

Confirmation of Charges

(Open Session)

ICC-02/04-01/15

- 1 International Criminal Court
- 2 Pre-Trial Chamber II - Courtroom 1
- 3 Situation: Republic of Uganda
- 4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
- 5 Presiding Judge Cuno Tarfusser, Judge Chang-ho Chung and
- 6 Judge Marc Perrin de Brichambaut
- 7 Confirmation of Charges
- 8 Monday, 25 January 2016
- 9 (The hearing starts in open session at 9.30 a.m.)
- 10 THE COURT USHER: All rise.
- 11 The International Criminal Court is now in session.
- 12 Please be seated.
- 13 PRESIDING JUDGE TARFUSSER: Good morning to everybody. I think without losing any time, we should continue where we left on Friday and I give the floor to the
- 14 Legal Representative of Victims.
- 15 Ms Massidda, you have the floor.
- 16 MS MASSIDDA: Can you hear me now? Okay. Thank you.
- 17 PRESIDING JUDGE TARFUSSER: No. I don't hear you. I try but --
- 18 MS MASSIDDA: I'm trying this new microphone.
- 19 PRESIDING JUDGE TARFUSSER: Oh.
- 20 MS MASSIDDA: Can you hear me or otherwise I will -- okay. Can you hear me now?
- 21 THE ACHOLI INTERPRETER: Yes.
- 22 PRESIDING JUDGE TARFUSSER: I can't hear you.
- 23 MS MASSIDDA: It's okay now? Okay. Then I will use that one.
- 24 PRESIDING JUDGE TARFUSSER: (Microphone not activated)

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- 1 MS MASSIDDA: Okay. Let's try. Thank you.
- 2 Your Honours, before I start my presentation, which will last approximately one hour, I
3 would like to address two brief issues as a matter of housekeeping, I would say. The
4 first one, I will make references in my presentation to some sources without quoting the
5 sources in order to not disturb the pace of the presentation. If the Chamber find it's
6 useful, an annotated copy in electronic version of the presentation can be made available
7 to the Chamber, parties and participants at the end of today's hearing.
- 8 Second, I will make reference later on at the end of my presentation to some arguments
9 which are included in the Defence pre-confirmation brief which is still classified
10 confidential.
- 11 I had a discussion with the Defence, and the arguments I will be referring to concern the
12 criminal liability of Mr Ongwen. This part of the brief was not redacted in the first
13 redacted version that they already filed, and it has been reclassified temporarily
14 confidential. Therefore, they have no objection in me making the submission in open
15 session.
- 16 PRESIDING JUDGE TARFUSSER: And we don't have.
- 17 MS MASSIDDA: Thank you.
- 18 Mr President, your Honours, on Friday my colleague, Ms Adong, has addressed the
19 historical and political context of the origin of the conflict in northern Uganda and the
20 impact of the conflict upon the victims and the community.
- 21 I will now address some legal issues relevant to the interest of our clients. I will not
22 embark in a full discussion of the different legal criteria to be met. I will try instead to
23 underline which elements from the victims' account of events corroborate the
24 Prosecution's case.
- 25 The Prosecution charges the suspect with several counts of war crimes and crimes

1 against humanity committed during the non-international armed conflict in northern
2 Uganda opposing the government of Uganda and the Lord's Resistance Army, to which
3 I will refer from now on as LRA, from at least 1 July 2002 until 31 December 2005.

4 As reflected by the victims' account of events, since 1986, there was increased tension
5 and multiple episodes of violence in northern Uganda. The raising of the LRA, an
6 insurgency movement aiming at overthrow Museveni government, spread violence in
7 different areas of the country, including Gulu, Kitgum, Pader, Lira, Adjumani and
8 Soroti.

9 As a consequence, a conflict of a non-international character started between the
10 government of Uganda and the LRA. The LRA had a clear hierarchy, was well
11 structured and well organised, armed, able to plan and successfully implement
12 hundreds of attacks against the civilian population in the course of which several crimes
13 were committed, namely: Murder, torture, cruel treatment, pillaging and rape. The
14 LRA not only had effective tactics in implementing attacks, but had significant military
15 ability. Mr Ongwen was aware of the existence of the armed conflict and engaged in
16 military operations.

17 All these factors correspond to the contextual elements of war crimes, as established by
18 the practise of the Court, namely:

19 One, the existence of a conflict of a non-international character between the
20 governmental authorities and an organised armed group under a responsible command
21 able of imposing discipline, which had the ability to plan and carry out military
22 operations for a prolonged period of time.

23 Two, the non-international armed conflict was protracted and reached a certain level of
24 intensity which exceeded that of international disturbances and tensions.

25 Three, the conduct charged took place in the context and was associated with the

1 non-international armed conflict.

2 Four, the suspect was aware of the factual circumstances that established the existence of

3 the armed conflict.

4 The victims of the attacks' account of events reveals that they were unarmed men,

5 women and children who suffered from a series of acts of violence, or, put in other

6 words, a campaign or operation carried out against them by the LRA in the localities

7 where they lived. The campaign involved the multiple commission of acts referred to

8 in Article 7(1) of the Roman statute against the whole civilian population because of its

9 perceived support to Museveni's government.

10 The victims of the attacks participating in the present case were not active in the armed

11 conflict which was raging in northern Uganda during the whole time frame referred to

12 in the charges. They were instead part of a civilian population and not members of the

13 armed forces of other legitimate combatants. This is true for all victims of the attacks

14 currently participating in the case and even more for the many children and women

15 victimized by the relevant crimes charged against Mr Ongwen.

16 In accordance with the chapeau of Article 7(1) of the Rome Statute, the attack against a

17 civilian population has to be widespread or systematic in the sense of the attack being

18 massive, frequent, carried out collectively with considerable seriousness and directed

19 against a multiplicity of victims or involving patterns of crimes in the sense of

20 non-accidental repetition of similar criminal conduct on a regular basis.

21 In the present case, the attack was both widespread and systematic.

22 The victims of the attacks' account of events reveals that the crimes they suffered from

23 were not spontaneous nor isolated acts of violence, but were rather part of a planned,

24 directed and organised attack against them, because they are Acholi and perceived as

25 supporting Museveni's government. The attack was perpetrated over a long period of

1 time.

2 In this regard, the numbers of victims affected by the events within the charges is also
3 one of the most relevant factors to be taken into account for the purpose of determining
4 under the chapeau of Article 7(1) of the Rome Statute whether the attack launched by the
5 LRA against the Acholi civilian population was widespread and/or systematic.

6 2,026 victims have been admitted to participate in this proceeding.

7 95% of them suffered from the four attacks charged against the suspect, were subject to
8 persecution and forced to flee their homes. The majority of them lost at least one and,
9 more often more, of their family members. Their properties were pillaged or destroyed.

10 Women and girls, participating victims in these proceedings, were either raped or
11 subject to other sexual and gender based crimes. As a result of rapes, some of them
12 contracted infections, others got pregnant and gave birth to children who were in turn
13 victimized and stigmatized.

14 The broad geographical spread of the victimizations and large number of the victims
15 participating in this case confirm the wide scope of the attack. Families and
16 communities of all ages and gender suffered from crimes in northern Uganda.

17 The four attacks mentioned by the Prosecution in the Document Containing the Charges
18 are only examples of the broad victimizations that occurred in northern Uganda since
19 1996 onwards. In this regard, victims wishes to highlight that the limited places of the
20 attacks and the temporal time frame identified by the Prosecution do not reflect the truly
21 systematic nature of the violence. They recall that in 2005, the then Prosecutor
22 indicated, and I quote, "The Lord's Resistance Army was allegedly responsible for at
23 least 2,200 killings and 3,200 abductions in over 850 attacks." End of quote.

24 The attack launched by the LRA against the civilian population was conducted pursuant
25 to or in furtherance of an organisational policy.

1 The evidence presented by the Prosecution allows concluding that:

2 (i) the LRA had the capacity to commit a widespread systematic attack against the

3 civilian population;

4 (ii) the LRA was a group of persons organised in an established hierarchical way;

5 (iii) the LRA was an organisation with the capacity to impose a policy on its members

6 and to sanction them;

7 (iv) the LRA had communication ability and a solid supply of weapons and ammunition

8 in order to carry out a widespread or systematic attack against the civilian population;

9 (v) the LRA was established and acted for a long period of time for the common purpose

10 of overthrowing the government;

11 (vi) the LRA followed a regular pattern in implementing its policy of persecuting,

12 murdering, pillaging, torturing, enslaving, raping and otherwise committing sexually

13 and gender based crimes, inflicting cruel or inhumane treatments and abducting

14 children and adults.

15 These elements correspond to the interpretation by different Trial Chambers and

16 Pre-Trial Chambers of the policy requirement and of the notion of organisation which

17 cannot be understood in a restrictive way.

18 As argued by Trial Chamber II in the Katanga judgment, and I will quote from the

19 original in French: (Interpretation)

20 "A narrow concept of the organisation which would require it to have quasi state

21 characteristics would not reinforce the objective pursued by the statute, which is

22 suppression of the most serious crimes. Indeed, such a concept would lead to the

23 exclusion of all entities having engaged in a generalized or systematic operation

24 implying multiple commission of acts under Article 7(1) of the statute in application or

25 pursuing their policy under the pretext that they were not sufficiently highly ranked to

1 be considered in theory as being likely to -- as being suitable to lead or to apply a policy
2 whose purpose was such an attack." End of quotation.
3 All these factors correspond to the contextual elements of crimes against humanity as
4 identified in the practise of the Court, namely:
5 One, during the period covered by the charges, there was an attack directed against the
6 civilian population;
7 Two, the attack was perpetrated following an organisational policy;
8 Three, the attack was widespread and systematic in nature;
9 Four, a nexus existed between the individual act and the attack; and
10 Five, the suspect had knowledge of the attack.
11 The victims, however, do not understand the temporal limitation at 31 December 2005.
12 They expressed the view that there are no reasonable arguments which indicate that the
13 policy stopped suddenly at midnight on that day. Unfortunately, after that date,
14 widespread and systematic attacks against the civilian population in furtherance of the
15 organisational policy continued to be perpetrated by the LRA, including - allegedly - by
16 the suspect.
17 Mr President, your Honours, I will not address in detail the crimes charged against the
18 suspect. The Prosecution has provided ample illustrations of the type of crimes
19 committed.
20 For the purpose of my presentation today I will limit my observation to three specific
21 matters which bear a crucial importance for victims in these proceedings: First, the
22 crime of persecution; second, the abduction of girls and the sexual and gender based
23 crimes with particular reference to the crime of forced marriage; and third, the crime of
24 conscription of children under the age of 15 and their use in hostilities.
25 The commission of the crime of persecution under Article 7(1)(h) of the Rome Statute

1 requires the infliction of seriously bodily or mental harm amounting to an "intentional
2 and severe deprivation of fundamental rights contrary to international law by reason of
3 identity of a group or collectively ... committed against any identifiable group or
4 collectively on political, racial, national, ethnic, cultural, religious, gender or other
5 grounds that are universally recognized as impermissible under international law."
6 The victims recall a particular pattern of the LRA in attacking IDP camps and put
7 emphasis on the crime of pillaging, explaining that the LRA took everything they owned,
8 including all goods necessary to sustain life in the difficult conditions in northern
9 Uganda, cups, pan, clothes, as well as livestock, representing the key source of income of
10 the affected people. Often, victims had compiled detailed lists of the items looted.
11 According to the victims' account of events, some murders were motivated by the desire
12 to oppress the resistance or by the desire to appropriate cattle belonging to the
13 inhabitants of camps. These acts are clearly intended to cause suffering and injury to
14 members of a targeted group, and restorative and fair justice for victims can only be
15 foreseen if these acts are given a place within the charges brought against the suspect.
16 Victims were cruelly attacked by the LRA - men, women, the elderly, children, the
17 handicapped - and this solely on the basis of their ethnicity with no pity and no
18 distinction with regard to gender or age. The victims' loved ones were killed. Most of
19 them were mutilated. Some were decapitated. Others were burned. Many women
20 and young girls were raped or were inflicted inhuman treatments. The property of the
21 vast majority of the victims were pillaged and burned systematically. Those who
22 survived had to leave their homes, to flee and take refuge far away from their homes for
23 many years because of a fear of being attacked again and because they lost all they had.
24 Victims indicate several reasons for being targeted: Because as residents in the IDP
25 camps they were perceived as supporters of the government; because they were

1 perceived as willing to join the local defence units assisting the UPDF; because they were
2 perceived as helping the UPDF.

3 Victims also explained that it was notorious that Kony wanted to target them because
4 they were not supporting his insurgency against Museveni's government.

5 "They targeted us because we are Acholi."

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

8 These are sentences usually used by victims to describe why they were targeted.

9 Therefore, recognition of the crime of persecution in connection with the attacks is an
10 important element that they hope will be retained by this Chamber.

11 Your Honours, at the time of the surrender of Mr Ongwen, victims indicated that the
12 abduction of girls for sexual purposes was usually perpetrated by the LRA, including by
13 senior leaders.

14 In broadening the scope of the charges, the Prosecution has now included sexual and
15 gender based crimes amongst the conduct for which Mr Ongwen should be committed
16 for trial. The crimes charged include rape, sexual slavery and forced marriage. The
17 last one merits some developments considering the limited practice available.

18 Allow me, your Honours, to quote from the History of Rome of Titus Livius, an expert
19 which actually describes in similar terms what victims have described to us as the
20 moment of their abduction.

21 I quote: "... Many people gather for the festival, especially those who live nears. The
22 Sabines, too, came with all their people, including their children and wives ... When the
23 time came for the show, and people's thoughts and eyes were busy with it, the
24 preconcerted attack began. At a given signal the young Romans darted this way and
25 that, to seize and carry off the maidens. In most cases these were taken by the men in

1 whose path they were. Some, of exceptional beauty, had been marked out for the chief
2 senators, and were carried off to their houses by plebeians to whom the office had been
3 entrusted ... The sports broke up in a panic, and the parents of the maidens fled
4 sorrowing ... The stolen maidens were no more hopeful of their plight, nor less
5 indignant." End of quote.

6 The episode is known as "The Rape of the Sabine Women" but, in fact, the English word
7 "rape" is a conventional translation of the Latin "raptio," which in this context means
8 "abduction," rather than its prevalent modern meaning in English language of sexual
9 abuse.

10 During the decades of armed conflict in northern Uganda the LRA systematically
11 abducted girls for the purpose of forcibly marrying them to commanders and fighters.

12 Abductions were normally perpetrated during the attacks. The majority of abducted
13 girls forced into marriage were given to LRA commanders and higher ranking fighters.

14 Top commanders would describe the type of girl they wanted, including age, physical
15 appearance and intelligence. If recent abductees matched these desired characteristics,
16 then they were collected and distributed to the commanders. It was an order to then go
17 with the men and become their wives, and resistance was punishable by rape, severe
18 beating, torture or even death. Once the senior commanders selected the girls they
19 wanted, the lower ranking fighters would be given a wife from those that remained.

20 Recent studies find that a quarter of all females abducted for any length of time were
21 forcibly married to members of the LRA and that half of them gave birth to children
22 conceived following these forced relationships.

23 Forced marriage is prohibited by many relevant human rights instruments.

24 Article 16 of the Universal Declaration of Human Rights and Article 23(3) of
25 International Covenant on Civil and Political Rights provide, and I quote, "No marriage

1 shall be entered into without the free and full consent of intending spouses." End of
2 quote.

3 According to various treaties, the single act of forcing someone into a marriage
4 relationship is a serious violation of his or her fundamental rights.

5 Mistakenly, girls forced into marriage are commonly referred to as sex slaves. This
6 inaccurate characterization of their activity within the LRA perpetuates a common
7 misunderstanding about their roles and experiences.

8 While forced marriage involves rape, sexual violence and enslavement, the crucial
9 element of a crime is the mental and moral trauma resulting from the imposition, by
10 threat or force, arising from the words or the conduct of the perpetrator of a forced
11 conjugal association and the relationship of exclusivity between the couple.

12 Forced marriages are coercive relationships without valid consent of the women. They
13 have the traditional characteristic of shared domicile, bearing of children, domestic
14 responsibilities, exclusivity and sex. The nature of these relationships forces girls to
15 take on roles as sexual partners, mothers to the children born from these relationships,
16 cooks, domestics, water collectors, porters, food producers. The relationship consists of
17 a familial aspect where children are born and raised by abducted mothers and their
18 captor husbands.

19 The consequences of the status of wife upon girls abducted into the LRA and taken by a
20 commander or fighter are complex and the practice has often a profound impact on the
21 victims and their children.

22 The use of the label "wife" causes a unique psychological suffering which often leads to
23 stigmatisation and rejection of the victims by their families and community. Forced
24 marriages also inflict grave psychological injury and result in long-term moral and
25 psychological suffering.

1 All victims recall their experience as wife as distinct from the ones suffered from as a
2 result of other gender crimes.

3 Victims indicate that their condition of wife had and still have serious repercussion on
4 their possibility of restoring normal relationship with men, and even if they are
5 integrated in the community, they feel that said integration is not, to use their word, full
6 and sometimes only dictated, and I quote again, "by social conventions more than by a
7 genuine will to help us in rebuilding our lives."

8 For these reasons, we support the Prosecution's position according to which forced
9 marriage should be included in the "other inhumane acts" category and, therefore, not
10 subsumed under "sexual slavery" as argued by the Defence in its Pre-Confirmation Brief.

11 The LRA has also been notorious for its widespread abduction of children to serve as
12 soldiers. The child soldiers, the two simple words, but they describe a world of
13 atrocities committed against children and sometimes by children.

14 Under Article 8(2)(e)(vii) of the Rome Statute, the recruitment of children under 15 into
15 armed forces or groups and their use in hostilities clearly extends to any armed group
16 within the meaning of internationally humanitarian law. The crime has a permanent or
17 continuous character, which means that the offence continues to be committed as long as
18 the child remains in the military group but does not reach the age of 15.

19 Given that the codification of a crime aims at protecting children under 15 as a
20 particularly vulnerable group from the inherent risks arising out of armed conflicts, in
21 principle all direct or indirect activities which expose children to the armed conflict risk
22 should be covered by the active participation requirement.

23 In this sense the Lubanga judgment clarified, and I quote, "All of these activities which
24 cover either direct or indirect participation have an underlying common feature: the
25 child concerned is at the very least a potential target. The decisive factor, therefore, in

1 deciding if an indirect role is to be treated as active participation in hostilities is whether
2 the support provided by the child to the combatants exposed him or her to real danger
3 as a potential target." End of quote.

4 Following the Chamber's reasoning, the following acts constitute use of children in
5 hostilities, apart of course taking direct part in hostilities, carrying equipment and
6 belongings for their superiors, including weapons; collecting firewood for the troops;
7 collecting and disposing dead bodies; collecting and carrying pillaged goods; being used
8 as escorts.

9 These are the kind of tasks typically described by former child soldiers when asked
10 about their stay within the LRA. The LRA used children as a vital resource. Children
11 were easily malleable to whatever purpose Kony wanted and were quick to obey the
12 orders. One former child soldier told us, "Children copy exactly what they learn during
13 training. They don't pretend."

14 Children, who were used as disposable porters by the LRA, walked quickly and tired
15 slowly. This both increased LRA mobility and enhanced its capacity to carry loads of
16 looted goods over long distances, to satisfy the need for food, gumboots and cash.

17 Forcing children to kill their friends or family members in front of other abductees
18 instilled fear into them and discouraged them from escaping. In the words of another
19 former child soldier, "Sometimes they get the new people to kill. You never refuse to
20 kill, otherwise they will kill you."

21 It also forced a clean break with the past, as they were less likely to return to a
22 community where they murdered, tortured and looted.

23 Victims participating in this case are either former child soldiers who managed to escape
24 or who were captured by the UPDF and subsequently set free. Parents of former child
25 soldiers also participate in this proceeding. Some of them had never seen again their

1 children since their abduction and they have lost any hope to embrace them again.

2 Others still keep hope of seeing their children coming back one of these days.

3 The ones who had the chance of returning to their families and communities face

4 enormous challenges in trying to return to a normal life. They have difficulty

5 processing their experiences and reintegrating within their communities. They need

6 healing from emotional difficulties and traumatic experiences, protection from

7 re-recruitment, training and education in peaceful roles, and the careful reintroduction

8 into their communities. The rehabilitation process includes drug withdrawal and

9 psychological adjustment, but also recovery from post-traumatic stress disorder, the

10 symptoms of which include nightmares, flashbacks, aggressiveness, hopelessness, fear,

11 guilt and social isolation.

12 Parents who are reunited with their child sometimes experience a degree of fear as to

13 whether he or she will reintegrate in the family and in the community. Many children,

14 on the other hand, also fear whether they will be loved and accepted, particularly if they

15 are still young. Others find reintegration difficult, particularly if they have earned

16 themselves an official rank and have become used to violence. The way from child

17 soldier to formal abducted child to finally just child in the midst of other children is a

18 long mile to walk, particularly because of a persistent mixed perception of former child

19 soldiers as victims on one hand and perpetrators on the other hand.

20 This leads me, your Honours, to the concluding part of this presentation, which relates

21 to the criminal liability of Mr Dominic Ongwen.

22 The Defence challenges the criminal responsibility of Mr Ongwen on the basis that

23 international criminal law protects children from being forcibly recruited. Since the

24 suspect is a former child soldier, the persons having recruited him should bear criminal

25 responsibility for the acts he committed because he was under threat, an argument

1 which victims consider totally unfounded in fact and law, and worst, disrespectful of
2 their sufferings.

3 It is not disputed that Mr Ongwen might have been a victim of a crime when he was a
4 minor. However, this fact alone does not constitute legal basis for excluding criminal
5 responsibility under the Rome Statute. In the present case, the fact that Mr Ongwen
6 had been abducted at a young age does not absolve him from criminal responsibility.

7 There is certainly no legal basis for such outlandish claim.

8 The relevant articles of the Rome Statute, Article 31, 32 and 33 never explicitly or
9 implicitly provide for such ground for excluding criminal liability. All that the Defence
10 offers in this regard is a vague notion of justice, nothing more. Put in simple terms, the
11 Defence invents a new theory for excluding criminal responsibility which is non-existent
12 in the legal framework of the Court.

13 Secondly, the arguments put forward by the Defence are at odds with established
14 principles of international criminal law. As provided for in Article 26 of the Rome
15 Statute, only persons under the age of 18 at the time of the alleged commission of a crime
16 fall outside of the Court's jurisdiction. The fact that Mr Ongwen was over 18 years at
17 the time of the alleged commission of the crimes charged is beyond dispute. Therefore,
18 there is simply no need to further address the matter.

19 Age of 18 is reflective of the universally accepted principle that persons above this age
20 limit must be held criminally responsible personally for criminal acts and omissions.

21 The age limit contained in Article 26 of the Rome Statute is an absolute border
22 completely independent of maturity or immaturity.

23 Even if one accepts at face value the Defence' allegations with regard to Mr Ongwen's
24 lack of maturity due to his captivity and isolation from society, it must be stressed that
25 the charges that he is facing today constitute, to use the words of the preamble of the

- 1 Rome Statute, some of "... the most serious crimes of concern to the international
2 community as a whole ..." which are representative "... of unimaginable atrocities that
3 deeply shock the conscience of mankind."
- 4 It is therefore impossible, your Honours, to seriously envisage the possibility that
5 Mr Ongwen did not understand at all the extremely grave nature of the criminal acts in
6 which he has allegedly engaged.
- 7 Duress is an excuse that is premised on the idea that the actor is incapable of making a
8 moral choice due to the overwhelming force of a threat.
- 9 While it could be argued that children under the age of 15 may not be able to always
10 distinguish what is wrong and what is right, and that the conditions of their forced
11 recruitment imply threats, this assumption cannot be invalid for someone who reached
12 the age of reason, who was in position of power within the LRA and who was able to
13 make a distinction and subsequently choose between what was right or wrong.
- 14 Mr Ongwen willingly remained in the LRA and the evidence shows that he shared the
15 objectives and purpose of the organisation to overthrow Museveni's government by
16 applying a policy of persecution against the Acholi civilian population perceived to be
17 supporters of the government in one way or the other.
- 18 In fact, Mr Ongwen had the possibility to leave the LRA and he did not.
- 19 An episode has been referred to us by our clients as indicative of the willingness of a
20 suspect to remain within the LRA.
- 21 Following the cessation of hostilities agreement in Juba in 2005, Ongwen was captured
22 by the UPDF while making his away to the then designated LRA assembly area. It is
23 reported that Mr Ongwen requested UPDF for safe passage to said assembly area and
24 that he finally managed to join it.
- 25 Victims legitimately ask: Was Ongwen at the time so intimidated by Kony? Their

1 answer is No. He was simply willing to remain within the LRA.

2 Mr Ongwen is known amongst the victims as the most courageous, loyal and brutal of

3 the men who served Joseph Kony. He has a record of protracted atrocities against his

4 own people. He was proud of his achievements in the battlefield; he shows no remorse.

5 Victims are waiting for a word of compassion, for the acknowledgment by the suspect of

6 his wrongdoing. They are listening at a request for impunity.

7 Impunity: the only word they hoped to never hear again after the surrendered of

8 Mr Ongwen, certainly not in a Court of Law.

9 The evidence adduced by the Prosecution militates for an important role fulfilled by the

10 suspect in the LRA during the entire period of the charges. In particular, the evidence

11 shows the progressive escalation of the military hierarchy by Ongwen within the LRA;

12 his direct involvement with the objectives and strategies of the campaign of attacks

13 against civilians ordered by Kony to LRA forces as from or around the middle of the

14 year 2002; his participation in the Control Altar, the section representing the core LRA

15 leadership responsible for devising and implementing LRA strategy, including standing

16 orders to attack and brutalise the civilian population in northern Uganda.

17 The evidence allows concluding that the execution of the crimes was secured by almost

18 automatic compliance with the orders issued by Kony and other senior commanders;

19 that the suspect made an essential contribution to the commission of the crimes charged;

20 that he was aware of a fundamental feature of the LRA as an organised and hierarchical

21 apparatus of power; and that he had effective command and control over his

22 subordinates during the period covered by the charges.

23 At the time of the surrender of Mr Ongwen, victims expressed concerns in relation to the

24 then formulation of the suspect's responsibility in the warrant of arrest which shows

25 engaged at the time under Article 25(3)(b) of the Rome Statute.

1 Indeed, victims considered that in light of his notorious role within the LRA, the
2 responsibility of Mr Ongwen for additional acts under other modes of liability could be
3 envisioned.

4 The victims are satisfied of the Prosecution's choice of characterising the individual
5 criminal liability of Mr Ongwen under different modes of liability as described in the
6 Document Containing the Charges and in the Prosecution pre-confirmation brief. The
7 legal texts of the Court do not limit the Prosecution in choosing a single mode of liability
8 where the evidence suggests that the suspect may be responsible for alleged acts under
9 more than one mode of liability. This approach has already been taken by the
10 Prosecution in several cases to date and considered appropriate by Chambers.

11 Therefore, victims support the Prosecution's arguments for confirming cumulative
12 charges under several modes of liability. Indeed, in order to ensure fairness towards
13 the victims and fully depict their sufferings, the charges must reflect the totality of
14 Mr Ongwen's liability.

15 Mr President, your Honours, victims have expectations from these proceedings. They
16 expect an independent, impartial, transparent and efficient justice capable of establishing
17 the truth with regard to the crimes committed.

18 Participation in the proceedings is first and foremost an individual step, which enables
19 victims to transmit their knowledge of the events and their history; sometimes, as in this
20 case, it becomes a collective undertaking, bringing together communities, neighbours
21 and families.

22 Finally, it is also a matter of punishing those responsible for the crimes and moving
23 towards reconciliation so that justice is done.

24 We can assure you, your Honours, that the mere fact of being represented today and the
25 ability to voice their concerns is part of what could be referred to or considered already

1 as reparation in the broad meaning of the term.

2 This concludes, your Honour, our presentation. We thank you on behalf of the victims
3 we represent for listening at their views and concerns.

4 PRESIDING JUDGE TARFUSSER: Thank you. Thank you very much, Mrs Massidda.

5 May I have just one small point? Titus Livius should have been -- could have been
6 quoted in Latin, but that's something else. It was just --

7 MS MASSIDDA: I would have loved to, your Honours, but I was a little bit afraid of
8 the translation.

9 PRESIDING JUDGE TARFUSSER: Okay. Okay. Accepted.

10 And now I pass the floor to the other team of Legal Representative of Victims. I don't
11 know who wants to speak, Mr Cox or Mr Manoba.

12 Mr Manoba, here's the floor.

13 Just we have a little bit more than half an hour, then we have the break.

14 MR MANOBA: Thank you, Mr President.

15 PRESIDING JUDGE TARFUSSER: Okay. Thank you.

16 MR MANOBA: Mr President, your Honours, I will address you foremost on the brief
17 introductory remarks, then address the Court on the harm suffered by the victims and
18 then hand over to my colleague who will then complete our submission today.

19 Mr President, your Honours, we present to you the views of our 1434 victims granted
20 status to participate in these proceedings. These views were collected from victims
21 through consultations undertaken from 12 to 15 January 2016, as well as information
22 provided by victims in their application for participation and during several visits
23 undertaken in the communities. These views and information corroborate the
24 Prosecution's document containing charges and our pre-confirmation brief.

25 For all practical reasons, the views in this submission were given by individuals and

1 endorsed by the majority of victims hailing from six villages in Odek, 11 villages in
2 Lukodi, 11 villages in Abok, that attended consultations which were held closest to their
3 homes to make it easy for them to participate in the consultations. These victims were
4 all reached by reason of careful and conscious mobilisation by a team of wonderful
5 people in the communities. These submissions are also informed by previous meetings
6 held with the victims in their communities between October and December 2015.

7 Your Honours, these victims are former residents of Odek and Lukodi, Lukodi and Abok
8 camps, which camps have been dismantled and victims returned to their original
9 communities. The victims are Acholi and Lango speakers or ethnic groups. There are
10 also others from geographical areas who suffered harm from one of the thematic crimes
11 included in the Document Containing the Charges, namely persecution, sexual and
12 gender based violence and conscription or use of children to engage in hostilities.

13 Victims of the crimes with which Dominic Ongwen is charged recall that from about the
14 year 1987 up to 2005, the government of Uganda and particularly its armed forces, the
15 Uganda People's Defence Force, formerly the National Resistance Army, or NRA, were
16 involved in fighting the Lord's Resistance Army, LRA, headed by Joseph Kony.

17 Your Honours, victims want this Chamber to know that whilst the period is significant
18 for the Prosecution in establishing the existence of conflict of a non-international
19 character in Uganda, it has had impact on them because some of them have been
20 repeatedly made victims of abductions, pillage, torture, and other inhuman and
21 degrading treatment at the hands of the LRA. This consequence affects their entire way
22 of life and livelihood.

23 Our submissions today have the intention not of duplicating the material which was so
24 convincingly and eloquently presented by the Prosecution last week. The Prosecution
25 has comprehensively laid out the evidence of crimes under international law committed

1 by Dominic Ongwen. We will today present to the Court the victims' views on those
2 crimes. We will first address the impact that the crimes had on the victims and we will
3 then present the victims' views regarding the charges in this case and the expectations
4 from the Court.

5 Your Honours, prior to the attack on the IDP camps of Lukodi, Abok and Odek, the LRA
6 had gained notorious reputation for being ruthless and excessively and inhumanly
7 violent with their victims. And therefore victims lived with fear and in terror of the
8 likely consequences of an LRA attack. When the attacks did occur in these camps
9 respectively, victims describe a state of pandemonium. The following submissions will
10 deal with each of the Odek, Lukodi and Abok IDP camps, camp attacks in turn before
11 turning to the -- to the thematic crimes involving child soldiers and sexual and gender
12 based violence. We do not address the attack on Pajule because we do not represent
13 any victims of that attack.

14 The attack on Odek IDP camp. As the Prosecution have described, the LRA attacked
15 Odek IDP on 29 April 2004. Victims who survived this attack described specific actions
16 of the attackers which support the charges in the Document Containing the Charges.
17 Many described the killing of civilians as well as acts of violence which would amount to
18 torture or cruel or inhuman treatment. Very many described the pillage of their
19 property which they or others were then forced to carry into the bush for their attackers
20 under threat of death or extreme violence.

21 And while some of these enslaved civilians were then allowed to return to their homes,
22 others did not escape. Some were killed, including in front of their own family
23 members. Others were forced to become child soldiers or sexual slaves or forced to
24 marry LRA members.

25 The horrors suffered by the victims of Odek attack are exemplified by the following

1 accounts:

2 One victim explained that she had been abducted by the LRA but had managed to
3 escape and return to her family. When the LRA attacked Odek, they shot dead her
4 brother-in-law as well as her aunt and her sister-in-law, both of whom were fleeing with
5 small children on their backs. Having seen her family killed, she was forced to carry
6 stolen items into the bush, but later managed to escape from the LRA a second time.

7 Another victim, who was only a child at the time of the attack, explained that he was
8 abducted together with his father. He explained, and I quote:

9 "When I reached the bush, I and other people were divided into different groups under
10 different commanders and given people to kill. My father was given to my group and I
11 participated in killing him. We beat him to death."

12 Some camp-dwellers managed to flee the attack and hide. When they returned to their
13 homes they were greeted by horrific scenes, horrific scenes. Numerous victims have
14 spoken of their shock at seeing the number of dead bodies which lay in the camp after
15 the attack. One victim described seeing a pig eating the body of a child.

16 Your Honours, the attack on Lukodi camp not long after the attack on Odek attack on 19
17 May 2004, similar horrors were visited on the residents of Lukodi IDP camp. Victims of
18 the Lukodi attack described the mass killing of civilians as well as acts of torture or
19 inhuman treatment.

20 Men, women and children were shot or burned to death in their huts. The great
21 majority of the victims describe having their property looted and/or destroyed, and
22 many were enslaved for the purpose of carrying stolen goods into the bush. Some of
23 these abducted in this way were forced to remain with the rebels, some were raped and
24 at least one became a sexual slave.

25 Your Honours, the horrors of the attack at Lukodi are described by some as follows:

1 One of the victims, who was only four years old when the attack occurred, recounted
2 that he was rescued from his burning home by an uncle, but witnessed two of his
3 brothers burned to death.

4 Another told that her grandmother was burned to death inside her home and that the
5 rebels put her stepson in an empty sack and stomped on the sack until her son was dead.

6 One victim, who lost his wife, mother and daughter in the attack, described the killings
7 as follows, and I quote: "The rebels entered the hut and shot my wife and she died
8 instantly. My daughter, who was strapped to my wife's back, also got shot in the leg.
9 My wife fell together with my child, and the hut was set ablaze. My mother tried to
10 pull off my wife's dead body so that it would not burn together with my daughter, but
11 she was also shot at in the stomach in the process. She fell in the compound. Her neck
12 was cut with a panga and her hands both chopped off with a log of wood. She later
13 died from the hospital. My daughter cried till morning and she died from the heat
14 caused by the fire as she was strapped on her mother's back."

15 Your Honours, the horrors continued well after the attack for those who were forced by
16 the rebels to carry stolen looted items into the bush. One victim described how she was
17 abducted by the rebels and forced to carry stolen goods, stolen goods. Her
18 two-months-old son, whom she was carrying on her back, was severely beaten by the
19 rebels and became unconscious. Although she eventually escaped, her husband who
20 was also abducted never returned. She also remembers witnessing horrible things
21 while she was with the rebels, including women being raped and people being
22 murdered.

23 Another of the victims abducted during the attack told how the baby child of another
24 abducted woman was taken from her, and the abductees were instructed to stamp on the
25 child until he was dead.

1 Mr President, your Honours, I now address the attack on the Abok IDP camp, which is a
2 Lango community.

3 Less than a month later, on 8 June 2004, further horrors befell the residents of Abok IDP
4 camp. They, too, described mass murder, attempted murders, torture and enslavement.
5 Many had their property destroyed or stolen by the rebels. The horrors experienced by
6 the victims at Abok are described by some as follows:

7 One victim tried to hide from the rebels along with her husband and their five-year-old
8 son, but the rebels found them and shot them. This victim survived only because she
9 became soaked by the blood of her dead family members and the rebels believed that she
10 was also dead.

11 Another victim hid in a hole when the attack began and he stayed there until the next
12 day. When he emerged, he found his father and son had been shot, his brother
13 abducted, and all of his huts burned to the ground.

14 Yet another victim who was only four years old at the time of the attack was stabbed in
15 the head and stepped on by the attackers.

16 Just as at Odek and Lukodi, the rebels did not finish their atrocities at the end of the
17 attack. They forced many of the civilians to carry stolen goods into the bush and
18 continued the abuses along the way.

19 One victim, your Honours, said that she was at home with her father and sister when the
20 attack occurred. The rebels shot her father dead and abducted her and her sister. She
21 later escaped but discovered that her mother had committed suicide upon hearing
22 the news of her husband's death and her daughter's abduction.

23 Another victim, a woman, told her story as follows, and I quote: "The rebels came and
24 abducted me and my two children. My house was then set on fire with all my
25 belongings, goats and hens which were around the house and were all burnt. I was

1 then given a heavy load to carry. I went with the rebels to the bush where I stayed in
2 captivity. While there I was subjected to severe beating all the time and my work was
3 to get the looted items from the rebels and take them to the bosses. I was also given one
4 man to be my husband. Because of fear of being killed if I refused -- I could not refuse.
5 I had to accept. I then escaped later when there was a severe war between the LRA and
6 the government soldiers. But my children remained in captivity till later on when they
7 also escaped."

8 Thematic crimes of child soldiers and sexual and gender based crimes.

9 Your Honours, indeed, as described by this last victim, many women and children were
10 abducted by the rebels and held in captivity where they were forced to become the wives
11 and sexual slaves of the rebels and/or to fight and kill at the LRA's behest.

12 Just as the Prosecution indicated, victims of LRA abductions were asked to undertake
13 horrific atrocities themselves. No doubt it was hoped that these victims would be kept
14 in captivity as much by the shame and stigma of what they had done as by the constant
15 threat of violence. Some of the participating victims described the terrible things they
16 were made to do. One woman explained, and I quote: "I was abducted in May 2003 ...
17 with my three brothers and made to carry heavy loads for a long distance. We went up
18 to another town where they made me kill my blood brother ... and made me eat mangoes
19 with his blood in my hand. My other brother came back after three months and told us
20 he did not know what had happened to my third brother." She also told how, and I
21 quote, "They put music and ask you to dance meanwhile you pick your husband and for
22 fear of death you must pick; and I picked one -- and I picked one who forcefully had sex
23 with me in a very bad way."

24 Another victim gave the following account about her abduction at the age of eight, and I
25 quote: "It was in 2003 when I was sleeping in the house with my parents. The rebels

1 entered and told my father to have sex with me. When my father refused, I was given a
2 machete or panga to cut him into pieces, which I did until he died. Later I was given a
3 rebel, a rebel man for a husband who forcefully had sex with me whenever he wanted,
4 given heavy luggage to carry with no food to eat. I was later rescued by the soldiers
5 who defeated the LRA, they took me to the barracks and later took me to my village.
6 My mother ... was abducted and has never returned up to now."

7 Mr President, your Honours, I would like to now deal with the impact of these crimes.
8 The enormity of the harm these crimes caused to victims is difficult to convey with
9 words alone. It is not an exaggeration to say that lives were ruined and the fabric of
10 communities destroyed. Victims wanted this Chamber to know that the harm
11 described severely -- severally here continues to affect the life and livelihood today of
12 each and every victim.

13 Individual victims suffered emotionally and psychologically. They remained fearful of
14 further attacks and cannot to this day forget the horrific events they witnessed.

15 Those whose family members who were killed or abducted often suffered a double blow.
16 They not only experienced an extremely traumatic event, but lost the person or people
17 who would have helped them to cope with this trauma. For example, if the victim lost
18 a father or a parent, they lost a person who offered love, comfort, security, well-being,
19 leadership and guidance.

20 Your Honours, most of those who suffered physical harm continue to suffer the impacts
21 to this day. This includes not only those who were injured by the rebels, but also those
22 who were raped and contracted HIV. Many victims told us that they have not been
23 able to access adequate health care. Some live to this day with bullets remaining in
24 their bodies. Many are unable to undertake daily tasks such as housework, carrying
25 things or farming. Many live in continuing physical pain.

1 Your Honours, women and children who were abducted and forced to become LRA
2 conscripts, sex slaves or rebel wives describe a further form of suffering: They are often
3 stigmatized by their communities. Former child conscripts are sometimes treated as
4 though they were willing participants in LRA activities. Some women who were
5 forcibly married or raped by the LRA commanders describe how after their escape they
6 were divorced by their husbands and how their communities looked upon them and
7 their children as tainted.

8 Children who were abducted and many others who were displaced or impoverished
9 through the attacks lost their access to education. Many families could no longer afford
10 the luxury of schooling.

11 Some children who had already been schooled lost their certificates during the
12 destruction and were unable to continue their education.

13 And as well as the forms of harm I have already described, almost all the victims of LRA
14 attacks describe the devastating economic impact of those attacks.

15 Your Honours, the accounts you have heard over these three days include many
16 gruesome and appalling crimes of physical violence against people. The brutal nature
17 of those crimes is such that we are sometimes inclined to treat the destruction and
18 pillage of property as unimportant by comparison. But we should know -- we should
19 not do so. The victims of the LRA attacks at Odek, Lukodi and Abok consistently
20 describe the extreme consequences of the attacks on their livelihoods.

21 Your Honours, from where we sit today in this modern courtroom in The Hague, the
22 importance of a goat or cow might not be obvious. But for those living or formerly
23 living in IDP camps in northern Uganda, these animals were prized possessions, which
24 offered meat and resources for tilling and cultivating land or for trade. Victims who
25 lost their goats, oxen and cows in LRA attacks are still today worse off economically than

1 at the time of pillage. They cannot trade or exchange the animals and are without
2 livestock for farming. Most have been unable to rebuild their herds, and the majority
3 indulge in the markets to sell or buy a small basket of tomatoes or roast maize.
4 And it was not only animals which were destroyed or stolen by the LRA. Most of the
5 victims from Odek, Lukodi and Abok describe returning to their homes after the attacks
6 to discover that their huts were burned, their livestock burned or stolen, and all their
7 household items, including money, cooking utensils and even clothes, had been pillaged.
8 Victims were left with quite literally nothing left.

9 Your Honours, the following are some accounts from victims which exemplify this
10 situation, and I quote: "On that day, the LRA looted my goats, chicken, ducks, cooking
11 utensils, mattresses, food, simsim, sorghum ... Now I am poor. I don't have any
12 domestic animals ... I cannot support my children in school. Feeding has become a
13 problem."

14 Another victim says, and I quote: "Starting a new life after losing all the things which I
15 had gathered like my hut, clothes, among others has not been easy since then because
16 also my goats and hens, which I used to sell and eat sometimes, were killed and others
17 burned.

18 And another victim says, and I quote: "Our hut was burnt and all our livestock were
19 burnt too. During the attack, I lost all my personal belongings in my hut; for example,
20 clothes, utensils to mention only a few. In addition, my goats, which were next to the
21 house, were also burnt. Up to this day, I have not been able to recover from the loss.
22 Today I am in financial hardship."

23 Yet another witness account says that "My only pregnant cow was shot dead by a stray
24 bullet, and all its meat was looted. In the morning, I came back and found only the
25 head and the legs were left for me where I had tied the cow. My bicycle and chicken

1 got burnt in the hut since all the huts in the camp were burnt that day. All my goats
2 were looted too. I was left with nothing at all because even my clothes got burnt in my
3 hut since my hut was burnt. From my hiding place, I saw the fire consume the entire
4 camp. By now, my cow would have made me very wealthy. All my goats and
5 property makes me worry a lot for all my wasted efforts and years."

6 And finally, one last account: "I feel very helpless because since that incident to date, I
7 have not been able to bring back or buy the items that got burnt."

8 Mr President, your Honours, to make matters worse, the LRA murders had left people
9 without those who would have cared for them. Parents now entering old age are
10 without their children. Children were left without parents.

11 One woman who was 31 years old when her son and daughter were murdered by the
12 LRA said, and I quote: "When I think of what happened, I get heartbroken because
13 when I see other children helping their parents, I usually get sad because if my children
14 had been around, they would be helping me."

15 Those who lived no longer had the basic means of survival and at the same time were
16 often faced with caring for children who had been orphaned by the attacks.

17 Your Honours, one victim gave this statement, and again I quote: "The next morning, I
18 came out of the hiding and found my elder brother ... shot dead by the rebels. The
19 rebels also looted my foodstuffs, two goats and clothing. I am burdened taking care of
20 the orphans that belong to my elder brother ... who was shot dead by the rebels. I feel
21 hurt that I do not have any goat at my age because my only two goats were looted by the
22 rebels on that day."

23 Mr President, your Honours, victims want this chamber to know that abductions of
24 children engaging in hostilities or killing them, as the LRA did, greatly affects the family
25 and social fabric of the families whose children have been victimized as such. This is so

1 because African children play an important role in the family set up. They assist their
2 parents and other members of the community. This unique responsibility of the
3 African child has been recognized by the African Charter on the Rights of a Child in
4 Article 31.

5 Your Honours, many victims speak of poverty and hunger as affecting them right up
6 today, more than ten years after these attacks. These were the impacts on victims of the
7 crimes committed by Dominic Ongwen - they may not be matters on which your
8 Honours need to decide in order to confirm the charges brought by the
9 Prosecution - however, for the victims we represent, it is important for you to
10 understand the profound damage that was done to their lives.

11 This concludes my part of the submission; and if we still have time before the break, my
12 colleague can proceed to conclude our submission.

13 PRESIDING JUDGE TARFUSSER: But I'm afraid we have not and, therefore, I will
14 suspend this hearing, and this hearing will be resumed at 11.30.

15 Mr Cox, please.

16 MR COX: Yes, your Honour. Just to give a fair warning to our colleagues to the
17 Defence that we probably won't be using all the time. We misunderstood the message
18 and thought that two and a half hours was all the time we had, including final
19 observation, so to allow them time to be prepared.

20 PRESIDING JUDGE TARFUSSER: Thank you. Thank you very much. This is very
21 helpful. So I would say that in the afternoon at -- well, we'll see. How long -- how
22 long do you think you will -- it will take you?

23 MR COX: Probably 30 minutes, your Honours, 25, 30.

24 PRESIDING JUDGE TARFUSSER: Okay.

25 MR COX: Yes.

Confirmation of Charges

(Open Session)

ICC-02/04-01/15

1 PRESIDING JUDGE TARFUSSER: So I think we are a little bit ahead of schedule. I
2 would urge you to start -- you have an hour, more or less, in the morning of the second
3 section, so I would just finish -- Mr Cox, I would pass the floor on to you.
4 I'm seeing consultations.

5 MR ODONGO: Your Honour, the Defence team had prepared to start its submission in
6 the afternoon, well aware that the whole of this morning would be consumed by our
7 colleagues on the other side, and some materials have been left in the offices, and I don't
8 know whether it would not be in the interest of fair submission to allow us to start in the
9 afternoon.

10 PRESIDING JUDGE TARFUSSER: I would not go along this way. I would really ask
11 you to start to have an hour. If we have an hour, I think we should use this hour to
12 start. You have time to rescue the material from the office now during the break, I think
13 at least to start with your submissions in the first part and then continue in the
14 afternoon.

15 Thank you.

16 MR ODONGO: Very well, your Honour.

17 PRESIDING JUDGE TARFUSSER: So we will resume at 11.30. Thank you very much.

18 THE COURT USHER: All rise.

19 (Recess taken at 10.59 a.m.)

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

21 THE COURT USHER: Please be seated.

22 PRESIDING JUDGE TARFUSSER: Mr Cox, the floor is yours.

23 MR COX: Mr President, your Honours, I will present the victims' views on the crimes
24 charged against Dominic Ongwen.

25 Having discussed the impact of the crimes on the victims we now turn to address the

1 victims' view on the counts which are brought against Dominic Ongwen in the
2 confirmation -- charges document, sorry.
3 In broad terms, the victims support the submissions made last week by the Prosecution.
4 The evidence presented by the Prosecutor was comprehensive and compelling. We
5 therefore do not seek to add to this. We will present the victims' views on two issues
6 relevant to the charge:
7 First, the victims' views on Dominic Ongwen's responsibility for crimes, particularly in
8 light of his own forced recruitment as a child;
9 Second, the victims' view on the scope of the charges brought in this case.
10 Your Honours, Mr President, victims hold Dominic Ongwen responsible for the crimes
11 they suffered.
12 Many victims commented that they believe Dominic Ongwen to be responsible for the
13 crimes from which they suffered, including the attacks on Odek, Lukodi and Abok IDP
14 camps.
15 They knew of him as a senior LRA commander and heard through various sources of his
16 role in these attacks. Many victims who were abducted described witnessing Dominic
17 Ongwen's role in the LRA and its firsthand command.
18 In the brief filed ahead of this confirmation hearing, Dominic Ongwen's Defence has
19 sought to argue that he is not responsible for the crimes charged. They place heavy
20 reliance on the fact that he was himself abducted and forced to fight with the LRA as a
21 child. And they argue that he is protected by the Defence of duress. Your Honours,
22 Mr President, the victims reject these arguments.
23 First, the Defence position on the criminality of former child soldiers has no basis in
24 international law as my distinguished predecessor has said. The Defence effectively
25 claim that a person conscripted as a child soldier is thereby protected from criminal

1 responsibility in respect of all acts committed, including into adulthood. No legal
2 authority is provided by the Defence for this assertion because there is none.
3 International instruments govern the human rights standards relevant in the prosecution
4 of children. These instruments include the Convention on the Rights of child; the
5 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also
6 known as the Beijing Rules; and the UN Guidelines on the role of the Prosecutors.
7 These international instruments do not prohibit the prosecution of children. They treat
8 the age of an offender as something to be considered in the exercise prosecutorial
9 discretion. In practice, children are almost universally protected from prosecution
10 before international courts by the fact that such prosecutions are restricted to those
11 persons most responsible.

12 Before this Court, children are additionally protected by Article 26, excluding
13 jurisdiction where a person has committed an offence before turning 18.

14 But Article 26 is clear. It implies only to persons who were under 18 at the time of the
15 alleged commission of crime. No similar provision exists to protect a person who
16 claims that childhood events led him to commit crimes as an adult. In fact, as the
17 prosecution so eloquently has already articulated, it is frequently the case that the adults
18 who commit crimes can trace the origins of their actions back to their childhood. Such
19 childhood circumstances may or may not be relevant in mitigating -- mitigation on
20 sentence. They do not provide a defence.

21 In the case of Dominic Ongwen there should be no question about his criminal
22 responsibility or liability or the appropriateness of his prosecution. The Defence
23 submits that Dominic Ongwen was born in May 1978. So even on this, the Defence's
24 best case scenario, Dominic Ongwen was already 24 years old on July 2002, the start of
25 the period of the charges. He would have been around 26 years of age when he

1 ordered and oversaw the attacks on the IDP camps of Odek, Lukodi and Abok. And he
2 would have been 27 years of age in December 2005, at the end of the period of the
3 charges.

4 So this defence or this argument of the Defence has no legal or factual basis.
5 But secondly, the defence arguments about Dominic Ongwen's lack of control over his
6 situation are not supported by the facts. The Defence has argued that it was, and I
7 quote, "Unthinkable for a recruit/abductee to escape." I am quoting paragraph 17 of
8 their brief.

9 This claim is very clearly refuted by the experience of abductees who are participating in
10 this case as victims, and that we represent. Very many of them did in fact escape.
11 Some women escaped together with their young children. Others escaped despite the
12 fact that they had suffered serious injuries during their ordeal. One particular woman
13 described how she had suffered a prolapsed uterus from repeated rapes and that she
14 was extremely weak. Nonetheless she managed to escape.

15 Abductees managed to escape in many ways. Some took the opportunity to escape
16 when they were sent to gather foods; others took advantage of the confusion during
17 battle with the UPDF.

18 One victim, who was only 12 years old at the time of his abduction, describes how he
19 escaped after two years by simply allowing himself to fall behind his rebel group as they
20 approach an attack site.

21 Among the participating victims are children who managed to escape their LRA captors
22 when they were as young as 9 years old of age.

23 The challenges that the children overcame in order to escape from the LRA are
24 exemplified by one victim who told his story of having been abducted during the attack
25 of Lukodi when he was only 10 years old.

1 He described in detail the journey he was forced to undertake with a heavy load of
2 stolen goods, how he saw another child killed and how he was, himself, violently beaten
3 and starved. He was hungry, in pain and no doubt terrified. But despite all these facts,
4 at the first opportunity, having been sent to collect water with another abductee, he
5 escaped. His feet were injured and swollen that he could not walk, and he had no shirt.
6 He describes that he crawled bare-chested, and therefore covered in sores, to his
7 freedom.

8 Against the background of these numerous escape stories, the Defence claim that it was
9 unthinkable cannot be sustained.

10 Dominic Ongwen's claim that he could have never escaped are an insult to the
11 thousands of adults and children who have shown great courage and resilience in
12 braving the escape from the LRA captors.

13 Victims observe that there was an amnesty law and a process in Uganda who came into
14 effect in 2000. Many commanders and fighters took advantage of the amnesty process
15 to escape and return from captivity. In fact the Amnesty Commission documents over
16 21,000 persons that were amnestied after escaping from the LRA. These 21,000 lived
17 under same exposure of risk of death or other severe punishment if caught. They used
18 every opportunity they had to escape. For several years after 2000 and before this
19 Court issued an arrest warrant for Dominic Ongwen, he had ample opportunity to seek
20 through -- amnesty through this process. He chose not to do so. He instead chose to
21 punish those others who did attempt to escape.

22 Mr President, your Honours, of course many victims have sympathy for Dominic
23 Ongwen as an abductee of the LRA. But they do not see it as an excuse for his actions
24 in adulthood. For the victims it is significant that Dominic Ongwen did not merely
25 survive in the LRA. He didn't even merely pass up opportunities to escape. No, your

1 Honour, he profited from his role in the LRA, rising through the ranks and gaining
2 power and other benefits associated with his position.

3 As one victim explained, she is ready to forgive Dominic Ongwen for what he has done,
4 but despite that she wants to see him undergo a fair trial, and if he's found guilty he
5 must be punished.

6 Thirdly, the defence of duress is not established.

7 Article 31(1)(d) of the Rome Statute only permits the defence of duress where a number
8 of elements are satisfied.

9 To rely on duress a suspect or accused must have been under a threat of imminent death
10 or of continuing or imminent serious bodily harm and must have acted necessarily and
11 reasonably to avoid the threat.

12 Mr President, your Honours, we all heard the radio communications, interceptions.

13 Mr Ongwen laughs during those communications. That is not the state of mind of
14 somebody under duress. It is the state of mind of somebody who is enjoying and
15 proud of what he is doing.

16 Further, and in any event, duress cannot protect a suspect or accused unless he did not
17 intend to cause a greater harm than the one sought to be avoided.

18 Throughout the period charged, Dominic Ongwen participated in heinous atrocities
19 against tens and probably hundreds of thousands of persons, crimes which were of
20 extreme nature, described by the Prosecution, and in our submission today, mass killings,
21 gruesome torture, children forced to kill their own family members and participate in
22 attacks on their own communities, women repeatedly subject to rapes, sexual slavery,
23 forced marriage and forced pregnancy.

24 Such a course of conduct by Dominic Ongwen was clearly intended to cause a greater
25 harm than any he might have personally sought to avoid.

1 To the victims the situation is clear: Dominic Ongwen was not forced against his will to
2 participate in the crimes for which he is being charged. Rather, he voluntarily and
3 proactively engaged in those crimes in order to improve his position in the LRA. His
4 crimes were not committed against his will. They were committed for his own personal
5 benefit.

6 The victims ask that your Honours reject this argument raised by the Defence about
7 Dominic Ongwen's abduction as a child and in relation to the defence of duress. They
8 ask that you confirm the charges as requested by the Prosecution.

9 Your Honour, Mr President, I will address the importance of the breadth of the charges
10 brought by the Prosecutor.

11 This brings us to the question of the scope of the case against Dominic Ongwen.

12 As the Court will know, victims have not always been happy with the scope of the
13 charges brought by the Office of The Prosecutor at this Court.

14 In several cases, victims felt that the Prosecutor was too conservative charging few
15 crimes and leaving many atrocities untouched. Happily this is not the case today.

16 Despite the narrow scope of the case originally established in the arrest warrant, the new
17 counts brought by the Prosecutor make a real attempt to grapple with the scope of the
18 crimes committed by Dominic Ongwen. This is very welcomed by the victims. I
19 respectfully request from this Honourable Court it maintains this way in confirming the
20 charges.

21 The victims are particularly appreciative of the so-called thematic crimes included in
22 counts 61 to 70, the counts which relate to sexual and gender based crimes and
23 conscription and use of child soldiers.

24 These crimes, your Honours, Mr President, these counts are the vital significance -- of
25 vital significance to the victims because the victims of these crimes hail from many

1 districts, not just the Acholi region. As presented by the Prosecutor in the map of
2 northern Uganda last Friday, the LRA conflict touched communities across most of
3 northern Uganda, including the Lango and Teso region. In seeking justice for LRA
4 victims and reviewing the charges of the Court, we respectfully submit you should take
5 care not to create or inflame tension between different tribal groups in northern Uganda,
6 a risk that would arise and could arise if it appeared that only some groups were given
7 recognition as victims of the crimes committed by Dominic Ongwen and the LRA. The
8 Prosecution office is to be congratulated on bringing the thematic counts with a scope
9 that is not limited geographically. Therefore, the Chamber is respectfully requested to
10 consider the importance of these counts when it takes its decision on the confirmation of
11 charges.

12 Mr President, your Honours, what do the victims want from these proceedings?
13 In meeting with the people we represent, they expressed their fear that Dominic Ongwen
14 would go unpunished for what he did to them. As an old woman said, and I quote:
15 "If he asks for forgiveness, I may be able to forgive him, but he must be punished. He
16 must be punished." And, Honourable Court, the punish they mention are strong,
17 proportional to the crimes for which he is responsible.

18 Some expressed that these proceedings are the only justice that they might get, that it's
19 the only fora where their voices will be heard and their stories will be told, and that we
20 should come here and tell those stories and speak their voices to your Honours.

21 They want the truth to be known, the whole truth. And as part of that truth they
22 mentioned while Dominic Ongwen must be held accountable for his crimes, he is not the
23 only one that has committed crimes against them. Other LRA commanders and
24 fighters made them suffer as well as UPDF troops. As usual in these conflicts, the
25 common person is caught in the middle.

1 As we have said when referring to the harm suffered by many, they still bear the
2 physical, psychological and economic consequences of their crimes they suffered. Their
3 life plans were ripped apart. They need urgent medical assistance since many people
4 even 11 years after have not received medical treatment for the wounds and their other
5 physical consequences of the attacks.

6 Individual and collective psychological support is desperately needed. Each day that
7 goes by unattended, the harder it is to deal. They suffered, individually and as a
8 community, unthinkable trauma. And even though they have taught us about
9 resilience, their needs must be covered.

10 One woman, an old woman from Lukodi, said that because of the many dead bodies she
11 saw, she hears people talking around her even when she's alone. This is just one
12 example of the consequences we speak about.

13 Many of the abductees and forced wives still suffer stigma in their community.

14 Psychosocial programmes must be put in place so they reintegrate. Access to education,
15 legal and social service, that allow them to reach at least the way of life they had before
16 they were crimes must also be put in place.

17 Even though we understand that it's not the procedural stage for reparations under the
18 Article 75 of the Rome Statute, we need to inform your Honours what the people we
19 represent said they expect from these proceedings.

20 We must inform this Honourable Court that there is much fear among victims in relation
21 to what could happen to them, having come forward as victims, if Dominic Ongwen is
22 released and goes back to the bush.

23 Your Honours, when we met with the victims and we asked them, and I quote: "What
24 do you expect of us as lawyers?" the main thing they repeated was, and I quote again,
25 "Come back and tell us what has happened, be it good or bad news." We hope, after

1 hearing the solid evidence presented by the Prosecutor's Office, that the ruling of your
2 Honours will be that there are substantial grounds for each one and all the charges
3 brought against Dominic Ongwen so we can bring back good news that the first stone
4 for justice to be done has been put in place and that as we requested, this will never
5 happen again to them as a guarantee of non-repetition. Therefore, Mr President, your
6 Honours, we respectfully request that all charges be confirmed. Thank you.

7 PRESIDING JUDGE TARFUSSER: Thank you very much, Mr Cox.

8 Now we have one hour for the Defence and I will ask the Defence to start its
9 presentation of the case. Thank you very much.

10 MR ODONGO: Mr President and your Honours, the Defence opens its submission
11 with full association with the sentiment about the atrocities that were meted to the
12 people of northern and eastern Uganda.

13 Mr President and your Honours, the Defence is not lost to the fact that the people of
14 Uganda, especially those who lived in the northern and the eastern part of the country
15 suffered despicable atrocities meted by those involved in the theatre of war and conflict
16 in their background.

17 Mr President and your Honours, the task of the Defence is to show that the gentleman,
18 the suspect who is in Court cannot be held criminally liable because, like many other
19 child soldiers, he was conscripted into a war that he had no interest nor desire to
20 participate in.

21 Mr President and your Honours, at the tender age of less than 30 years, the suspect in
22 court, Dominic Ongwen, lost the opportunity to move through the ladder of decent and
23 guided development from childhood into adulthood. The curtain was drawn against
24 the opportunity, that opportunity. A dark cloud hovered over his head as he shivered
25 at the thought of being under the ruthless and brutal hands of arguably the most feared

1 rebel organisation the world has ever known.

2 The world that has in place humanitarian laws for protection against such acts helplessly

3 watched agape. The government of Uganda, which had a constitutional mandate to

4 protect him, was either impotent or cared little to do its part to ensure that he was not

5 abducted.

6 Dominic Ongwen was only a child aged 9 and a half years when he was abducted, kept

7 in captivity for over 25 years and allegedly made to commit the crimes he is now

8 charged with before this Court.

9 Your Honours, Dominic Ongwen, coming from a deeply religious background, the

10 Defence cannot but only open its statement by quoting the following verses from chapter

11 17, verses 1 to 3 of the Holy Bible, and I quote: "Jesus said to his disciples: 'Things that

12 cause people to stumble are bound to come, but woe to anyone through whom they

13 come. It would be better for them to be thrown into the sea with a millstone tied

14 around their neck than to cause any of these little ones to stumble. So watch

15 yourselves.'" End of quote.

16 Mr President and your Honours, Dominic Ongwen was an innocent child without the

17 least propensity towards violence or lawlessness. And this has been clearly recorded

18 by journalists, scholars and those who cared to study the history of Dominic Ongwen the

19 child before his abduction. Therefore, Mr President and your Honours, if Dominic

20 stumbled, it was all caused by the evil hands of Joseph Kony and his commanders who

21 left him with the devil's choice in many of the crimes he's charged with by the Prosecutor

22 before this Court.

23 I say Dominic Ongwen, your Honours, was left with the devil's choice because in

24 captivity and in the circumstances that he found himself in, it was a matter of choice

25 between either compliance or certain death. Ongwen chose the latter.

1 Mr President and your Honours, the big questions in these proceedings is whether or not
2 there is sufficient evidence to establish substantial grounds upon which to believe that
3 Dominic Ongwen committed the crimes that he is currently charged with so as to
4 confirm the charges against him.

5 And your Honour, in order to establish a ground of crime, the element of intent is
6 pivotal. And in the case of Dominic Ongwen, your Honours, it is the submission of the
7 Defence that Ongwen should be traced from the day he was abducted, the circumstances
8 under which he was put in order to establish whether he had a free mind, whether he
9 owned his own mind at any stage in order to form intent because the critical thing about
10 criminal liability is intent.

11 Was Dominic Ongwen free to form the criminal intent to commit the crimes that he has
12 been charged with, or was he actually carrying the missions, the intent, propagating the
13 intent of those who put him under captivity and made it impossible for him to have a
14 free mind?

15 It is the Defence case that before the task of answering this question, the burden to prove
16 that the suspect was criminally liable for acts or omissions he is charged with lies
17 exclusively with the Prosecution. And that burden, as it's well known in criminal law,
18 must be beyond any element of reasonable doubt.

19 Mr President and your Honours, I shall now move to address you on the question of
20 background of the conflict and its impact on the population.

21 Mr President, I must admit that I feel deeply, Defence feels deeply indebted to my
22 learned sister Jane Adong for giving a fairly elaborate and comprehensive description
23 and history of the conflict that gave pathogenesis to the abduction of Dominic and the
24 current case.

25 Whereas the Defence does not dispute the occurrences of despicable episodes of violence

1 of stupendous proportions, it is our duty, your Honours, to point out that Dominic was
2 an unwilling victim in the theatre of war between forces of the government of Uganda
3 and the LRA. Your Honours, I want to beef up the narrative that was given by my
4 sister Jane Adong, but with a background related to this case.

5 Your Honour, your Honours, the world was given a very rude awakening in the 1980s
6 when the government of Yoweri Kaguta Museveni came into power. The country went
7 ablaze and there were configuration of fighting forces that wished to resist or overthrow
8 that government. This theatre, your Honours, finally concentrated in the Acholi and
9 Lango subregion, not to mention the Teso subregion, which became the epicentre of the
10 struggle against the government of the National Resistance Army, now called UPDF.

11 Mr President, Dominic Ongwen comes from a village called Coorom, Coorom literally
12 meaning "men are equal." In the Gulu, in Gulu district within the Acholi subregion.
13 The story that I'm going to narrate to you, your Honours, should inform the basis of
14 your decision as to the reason why war in northern Uganda to begin with got started;
15 and, secondly, it will help you to form your opinion about how a little child like Dominic
16 Ongwen taken to the bush and indoctrinated into the belief in the metaphysical
17 environment into which he was steeped was left with no choice but to continue in the
18 bush.

19 Your Honours, when the current government came into power, the people of Acholi and
20 Lango subregions -- who had post independence dominated the politics of Uganda and
21 indeed who after the overthrow of Idi Amin, they held two governments, Obote two
22 governments and General Tito Okello's government -- seriously resisted the idea of
23 being ruled by a government that came into power by the force of arms.

24 This was seriously countered by the then national resistance army that sent its troops to
25 particularly the Acholi subregion to suppress the rebellion against its established

1 government.

2 Your Honours, the world may want to hear this repeated, that the situation was so badly

3 handled that the people, the young men and elders of Acholi subregion were left with no

4 option but to find a way of defending themselves.

5 Your Honours, it is against this background that the elders of Acholi advised their

6 able-bodied young men and women to go and die like men, to go and defend them.

7 In this frame of things, your Honours, so many things happened. When the war

8 against the government forces became difficult, the government devised means to create

9 division within the population and that is when -- I am raising this, your Honour, to

10 draw your attention to how the civilian population became a target.

11 The government formed or caused to be formed what was called the militia. In Lango

12 they were called the Amuka boys, in Teso they were called -- Teso and Acholi

13 subregions they were called the arrows and bows boys. The clear instructions was that

14 they should defend themselves. If they saw the LRA, they should shoot them. They

15 should disclose to the government forces where the LRA were hiding. And to make

16 matters worse, these forces, so-called LDUs were mixed up either within the civilian

17 population or so close to the army barracks.

18 Therefore, your Honours, in deciding whether the attack on these IDP camps were

19 directed to the civilians or to the armed forces, the Uganda armed forces, you've got to

20 take into account that the IDPs were established more or less at the same place, in the

21 same environment with the IDP camps. Therefore, this civilian population, the army

22 got and the LDUs got so inextricably interwoven with one another that it was not easy to

23 tell one from the other.

24 Your Honour, your Honours, with that background the Defence submits that Ongwen,

25 who was just a child, remained a child up to the time he surrendered.

1 Your Honours, Dominic Ongwen feels a deep sense of betrayal for the following reasons:

2 The war in which Dominic Ongwen got engulfed was not his own but, rather, one which

3 was fought on the instruction and with the blessing of the Acholi elders against the

4 government of Uganda, with he perceived as repressive and which had marginalised,

5 allegedly marginalised the Acholi people.

6 Your Honours, Ongwen normally bitterly remembers the address by Joseph Kony

7 himself to the Acholi elders who went to meet him and his commanders during the Juba

8 Peace Talks in the presence of United Nations Special Envoy to the peace talks, His

9 Excellency Joaquim Chissano.

10 In the full glare of the world in his reminder to the Acholi elders, Joseph Kony recited to

11 them the story of the hunter who, left with no alternative, held the lion's tail and fought

12 with the beast until death point. When a passerby accepted the hunter's plea to assist

13 him and took over holding the lion's tail, the hunter fled leaving the passerby with the

14 burden.

15 In other words, Kony was saying when he went to the bush he went at the behest of the

16 elders of Acholi to go and fight for the Acholi people.

17 He was giving a graphic comparison that when he took over the mantle of the war and

18 fought on behalf -- I mean the mantle of the war, your Honours, he was fighting on

19 behalf of the Acholi people who had now lost direction or the temerity to confront the

20 government that they thought was repressive.

21 He challenged them that, therefore, you know, you appear to now be saying that I am

22 the wrong guy when indeed I took over this on your behalf.

23 Your Honours, the assurances he was variously given by the international community,

24 that is Dominic Ongwen, through the United Nations envoy, Joaquim Chissano, during

25 the Juba peace talks, reassured Ongwen that he would be safe, the world would stand

1 behind him if he surrendered and came out.

2 He was reassured that the world would stand behind him if he renounced rebellion.

3 Indeed, your Honours, he was told that as a person who was abducted at the tender age
4 of below 10 years, and remained in the bush against his will for more than 20 years, he
5 could not be held responsible for any acts or omission that may have been forced upon
6 him by his captors.

7 In the mind of Ongwen, your Honours, his indictment tantamount to indicting the entire
8 child soldier -- I mean, soldiers in the world. As we speak now in this hall, your
9 Honours, there are still multitudes of child soldiers waiting to hear from the
10 international community represented by this Court what would happen to them if they
11 risked to escape and come out.

12 This Honourable Court should be reminded that it is a representative of that
13 international community who yearns to protect the child soldier. The Defence hopes
14 that this judicial institution of the international community will not behave like the
15 Catholic convert who justified his actions by changing goalposts.

16 Your Honours, the story is told that when the white man took his religion to Africa, he
17 found a man who was called Aboku (phon), he had -- he convinced him to convert into
18 Catholicism, baptised him and called him John, and he told him, John, in order to be a
19 good Catholic there are two things you ought never to do. The first one is that a good
20 Catholic never eats meat on a Friday. And the second one is that a good Catholic never
21 tells a lie.

22 Your Honours, finally the white priest went back to his home country on leave, but on
23 the day when he came back he found John had had some problems, challenges in the
24 family. He had gone out and killed a rabbit because there was famine, there was
25 nothing to eat in the house. He went into the bush, killed a rabbit and here he was

1 eating rabbit meat on a Friday.
2 The priest said to John, but John, how dare a good Catholic eat meat on a Friday. And
3 John said, but father what I'm eating is not meat, it is fish. The priest said, but John,
4 you have now committed two sins; first you are eating meat on a Friday and now you're
5 telling me this is fish. And John said, but father, I insist this is fish. He said how does
6 it become fish? John told father, you know, father, when you came to Africa, me, I was
7 called Aboku. You poured water on me from and from Aboku I become John. So
8 father, you know, when I cut this meat into pieces I sprinkled water on it and I said from
9 meat you become fish. So I'm eating fish.

10 The Defence hopes that this story will not come true in the representation of the
11 international community by this Court. This Court, representing the international
12 community, should make sure that the goalpost about protecting the child soldier is not
13 shifted.

14 Your Honours, I shall now go to an overview of the Defence submission. And in order
15 to give a graphic exposure of what I am going to say next, I want my colleague to
16 run -- introduce a slide from Justice Hub.

17 Your Honour, your Honours, as a matter of public interest, from the onset, the Defence
18 notes that Dominic is charged with 70 counts. This is the largest number of counts
19 against anyone accused before the International Criminal Court or the ad hoc tribunals.
20 You can find on the screen a sample of a few cases Omar Al-Bashir has 10 charges;
21 Slobodan Milosevic, 66 charges; Joseph Kony, the leader of the LRA, 33 charges.

22 Your Honour, the question would be asked did Ongwen commit more atrocities than his
23 mentor, than his commander-in-chief, than Joseph Kony himself? Did Ongwen commit
24 more atrocities than Milosevic, the notorious guy who made the world tremble? Is
25 Dominic Ongwen worse than Al-Bashir who, because of the lack of please capacity of

1 this Court, has not been brought before this Court?

2 We challenge this Honourable Court to view with suspicion the multiplicity of charges,

3 duplication of charges, the cumulative dimensions of the charges brought against

4 Dominic Ongwen and look at it -- look at them with pity.

5 Mr President and your Honours, in this submission, the Defence have raised a number

6 of factual and legal issues pertinent to the adjudication of this matter.

7 In relation to the factual matters, the Defence has consistently raised the issue of its

8 inability to properly review the evidence disclosed by Prosecution. And this arises

9 from the fact that some of them were very unclear; for instance, the logbooks and the

10 intercepts.

11 It was only yesterday or the other day when the intercepts, I understand they were

12 enhanced, were played here that they made sense to the Defence.

13 As such, your Honours, and in the interest of our client, the Defence finds itself as a

14 disadvantage to respond to all the factual matters in this stage -- at this stage. While the

15 Defence reiterates its position that this has resulted in unfairness and prejudice to

16 Dominic, we shall nonetheless endeavour to provide observations in relations to the

17 attacks on the IDP camps.

18 In the light -- in light of the circumstances, your Honours, the Defence further reserves

19 its right to amend any factual characterisation made after confirmation should this case

20 proceed to trial.

21 The Defence respectfully submits that the Pre-Trial Chamber should dismiss all the

22 charges against Dominic Ongwen and accordingly discharge him at this pretrial stage,

23 particularly on account of his exclusion from criminal liability under Article 31 of the

24 Rome Statute.

25 Your Honour, Article 31 must be interpreted broadly but not in a simplistic manner as

1 has been suggested by the Prosecution and counsel for the victims.

2 Look at a small boy, a child who has been brought in the bushes and has not had the

3 opportunity to relate with common society, common decent society, a boy who has no

4 hope at all of ever returning to normal society, a boy who has no governmental

5 protection to which to return or to report for protection, a boy whose only protection and

6 guarantee to life was compliance, compliance or death. That is what I earlier on said,

7 he was left with the devil's choice.

8 Your Honours, what do we mean by the devil's choice? I have a decided -- decision in

9 the Ugandan court which I shall avail to this Honourable Court where the definition of

10 the phrase of "the devil's choice" was met.

11 And this brings me to the point where I should remind this Court that this case is arising

12 out of a situation in Uganda which has been characterised by repression and repression,

13 dictatorship and dictatorship. The case I'm referring to, your Honours, was a case

14 where dictator Idi Amin directed a certain woman to sell her property to the embassy of

15 Somalia. The woman was left with no choice but to sell the property. When Idi Amin

16 was overthrown, this lady went to court, but the defendant brought the sale agreement

17 and said, "But you signed this document selling your property." And the decision was

18 as to whether she voluntarily consented to sell her property.

19 Their Lordships in that case, your Honours, said no, that was not consent. Given the

20 dictatorship of Idi Amin and his propensity to kill anybody who stood in his way, the

21 lady was left with no choice but the devil's choice. So the choice she took to sell the

22 property was the devil's choice.

23 Your Honours, we submit that in everything that Dominic Ongwen did, he was left with

24 the devil's choice.

25 Your Honours, I now go to the manner or programme of our presentation. The Defence

1 submission shall be cascaded into four parts and presented by each of my colleagues, my
2 learned colleagues, Mrs Michelle Oliel, madam learned counsel Abigail Bridgman, and
3 learned counsel Thomas Obhof.

4 As I have already done, your Honour, I have dealt with the background remarks of the
5 presentation. My learned friend Michelle Oliel shall handle the issue of reversing the
6 burden of the child soldier dealing in detail with Dominic's age. She will tell the Court,
7 this Honourable Court how Dominic was under duress for all the acts he's alleged to
8 have committed during his life within the rebel ranks.

9 She will show that this is clearly borne out by the Prosecutor's, counsel for victims -- by
10 the Prosecutor's and counsel for victims' own admission that defiance of superior orders
11 in the LRA have dire consequences. This was clearly brought out. I'm indebted to
12 them for having brought this out very clearly. I think that is a common theme that runs
13 through all the submissions of both the Prosecution team and counsels for the victims,
14 the theme that in the LRA, I mean, there was zero tolerance for defiance of superior
15 orders.

16 And in the particular case of Dominic Ongwen we shall run you through to the peculiar
17 character and charisma of Dominic Ongwen, not against civilians, but against the UPDF
18 that endeared him to his commanders, that endeared him to Joseph Kony. Far from
19 saying that he was selfish and everything he did he did for his own gain, evidence
20 abound to buttress the argument that Dominic Ongwen was singularly one of the most
21 loved commanders of the LRA. He related well with the population and in many cases
22 meted punishment against errant commanders and soldiers under him who attacked
23 civilians.

24 Your Honours will appreciate that it was not for nothing that Dominic Ongwen was left
25 behind in Uganda when Joseph Kony finally crossed the borders and went into Garamba.

1 It was because of his special relationship with the civilian population. And this, your
2 Honours, is clearly borne out by the fact that while he was in total command of his
3 troops, in Uganda I'm yet to hear a single incidence of atrocity that was directed or
4 commanded by Dominic Ongwen. This fact alone speaks volumes about Dominic
5 Ongwen's peculiar love and relationship for the population.

6 Your Honours, my learned friend Oliel will also show that -- shall demonstrate that the
7 charges are marred with or could lead to cumulative convictions. She will end her
8 submission with the fact that indirect co-perpetration is not provided for under the
9 Rome Statute and should, therefore, be excluded or expunged from court record.

10 Your Honours, learned counsel Abigail Bridgeman shall address your Honours on the
11 issue of forced marriages, if there was any marriages. She will endeavour to illustrate
12 to you, your Honours, that this is a charge in futility because there was never any
13 marriages in the bush whether in common law or under any religious denomination or
14 even under the Acholi tradition. We will illustrate to you that in the Acholi tradition,
15 upon which the background is predicated, in order to enter into -- I mean like in many
16 African societies, marriage is denominated by the performance of some ceremonies
17 between two families where gifts are exchanged. None of this was ever seen in the
18 situation before your Honours.

19 She will also argue that it is not a crime under the Rome Statute, but it is in any case
20 subsumed by the offence of sexual slavery which is also part of the Prosecution case.

21 She will make submissions on counts on sexual violence, I mean on sexual -- I mean on
22 counts 50 to 60 and, lastly, she will address Your Lordships, your Honours, on the issue
23 of the veracity of the statement of Prosecution Witness Number 198 and Prosecution
24 Witness Number 200.

25 Your Honours, learned counsel Thomas Obhof shall then submit on Rule 76(3) of the

1 Rules of Procedure and Evidence dealing with the form, language and availability of the
2 Prosecution witness statements. He will further address your Honours on the issue of
3 common -- of command responsibility under Article 28(a), locations of Dominic Ongwen
4 at the relevant times in relation to Pajule, Odek, Lukodi and Abok IDP camps.

5 In all these --

6 PRESIDING JUDGE TARFUSSER: With the paper you were hitting with the
7 microphone, so it goes into the --

8 MR ODONGO: Sorry. Your Honours, the Defence case shall be premised on the
9 arguments outlined below. Number one, your Honour, we shall premise argument that
10 criminal liability should not be -- should be excluded on the basis of duress pursuant to
11 Article 31 of the Statute.

12 Number two, that the brunt of rebel atrocities should not be visited on child soldiers like
13 our client, who had no choice in joining the rebel ranks and remained in rebel ranks
14 against his will.

15 Number three, that eleventh-hour evidence should be excluded pursuant to Rule 76(3) of
16 the Rules of Procedure and Evidence.

17 Number four, that the Chamber, the Trial Chamber should refrain from confirming
18 cumulative charges in the interest of fairness where such charges are based on the same
19 facts.

20 Five, that indirect co-perpetration should not be regarded as a mode of liability since it is
21 not provided for in the Statute. This is a basic and cardinal rule in criminal, in all
22 criminal jurisdictions. I should imagine that you cannot be prosecuted for an offence
23 which has not been specifically provided for in a Statute.

24 Number six, Prosecution has miserably, in our view, Prosecution has miserably failed to
25 discharge, to discharge its duty to prove that Dominic either ordered the alleged crimes

1 or aided, abetted or otherwise assisted in the commission of the crimes charged.

2 Apart from the radio excerpts which were so badly brought on record, Prosecution has

3 failed to fix our client at the scenes of crime and because they have failed to dispense

4 with their responsibility to fix him at the scene of crime, our client is entitled to the

5 defence of alibi.

6 Number seven, it is the Defence case that the subjective elements pursuant to Article 30

7 of the Statute have not been met. It is the case of the Defence that since Dominic started

8 off as a child soldier, he was so obfuscated and befuddled by the hard experience and

9 the hard - indeed the devil's choices he was left with.

10 Number eight, it is the Defence case that Dominic is not responsible for the crimes

11 charged pursuant to Article 28(a) of the Statute.

12 Number nine, it is also the Defence case that the crime of forced marriage is subsumed

13 by the crime of sexual slavery and cannot, therefore, be charged separately.

14 And last but not least, Mr President and your Honours, it is the Defence case that

15 Dominic did not possess the requisite intent or capacity to commit the offences under

16 counts 50 to 60.

17 It will be submitted that Dominic Ongwen was just an instrument. He was just an

18 instrument. And the instrumentality with which he was viewed by his captors cannot

19 be visited on him as parameters sufficient to hold him liable for the offences under those

20 Articles.

21 Your Honours, based on the foregoing, the Defence shall, in due course, invite the

22 Chamber to find that this is a proper case for it not to confirm any of the charges

23 preferred against Dominic Ongwen.

24 Your Honours, it's about six minutes to lunchtime and I reckon this would be a logical

25 point at which we can stop and go for lunch. I'm much obliged, your Honours.

Confirmation of Charges

(Open Session)

ICC-02/04-01/15

1 PRESIDING JUDGE TARFUSSER: Thank you, Mr Odongo. I for sure will not give the
2 floor to any one of your team for the last six minutes, of course, but I can see that you did
3 not need at all the further two or three hours break in order to start your submission in
4 the afternoon because you are, as I expected, well prepared. So it was a correct choice
5 mine to proceed.

6 So I think, but I ask if this is the case, that by using the hour and a half this afternoon and
7 two sessions in the morning tomorrow that you will probably finish.

8 MR ODONGO: Your Honour, we have no qualm, no doubt in our minds that by
9 tomorrow we shall be done.

10 PRESIDING JUDGE TARFUSSER: But tomorrow at this time, not -- without using the
11 one and a half hour in the afternoon, this is what I was --

12 MR ODONGO: Very likely, unless exigencies occur, which would make it -- but we
13 think we shall finish by this hour.

14 PRESIDING JUDGE TARFUSSER: I just now turn to the Prosecutor telling the
15 Prosecutor that in the afternoon instead of starting on Wednesday morning if this occurs
16 that the Defence finishes by 1 o'clock tomorrow, you're invited to make your final
17 submissions in the afternoon session.

18 MR GUMPERT: If that occurs, we shall do so.

19 PRESIDING JUDGE TARFUSSER: Okay. Thank you very much.

20 So now we break for the lunch break and we resume at 2.30 p.m. Thank you.

21 (Recess taken at 12.55 p.m.)

22 (Upon resuming in open session at 2.32 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE TARFUSSER: Just two small things before giving the floor to the

1 Defence:

2 First, I want to put on the record that the Chamber has given back to the Prosecutor the
3 logbook, the original logbook we retain for a few days just to have a look at it; and the
4 second is that we should finish at quarter to 4 because at quarter past 4 another hearing is
5 ongoing, so in order to prepare the changes, it would be better. We have been advised to
6 close a little bit earlier, so 15 to 4. So that's it.

7 Now I give the floor to the Defence of Mr Ongwen, whoever wants to speak.

8 MR ODONGO: Your Honours, I shall -- it is me to speak again, and I'll begin from
9 where I stopped.

10 And your Honours, this afternoon I am going to address you on the role of the
11 international community and Dominic Ongwen's abduction. I'll start there.

12 Mr President and your Honours, it is clear that international humanitarian law protects
13 children from recruitment into armed forces and their use in armed conflicts.

14 I'm sure there is no argument that Dominic Ongwen is entitled to this protection or was,
15 at the time when he was a child, entitled to this protection with equal measure.

16 Article 38 of the United Nations Convention of the Rights of the Child is clear on this. It
17 states, and I quote, "One" -- I mean 38(2) "States shall take all feasible measures to ensure
18 that persons who have not attained the age of 15 years do not take a direct part in
19 hostilities."

20 Your Honours, abducted by the Lord's Resistance Army in 1987 at the young age of 9.5
21 years, Ongwen, Dominic, enjoyed no such protection. On that dreadful day, the innocent
22 child, Dominic, left his mother and father in search of education. Little did he know that
23 he would never see his mother and father again. On his way to school along with two
24 other children, he was abducted by the LRA. On the same day of Dominic's abduction,
25 his mother was allegedly killed, killed by LRA forces who shot her as she searched and

1 cried for Dominic.

2 Dominic's father, on the other hand, has never been seen again.

3 It is believed that he could have been killed by the National Resistance Army, now

4 UPDF, because they believed him to be a rebel fighter.

5 Stolen from his family and community, Dominic was taken to a makeshift training area.

6 Along the way and in the subsequent months and years, his abductors beat, tortured and

7 subjected him to constant acts of violence and forced him to perform the same on others.

8 Dominic was forced to witness acts that no person, let alone a child, should witness.

9 In the words of the Prosecutor with which we totally associate ourselves, I quote "Child

10 soldiers underwent rudimentary military training, and they endured brutal disciplinary

11 measures. They were regularly required to participate not only in the murderous attacks

12 on civilian camps, but in the individual acts of torture and murder designed to convince

13 recently abducted children that they were so steeped in blood that there could be no

14 acceptance for them back in civilian society."

15 Your Honours, this Court may have to pause backwards and search its soul and ask was

16 Ongwen an exception.

17 Your Honours, the above description could not have been any more apt than the

18 indoctrination Dominic Ongwen went through. It was violently meted out or made

19 under threat of imminent violence and death. And like other children stolen by the

20 rebels, he was made to believe at a young age that Joseph Kony had supernatural and

21 spiritual powers and was above reproach and question.

22 Your Honours, if the laws of war were meant to protect children like Dominic from being

23 forcibly recruited into the ranks and files of the LRA and forced to engage in hostilities, it

24 is inapposite to suggest that individual criminal liability can then be imposed upon those

25 like him who should have been protected but ended up enslaved by Joseph Kony.

1 And what with? The rigorous process of the indoctrination that these children went
2 through.

3 Your Honours, throughout the turns and twists in the armed conflicts between the
4 government of Uganda and the LRA, Dominic lived his life under duress. Left to the
5 vagaries of life in the bush, and knowing that he had no home to return to, as his mother
6 and father and perhaps his entire family were no more, Dominic succumbed to the
7 so-called Stockholm syndrome.

8 He had to adapt to the realities of his misfortune and develop acute survival instincts.

9 He recoiled into existentialist living until such a time an opportunity would avail itself for
10 him to escape. And that only came on 21 January 2015 or thereabout.

11 The all-knowing and all-seeing Joseph Kony instilled institutional ethos that required
12 complete compliance and discipline. This exactitude, your Honours, was so stultifying to
13 the young minds of child soldiers that it had made an indelible mark, indelible mark on
14 their minds for the rest of their lives in captivity.

15 Throughout the rest of his life and until surrendering to the US Special Forces, he
16 remained under the apprehension of fear of imminent death, especially if he were to flee,
17 your Honours. It's not as if he never contemplated escape. And, indeed, on several
18 occasions Dominic attempted to escape, sometimes with nearly fatal consequences.

19 Your Honours, the environment of duress never dissipated as Dominic remained in the
20 rebel group. His so-called promotions in the rebel ranks were demonstrative of one
21 thing; development of a higher survival instinct than others while under duress in the
22 bush. In the bush it was survival for the fittest. Each one for himself, God for us all, and
23 let the devil take the hind most. That was the philosophy in the bush.

24 Mr President, and your Honours, it is pertinent to clarify that Dominic Ongwen was not
25 arrested, as stated by Mr Gumpert in his introductory statement. It is a well-recorded

1 fact that Dominic surrendered to a militia in DCRA who handed him over to the US
2 Special Forces; who, in turn, handed him over to the UPDF; who, in their turn, handed
3 him over to the ICC through the CAR authorities.

4 Mr President and your Honours, it is important to note at this point that this act of escape
5 was just a culmination of the many opportunities Dominic sought to escape but in vain.
6 Mr President and your Honours, it is evidently clear that the question as to whether or not
7 Dominic voluntarily remained in the rebel ranks even when he had a clear opportunity to
8 escape has become an issue in these proceedings.

9 In this presentation, your Honours, Defence will show that on many occasions
10 Dominic Ongwen attempted to escape but was not able to escape because of the special
11 attention that Joseph Kony gave to him. As a matter of fact, it is on record that he made
12 contacts very early in the day with General Salim Saleh, the brother to his excellency
13 President Yoweri Kaguta Museveni and a premium stakeholder in the government of
14 Uganda, with a view to surrendering. This earned him severe corporal punishment and
15 long prison terms. As a matter of fact, from that date, Kony never trusted
16 Dominic Ongwen again and surveilled him in all his activities and put spies all around
17 him all the time.

18 In or about 2003 he contrived an escape plot with two others. He narrowly escaped
19 death, escaped death by the mercy of God, but was seriously tortured on the orders of
20 Kony and Otti who invited him from his camp to Kitgum. Because of his propensity to
21 escape, Dominic Ongwen was always under virtual prison. In fact, even when he was
22 sick in the sickbay he was constantly being surveilled by spies who were put around him.
23 In or around 2006, Dominic Ongwen again hatched an escape plan with Prosecution
24 witness number 240, but this plan also came to naught. According to the account of
25 Defence witness number 24, Kony always assigned spies as escorts to ensure, among other

1 things, that Dominic did not escape.

2 The character of Dominic Ongwen will be very instructive, your Honours, in this

3 proceedings. One of the things that cost misapprehension and distrust between Kony

4 and Dominic Ongwen, especially in the later years, was when after attaining maturity in

5 ascending the ladders, ascending the ladder of command authority called the command

6 altar, the only altar, he could now exact direct opposition to Joseph Kony.

7 One of the incidents that alerted Joseph Kony to Dominic Ongwen's propensity to escape

8 was an incident during the peace talks when Joseph Kony, being frustrated by the

9 apparent failure -- or, rather, the imminent failure of the peace talks, ordered that the

10 delegation, the entire delegation of the peace talks should be killed. Dominic Ongwen

11 stepped in and challenged him at the risk of being killed.

12 By the same token, when the elders of -- I mean, from Acholi, together with others from

13 other parts of Uganda went to meet him in the presence of President Chissano - Chissano

14 was the former president of Mozambique - Kony again hatched a plan to kill the entire

15 delegation. Dominic Ongwen again intervened, and because he was so popular with

16 especially the new abductees, Kony feared to kill him. He saved the situation again.

17 The breaking point between Dominic Ongwen and Joseph Kony came when Joseph Kony

18 had hatched a plan to send Dominic Ongwen to head a delegation to link up with the

19 Boko Haram of Nigeria in order to join hands, you know, to fight. Dominic Ongwen

20 again challenged Kony and refused this. He also declined at the risk of his life because

21 by this time at least he had already taken a poll position within the leadership of the LRA

22 organisation. He had been sent to link up with the Arab world, the -- you know the

23 government of Sudan, the government of Khartoum. Dominic Ongwen again refused

24 this. And because of the imminence of Kony's action on Ongwen, his own escorts took

25 pity on him, took pity on him and they were the ones who finally advised him and

1 showed him an escape route by which he escaped.

2 Your Honours, this is the sad story of this young man before this Court. He has seriously

3 attempted at all times to escape but could not until finally the reality of the situation

4 exerted pressure on his own escorts, those who were instructed to spy on him and to

5 make sure that he did not escape capitulated and allowed him to escape.

6 Your Honours, this young man in court is now out of the bush voluntarily. It was being

7 suggested by both the Prosecution and counsel for the victims that Dominic Ongwen did

8 what he did for gain.

9 With the fear of perhaps being misunderstood for being aggressive in my words, I

10 strongly suggest that this is very insulting to somebody who lost everything, including his

11 parents, who lost his childhood. What was there to gain in the bush? Promotions?

12 And what were these promotions was? Did they have any financial attachment to them?

13 What rewards were there other than the boosting of ego and that kind of thing? I think

14 this line of thinking must be rejected by this Court with the contempt it deserves.

15 Your Honours will appreciate that Dominic Ongwen has already suffered jeopardy at the

16 hands of the most vicious rebel organisations in the -- in the world. To indict him and to

17 put him under yoke would be double jeopardy. He has already wasted away 27 years of

18 his life and it is the case of the Defence that to press these charges against him would be

19 double jeopardy.

20 Article 39 of the Geneva Convention, your Honours, States -- again provides that "States ...

21 shall take ... appropriate measures to promote physical and psychological recovery and

22 social reintegration of a child victim of: Any form of neglect, exploitation or abuse;

23 torture or any other form of cruel, inhuman or degrading treatment or punishment; or

24 armed conflicts."

25 Your Honour, it is not open -- it is not open to debate that Dominic Ongwen suffered all

1 these vagaries of life. We are in total agreement between the three sides to this argument,
2 the Prosecution, the Defence and, indeed, the victim counsel, that Dominic Ongwen went
3 through all this. What would the world say about this man going through another round
4 of punishment when it is absolutely clear that he did not have his own mind throughout
5 his stay in the bush? The argument should not be lost that the LRA was not an ordinary
6 rebel organisation; it was shrouded in mystical and metaphysical environment that
7 descended upon young minds and adults alike.

8 Your Honours, the Defence submits that contrary to the Prosecution's assertion, Dominic
9 is approximately 37 years. He was abducted at the age of below 10. It has been
10 forcefully argued that it is the question of when he was abducted is neither here nor there
11 because the difference of two years does not make sense.

12 Your Honour, I think even with the most eloquent argument, there is no way you cannot
13 differentiate between the person who was under the age of 15 for two years and that who
14 was under the statutory age of 15 for five years. It makes a world of difference because
15 these are formative years and, therefore, it is relevant the time -- I mean, when
16 Dominic Ongwen was abducted is absolutely relevant and it cannot be washed away
17 under the carpet.

18 The Office of The Prosecutor having invested, your Honour, public resources and years
19 investigating the case from 2004 through 2010, talking to his family and determining that
20 Dominic was born in May 1978, we consider it, your Honours, disingenuous for them to
21 now turn around and say that he was born in 1975. It was their own finding that he was
22 born in 1978.

23 Your Honours, the two people best positioned to testify to Dominic's age, that is his
24 mother and father, may the Lord rest his soul in peace, were unfortunately murdered by
25 the warring factions just after Dominic was abducted.

1 The next best person would be Dominic's paternal uncle therefore, a former teacher and
2 someone who he was abducted with. Defence Witness Number 26 states that Dominic
3 was born in May 1978 and was around 9 to 10 years old when he was abducted in or
4 around November 1987.

5 The Defence -- sorry, I'm reminded, and I want this expunged from the court record, that
6 it is Defence Witness Number 8, rather, than Defence Witness Number 26, Defence
7 Witness Number 8 who gives the date of his birth.

8 The defence, your Honours, submit that in a culture where birthdays are not significant, it
9 is easy for one not to know his own birth date. Dominic himself does not know his exact
10 birth date.

11 The Prosecution's evidence also supports the proposition that many people who returned
12 from the bush did not know their true age or birth date. For instance, Prosecution
13 Witness Number 309 gives three different birth dates in three different years in the same
14 interview. As the witness does not have a birth certificate, he states that he knows his
15 birth date because his mother told him.

16 The same can be said for Defence Witness Number 4 and Prosecution Witness 235.
17 Defence witness -- I mean, Prosecution Witness Number 235, Defence Witness Number 5
18 and Prosecution Witness Number 236. It is submitted that as a result the most reliable
19 confirmation of Dominic's birth date being in May 1978 comes from Defence Witness
20 Number 8, a person who was present at Dominic's birth and the people that grew around
21 him.

22 Your Honours, the media is under -- I think it has assumed notoriety, the media is awash
23 with the narrative that Joseph Kony is believed to possess spiritual and supernatural
24 powers, which definitely instilled fear in everybody who came around him. Joseph Kony
25 has been described as an all-seeing and all-knowing individual, making it unthinkable for

1 a recruit abductee even subsequent to their -- many years after their abduction to attempt
2 to escape.

3 Many believe that he could talk to the Holy Spirit, so to speak, he was a spirit medium,
4 sometimes referring -- I mean referred to as Lakwena. He was referred to as Lakwena.
5 I'm told "Lakwena" in Luo means "the messenger." So Kony was perceived to be the
6 messenger of the spirit world. So he was a conduit that connected directly with the spirit
7 world.

8 Many believed that Kony talked to the Holy Spirit and that Kony was only a
9 messenger -- was that messenger of the spirits. These spirits which included -- you
10 know, these are very, according to them, these are powerful councillors in the holy altar of
11 the LRA, the command structure of the LRA.

12 We are told by Dominic Ongwen that they were made to believe that the Holy Spirit
13 world, the spirits that commanded the altar, the holy altar was, I mean -- they had a
14 committee that was chaired by a spirit that was called Juma Oris Debohr, he was the
15 chairman of the spirits, and each spirit had a special role.

16 For instance, there was a spirit called Ing Chu, I think from the Orientals. This was a
17 spirit that was responsible and managed matters of intelligence, went to the battlefield to
18 find out whether you were doing according to instructions and hover around everybody
19 to search your soul to find out whether you had a mind to escape.

20 There was another one called Who Are You, a spirit called Who Are You. This was a
21 director of operations. This was in charge of operations. And then there was another
22 one called Mama Silly Salindi Mackay. This was a doctor in charge of the healing powers
23 that instructed Kony on the herbs and things that he should use to heal. Those who were
24 with him in the bush and his healing powers according to what they believe included
25 healing even syphilis, but provided you conformed to the instructions given by Kony.

1 And then there was another one called Bianca, another one called Silver. All this, this
2 was the team of spirits that this unfortunate child was unwittingly made to believe was in
3 control of his life in the bush.

4 Your Honour, I'm reluctant to repeat but I must repeat that failure to follow the rules
5 meant punishment, and usually this punishment was death, especially in the battlefield
6 by the spirits that always knew who was breaking which rules.

7 There is a sad story of witness number -- Defence Witness Number 27, who it is alleged,
8 your Honours, when he was being sent to the battlefield, he was told: When you get a
9 woman, never go into -- never get into any sexual relationship with any woman, however
10 beautiful she is.

11 But this young man I think succumbed to the desires of the flesh. After a pitched battle
12 he captured one of the girls and had sex with her. And within a short time, this young
13 man was hit in his genitals and one of his testicles destroyed. And according to the
14 on-listeners, this was because he defied the instructions of the spirits given by
15 Joseph Kony.

16 Your Honours, such were the fears instilled.

17 Your Honour, this type of indoctrination was not without consequence. This was a
18 powerful tool in Kony's arsenal and his ability to control people from childhood to adults
19 who were trained to believe that he was a prophet, a prophet by birth and by inclination.
20 This is not only significant, this is not insignificant given that many of the children in the
21 LRA came from societies where spiritual beliefs are ingrained in them from childhood.
22 For instance, it is believed that your ancestors formed part of your daily existence and you
23 are to conform to certain patterns of life in order to live in tandem with the spirit world.
24 From this indoctrination, Kony ruled with complete and unfettered power. His orders
25 were final and meant to be followed, and were meant to be followed. Disobeying orders

1 of the prophet resulted in torture, death or even worse, worse in the sense that apart from
2 killing you, they might even descend on your own family, on your own village.

3 And the experiences of northern Uganda are replete with examples of some of this. The
4 community knew that these things were possible.

5 Joseph Kony and his spiritual powers -- I mean Joseph Kony is believed to have been
6 endured with the spirit since the beginning. No matter how he ascended to lead the
7 LRA, the end product remained the same, Kony was perceived by the LRA as having
8 prophetic powers.

9 The command structures. Your Honours, I now turn to the issue of command structure
10 of the LRA.

11 Your Honours, I hate to say that the LRA was not an ordinary rebel group where it was
12 open for -- to anybody to question certain things because there were -- there usually is
13 what you call a high command, you know, army council, and that kind of thing.

14 The structure of Kony's LRA was predicated on the -- it was predicated on the Control
15 Altar. The Control Altar was managed by the council of spirits that I have already talked
16 about, and perched on the human chair all the time was this man called Joseph Kony.
17 Immediately under the Control Altar, there was what you would call "the division" who
18 were selectively invited to discuss certain matters with Kony once in a while if he so
19 pleased.

20 And then under the division there were the four brigades. Then under the brigades there
21 were battalions and then, of course, the normal company and then the units and so on and
22 so forth.

23 But, you see, there was a -- in the LRA, there is something completely peculiar to that
24 organisation in the sense that Joseph Kony was the alpha and the omega of the
25 organisation that dispensed orders without listening to anybody.

1 It is on record, your Honours, that even when he invited you to give an opinion about a
2 matter, you can rest assured that it was just to pick your mind, not to be bound by your
3 decision because, after all, the orders that he gave were not ordinary human orders.
4 They were meant to have come from the supernatural world, from the spirit world, so
5 they were unchallengeable.
6 So the real army council, as it were, at the Control Altar, were the spirits chaired by
7 Juma Oris that I have narrated to you. That is why, Mr President and your Honours, on
8 many occasions, like in the case of Lukodi, instead of giving orders to Dominic Ongwen,
9 he overpassed him and gave the orders to his second in command, and you would -- you
10 could not question it. Now, in a situation where the ultimate boss had given an order,
11 wants somebody to raise his arm to tell me whether if he was in the same position as
12 Dominic Ongwen, knowing what Kony was, you would, first of all, challenge that order;
13 and if that order was not open for you to challenge, in the event that it was executed badly
14 and the implementers committed acts of atrocities, by the same token that you did not
15 have control over the person who was sent to implement the order, would you have the
16 capacity and the temerity to rein in and punish the person who has committed the
17 atrocities? If you did, what would the ultimate boss who issued the order do to you?
18 Your Honours, I want to run you through quickly -- through the -- through some
19 examples which are on record as giving stock to the belief that Kony was spiritually
20 endowed and, therefore, it was a stupid risk to defy his orders.
21 It is alleged, your Honour, your Honours, and this is widely known to the Ugandan
22 community, and many witnesses have testified to this, that the failed 1993 peace talks and
23 the move to South Sudan just before the -- those peace talks, Kony had spoken about an
24 upcoming cessation of hostilities for the purpose of the peace talks, but he foretold -- he
25 foretold that the peace talks would last just long enough to move everyone to Sudan.

1 This came to pass. This came to pass according to those who were involved in it. This
2 came to pass as the peace talks broke down just as the last of the rebels escaped into
3 Sudan.

4 Another incident, your Honours: In 1997, when they were at River Aswa, Kony foretold
5 that there was going to be an attack, there was an imminent attack, and that people should
6 quickly pack their luggage and cross the river according to their narratives, which is on
7 record.

8 After crossing the river Aswa and making camp, Kony became possessed by a spirit and
9 instructed everyone to pick up camp and move immediately. Following his instructions,
10 the group started leaving immediately. Whilst leaving, the UPDF shelled the camp,
11 destroying the area where the group was sitting just five minutes earlier. At this time no
12 one in the group, including Kony, had a functioning radio or communication device.
13 This is a strong message to young people, like Dominic Ongwen, that this was not an
14 ordinary person.

15 Mr President and your Honours, in March 2002, during the Iron Fist Offensive, Kony
16 predicted that the Iron Fist Offensive -- I mean, he had predicted the Iron Fist Offensive
17 months before it happened. Because of this prediction, people were able to prepare for
18 the attack and go on defensive to slow the UPDF. According to them, when the UPDF
19 came, the direction they came from, how they came, was well predicted and prophesied
20 by Kony.

21 All the former abductees and those who were in the LRA will confirm this to anybody
22 who cares to listen.

23 Then there was this Titanic Garamba Park bombing. Your Honours, it is stated that
24 about a week before Garamba Park bombing, Kony assembled everyone and told that the
25 UPDF would attack them in one week. The day before the attack, Kony spoke to

1 everyone again. He told them to leave if they so wished; but that if they wished to stay,
2 they would not be killed. They would neither be harmed nor killed. When the fog
3 abated the next morning, four to five planes flew overhead dropping bombs all around
4 the LRA's location. Two people received minor injuries from exploding trees, and not a
5 single person was killed.

6 To an unsuspecting mind like Dominic Ongwen, this was a telling truth about Kony's
7 spiritual powers. In this context, your Honours, it is incomprehensible that a captive, let
8 alone a child who's mind is still in its formative stage, would disentangle his mind from
9 the belief steeped in the metaphysical environment fate has put him in.

10 And, of course, your Honours, this transcended into his adult life because it must be
11 simplistic to say that this only would impact on the minds of child soldiers and that there
12 would be a magic transitory movement into now believing that these things don't happen
13 immediately after you've become of age.

14 It is believed that from these spiritual powers, Kony was able to lead through duress and
15 threats of violence. If one disobeyed, they would not receive the protections and
16 prophecies by Kony. Joseph Kony's alleged healing power, ability to interpret dreams
17 and read people's mind added impetus to the unfettered loyalty to him.

18 Joseph Kony did not have a formal education, but he was believed to be able to heal the
19 sick. Those who did not follow his instructions to the word were not cured. He also
20 interpreted dreams and seemingly normal everyday acts, which were a routine part of his
21 duties as a spiritual leader of the LRA.

22 Dream and occurrence interpretation formed part of the day-to-day operations of the
23 LRA. The interpretations, therefore, shaped the actions of the Holy Spirit Army.
24 Your Honours, radio intercepts, radio intercept records tend to prove the importance of
25 Kony's power, spiritual power to interpret dreams and everyday acts, even the death of

1 Charles Tabuley. The death of Charles Tabuley, one of his most trusted generals, was
2 predicted in advance by Kony.
3 He also interpreted dreams and -- I mean, your Honours, the LRA loyalist fighters
4 believed that Kony used the spirits to learn of secret plots of desertion and disobedience.
5 They believed that Kony had spies at every corner. For instance, shortly before his death,
6 Nyeko Tolbert Yadin had come to Dominic with escape plans. Nyeko had heard of
7 amnesty and came to his brother, who is Dominic Ongwen, who had also known about
8 the amnesty. They agreed to escape.
9 But before escaping they had to make sure that the escape route was clear. So a scout
10 was sent by them to check on the escape route. Unfortunately, just after being sent, Otti
11 summoned Dominic Ongwen and Defence witness number 13 to Kitgum,
12 Dominic Ongwen was arrested, beaten seriously and he was told of the untold horrors
13 that would happen if he left the LRA.
14 It is instructive, your Honours, to note that the LRA did not have any proper chain of
15 command. The LRA did not maintain a proper chain of command at all.
16 Joseph ruled -- Joseph Kony ruled the LRA with supreme and exclusive power. His
17 orders were issued by himself or through Vincent Otti in an inconsistent fashion, never
18 following a chain of command. And it would, therefore, be very unfortunate to hoist this
19 young man, Dominic Ongwen, on this matter of command. Everyone reported to Kony
20 and Kony could order anyone on a mission.
21 Former civilian commanders of and with the LRA expressed to the Defence that orders
22 did not always trickle down the chain of command as one would expect in a military -- in
23 a normal military establishment. Kony could and would tell junior commanders to go on
24 missions and the senior commanders would not know about the mission until after the
25 fact. This is not how a military or military-like structure operates. Orders flow from the

1 top through senior commanders to the intended recipients. Senior commanders are not
2 bypassed by convenience; they are part of the loop to ensure success and accountability of
3 their subordinates.

4 This is not how the LRA operated. It operated with Kony at the top giving orders to
5 whomever he wanted without any true chain of command. The brigades in the LRA
6 were not brigades as in a conventional army. In conjunction with the lack of a chain of
7 command, the LRA did not maintain a conventional military structure with its brigade.
8 In a military -- in a regular military, the brigade commander would be apprised of all
9 actions of his or her subordinates. Nothing would go around the commander. In the
10 LRA this was not the case as discussed already.

11 Additionally, there were times that the LRA had more than one commander per brigade.
12 Again, a clear chain of command would not be present. Two persons with the same
13 responsibilities and powers destroy the normal command structure of militaries and
14 military-like organisations. Names like Sinia, Gilva, Trinkle, Stockree, Control Altar
15 along with Oka, Terwanga, et cetera, et cetera, went absolutely nothing. They were loose
16 groups without a command structure. The command structure of the LRA was such that
17 everyone reported to Kony if Kony so wished.

18 Last but by no means least, Mr President and your Honours, I will give you an outline of
19 what we think about grounds for excluding Dominic Ongwen from criminal
20 responsibility under Article 31 of the Rome Statute.

21 Your Honours, Article -- but, I think, your Honours, I shall leave that to my colleague, my
22 learned colleague, Michelle Oliel, who will address you on this.

23 So in conclusion, your Honours, in the words of the Prosecutor in paragraph 3 of their
24 statements on the pre-confirmation brief, it is stated that the confirmation process is
25 designed to protect Dominic Ongwen from wrongful and unfounded charges.

1 On page 16, the Prosecution notes that local officials formed bow and arrow civil defence
2 units to defend themselves against Joseph Kony's rebels. By this it is overtly clear that
3 another fighting front was opened against the LRA.

4 So far, Mr President and your Honours, nobody has made a forensic assessment of this
5 tacit admission by the government of Uganda that it may have failed to use its
6 institutional capacity to protect the lives and properties of its civilians.

7 Where were these arrow boys stationed? You may want to ask. Were they stationed
8 within the civilian population or were they stationed within the barracks? Were they set
9 apart in a separate location? And you want to ask, your Honours, did this help or rather
10 escalate the problem of the LRA trying to distinguish the enemy from friends and those
11 who were neutral? Was this a protective measure for the civilian population or it only
12 helped to put them in arms way?

13 In our view, your Honours, we think that this Honourable Court has an intractable
14 problem to assess the problems that the civilians found themselves into, but we must
15 emphasise that our hearts go out to the civilian population who are victims of this
16 senseless war that engulfed Uganda for more than 20 years.

17 We are glad to be in defence of Dominic Ongwen, we -- whom we hope shall be used as a
18 floodgate to narrate the hues and cries of the people who suffered under this. And we
19 do completely agree with my brother, Cox, when he said whatever the end result of this
20 trial -- I mean, whatever the end result of this process, it is incumbent upon this Court to
21 make sure that the interests of the civilian population of the victims are properly assessed
22 because they got involved in a war that they knew not.

23 Your Honour, I shall stop my presentation at this point. I thank you very much.

24 PRESIDING JUDGE TARFUSSER: Thank you very much, Mr Odongo.

25 Now we have reached the time given me by the court officer, generously given to me by

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- 1 the court officer, and I think we have to suspend until tomorrow at 9.30 for the continuing
- 2 of the Defence presentation of the case.
- 3 Thank you very much.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 3.43 p.m.)