims had been forced to kill members of their own family or communities, a technique used by the LRA not only to terrorise, but also to making it less likely they would escape because of the damaged relationships that would result.<sup>705</sup>

409. Some abductees returned to family members whom they felt they no longer knew.<sup>706</sup> Others described how their relationships with their family members could never be repaired because of their abduction. V2’s story is an example: His family welcomed him home and tried to help him return to normal life.<sup>707</sup> But they also fear him. V2 described how the first day he met his father again they sat through a whole night awake and watching each other because they were scared of each other.<sup>708</sup> Although things have improved slightly with time,<sup>709</sup> his relationships remain permanently changed. He experiences episodes of extreme anger which began after his return from the bush;<sup>710</sup>

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<sup>701</sup> [REDACTED].

<sup>702</sup> PCV-2, T-176, 9:10-11.

<sup>703</sup> PCV-2, T-176, 13:6-10.

<sup>704</sup> PCV-2, T-176, 12:23-13:5.

<sup>705</sup> PCV-2, T-176, 51: 3-5.

<sup>706</sup> P374, T-150, 16:2-5.

<sup>707</sup> V-2, T-171, 18:21-19:3; 20:2-6.

<sup>708</sup> V-2, T-171, 18:3-6.

<sup>709</sup> V-2, T-171, 21:1-9.

<sup>710</sup> V-2, T-171, 39:17-21; 40:7-12.

and this has meant that his family continues to fear him.<sup>711</sup> Speaking of his father he said:

*[Before my abduction] We had a very strong and good relationship. We would stay together, we would converse and chat. But after my return, I think he looked at me or was studying me and felt that my mind had changed. I was not the same person as I was before. So he started fearing me. And up until now our children, even the older ones and the young ones fear me. If anything happens, any slight thing happens, they just, you know,, have that fear in me.*<sup>712</sup>

410. Parents and other guardians were not provided with training or guidance in how to understand the behaviour of the returning child abductees or how to react appropriately when these children showed aggression.<sup>713</sup>
411. At the same time those who suffered consequences such as depression as a result of the crimes may also not be in a position to provide support to their children and other family members as would normally occur within a family.<sup>714</sup>
412. Victims who suffered sexual violence may find it difficult to form trusting relationships in marriage.<sup>715</sup>
413. Some of the long term difficulties in family relationships may also be attributable to the crimes' interference with children's attachment process, making it difficult for them in the longer term to form trust relationships.<sup>716</sup>

### **8.2.7 Social isolation and loss of support networks**

414. Returnees' experiences of stigma and the damage done to their family relationships contributed to their social isolation. As they sought to recover from highly traumatic events, they lacked a support network. Victims described how they had no friends<sup>717</sup> and they felt they could not speak of what had occurred to anybody.<sup>718</sup>

*"If I was to tell, if I was to tell them what had happened to me, I think it would have created even more fear and distance between me and them. ... I couldn't tell them, because if I --- every time I talked about it I get so*

<sup>711</sup> V-2, T-171, 27:20-21; 28:8-12; 36:6-12.

<sup>712</sup> V-2, T-171, 36:6-12.

<sup>713</sup> V-3, T-172, 18:11-19:4.

<sup>714</sup> PCV-2, T-176, 24: 14-23.

<sup>715</sup> PCV-1, T-175, 27: 8-22.

<sup>716</sup> PCV-2, T-176, 15:12-19.

<sup>717</sup> V-2, T-171, 27:15.

<sup>718</sup> V-2, T-171, 42:3-8; P-280, T-84, 13:2-6.

*angry. I feel the pain that I went through. And if I was to start explaining to them , they wouldn't even understand. They would distance themselves more, they would insult me more, and they would even kill me. Sometimes when people are many, I'll fear that there would be mob justice on me. As a young person, 8, 14, telling them that you've killed people, I'm sure they wouldn't want to hear it.*"<sup>719</sup>

415. Formal counselling was not available.<sup>720</sup> Returnees also did not feel comfortable speaking with each other when they met each other.<sup>721</sup> Doing so would create a risk of further stigma and reprisals.<sup>722</sup> Moreover even while in the bush together abductees were not allowed to form friendships with each other,<sup>723</sup> further contributing to their social isolation after escape.
416. P-218 stated that the deaths of peoples in the camps left many people with the burden of looking after children and orphans.<sup>724</sup> D-124 informed the Court how his family had been affected by the conflict. His brother died during the conflict and he is how looking after his two nephews and 10 other orphans.<sup>725</sup>
417. Furthermore, in terms of the social cohesion of societies, P-355 stated that prior to the conflict the traditional chief was most respected, however, when the conflict broke out 'everybody was lumped into what would have been the most- a kind of concentration camp. So there was no difference between social structures ...[and] the social system were (sic) actually destroyed.'<sup>726</sup>
418. Victims of sexual assault also described their inability to discuss their suffering. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>727</sup>
419. This lack of support for victims is a significant negative factor in their ability to recover from trauma.<sup>728</sup> In other contexts, professional treatment could be used to fill this void until victims are recovered sufficiently to build new relationships and rebuilt existing

<sup>719</sup> V-2, T-171, 42:7-8, 12-18.

<sup>720</sup> V-2, T-171, 28:19-21; 29:16-19.

<sup>721</sup> V-2, T-171, 43:17-22.

<sup>722</sup> PCV-2, T-176, 67:19-22.

<sup>723</sup> P-314, T-75, 52:8-16; P-340, T-102, 52:10-12; P-252, T-88, 34:18-35:2.

<sup>724</sup> P-218, T-90, 22:22-25.

<sup>725</sup> D-124, T-195, 24:6-10.

<sup>726</sup> P-355, T-97, 20, 4-11.

<sup>727</sup> [REDACTED]

<sup>728</sup> PCV-1, T-175, 35:6.

ones. However as explained further below, the victim communities have largely been deprived of psychosocial treatment services.

### **8.3 Material harm**

420. The victims faced a range of material forms of harm, as described below. It is important to view these forms of harm not only in isolation, but also how they interacted with the other forms of harm suffered by the victims. For example: ongoing poverty prevented victims from accessing health services which might have alleviated their physical injuries and illnesses. Material factors can also play a significant role in recovery from mental health problems: recovery will become extremely difficult where victims are struggling with daily challenges such as housing and livelihoods.<sup>729</sup> The correlation between poor material circumstances and poor psychosocial outcomes was also demonstrated in the Expert Victims' Study, which found a clear correlation between low asset wealth and poor psycho-social wellbeing.<sup>730</sup>
421. This connection is evident not only from the expert evidence, but also from the testimony of the victims themselves. For example V-4's explanation about the extent of psychosocial harm continuing throughout the Lukodi community today demonstrates the close association in his perception between trauma from past events and the burden of continuing poverty:

*...the trauma of what happened in Lukodi affected so many people. Some people are psychologically affected up to now. There is general fear, and there is the fear of a repeat of what happened in Lukodi. There is still a lot of trauma in the community. People are economically deprived and people have not gone back to what used to be in the past. There is a lot of despair and people are not sure whether what took place then will not take place again.*<sup>731</sup>

#### **8.3.1 *Loss of homes and personal property including livestock***

422. Many victims reported suffering terrible material losses as a result of the crimes.
423. In the attacks on Lukodi, Abok and Odek IDP camps most of the huts were burned.<sup>732</sup> The rebels systematically burned each house as after looting it.<sup>733</sup> Any personal items

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<sup>729</sup> PCV-1, T-175, 35:17-23.

<sup>730</sup> UGA-V40-0001-0071 to 0072.

<sup>731</sup> V-4, T-173, 23:9-14.

<sup>732</sup> V-4, T-173, 20:16-17; P-340, T-102, 53:10-34; P-293, T-138, 42:1-4; P-187, T-164, 42:12; P-306, T-130, 24:21-22. P-70 testified that this was indeed the usual practice during attacks: P-70, T-106, 64:21-23.

<sup>733</sup> P-187, T-164, 11:18-20; P-186, T-131, 18:15-16; P-293, T-138, 24:7-12.



which people had kept in those huts was either stolen by the rebels or burned with the huts.<sup>734</sup> “Nothing survived.”<sup>735</sup>

424. Communities’ livestock – one of their primary sources of wealth – was lost. Livestock played a key role in the lives of families and communities: as well as being a source of food and/or a means of farming, these animals are used for traditional rituals, marriages, and economic transactions.<sup>736</sup>

*Livestock, especially cattle, was very useful in the community. It was used for paying bride wealth. It is used for ploughing. It is used as a source of beef. You also use the cattle to pay school fees because you sell and pay with this. When you are sick you sell your livestock to get treatment. Things like goats, for example, help also in the same way. Goats are used for helping treat people in so many ways. There are some conditions like madness, they use goats in a traditional way to heal it. And for rituals that are culturally important to the community, they use goats to carry outside rituals. When there are funerals that are taking place in the community, the guests are fed on goats and cattle, and for that matter, this was an important element in the culture of Acholi, economically and socially.*

425. To be without livestock means poverty: it means reliance on a hand-hoe and therefor farming a larger area, with less food to feed a family.<sup>737</sup>
426. As a result of the crimes, victims lost cattle, goats and chickens in LRA raids and attacks.<sup>738</sup> Some, seeking to avoid this moved their cattle to areas near town, but were then unable to care for them properly there.<sup>739</sup> Others, faced with this situation and increasing poverty, sold their cattle.<sup>740</sup>
427. This loss of material wealth has had a long-lasting impact on the communities. They have still not recovered today. V4, a community leader explained:

*Our people are poor these days, because of the variable situation that people live in. In the past people had livestock. People had cattle. People had goats, chickens and other things. But all these things have been taken away and it's not easy to gain back.*

<sup>734</sup> E.g. P-24, T-77, 26:21-27:3; 62:22-63:11; P-304, T-133, 37: 10-13; P-187, T-164, 41:22-25; P-269, T-85, 62:24-63:2; P-280, T-84, 13:10-13; P-293, T-138, 26:5-7.

<sup>735</sup> V-4, T-173, 20:21-22.

<sup>736</sup> P-306, T-130, 11:13-15; V-4, T-173, 26:22-27:6.

<sup>737</sup> V-4, T-173, 27:7-9.

<sup>738</sup> V-3, T-172, 27:19; V-4, T-173, 20:25-21:3; P-187, T-164, 41:22-23; P-280, T-83, 72:7-9.

<sup>739</sup> V-3, T-172, 27:19-21.

<sup>740</sup> V-3, T-172, 27:22-23.

*For me, as an example, I had cattle, I had goats because I had worked hard. But now I'm not able to farm enough resources to farm and raise enough resources to buy more livestock.*  
*...People are desperate, desperately in a poor, living in a poor condition.*<sup>741</sup>

428. The Victims' Expert Study showed that victims of the crimes have significantly less asset wealth than the general population.<sup>742</sup> Some categories of victims have particularly low asset wealth – in particular women who had been abducted.<sup>743</sup>

### 8.3.2 *Loss of livelihoods*

429. For a very large number of victims, continuing physical injuries and psychosocial problems interfere with their every day life. The Victims' Expert Study assessed victims' present-day level of "disability" defined as a substantial functional limitation of daily life activities caused by a physical, mental or emotional impairment and environmental barriers that result in limiting a person's participation. The Study found that two thirds of the victims reported having a disability.<sup>744</sup> This compares with only 21% of the general population who report a disability.<sup>745</sup> More than half of those disabled individuals reported that their disability either completely prevents them from working, or interferes "a lot" with their work.<sup>746</sup>
430. Witness P-24 described her continuing injuries caused by the crimes and how they impact her daily life to this day:

*...even before coming here, I was from the hospital, my ears still disturb me, I have pain in my ears all the time. I'm not able to work, I cannot go to do my farm work, because I find my body is aching all the time. I cannot walk for long distances. My ears keep aching also and I have to struggle with it like that.*

...

*I am not able to dig with ease, but I have no option. I go and dig a little. I cannot dig for long like my colleagues do. I just do what I can and stay home.*<sup>747</sup>

431. Not only physical, but also psychosocial problems interfere with the victims' ability to continue an economically and socially productive life. V-4 explained:

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<sup>741</sup> V-4, T-173, 25:21-26:8.

<sup>742</sup> V-1, T-174, 26:22-24.

<sup>743</sup> V-1, T-174, 28: 20-25.

<sup>744</sup> UGA-V40-0001-0061; V-1, T-174, 23:5-7.

<sup>745</sup> UGA-V40-0001-0063; V-1, T-174, 23:7-8.

<sup>746</sup> UGA-V40-0001-0061.

<sup>747</sup> P-24, T-77, 61:10-14; 61:22-24.

*There are some people who do not have any mental problem in the past are now behaving like mad people. Some people who were very able, who were hard working are no longer able to do what they used to do. They're like wasted in the trading centres.*

*There are some people who have given up in life. They live as if their spirits have deserted them. There are people who are too secluded and they keep to themselves alone, even if they were not like that before. That is what I'm observing as a result of the trauma which people are living with.*

*Some of the community members lost so many people, and they do not know what to do.<sup>748</sup>*

432. The Study also demonstrated that this increased level of disability affects the wellbeing not only of the individual but the household.<sup>749</sup> Victims surveyed had on average of 2 disabled members, compared with .5 in the general population; contributing to a high average proportion of dependents per household: 70% in the victim population, compared to 47% in the general population.<sup>750</sup>
433. Other factors also may have contributed to the increase rate of dependency. Where household heads were killed, others had to step into their place, often taking care of many dependents, and finding life very difficult as a result.<sup>751</sup> Women who returned from the bush with children found it difficult to marry and as a result they and their children became dependent on parents or extended family.<sup>752</sup>

## **8.4 Other forms of harm**

### **8.4.1 *Loss of education***

434. Through a variety of means the crimes interfered with the victims' education.
435. Children who were abducted by the LRA suffered the most direct effects on their education. For the period when they were "in the bush" they received no schooling. In this way some children missed significant parts of their education. Even those children who managed to escape from the LRA and return to their communities found many barriers to returning to education. Psychological problems made it difficult for children to re-adjust to the behaviour expected by teachers and other students.<sup>753</sup> Stigma caused children to drop out of school or prevented them from properly engaging with their

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<sup>748</sup> V-4, T-173, 23:23-24:7.

<sup>749</sup> V-1, T-174, 23:9-11.

<sup>750</sup> V-1, T-174, 23:21-24:12.

<sup>751</sup> E.g. P-293, T-138, 45:1-7; P-218, T-90, 21:24-22:3.

<sup>752</sup> E.g. P-187, T-164, 7:5-8.

<sup>753</sup> V-3, T-172, 11:19-12:12.

education.<sup>754</sup> Teachers in at least some schools tried their best to respond supportively to these challenges, but they did not always succeed.<sup>755</sup> V-3 explained:

*The abduction of children in particular, some of the children who were abducted, on their way back, some of them passed through rehabilitation centres, some of them did not have the opportunity to directly go through the centres, they would go back home and stay at home. The children who went through the rehabilitation centres, some of those children were counselled, they were advised on how to enter back into the community, but the children who did not go through the rehabilitation centres and especially the children who had been in the bush for a long time, had misbehaved a lot because on most occasions the children would come and mix, the ones from the rehabilitation centre and the ones who did not go to the rehabilitation centre, and if somebody, especially someone from the bush did something that was wrong, they will always castigate the child and tell the person, "Do not start your behaviour that you brought in the bush". And that was extremely painful to those children who had returned. And in the end, those children became disrespectful. And when they found that life was extremely difficult, they would stop school. They would just stop their education because as far as they are concerned, the school was unable to help them and they would decide to go back home. And this actually disrupted a lot of education for children. There are some children who were abducted, for example, the girls; some of them came back with children. Some of them did not have children, but they do not – they are no longer interested in education, so this also interfered with the education in – you know, with our children in the part of our country.<sup>756</sup>*

436. However loss of educational opportunities was not a form of harm suffered exclusively by returnees. The entire school system suffered serious damage as a result of the LRA's activities, including the crimes charged in this case.

437. The experience of the Lukodi Primary School, of which Witness V3 testified, is an example:<sup>757</sup>

438. From 2002 the school was suffering because of LRA attacks. Students and teachers were often unable to travel to the school because of LRA activity;<sup>758</sup> or only managed to attend late.<sup>759</sup> Children and teachers alike faced difficult living conditions, including

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<sup>754</sup> V-3, T-172, 12:1-12.

<sup>755</sup> V-3, T-172, 12:18-14:8.

<sup>756</sup> V-3, T-172, 11:19-12:12.

<sup>757</sup> V-3 testified that he understood the experience of other schools was similar: V-3, T-172, 10:2.

<sup>758</sup> V-3, T-172, 9:4-11.

<sup>759</sup> V-3, T-172, 9:12-14.

having to sleep in the bush at night without light so as to hide from the rebels, meaning that teachers could not prepare for classes, and children could not to homework.<sup>760</sup> The LRA would attack the school, stealing supplies and abducting people to help them carry food.<sup>761</sup> V3 recalled one occasion on which this had occurred immediately after food aid had been delivered to the school,<sup>762</sup> suggesting that such necessary assistance attracted LRA attacks.

439. Eventually it was decided to relocate the school to a location on the outskirts of Gulu town, in Laliya<sup>763</sup> (approximately 2 or 3 kilometres from the centre of Gulu, and around 14 or 15 kilometres from Lukodi<sup>764</sup>). Conditions in Laliya were extremely challenging: The classrooms ordinarily used for Laliya Primary School was now shared with an additional five other schools, including Lukodi Primary School.<sup>765</sup> The result was that a classroom which was intended to accommodate around 50 pupils<sup>766</sup> was used for 150-200 students,<sup>767</sup> with students sitting on the floor in in the heat in conditions so crowded that the teacher could not walk among them.<sup>768</sup> Outside of their classes, the students continued to face other challenges. They had been sent to live in Laliya because of its perceived relatively safety, but often parents remained in Lukodi to work and produce food: many children were looked after by siblings with only visits from their parents when security conditions allowed it.<sup>769</sup> In these conditions the children's education suffered from an inability to focus on their education, and a lack of parental protection: they did not have time to study, and many girls in particular dropped to marry or as a result of pregnancy.<sup>770</sup>
440. Even when Lukodi Primary School was able to return to its original location, it faced many more obstacles: the school's grounds and buildings had been largely destroyed, and its movable property stolen or scattered.<sup>771</sup> Students began to report problems in the school buildings because of cen.<sup>772</sup>

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<sup>760</sup> V-3, T-172, 9:14-24.

<sup>761</sup> V-3, T-172, 7:6-12.

<sup>762</sup> V-3, T-172, 7:9-12.

<sup>763</sup> V-3, T-172, 7:13-19.

<sup>764</sup> V-3, T-172, 8:13-15.

<sup>765</sup> V-3, T-172, 16:16-20.

<sup>766</sup> V-3, T-172, 19:10-11.

<sup>767</sup> V-3, T-172, 16:23-24.

<sup>768</sup> V-3, T-172, 19:18-19.

<sup>769</sup> V-3, T-172, 17:20-18:8.

<sup>770</sup> V-3, T-172, 20:18-21:7.

<sup>771</sup> V-3, T-172, 22:21-23.

<sup>772</sup> V-3, T-172, 24:13-26:2.

441. Academic records maintained by the school show the devastating consequences that all of these factors have had on the students' learning, not only at the time but for many years thereafter.<sup>773</sup> The lasting nature of poorer educational outcomes is also confirmed by the Victims' Expert Study, which found negative effects on education also in relation to children *born after* the attacks charged in this case.<sup>774</sup> This may be explained by various factors. One could be the lasting damage to the well-being of students in the community – children who are at risk of psychological problems and stigmatisation have less capacity for doing well at school.<sup>775</sup> This applies also to children who are at risk because of the vulnerabilities or stigmatisation of their parents. In addition, other factors such as the lasting material harm done to children's families, and disabilities preventing other family members from working, can result in children dropping out of school in order to contribute to household income.<sup>776</sup>
442. P-24, for example, explained that none of the children in her household are attending school, and that she cannot afford for them to go to school.<sup>777</sup> Other witnesses also testified about how their families' poor economic circumstances led children to drop out of school.<sup>778</sup>
443. The impact of this loss of education has been among the most devastating consequences for the victims.<sup>779</sup>

*Up until now, I am not able to do anything. I don't have any skill. I did not continue with my studies.*<sup>780</sup>

*It ruined my life. Right now my age mates who went to school have a source of livelihood. I also wanted to be like them. When I was young, I had so many ambitions, but when I was abducted all my dreams were shattered. I couldn't go to school and my life is a total mess. Right now I'm – I'm a begger. I beg for help. I beg for things if I want to get something. If this did not happen to me I would be somewhere right now.*<sup>781</sup>

*If I look at the future of our children, I mean the pupils, if I look at the future of my brothers and sisters, most of them were only able to go up to primary education. They could not go beyond that. And if they are to compete for jobs, for instance, out of the country, if they are looking for*

<sup>773</sup> V-3, T-172, 29:18-23:12; UGA-V40-0003-0008.

<sup>774</sup> V-1, T-174, 29:25-30:2; 31:6-14.

<sup>775</sup> PCV-1, T-175, 29:6-12.

<sup>776</sup> V-1, T-174, 30:9-15.

<sup>777</sup> P-24, T-77, 65:8-9, 16-17.

<sup>778</sup> P-340, T-102, 55:8-18. See also V-2, T-171, 26:10-17.

<sup>779</sup> P-293, T-138, 47:23-48:3.

<sup>780</sup> V-2, T-171, 26:16-17.

<sup>781</sup> V-2, T-171, 29:8-13.

*people with masters degrees, we cannot compete because I believe the future rests on education.*<sup>782</sup>

*...right now that I'm at home most of the people that were not abducted continued with their education. There were some people who were not as bright as me in school who continued their education. They have jobs. They are able to pay for their children to go to school. But I don't have anything. So perhaps if I had not been abducted maybe I would have also been in a similar position. But right now the only means I have to sustain myself is through farming. If I am unable to farm then that's it, I do not have any income. So yes, my education was interrupted and that seriously impacted on my life.*<sup>783</sup>

#### **8.4.2 Displacements to the camps and conditions there**

444. Even before they suffered the crimes which are the subject of this case, the Victims had already experienced significant trauma. This is relevant to the harm caused by the crimes because of the cumulative and compounding nature of the impact caused by consecutive harmful events (discussed further below). For the Victims, one of the most important forms of harm which preceded the crimes was the suffering they experienced in the IDP camps.

445. In relation to the living conditions in the IDP Camps, P-355 stated that everyone was forced to live together, sharing the few resources that were available. In addition, the conditions in terms of hygiene were extremely poor and *‘[P]eople were depending entirely on handouts from government. They could not access their land for fear of being abducted.’*<sup>784</sup>

446. Life in the IDP camps was extremely difficult:

*life in the camp was very hard; we were hungry, because we did not have any food; secondly, there was problems with the welfare, medical welfare. We did not have hospitals there. Education as well, that was a problem. There were no schools in the area. And due to the upheavals and the disturbances, there was no proper education at that time.*<sup>785</sup>

447. As another victim described it:

*We were staying like that in a manner that was not human.*<sup>786</sup>

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<sup>782</sup> V-3, T-172, 21:11-16.

<sup>783</sup> P-340, T-102, 56:3-10.

<sup>784</sup> P-355, T-97, 19:17-24.

<sup>785</sup> P-304, T-133, 31:7-12.

<sup>786</sup> P-24, T-77, 58:7.

448. Conditions were very crowded.<sup>787</sup> Sanitary conditions were at best rudimentary: camp residents were required to dig their own toilet facilities.<sup>788</sup> One witness who lived in Odek camp explained that in the early period

*the hygiene situation was very precarious. There were no latrines, people would defecate anywhere, and you would have – the place was very dirty. There was no proper sanitation facilities within.*<sup>789</sup>

449. Cramped conditions contributed to the spread of sicknesses,<sup>790</sup> but local medical facilities were very limited and serious illnesses could only be treated in a regional centre such as Gulu where there was a hospital.<sup>791</sup> Medication was not kept in the camps because of fears that it would be stolen by the rebels (and perhaps encourage attacks).<sup>792</sup> In some camps water was also insufficient.<sup>793</sup>

450. Families were divided because many parents chose to send their children to live in town where it was safer and they could be educated.<sup>794</sup>

451. The population was torn between their terror of the LRA and their most basic needs for survival. Because of the crowded conditions in the camp, farming could not take place there.<sup>795</sup> To produce or collect food people had to return to their original villages and farms or other places outside the camp where they could find food.<sup>796</sup> If caught by the rebels while doing so they could be killed or abducted.<sup>797</sup> Food aid was sometimes provided by humanitarian agencies,<sup>798</sup> but sometimes this in itself attracted a rebel attack so that the food could be pillaged. Witnesses testified that the food pillaged during the attacks on Lukodi, Odek and Abok had been provided as aid in this way.<sup>799</sup>

452. Indeed, although the camps were in theory intended to protect the civilian population, many of them perversely became the target of attacks, as the evidence in this case shows. The evidence suggests that the UPDF did not always priorities the security of civilians living in the camps. For example in Lukodi, only 19 soldiers were sent to

<sup>787</sup> V-4, T-173, 8:19-22; 9:8-10; 10:11-12.

<sup>788</sup> V-4, T-173, 9:25-10:1; 10:5.

<sup>789</sup> P-269, T-85, 60:17-20.

<sup>790</sup> V-4, T-173, 10:11-12.

<sup>791</sup> V-4, T-173, 10:13-16; P-24, T-77, 59:16-20; P-280, T-84, 6:21-22.

<sup>792</sup> V-4, T-173, 10:20-22.

<sup>793</sup> P-304, T-133, 31:20-22; P-280, T-84, 6:15-19.

<sup>794</sup> P-218, T-90, 18:11-13.

<sup>795</sup> V-4, T-173, 9:14-16; P-24, T-77, 58:7-9.

<sup>796</sup> V-4, T-173, 8:22-23; P-24, T-77, 58:12-22; P-187, T-164, 8: 13-14; P-218, T-90, 18:14-18; P-286, T-31, 54: 10-14.

<sup>797</sup> V-4, T-173, 8:24-25; 9:15-16; P-24, T-77, 58:12-22.

<sup>798</sup> P-187, T-164, 8: 14-16; P-269, T-85, 34:11-18.

<sup>799</sup> P-24, T-77, 30:3-6; P-340, T-102, 40:20-22; P-187, T-164, 8:15-17; P-269, T-85, 36:13.



protect the camp.<sup>800</sup> Rather than basing themselves around the perimeter of the camp, they were stationed in the centre of it.<sup>801</sup> Some witnesses testified that when the LRA attacked the camp at Lukodi the UPDF soldiers fled.<sup>802</sup>

453. Mistreatment at the hands of the UPDF was also widely reported.

454. Curfews were imposed preventing people from leaving the camps outside specified hours.<sup>803</sup> Some people reported that breach of the curfew could result in mistreatment by the UPDF.<sup>804</sup>

455. Incidents of sexual violence by the UPDF against civilians in the camp occurred.<sup>805</sup> The victims were unable to complain for fear of violent reprisal.<sup>806</sup> Sexual exploitation by the UPDF also became common as people were desperate to earn money to survive.<sup>807</sup> This had negative psychosocial consequences not only for the individuals involved but also for the society, because of the break in traditional values as well as the loss of trust that resulted from exploitation by supposed protectors.<sup>808</sup>

## **8.5 Additional comments on harm**

### **8.5.1 *Lack of treatment and support services***

456. The various form of harm suffered by the victims have not yet been adequately addressed by the provision of appropriate services.

457. The Victims' Expert Study showed that the victim population continues to suffer significant barriers to accessing health services. They require significantly more time than members of the general population to access a health centre, and are less likely to obtain the treatment that they require when they get there.<sup>809</sup> The latter result is most likely due to the fact that the mental and physical health problems faced by the victims are more severe than those in the general population and therefore require specialised services which are available only in larger population centres.<sup>810</sup>

<sup>800</sup> V-4, T-173, 11:12-14. Concerning Abok see P-304, T-133, 32:23-24.

<sup>801</sup> V-4, T-173, 11:16-22.

<sup>802</sup> P-187, T-164, 18: 10-12; 20:2-9.

<sup>803</sup> P-304, T-133, 33:3-9; P-293, T-138, 26:14; P-218, T-90, 18:18-21; P-286, T-31, 54: 10-14; P-291, T-138, 13:13-23; P-306, T-130, 22:7-11.

<sup>804</sup> P-304, T-133, 33:16.

<sup>805</sup> P-269, T-85, 33:8-11; 62:7-12.

<sup>806</sup> P-269, T-85, 33:8-11.

<sup>807</sup> PCV-2, T-176, 61:18-25; P306, T-130, 22:15-17.

<sup>808</sup> PCV-2, T-176, 61: 22-25.

<sup>809</sup> UGA-V40-0001-0045; V-1, T-174, 25:9-14.

<sup>810</sup> V-1, T-174, 25:18-26:7.

458. Mental health treatment and psychosocial support services are still desperately needed in the victims' communities. But the evidence has also shown that harm would have been minimised if these services were provided earlier: the earlier that mental health is provided after a traumatic event, the better are the results.<sup>811</sup> However none of the victims who have given evidence in this case reported receiving adequate mental health assistance.<sup>812</sup>
459. The lack of mental health services is mirrored by an inadequacy of resources to allow the victim communities to undertake traditional rituals which would have assisted in recovery.<sup>813</sup> Such rituals are able to alleviate the problem of cen.<sup>814</sup> Traditional rituals are also necessary upon the death of a community member, and if not performed problems for the family and community may result.<sup>815</sup> As V-4 explained:

*Cultural practices require that you should find these animals to use for the rituals. For example, if someone was raped in the bush and there is a need to use a goat to carry out a ritual to cleanse the person, because if you don't cleanse it, the person may get mad or may not bear children or may actually die. You have to look for a goat so that a ritual is conducted and the person is cleansed.*<sup>816</sup>

### 8.5.2 *Compounding nature of harm*

460. Most of the victims participating in this case suffered multiple crimes or traumatic events during the conflict. The LRV's Expert Study showed that 99% of the participating victims had suffered harm as a result of more than one crime, while half experienced 6 or more crimes.<sup>817</sup> Some also experienced crimes committed by the UPDF.
461. This repeated experience of trauma has the effect of compounding the harm experienced by the victims.<sup>818</sup> By suffering a horrific act a victim does not become inured to further harm. To the contrary, he or she is only made more vulnerable to further harm. Mental illness or emotional suffering created by a first traumatic incident can contribute to revictimization: this phenomenon whereby those who have already suffered a trauma are more likely to become the victims of further harm is theorised as being related to

<sup>811</sup> PCV-2, T-176, 31: 8-19; PCV-1, T-175, 35:4-5.

<sup>812</sup> Some explicitly indicated the lack of such treatment: see for example P-24, T-77, 66:11-18.

<sup>813</sup> PCV-2, T-176, 39:18.

<sup>814</sup> PCV-2, T-176, 32:5.

<sup>815</sup> PCV-2, T-176, 39:8-19.

<sup>816</sup> V-4, T-173, 27:15-19.

<sup>817</sup> UGA-V40-0001-0036 to 0040; V-1, T-174, 15:2-3, 15:25-16:4.

<sup>818</sup> PCV-1, T-175, 37:16-17.

their reduced ability and respond to cues.<sup>819</sup> The Victims' Expert Study found evidence that this phenomenon is at work in the victim communities, with victims who had suffered past trauma being more susceptible to criminality in the present.<sup>820</sup> Existing mental illness or psychological harm also render the victim less able to cope with further traumatic events when they do occur.<sup>821</sup>

462. The Victims' Expert Study showed a strong correlation between the number of crimes that victims had suffered and their present-day psychosocial well-being.<sup>822</sup>
463. For this reason the victims categorically reject the efforts of the Defence to exculpate the accused by repeatedly referring to crimes committed by the UPDF. Suffering is not a zero sum game where crimes committed by one side erase the harm imposed by the other. To the contrary, victims who have already suffered one serious crimes are disproportionately affected by subsequent crimes. Therefore where two groups of perpetrators set upon a civilian population the result is therefore not that they are both thereby absolved; rather they are both *additionally culpable*, for targeting individuals who are already vulnerable.

### 8.5.3 *Community social structures*

464. Loss of property happened not only at the individual or family level but affected the whole community, which found itself in poverty. In the victim communities there is a collective sense of suffering and hopelessness:

*And that attack left a lot of bitterness in the people of Odek. Even up to now, if you go for a meeting in Odek, you will find more women than men because most of the men died, some were abducted, and never returned up to now. People are not sure whether they are still alive or no longer. Some people are still missing their children. All the school-going children were abducted and their parents are still missing them. People are very embittered, but there is nothing else they can do so they are carrying on with life. There is nothing that can be done to rehabilitate the lives of these people.*<sup>823</sup>

465. Whereas in the past community valued and seen as a solution to problems, the experience of the attacks led some people to fear community life and to instead seek isolation:

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<sup>819</sup> PCV-1, T-175, 32:9-15.

<sup>820</sup> V-1, T-174, 34:2-11.

<sup>821</sup> PCV-2, T-176, 30:2-11.

<sup>822</sup> V-1, T-174, 19:6-16; UGA-V40-0001-0137 at 0141

<sup>823</sup> P-269, T-85, 63:20-64:2.

*In the past, people would come together like in a cooperative society to do things together in the community. They would go farming together and they would have a lot of activities that was done communally. But with what took place, people fear coming together. They fear that when you are found living together, they will finish you like they finished people in the past. And they fear that when you are like five or ten, you can all be taken.*<sup>824</sup>

466. Social support structures which existed before have been eroded. Dependency on aid was created.<sup>825</sup> Young people began to lose their sense of cultural practices and respect for elders.<sup>826</sup> Ethnic identity and practices were eroded.<sup>827</sup> Alcohol and other substance usage increased,<sup>828</sup> as did levels of crime.<sup>829</sup> Violence, including domestic violence has increased.<sup>830</sup> Young men expected to provide for families are without any means of income and turn instead to socially destructive behaviours.<sup>831</sup> One witness spoke of this as follows:

*some boys my age and younger, some of them get up early in the morning and head straight for the trading centres. They believe that if they get anything, if they earn a little bit of money, then they are supposed to use it immediately. So whatever they earn, they use. There are some who have stopped that kind of behaviour, but there are some who still continue with that kind of behaviour.*<sup>832</sup>

467. Another explained:

*Some of the children who are living in the community try to go and look for money in the town areas and they come back with infections and end up dying. People are getting sick. And you are not able to go and get medical treatment. For that matter, the life, general life conditions is very poor, not like it was in the past.*<sup>833</sup>

468. Traditions relating to (patrilineal) succession and land ownership were undermined: the children of girls and women abducted into the LRA could not inherit land and these families would then have not land to work.<sup>834</sup>

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<sup>824</sup> V-4, T-173, 25:6-11.

<sup>825</sup> V-3, T-172, 27:2-4.

<sup>826</sup> PCV-2, T-176, 26:10-13.

<sup>827</sup> PCV-2, T-176, 26:13-15.

<sup>828</sup> V-3, T-172, 27:5-7; PCV-2, T-176, 27:2, 29:12; P-306, T-130, 24:2-5.

<sup>829</sup> PCV-2, T-176, 28:13.

<sup>830</sup> V-3, T-172, 27:25-28:5; PCV-2, T-176, 27:2.

<sup>831</sup> PCV-2, T-176, 29:10-14.

<sup>832</sup> V-3, T-172, 28:19-24.

<sup>833</sup> V-4, T-173, 26:12-15.

<sup>834</sup> PCV-2, T-176, 28:12-16.

469. The damage which was done to community and cultural identity also made recovery from separate individual forms of harm harder. As Professor Wessells explained such recovery

*“requires having a strong cultural identity, being able to practice the rituals what enable one to become well and that enable the community to become well. It also means a sense of social harmony and ability to work together. ... With low social cohesion, it now means that people are fragmented and less able to work together to solve their problems.”*<sup>835</sup>

470. Professor Reicherter similarly explained that:

*An individual developing one case of post-traumatic stress disorder is different from a community of people wherein many of the persons have developed a mental-health disorder, post-traumatic stress disorder or otherwise, some other mental health disorder, depression, some dissociative state, any other kind of disorder.*

*Furthermore, one individual in a community developing a mental health disorder like post-traumatic stress disorder can affect, you know, many of the other players in that community, their family, their children, their ability to operate and function within that system, and so therefore sort of pointing out in this line really that it's not only important for the specific victim, but important for their network of social functioning.*<sup>836</sup>

#### **8.5.4 Continuing harm and the impact on the next generation**

471. Among the most striking features of the harm suffered by the victims and their communities is its pervasive nature. As these submissions have repeatedly alluded, the harm continues to be experienced until this day. However it is important to recognise that the harm is not limited to the original direct victims of the crimes. The children of those victims are also now suffering harm as a result of the crimes. This is evident in several respects.

472. First, it is now recognised that psychological trauma suffered by a primary victim will have impacts on their children.<sup>837</sup> This occurs in part through environmental mechanisms: whereby children learn views or behaviours from their parents or experience consequences from the different parenting behaviour of a traumatised parent.<sup>838</sup> However there is also evidence that a parent's trauma can be transmitted

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<sup>835</sup> PCV-2, T-176, 27: 5-12.

<sup>836</sup> PCV-1, T-175, 23:12-22.

<sup>837</sup> PCV-2, T-176, 22:20-24:7.

<sup>838</sup> PCV-2, T-176, 23:12-24:7; PCV-1, T-175, 28:11-25, 31:15-23.

through genetically as a result of changes caused by the trauma to DNA.<sup>839</sup> As a result, children of people with PTSD have an increased risk of mental health problems, even when they themselves have not been exposed to trauma.<sup>840</sup>

473. Perhaps more obviously, the extreme and lasting economic devastation felt by the victims and their communities continue to have consequences for children born since the crimes; as do the various forms of social disintegration described above. The Victims' Expert Study concluded that on almost every indicator, the Victims are worse off than the general population in the Acholi and Langi regions:

- (a) They are significantly more likely to have a disability that prevents them from working or significantly affects their ability to work;<sup>841</sup>
- (b) They have significantly less access to the health services which they require;<sup>842</sup>
- (c) They have significantly less asset wealth;<sup>843</sup>
- (d) They suffer significantly greater food insecurity;<sup>844</sup>
- (e) They have significantly less access to potable water;<sup>845</sup>
- (f) Their children are more likely to suffer malnutrition;<sup>846</sup>
- (g) Their children are less likely at every age group to be enrolled in school; and those who are are less likely to attend every day;<sup>847</sup>

474. This continuation of the harm to the present day, and the recognition that it can be transmitted to subsequent generations is among the reasons why it will be especially important for the Court, following an appropriate guilty verdict, to do everything in its powers to ensure that appropriate reparations are made to the victims. This is a real and tangible result which it is in the power of this Court to achieve. It is clear that a positive intervention is required in order to prevent the further transmission of harm to subsequent generations.

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<sup>839</sup> PCV-2, T-176, 22:25-23:11.

<sup>840</sup> PCV-1, T-175, 28:22-25.

<sup>841</sup> UGA-V40-0001-0010 at 0098.

<sup>842</sup> UGA-V40-0001-0010 at 0099.

<sup>843</sup> UGA-V40-0001-0010 at 0099.

<sup>844</sup> UGA-V40-0001-0010 at 0099.

<sup>845</sup> UGA-V40-0001-0010 at 0100.

<sup>846</sup> UGA-V40-0001-0010 at 0101.

<sup>847</sup> UGA-V40-0001-0010 at 0100.

## 9 CONCLUSION

475. For the reasons elaborated above, the LRVs submit that the Chamber should find the Accused guilty on all of the counts set out in the Confirmation of Charges Decision.
476. In addition, the LRVs request that the Chamber make explicit findings in its Judgment which reflect the extent of the harm which these crimes have caused to the victims. While the complete repair of this harm is impossible, the Victims would find some solace in an official recognition from this Court of the devastation which the crimes caused to them, both individually and collectively. Such findings should also constitute the first step in a reparations process. The LRVs also request that following a guilty verdict the Chamber move promptly to initiate proceedings under article 75, so victims need not suffer further delays in receiving some reparations for the egregious harm which has been done to them.

Respectfully submitted,



**Joseph A. Manoba**



**Francisco Cox**

Dated this 31<sup>st</sup> day of March 2020

At Gulu, Uganda and at Santiago, Chile